

## **ADMINISTRATIVE TRIBUNALS UNDER INDIAN CONSTITUTION: AN OVERVIEW**

*Written by Dr. Chandrakanthi. L*

*Assistant Professor, P.G. Department of Law and University Law College,*

*Bangalore University*

---

### **Abstract:**

Administrative tribunals are constituted with amendment to Articles 323A and 323B of the Indian Constitution. These are constituted to exclusively deal with service matters of the civil servants. However, Administrative Tribunal is a substitute to High Court. These tribunals are quasi-judicial in nature but assigned with adjudicate the matters referred before them. It is a sign of welfare state. As many tribunals are working today, regulatory mechanism is very much needed. The tribunals are established to avoid regular court approach by civil servants. The only strict restriction imposed on them is to follow Principles of Natural Justice, but the tribunals started to give their own construction to interpret the Principles of Natural Justice. This is because there are no settled definite principles to say these are the fundamental principles of Natural Justice.

### **Introduction**

By giving up the traditional theory of 'laissez faire' and the police state, now the state has become not only a welfare state but more so a progressive democratic state. As a result, state started to seek the social security and social welfare for the common masses. According to Servai, the development of administrative law in a welfare state has made, administrative

tribunals a necessity'.<sup>1</sup>

Moreover, the modern government forced to employ a large work to carry out its diverse activities. The employed persons in the government today are better educated and more aware of their rights even if they are not in equal measures, aware of their duties and obligations. Even those not so well educated have become politically aware enough to be increasingly insistent on their rights<sup>2</sup>.

The issues arising out of this relation are not purely legal issues. Hence, the ordinary course of law failed to deal with all this kind of socio-economic problems. To meet such requirement, the governments in different countries are assigned this judicial type of function to tribunals which have been created under different statutes. India is one among them.

Hence, tribunals play a very important role and tribunals have been increasing since from 1947<sup>3</sup> especially after 1976. The 42nd Amendment Act of Indian Constitution inserted Art. 323A<sup>4</sup> and Art. 323B.<sup>5</sup> Tribunals function differently from courts, from the manner of appointment to the procedure followed, yet they seek to achieve the same objective as that of

---

<sup>1</sup> Serwai ,HM, Constitutional law of India, Tripati, Bambay, 1968, p. 23.

<sup>2</sup> Maheshshwari S.R., Indian administration, Orient Longman Pvt. Ltd. New Delhi, 2001, p.62.

<sup>3</sup> Rao, Nageswara V, and Reddy G.B., Doctrine of Judicial Review and Tribunals: Speedbreakers Ahead, Journal of the Indian Law Institute, New Delhi, 1997, p.418.

<sup>4</sup> Art. 323A: Administrative tribunals- Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. Further, Art. 323A (1) may provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States; specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals; provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals ;exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1); provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment; repeal or amend any order made by the President under clause (3) of article 371D; contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

<sup>5</sup> Art. 323B--the appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause ( 2 ) with respect to which such Legislature has power to make laws.

courts- to deliver justice. In this light, the paper proceeds to analyze the tribunal system in India.

### Meaning and Definition

Tribunals can be called as “Judgment seat or court of justice or board or committee appointed to adjudicate on claims of a particular kind”. Meaning of the tribunal can be gathered from the various Supreme Court authorities. Therefore, they are adjudicatory bodies (except ordinary courts of law) constituted by the State and entrusted with judicial and quasi-judicial functions as distinguished from administrative or executive functions.<sup>6</sup>

In accordance with the Indian judiciary they are the bodies must maintain procedural safeguards while arriving at their decisions and observe principles of natural justice-their opinions were substantiated by the 14th Law Commission Report.<sup>7</sup> The tribunals were established with the object of providing a speedy, cheap and decentralized determination of disputes arising out of the various welfare legislations and to address specifically cases come out of new socio-economic legislations.<sup>8</sup>

The word ‘tribunal’ takes its origin from the Latin term *tribunus* which means “a raised platform with the seat of judge, who elected by the pleas of protect their interests<sup>9</sup>”.

