

Administrative law

Meaning of Administrative Law

Administrative law is that branch of Constitutional law which deals with

- 1. powers and duties** of administrative authorities
- 2. procedures followed** by them in exercising the powers and discharging the duties
- 3. remedies available** to an aggrieved person when her/his rights are affected by an action of such authorities

Purely Administrative function/action

- Power to issue license or permit.
- An order of preventive detention
- An order of acquisition or requisition of property
- An order setting up a commission of inquiry.
- Withdrawal from Prosecution
- **Appointments/Promotions/Transfers**
- Most of your actions are not quasi-legislative/ quasi judicial actions, but they are **purely administrative actions.** With respect to purely administrative actions, **you act on the basis of your knowledge, experience and wisdom.**

Quasi-judicial function/action

- Cancellation, suspension, revocation or refusal to renew licence or permit by licensing authority
- **Imposition of fine**
- Dismissal of an employee on the ground of misconduct.
- Disciplinary proceedings against students.
- Determination of citizenship

Quasi-legislative function/action

- Imposition of tax
- Imposition of fee
- All India Services (Conduct) Rules, 1968
- All India Services (Discipline & Appeal) Rules, 1969.
- **Prescribing dress code from time to time**
- **Fixing Physical Training type, venue & timings**

Quasi-Judicial

- **Consider submissions & arguments**
- **Collate Evidence**
- **DECISION ON EVIDENCE**

Administrative

- **Need not** Consider submissions & arguments
- **Need not** Collate Evidence
- **MAY or MAY NOT BE**
- Decision on the basis of his **knowledge, experience and wisdom. (DISCRETION)**

Quasi-Legislative

- **NEED NOT BE**
- **GENERAL**
- **RELATES TO FUTURE**
- **PNJ = Not Applicable**

- Quasi-Judicial
- **DECISION ON EVIDENCE**
- **SPECIFIC**
- **RELATES TO A PAST INCIDENT**
- **PNJ= Applicable**

Quasi-Legislative

- GENERAL
- FUTURE

- **PUBLISHED
(Communicated)**

- PNJ = Not Applicable

Administrative

- GENERAL /SPECIFIC
- PAST /PRESENT/FUTURE

- **MAY or MAY NOT BE
PUBLISHED**

- PNJ= Applicable

- I have a daughter who is 27 years old and working as a software engineer in HYD and earning a lakh per month. I felt that now I have to see her married and asked her whether she likes anyone or can I search for a suitable boy and what are her requirements. She says that she does not have anyone in mind and I can search but the boy should be taller than her, handsome, stable job, earns more than her and belong to a good family. I take 10 months for finally choosing 5 matches according to her requirements and place before her the options. She selected one and they talked to each other, find acceptable to each other and I got them married. (Decision= KNOWL/ EXP/WISDOM)

Natural Justice -Principles

2 FUNDAMENTAL PRINCIPLES

1. Right to be heard
2. Absence of Bias (Likelihood)

Additional Principle

1. Reasoned Decision (Give reasons for decision)

Nature and Significance of

Administrative Law

- Administrative law, as the name indicates, is a *law relating to administration.*
- Administrative law is the *body of law that governs the activities of administrative* agencies of the government.
- The government wields enormous power and we know that any power is liable to be abused. Administrative law is the *law relating to the prevention of the abuse of such power.*

ADMINISTRATIVE ACTION

- Simply speaking, it means “act of an administrative authority”. It is, however, a term of wider connotation. It is said that the administration is the meeting point of three kinds of governmental functions ,namely legislative, judicial and executive.

Classification of Administrative Action:-

- I. Quasi-legislative
- II. Quasi-Judicial
- III. (Purely) administrative (an action which is neither Quasi-legislative nor Quasi-Judicial).

Quasi-Legislative functions - Ingredients

- Order is Legislative in character, it has to be **published.**
- Order is Legislative in character, **the court will not issue a writ of certiorari (or prohibition) to quash it**
- There is **no right to a notice or hearing.**
- **Rules of Natural Justice do not apply in case of quasi-legislative function.**

Judicial Action distinguished from Quasi-Judicial Action

1. A court cannot be a judge in its own cause , while an **administrative authority vested with quasi judicial powers may be party to the controversy but it can still decide**
2. A court is bound to follow the **rules of Indian Evidence Act,1872 and Civil Procedure Code,1908** while a quasi-judicial authority is free from such requirements
3. A quasi-judicial authority has **some of the trappings of a Court**, but not all of them; nevertheless there is an obligation to act judicially.
4. A court is bound by **precedents**, quasi-judicial authority is not.
5. A **lis inter (dispute between)** parties is an essential characteristic of a judicial function, but this may not be true of a quasi-judicial function (Enquiry into lost laptop).

