

Administrative Law & Administrative Tribunals

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Definition of Administrative Law

- **K.C.Davis** - law concerning powers & procedures of administrative agencies including the law governing judicial review of administrative action (American approach)
- **A.V.Dicey** – portion of national legal system determining legal status and liabilities of all state officials, defining rights and liabilities of private individuals in dealing with public officials & specifying procedure by which such rights & liabilities are enforced (British approach)
- **Ivor Jennings** – law relating to administration. It determines organization, powers and duties of administrative authorities (Modern British approach)

Administrative Law - most outstanding legal development of the 20th century

Comprehensive Definition of **Adm. Law**

Administrative law deals with-

- 1) structure, powers & functions of organs of administration
- 2) limits of their powers
- 3) methods & procedures followed by them in exercising their powers and functions; &
- 4) methods by which their powers are controlled including legal remedies available to person whose rights are infringed by their operation

(Jain & Jain)

Reasons for Growth of Adm. Law

- Growth of adm. powers & functions
- Shift from *laissez faire* system(19th century) to that of *social welfare state* (20th century)
- *State activism & Multiple roles played by state – service provider, active instrument of socio-economic policy, economic regulator, entrepreneur, & facilitator*

In India, administrative law is basically principle -based and judge made law drawn substantially from the constitutional law

Adm.Law -Contents

- Definition, nature & Scope of Adm.Law
- Classification of Adm. Functions
- Delegated Legislation
- Adm. Discretion
- Adm. Adjudication
- Rule of Law & Separation of Powers
- Principles of Natural Justice
- Judicial Control of Adm. action
- Judicial Review of Adm. action
- Accountability of Administration – in torts & contracts
- Ombudsman , Central vigilance Commission ,Administrative Tribunals & RTI

Classification of Adm.Functions

- Rule application function- Adm. function proper-Ministerial & Discretionary
- Quasi-legislative functions - Delegated Legislation
- Quasi-judicial functions - Adjudicatory Functions

Most Common Litigation faced by Government Institutions

- Contractual & Service related
- Service Disputes – Resolved at Departmental and Beyond-Departmental level
- Resolution beyond Department – Tribunals , High Courts and Supreme Court

Service Matters

- All matters relating to conditions of service in connection with Union or any State or any local authority or other authority etc.
- Including recruitment, remuneration, pension & retirement benefits
- Tenure including confirmation, seniority, promotion, reversion, premature retirement , superannuation, Leave , disciplinary matters etc

Law Governing Service Matters

- **Constitution of India-** Art.14-18,21 & 309-311
- Service Rules framed by appropriate Government
- The Service Contracts (Standard Form)
- Judicial Precedents

Tribunals

- **Quasi-judicial bodies** created for specific purposes
- **Classification** - Domestic, Service and Administrative
- Service Tribunals Created Under Art. **323-A** of Constitution & Administrative Tribunals Act, 1985
- **Classification of Service Tribunals**-State, Joint or Central

Art.323-A of the Constitution (added by 42nd Amendment) –Service Tribunals

- **Clause (1) of Article 323-A:** provides for 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 affairs of the Union or of any State or of any local or other authority within territory of India.
- The power to constitute such Tribunals is vested exclusively in Parliament.
- **Clause (2) of Art.323-A:** provides for establishment of Administrative Tribunals for Union and for each State or for two or more States;
 - (ii) Specify the jurisdiction, powers and authority which may be exercised by such tribunals;
 - (iii) Provide for the procedure to be followed by these tribunals; and
 - (iv) Exclude the jurisdiction of all courts except the special jurisdiction of the Supreme Court under Article 136.

Article 323-B: Administrative Tribunals

- Article 323-B empowers Parliament or State Legislatures to set up tribunals for matters other than those covered by clause (2) of Article 323-A.
- The matters to be covered by such tribunals are as follows:
 - (i) Levy, assessment, collection and enforcement of any tax;
 - (ii) Foreign exchange, import and export across customs frontiers;
 - (iii) Industrial and labour disputes;
 - (iv) Matters connected with land reforms covered by Article 31-A;
 - (v) Ceiling on urban property;
 - (vi) Elections to either House of Parliament or Legislatures of the States and
 - (vii) Production, procurement, supply and distribution of food-stuffs or other essential goods. Etc.
- Eg: NCLT, NGT, Consumer Commissions , ITAT etc

Distinction between Courts and Tribunals

- “Tribunal” = Seat of Justice
- All tribunals are not Courts though all Courts are tribunals.
- A tribunal may be termed as Court if it has all the trappings of Court and satisfies the above stated parameters.
- Every Court may be a tribunal but every tribunal necessarily may not be a Court.

Composition of Service Tribunals

- Chairman , Vice-Chairmen & Members
- **Members** – Administrative and Judicial
- **Qualifications**: Chairman- sitting/former judge of H.C. or experience as V.C. for 2 years
- **Vice Chairman** :is/was/qualified to be H.C. Judge or 2 yrs exp . as Secretary to Govt or 5 yrs exp . as Addl. Secretary or 3yrs exp. as jud. / adm. Member of adm. tribunal

Composition of Tribunals (contd..)