According to Oxford Dictionary, the tribunal means “Judgment Seat or “a Court of justice.<sup>10</sup>

According to Oxford Companion of law “any person or body of persons having to judge, adjudicate on or determine claims or disputes....<sup>11</sup>

Prof. Balram Gupta says that if an authority is to be considered as tribunal it must be constituted by the state invested with certain functions of the judicial powers of the state.<sup>12</sup>

Prof, M.P. Jain says that a body, besides being under a duty to act judiciary, should be one which has been constituted by and invested with a part of the judicial functions of the state.<sup>13</sup>

Basu says that ‘tribunal’ is used in juxtaposition with the word ‘code’ and refers to the quasi-

---

<sup>6</sup> Thakker, C.K., Administrative Law, Eastern Book Company : Lucknow, 1996, p.226.

<sup>7</sup> Nayak,R., Administrative justice In India, Butterwoths : New Delhi, 1989, p.38

<sup>8</sup> Jain,M.P., Principles of Administrative Law, Wadhwa & Company : Nagpur, 1996, pp.246-248

<sup>9</sup> Saha, Dr. Tushar Kanti, Administrative Law, Kanishka Publishers: New Delhi, 2001, p.121.

<sup>10</sup> Chhabra, Sunil, Administrative Tribunals, Deep and Deep Publications, New Delhi,1990, p.2.

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

judicial tribunals excluding courts which have the trappings of a court.<sup>14</sup>

Administrative tribunals are particularly associated with the administration and their decision are administrative. But it is not significantly true but it is true to the extent of their concern with schemes in which the administration has an interest. Further, it is found in the majority of the cases that decisions of the administrative tribunals are more judicial in nature as there is a demand to apply rules impartially without leaning towards their executive polity.

There is no specific definition for “Administrative Tribunals” in the Constitution of India. However, Articles 227 and 136 of the Constitution of India provide only the word “tribunal” and nothing more. As there is no precise or scientific form of definition for tribunal, we should divert our concentration on the Supreme Court for its views regarding the tribunals by referring to certain case laws.

In *Durga Shankar Mehtha v/s Raghuraj Singh*<sup>15</sup>, the Supreme Court expressed that ‘Tribunal’ as used in Article 136 does not mean the same thing as ‘court’ but includes within its ambit, all adjudicating bodies provided they are constituted by the state and invested with judicial as distinguished from administrative or executive functions.

In *Bharat Bank Ltd. v/s Employees*<sup>16</sup>, the Supreme Court observed that though tribunals are clad in many of the trappings of court and though they exercise quasi-judicial functions, they are not full-fledged court.

In *Associated cement companies Ltd. v/s P.N. Sharma*<sup>17</sup>, the Supreme concluded about the tribunal as that it is an adjudicating body which decides controversies between the parties and exercises judicial powers as distinguished from purely administrative functions and the possesses some of the trappings of a court, but not all.

However, there is basis test within Article 136 or 226 for tribunals that

- a. It is an adjudicating authority other than the court
- b. The power of adjudicating must be derived from a statute or a statutory rule.
- c. The power of adjudicating must not be derived from an agreement between the parties.

---

<sup>14</sup> Ibid

<sup>15</sup> AIR 1954 SC 520.

<sup>16</sup> AIR 1950 SC 188

<sup>17</sup> AIR 1965 SC 1595

*S.N. Jain* defines the tribunal, as “the work is a name given to various types of administrative bodies. The only common element running through these bodies is that they are quasi- judicial and are required to observe principles of natural justice or fair hearing while determining issues”<sup>18</sup>.

So, it can finally be defined as a judicial body not being an ordinary court that functions on constitutional mandate or under statutory empowerment performing judicially quasi-judicially as the arm of judicial system with a repository or expertise a unique to its nature.

### **Characteristics of Administrative Tribunals**

The following are the characteristic of an administrative tribunal:

1. An Administrative tribunal has statutory origin as it is creature of statute;
2. It has the get –up of a court with having a some of the trapping of a court but not all;
3. It performs quasi-judicial functions as it is entrusted with judicial powers of the State which is distinguished from pure administrative or executive functions;
4. It is a self-styled entity within the ambit of the Act regarding rigid procedures. It means it is not bound by the strict rules which should be followed by the court i.e. rules of evidence;
5. In some aspects of procedural matters such as to summon witnesses, to administer oath, to compel production of documents etc. it has possessed power as of the court;
6. Tough the discretion is conferred on them, it is to be exercised objectively and judicially. It means that most of its decision is recorded the finding of facts objectively and apply the law without regard to executive policy;
7. It is confined exclusively to resolve the disputes/cases in which government is a party but often it moves to decide the disputes between two private parties for example Election tribunal, Rent Control Board;

---

<sup>18</sup> Diwan, Paras, Administrative Law, Allahabad Law Agency ,Allahabad, 1995, p.62.



