

ADMINISTRATIVE TRIBUNALS

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- **“A Court system overcrowded with bewildered litigants, harried judges and over-worked personnel cannot provide fair treatment”.**
- **Warren Burger, C.J. (quoted in Wilson 1988:iii**

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

Law Governing Service Matters

- Constitution of India- Art.14-18,21 & 309-312
- Service Rules framed by appropriate Government
- The Service Contracts (Standard Form)
- Judicial Precedents

TRIBUNAL JUSTICE

- Tribunal Justice is the new illumination of Administrative Justice -.
- Origin/Source of Authority :
 - i) Art-323.A & 323.B of the Constitution of India.
 - ii) The Administrative Tribunals Act, 1985.
- Purpose – To provide expeditious and inexpensive justice to the parties.
- Freed from traditional technical procedural wrangling.
- To secure the functional integrity of the administration and protect the interests of the aggrieved persons.
- To economize the time and money of the State and citizens.

Comparative Adm. Tribunals

- U.S. – Administrative Law Judges adjudicate administrative disputes under Administrative Procedure Act, 1946.
- French Droit Administratif —
 - i) Conseil d'Etat,
 - ii) Cours Administrative d'Appelle and
 - iii) Tribunaux Administratifs
 - Three-tier hierarchy of administrative courts that adjudicate administrative disputes.
- U.K. - The Tribunals and Enquiries Act, 1958

Tribunals

- Administrative Tribunals - the judicial model of decision-making bodies.
- The Tribunal - a Court of First Instance in respect of Service Law.
- Quasi-judicial bodies created for specific purposes

Classification – Statutory & Domestic

- 1. Statutory Tribunals – (Public Tribunals)- Service Tribunals
Art. 323.A and 323-B. Administrative Tribunals
- 2. Domestic Tribunals – (Private Tribunals)
Disciplinary Committees of Professional Bodies/Private institutions/BCI/MCI/Corporate
- 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.
 - - - for Income Tax, Excise and Customs purposes
- Foreign exchange, import and export frontiers
- Industrial and Labour disputes,
- Land Tribunals, Ceiling on Urban property,
- Election to Parliament, State legislature matters,
- Essential commodities or goods control and regulation,
- Rent Control matters etc and other incidental matters.

Parliament may, at the requests of the States, establish tribunal covering the matters of two or more States.

Service Matters

All matters rel .to conditions of service in connection with Union or any State or any local authority or other authority etc.

- Including recruitment, remuneration (including allowances), pension & retirement benefits
- Tenure including confirmation, seniority, promotion, reversion, premature retirement , superannuation
- Leave of any kind
- disciplinary matters & any other matter

The incidental & ancillary matters like-

- Transfer
- allotment of quarters
- eviction proceedings under public premises Act
- and determination of marital status for purpose of family pension

Administrative Tribunals Act 1985

Central Administrative Tribunal – Creature of the Administrative Tribunals Act, 1985 established-

- for adjudication of disputes and complaints
- with regard to the conditions of service
- appointed to the Public Service and the posts in connection with the affairs of the Union and the States.
- reflects the 'Proportionate Dispute Resolution' (PDR) principle with flexible and holistic objective.
- Powers - equal to that of High Courts. (Sec.17)
- Simplicity – Aggrieved party himself may appear – Government representation either through officers of the department or legal practitioners.
- Special body consisting of equal number of Judicial members and administrative members experienced in governance and administration.

Contd...

- Speedy and inexpensive relief to employees - Affordable application fee - Rs. 50/-
- Disposal cases by AT at 93.41%. (7,79,101 cases filed and 7,27,818 cases settled).
- The Central Administrative Tribunal adopts Principles of Natural Justice.
- Empowered to frame its own rules of procedure and practice –
- accordingly Administrative Tribunal (Procedure) Rules, 1987 and
- Central Administrative Tribunal Rules of Practice, 1993 were made.

Scope

Sec.1: CAT applies to the whole territory of India, or under the control of Govt. of India, or any government owned or controlled corporations.

State Tribunals operate within the territory of state.

Sec.2: ATA not applicable to

- Members of Armed Forces, employees of the Supreme Court or of any High Court [or courts subordinate thereto) and secretarial staff of Parliament houses, State Legislatures or Union Territory legislature.

Sec.4 : Establishment of CAT Branches. There are 17 branches- Principal Br. at Delhi, and other branches as notified by Central Govt. and Circuit Benches; and also includes 214 organizations notified by the Govt. under section 14 (2) of the ATA brought within the sweep of the CAT.

Composition of Service Tribunals.

