

ADMINISTRATIVE LAW & ADMINISTRATIVE TRIBUNALS

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ADMINISTRATIVE LAW

- Most outstanding legal development of the 20th century
- Law concerning powers & procedures of administrative agencies including the law governing judicial review of administrative action (**K.C.Davis** - **American approach**)
- 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 (**A.V.Dicey** – **British approach**)
- law relating to administration. It determines organization, powers and duties of administrative authorities (**Ivor Jennings** – **Modern British approach**)

COMPREHENSIVE UNDERSTANDING 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 etc
- Administrative law - drawn substantially from the constitutional law & basically principle -based and judge made law

ADMINISTRATIVE LAW -SCOPE

- **Meaning , Growth & Scope of Adm.Law**
- **Classification of Adm. Functions** (Proper Adm.action, quasi-legislative and quasi-judicial)
- **Delegated Legislation** (Reasons for Growth, Forms, and Controls)
- **Administrative Discretion** (Need, Form and Control)
- **Rule of Law** (Evolution , importance, Constitutional perspectives etc)
- **Separation of Powers** (Structural and Functional Characteristics)
- **Principles of Natural Justice** (Fair Hearing and Rule against Bias etc)
- **Judicial Control and Review of Adm.Action** (Through Public Law Remedies-Writs, PIL etc)
- **Administrative Adjudication** (Quasi-judicial action of admn.)
- **Accountability of Administration** (In Torts& Contracts- Doctrine of Sovereign Functions and its decline etc)
- **Ombudsman , Central Vigilance Commission , Administrative Tribunals & RTI**

GOVERNMENT INSTITUTIONS AND LITIGATION

- **Contractual & Service related**
- **Service Disputes** – Resolved at Departmental and Beyond-Departmental level
- **Service Matters-** matters qua conditions of service in connection with Union or any State or any local authority or other authority etc-
- **Areas of Litigation:** recruitment, remuneration, pension & retirement benefits, and Tenure including confirmation, seniority, promotion, reversion, premature retirement , superannuation, Leave , disciplinary matters etc
- **Resolution beyond Department** – Civil Courts, Tribunals , High Courts and Supreme Court

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
- **Tribunal = Seat of Justice**
- **Tribunal is Court if it has all trappings of Court**
- **Every Court may be a tribunal but every tribunal necessarily may not be a Court.**

OTHER ADMINISTRATIVE TRIBUNALS

(U/ART . 323-B & OTHER LAWS)

- **Article 323-B empowers Parliament /State Legislatures to set up tribunals**
- **Purpose of Tribunals:** to adjudicate matters including :
 - Levy, assessment, collection and enforcement of any tax;
 - Foreign exchange, import and export across customs frontiers;
 - Industrial and labour disputes;
 - Matters connected with land reforms covered by Article 31-A;
 - Ceiling on urban property;
 - Elections to either House of Parliament or Legislatures of the States; and
 - Production, procurement, supply and distribution of food-stuffs or other essential goods. Etc.
- **Eg:** NCLT, NGT, Consumer Commissions , ITAT, Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Competition Appellate Tribunal (COMPAT) and Securities Appellate Tribunal (SAT) and Armed Forces Tribunal (AFT) etc
- **Mandate, Jurisdiction and composition of Adm. Tribunals vary**

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
- **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**

ADM. TRIBUNALS & ROLE IN SERVICE MATTERS

- 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, and Other authorities notified by Central Govt
- All jurisdiction & Powers exercised hitherto by all courts except Supreme Court
- Adm .Tribunals=High Courts

AUTHORITY OF ADM. TRIBUNALS

- **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)
- 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**
- **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 under Art.227
- **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
- 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

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
- Always follow Rule of Law
- Be thorough with the procedures
- Remember that Applicant is a citizen too.

CONCLUSION

Thank you