8. It enjoys independent states free from any administrative interference in the discharge of their judicial or quasi-judicial functions;
9. The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.<sup>19</sup> Hence tribunal cannot dispose the matters as final arbitrator;
10. IT should act without any bias;
11. Once the issues settled by the High Court cannot be entertained by the administrative tribunal;
12. It is perpetual in nature and tribunal have been established specially to deal with a particular type of case or with a number of closely related types of cases.<sup>20</sup>

### **Importance of Administrative Tribunal**

The reasons why parliament increasingly confers powers of adjudication on special tribunals rather than on the ordinary courts may be stated positively as showing the greater suitability of such tribunals, or negatively as showing the inadequacy of the ordinary courts for the particular kind of work that has to be done<sup>21</sup>.

The growth of administrative decision making was the need to explore new public law standards based on moral and social principles away from the highly individualistic norms developed by the courts. Realizing their limitation, the Supreme Court once said that leaving such technical matters to the decision of the court is like giving surgery to a barber and medicine to an astrologer<sup>22</sup>. An even more important practical reason for the growth of tribunals was the desire to provide a system of adjudication, which was informal, cheap and rapid. Litigation before a court of law is not only time consuming but is a luxury for the rich man.

The reasons why parliament increasingly creates tribunals may be the ordinary courts are already overburdened with work, their procedures are technical and costs are prohibitive

---

<sup>19</sup> Takwani C.K, "Lectures on Administrative Law, Eastern Book Company, Lucknow, 2001, p.31.

<sup>20</sup> Jones, Brain and Katharine Thomson, *Garners Administrative Law*, Butterworths, London 1996, p. 24.

<sup>21</sup> Phillips, O.Hood and Jackson, *Constitutional Law and Administrative Law* Sweet and Maxwell, London, 1987, p.637.

<sup>22</sup> Massey I. P., *Administrative Law*, Eastern Book Company, Lucknow, 2008, p. 184.

and questions arising out of a social or industrial legislation are better decided by persons who have an intimate and specialized knowledge of the working of that Act. Hence for a government, this has taken on ambitious and massive plans of public health, education, planning, social security, transport, agriculture, industrialization, national assistance. It is impossible to carry out these programs and determine legal questions involved therein with the assistance of the law courts because of their highly individualistic and ritualistic approach. No intensive form of government can function without a decision making system of its own. Therefore, administrative decision making through administrative tribunals is inevitable and essential. The Administrative Tribunal can adjudicate on the matters: levy, assessment, collection and enforcement of any tax; foreign exchange, import and export across customs frontiers; industrial and labour disputes; land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way; ceiling on urban property; elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329A; production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods; any matter incidental to any of the above specified matter.<sup>23</sup>

### **Objectives of the administrative tribunals**

Administrative tribunals constituted with few objectives:

- a. To provide for a forum to deal exclusively with service matters which off loaded the burden of the cases of High Court from their jurisdiction;
- b. To provide inexpensive and speedy relief to government servants in service matters;
- c. To provide special powers to the tribunals to make their own special powers and procedures and not be guided by the Civil Procedure Code or the Law of Evidence but to work according to rules of natural justice.

---

<sup>23</sup> See Art. 323A and 323B of Indian Constitution.

As far as creation of tribunals is concerned constitution is silent. No express provision in the Constitution, as it stood originally, provides for the establishment of tribunals. However, Articles 262(2) and 263(1) are important in this regard.

Article 262(2) provides for the creation of tribunal to adjudicate the disputes relating to water of interstate rivers or valleys.

Article 263 (1) provides for creation of council charged with the duty of inquiry into the disputes between states.

Apart from these two Articles, the creation of tribunals is implied in the Articles 136, 226 and 227 of the Constitution as the term 'tribunal' is used in these Articles.

However, forty second Constitutional Amendment expressed the provision for the creation of tribunals. This Amendment opened the possibility for the proliferation of the tribunals system in the country. Article 323A empowers the parliament to establish service tribunals, which will deal with the service matters i.e., recruitment, conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or any local or other authority in India or under the control or owned by the government and Article 323B empowers the appropriate legislature to provide the law, for adjudication or trial by tribunals of any disputes and offences with respect to several matters. Further the Article 323B is wide amplitude and it provides that tribunals may try certain criminal offences also.