- **Judicial member** - is/has been/qualified to be a High Court judge or member of Indian Legal Service holding post in Grade-I for minimum 3 years
- **Adm.Member** – 2yrs experience as Additional Secretary or 3 yrs experience as Joint secretary having adequate administrative experience
- **All-appointed by the President in consultation with concerned Governor**

Jurisdiction, Powers and Authority of Adm.Tribunals

- Governed by Sec.14 of ATA,1985
- All jurisdiction & powers over recruitment and related matters pertaining to All India Services/Civil Service of Union/Civil Post under Union/Defence
- All jurisdiction & Powers exercised hitherto by all courts except Supreme Court
- Adm . Tribunals=High Courts

Jurisdiction, Powers and Authority of Adm.Tribunals (contd..)

- Powers to punish for contempt - U/S 17, ATA, 1985 & Contempt of Courts Act ,1970
- * Powers to pass *interim* orders – Sec.24, ATA,1985 including injunctions / stay
 - To prevent any loss being caused to applicant which cannot be compensated in money.
- Power to Transfer pending cases – S.28
- Power to Review its decisions - S.22(3)(f)

Procedure for determination of service disputes

- **Application to Tribunals** - S.19
 - After exhausting alternative remedies under relevant service rules (after passing of final order by competent authority or after expiry of 6 months period from representation) - S.20
 - **Within Limitation Period** (**within 1 yr from date of final order** or **within 1 yr from expiry of 6 months from appeal/representation if no final order is passed**)
 - Subject to condonation of delay by showing sufficient cause

Procedure for determination of service disputes (contd..)

- Tribunal not bound by CPC,1908 but guided by principles of natural justice

(Sec.22)

- Shall decide every application as expeditiously as possible – on perusal of documents, written representations and after hearing oral arguments advanced
- Shall have all powers of a civil court under CPC

Procedure for determination of service disputes (contd..)

- Applicant can take assistance of legal practitioner & Govt . can appoint presenting officers (S.23)
- Tribunal can pass interim orders (s.24)
- Orders of Tribunals- executable (by following procedure under O.21 r/w S.151,CPC like a decree)

Exclusion of Jurisdiction of Courts except Supreme Court (Position till 1997)

- No provision for appeal against decision of Adm.Tribunals except to S.C.of India - S.28,ATA & Art.323-A(2)(d) of Constitution
- To the Supreme Court - only under Art.136 of Constitution
- Impact of *L.Chandra Kumar vs.Union of India* AIR 1997 SC 1125 -W.P.can be filed before a DB of concerned HC
- **Power of Judicial Review** - Basic Feature of Constitution

Remedies before the High Courts

- Through W.P.s under Art.227
- Only before a Division Bench and only after *Chandra Kumar*
- Remedies available- directions, orders or writs including writs in nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari
- Most relevant writs in service matters -mandamus, Certiorari and Prohibition

Remedies before the High Courts (contd..)

- **Nature of writ remedy**- discretionary
- **Discretion of court** – depends on Laches, Alternative relief, Locus standi, Res Judicata and Questions of Fact etc.
- **Grounds of Challenge**-Violation of Art.14,15,16, and 311 etc

Central Adm.Tribunal (Procedure)Rules,1987

- Framed by Central Government U/S 35 and 36 of Ata,1985 (w.e.f.15 Jan 1987)
- **Language** of Tribunal-English (Hindi at discretion of Tribunal)
- **Application**- 1] presented by applicant in person/agent/legal practitioner;2]in Triplicate;3]in two compilations viz., 1-application along with impugned order and 2-all other documents and annexure ;4]filed at place of working of applicant or where cause of action arose-exception-in case of retirement/dismissal/termination of service, at the place of residence of applicant

Central Adm.Tribunal (Procedure)Rules,1987 (contd..)

- **Application Fee** –Rs.50/-
- **Contents of Application**- Distinct grounds,prayer for interim order/direction,separate application and affidavit for condonation of delay
- **Annexure**- attested true copy of impugned order, other documents relied on and index of documents
- **Service of Notices/Processes**- by party, hand delivery (dasti), RPAD, thr.concerned Head of office
- **Filing of reply by Respondents**- in triplicate along with documents

Central Adm.Tribunal (Procedure)Rules,1987 (contd..)

- **Ex parte hearing and disposal of application-** at discretion of tribunal
- Can be set aside within 30 days from date of order
- **Review Petition-** to be filed within 30 days from date of receipt of copy of order.

The CAT(Contempt of Courts) Rules,1992

- **Contempt**- Civil or Criminal
- **Contempt petition** –filed before a bench of min.2 members or can be taken suo motu also
- **Compelling attendance**-if needed by issue of warrant (R shall appear unless ordered otherwise)
- **Execution of sentence**-Imprisonment till rising of Tribunal/Fine/Imprisonment
- **Apology** at any stage of proceedings

Precautions to be taken by Presenting & other authorities

- Classify, catalogue and index all documents
- Follow principles of natural justice in every official dealing
- Remember that the RTI Act is in force
- Remember Rule of Law
- Be thorough with the procedures
- Remember that Applicant is a citizen too.

Conclusion

Thank you