Chairman + Vice-Chairmen (as determined by the Govt) + Members (Judicial + Administrative)- S-5

- Qualifications: Chairman- sitting/former judge of H.C. or experience as V.C. for 2 years- S-6
- Vice Chairman :is/was/qualified to be H.C. Judge or 2yrs 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
- A Bench shall consist of one Judicial Member and one Administrative member.
- Matters of Seniority, Promotion, Disciplinary proceedings etc.. are entertained by Division Bench-

- However, Single Member Bench may dispose of certain specified cases like –
 - Change of date of birth while in service; Posting/transfers; Entry(s) in character rolls made otherwise than as a measure of penalty under Central Civil Services (Classification, Control and Appeal) Rules, 1965; Allotment of and eviction from Government accommodation; Fixation of pay; Claims of medical reimbursement, leave, Joining Time, Leave Travel Concession and Overtime; Crossing of Efficiency Bar; Grant of Family Pension; Grant or refusal to grant of advances/loans; Stagnation increment(s); Grant of passes to Railway employees; Grant or refusal to grant or recovery of allowances; Payment of interest on pensionary benefits.
 - [CAT, Principal Bench, New Delhi, Order No. 1/32/87-JA/2169 (A), dated the 21st March, 1988, circulated under G.I., Dept. of Per. & Trg., O.M. No. A. 11019/71/87-AT, dated the 16th May, 1988.]

Jurisdiction, Powers and Authority of Adm.Tribunals

- Sec.14

All jurisdiction & powers over

- All service matters (recruitment and related matters)
- pertaining to All India Services/Civil Service of Union/Civil Post under Union/Defence
- Other authorities notified by Central Govt
- service matters in respect of persons on deputation to Union Government from State or local or other authorities.
- 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 Review its decisions** - S.22(3)(f)
- **Transfer of Cases**- The Chairman of the CAT is empowered to transfer of case from one branch to another branch, either on application from the aggrieved party or suo motto, after due notice to the parties and hearing their submissions. Sec.25
- **Power to Transfer pending cases** – S.28

Procedure for determination of service disputes

- Application to Tribunals - S.19
 - **After exhausting alternative remedies under relevant service rules-** (Submission of Memorials or petitions to the President or Governor would not be considered as a remedy to be exhausted.)
 - On expiry of six months from the date of appeal or representation, where the competent / appellate authority did not respond.- **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) **S-21**
 - **Subject to condonation of delay by showing sufficient cause**

Application- How & Where

aggrieved person may **in person/agent/legal practitioner;**

- file an application before the CAT
- **against any order affecting his rights or interests,**
- **in respect of any service matter**
- **falling within the jurisdiction of tribunal,**
- **for redressal of his grievance.**
- If the Tribunal, after necessary inquiry, finds the case fit for further proceedings, **may admit the same.**
- If the Tribunal is not satisfied of the contents of the application, **it may summarily reject the application.**

- Application Fee –Rs.50/-

Contents of Application-

- Particulars of the order against which the Application is made
- Jurisdiction
- Limitation
- Facts of the Case
- Distinct grounds for Relief
- Details of remedies exhausted
- Matter not previously filed/ pending with any other Court
- Relief sought - prayer for interim order/direction,
- Particulars of IPO in respect of fee
- **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

- 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
- Language of Tribunal-English (Hindi at discretion of Tribunal)

(Central Adm.Tribunal(Procedure)Rules,1987Framed by Central Government U/S 35 and 36 of ATA,1985 (w.e.f.15 Jan 1987))

Contd..

- On admission of such application for redressal of grievance is admitted by the tribunal, **all the previous proceedings relating to the subject matter under service rules stand abated.**
- Normally individual applications are entertained. **Joint application from many aggrieved persons pertaining to the same cause of action and seeking same relief,** may with the permission of the Tribunal **be entertained.**

Procedure for determination of service disputes (contd..)

- Tribunal not bound by CPC, 1908 but **guided by principles of natural justice and Government orders/directives.** (S.22 (1))
- the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.
- **Shall decide every application as expeditiously as possible** – on perusal of documents, written representations and after hearing oral arguments advanced- (S.22 (2))
- **Shall have all powers of a civil court under CPC** (S.22 (3))

Procedure for determination of service disputes (contd..)

- Party may appear in person or can take assistance of legal practitioner & Govt can appoint presenting officers (S.23)
- Tribunal can pass interim orders (s.24) Interim order operative for 14 days unless vacated, or may continue if the other party fails to comply with the CAT directions.
- Orders of Tribunals- executable (by following procedure under O.21 r/w S.151,CPC like a decree) S- 27
- CAT may consider Review of its decision where the party alleges a glaring omission, patent mistake or error in the judgment. S.22(3)(f) - to be filed within 30 days from date of receipt of copy of order
- Proceedings before a Tribunal to be judicial proceedings. S.30.
- Once a review petition is disposed, no petition for further review.
- Ex parte hearing and disposal of application-at discretion of tribunal
- Can be set aside within 30 days from date of order

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
- *L.Chandra Kumar vs.Union of India AIR 1997 SC 1125 – WP 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

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

Final Slide

**“START BY DOING WHAT IS
NECESSARY THAN WHAT IS
POSSIBLE,
AND SUDDENLY YOU ARE DOING THE
IMPOSSIBLE”**

-St Francis of Assisi