In 1985, Parliament passed the Administrative Tribunals Act in pursuant of Article 323 A of the Constitution. And under Article 323B parliament and state legislatures are passing law from time to time which provided for the creation of tribunals.

The work assigned to the tribunal is very complex in nature. It requires qualified and experienced members to the adjudication of the subject matters. Hence the chairman must come from judiciary with an experience of adjudication to his credit. He must be legally qualified person because he only can apply statute law or case law to complex situations other members of the tribunal shall have the sound professional knowledge and practical



experience of the service matters. So they are to be senior executive officers who are men of character, integrity and having best ability.

Each tribunal shall consist of chairman, Vice chairman and judicial and administrative members in such number as the appropriate government may deem fit. The qualifications are fixed by the President of India after consulting Chief Justice of India and for their members' consultation with the Government of the concerned State i.e. in case of State Administrative Tribunal or joint Administrative Tribunal will be made. The chairman of tribunal has been given the exclusive power to constitute bench. He may transfer the vice chairman or other member from one bench to another. He can constitute a bench composed of more than two members and also single member bench.

### **Tribunal is not a substitute for High Court**

The tribunals empowered to adjudicate disputes and entertain complaints with respect to service matters. All other courts except Supreme Court are barred to entertain these cases. Therefore, tribunals do not enjoy the same status or are at par with High Court. But a tribunal will not have power to issue writ as power is not given to them.

The Supreme Court in *S.P. Sampath Kumar's* case<sup>24</sup> declared that the tribunal is the substitute of High Court and is entitled to exercise the power thereof. The position emerges that the High Court and tribunals are not rival institutions. The tribunals are apart of the jurisdiction of High Court i.e., relating to service matters an appeal can not lay within the High Court against the order or judgment and as a matter of right before the Supreme Court. But Supreme Court can entertain appeal in the exercise of its extraordinary jurisdiction under Article 136. Hence, the tribunal's decision is made appealable within the tribunal itself before a large bench as an ordinary employee cannot be accepted to afford the cost of litigation in the Supreme Court, which may sometimes result in the denial of his right to seek justice.

But in *L. Chandrakumar v/s Union of India* case<sup>25</sup>, the Supreme Court reversed its earlier judgment and ruled that power of judiciary vested in the Supreme Court and High

---

<sup>24</sup> (1987) 1 SLJ 124

<sup>25</sup> (1997) 3 SCC 261

courts is constituted part of the basis structure of the constitution and could not be taken away. Now the tribunals are allowed to function as courts of first instance subject to the jurisdiction of High Courts. This down graded the role of tribunals from the substantial role to supplemental role.

There is a condition to invoke tribunals to a civil servant that he should have availed to him under the service rules and he should have locus standi in the subject matter.

The Government of India has framed rules for filing an application before Administrative Tribunal that it shall be presented in Form 1 by the applicant in person or by an agent or by a duly authorized advocate to the Registrar or an other officer authorized by the Registrar to received the applications or sent by registered post with acknowledgement only addressed to the Registrar. After the application has been filed, the Registrar or the officer authorized by Registrar shall endorse the date on which it is presented for deemed to have been presented and sign the endorsement. In the scrutiny, any irregularity is found in the application the Registrar may allow the parties to remove in presence. Otherwise he may refuse to register such application with reasons recorded in writing an appeal against the order of Registrar will be filed within fifteen days of such order. Tribunal empowers to regulate its own procedure including fixing of places and times of its enquiry and deciding whether to sit in public or private place.

The tribunal can admit evidence, in lieu of any originals document, a copy attested by a gazette of officer. It can avoid oral evidence and evidence on affidavits. No evidence will be taken in the absence of both the parties and hearing will commence when both the parties present<sup>26</sup>.

The person who is aggrieved by an order of the government or its agencies can approach the tribunal within a period of one year from the date on which the delinquent official was penalized and this representation has to be disposed of within the period of six months<sup>27</sup>. However, delay can be condoned by the tribunal if it is satisfied with sufficient cause. The tribunal shall follow the principles of natural justice. It is empowered to review its own decision and may reject the application of review if it is satisfied that there is no

---

<sup>26</sup> The Central Administrative Tribunals Rules 1985, Rules 3-25.

<sup>27</sup> Section 21 of Central Administrative Tribunal Act, 1985.

sufficient ground for it such rejected application of review is not appealable. It excludes the jurisdiction of other courts but subject to the writ jurisdiction of High Court and Jurisdiction of Supreme Court under Article 136. The grounds for Supreme Court to interfere with the findings are:

- The tribunal has acted in excess of jurisdiction or has failed to exercise apparent jurisdiction.
- It has acted illegally
- There is an error of law<sup>28</sup>.
- The order of it is erroneous or has approached the question in a manner liable to result in injustice.
- It has acted against the principles of natural justice.

No civil servant is to be dismissed or removed without a departmental enquiry<sup>29</sup>. The tribunal has the power of judicial review for the validity of such disciplinary proceeding but power is limited as it cannot change the decision. However, the Supreme Court under equitable jurisdiction under Article 136 enjoys the power to change such decision or opinion of the disciplinary proceedings.

For the proper implementation of welfare schemes the tribunals were found to be essential and inevitable. Thus, the tribunal system cannot be inconsistent with rule of law in fact they have become the agencies for ensuring rule of law.

Before excluding the power of the High Courts under Articles 226 and 227 over administrative tribunals, a direct access is in fact not provided under Article 136, because the Supreme Court will grant special leave only in special cases. The result is that of the closure of the doors of judiciary in certain matters.

---

<sup>28</sup> Ibid Section 28

<sup>29</sup> Article 311 of Indian Constitution.

The Administrative Tribunals system is surely effective and useful. But it is hardly a substitute for administrative reform, which continues to be pressing need of our developing country. Nor is the Administrative Tribunal intended to replace or supplant the regular governmental system of the country. The Union Public Service Commission must continue to do its work and the departmental promotion committees must continue to meet. The Administrative Tribunal does not and is not intended to interfere, even in the slightest way, in the functioning of the executive. It is only when a complaint is filed that tribunal activates itself and begins moving.

### **Need to regulate Tribalization in India**

Presently, there many tribunals functioning in India and it cannot be listed as exhaustion.<sup>30</sup>The tribunal system is not growing in a direction as it is lacking with far reaching goal .<sup>31</sup>According to existing present status the tribunals are let free to interpret the principles of natural justice as there is no settle definite or uniform norms for them in their<sup>32</sup>

### **Concluding remarks**

The unsatisfactory position of the law pertaining to tribunals calls for urgent reforms. It is high time to legislate to step in and introduce reforms at least on the following lines:

- ❖ Need to list the tribunals working under various enactments.
- ❖ A legislation providing for minimal uniform procedures for tribunals may be passed.
- ❖ A watch dog committee to supervise the administrative tribunals should be constituted. It must be independent, permanent and autonomous body composing of men of the highest integrity, legal background and deep knowledge of administration. Because the composition consists of retired judicial or non-judicial members. It is an

---

<sup>30</sup> I.P. Massey, supra note 22.

<sup>31</sup> Jain, M.P., and Jain, S.N., Principles of Administrative Law, LexisNexis Butterworths, Wadhwa Nagpur, 2010, p. 790.

<sup>32</sup> Ibid, pp.867-868.

admitted fact that a retired officer or a judge cannot work the same of zeal, courage and hardwork as a direct recruit appointed on a permanent basis.

- ❖ An appellate tribunal with a power to review question of facts may be constituted.
- ❖ Existing jurisdiction of the High Courts and the Supreme Court should be maintained unimpaired.
- ❖ An administrative division bench of the Supreme Court in each High Court to hear appeals under Article 136 may be constituted.
- ❖ Instead of the existing appointing committee under the Act, 1985, the committee should consist of
  - The Chief Justice of India as a chairman.
  - The union Minister of Law.
  - The Chief Justice of the concerned State Government.
  - The Chief Secretary of the concerned State Government.
- ❖ The salaries of the chairman, vice chairman and other members of tribunal, fall much short of the status and position of them. Therefore, to attract best legal brains of the country for these assignments, the present salaries should be revised.
- ❖ Politics should be kept out of the appointment process and complete security of tenure shall be provided to the members.
- ❖ The decisions of a High Court is appealable with in the High Court before a larger bench, there may be a suitable provision for at least on appeal within the tribunals.

It is hoped that by in to consideration the aforementioned suggestions, the prevailing vagueness and uncertainty in the sphere of administrative adjudication may be removed and in its place prompt and effective means of adjudication may be installed with full strength to render such person his due. The trend of future development of law appears to be definitely on the lines of the tribunal era where more segments of a society in legal system make use of this type of justice delivery system. It will also herald the era of prompt legal justice and socio-economic justice.