DISTINCTION BETWEEN QUASI-LEGISLATIVE AND QUASI-JUDICIAL FUNCTIONS

- A legislative function (framing rules/regulations) **prescribes future pattern of conduct and creates new rights and liabilities**, whereas a decision (judicial function) **determines rights and liabilities on the basis of present or past facts and declares the pre-existing rights and liabilities**.
- Legislative function **is general** and relates to the future whereas the Judicial Function is **specific and ordinarily relates to the past**.

Distinction between Administrative and Quasi-Legislative Functions

1. **Duty to give reasons** applies to administrative orders but not to legislative orders.
2. Since a quasi-legislative function is legislative in character, there is **no right to a notice and hearing unless specifically so required by the statute.**
3. The **rules of Natural Justice do not apply in case of quasi-legislative function.**
4. If an order is legislative in character, it has to be **published in a certain manner**, but it is not necessary if it is of an administrative nature.

DISTINCTION BETWEEN ADMINISTRATIVE & Q- JUDICIAL ACTS

- In case of the administrative decision there is *no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh-submissions and arguments or to collate the evidence* .

However, with respect to a quasi-judicial decision, there is *a legal obligation upon the person charged with the duty of reaching the decision to consider and weigh-submissions and arguments or to collate the evidence* .

Primary Source of Administrative Law

- Administrative law is not a codified, documented or well-defined law like the Penal Code, Evidence Act, or the Constitution of India. It is essentially unwritten, uncodified, and judge-made law. It has developed gradually as a consequence of various situations.

Case study

The Indian Institute of Management, Dehradun (IIM-D) a Government of India organization, issued an advertisement for the recruitment of 6 stenographers. The skill test mandated by the Recruitment Rules (RR) and notified, stated that the candidate must have a *typing speed* of 50 words per minute (wpm) in English or 40 wpm in Hindi apart from other requirements as per the job profiles of the stenographers. Candidates who applied in response to the recruitment notice were called for written and skill test as per the RR.

On the basis of overall performance, a merit list was prepared by the selection committee. Offer of appointment was issued to six persons who joined the service accordingly.

Case Study...contd.

- A complaint was received from one of the unsuccessful candidates stating that the successful candidates did not meet the typing speed criterion as given in the RR.
- After 18 months after these six candidates joined and working ,an inquiry was instituted to inquire into the allegations. The allegations were proved in the inquiry submitted two months from then .It was held that, the merit list that was prepared, was based on the criteria of *computer proficiency test, language and interview* and **Not** on *typing speed*.

Based on the information available in the case study,

answer the following questions -

1. Can the selection committee adopt selection criteria other than and excluding those mentioned in RR?. Yes / No
2. Can selection criteria be changed after the commencement of the selection process? Yes / **No**
3. Is an inquiry after receipt of the complaint mandatory? Yes / No
4. If you are the head of IIM Dehradun, what decision would you take after receiving the inquiry report?
 - a) Cancel the selection process
 - b) Start a fresh selection process
 - c) Create a new post
 - d) Issue a show cause to the selected candidates asking why their services should not be terminated

Liability for the wrongs of civil Servant

- Civil Wrong= No liability and will be the liability of the State if done in the course of employment
- Crime = There is Liability but sanction to prosecution must be obtained before prosecution for a crime done while acting or purporting to act in the discharge of the duties
- Disciplinary Proceeding=Yes but it is purely discretionary
- Government does not buy 3rd party insurance

Tribunals: an Introduction

- A tribunal is a body or authority, although not a Court, **having all the attributes of a Court**, which is **vested with judicial power to adjudicate on questions of law or fact**, affecting the rights of citizens, in a **judicial manner**.
- Tribunals are administrative bodies, set up solely with the idea of discharging *quasi-judicial* duties. Their determinations affect the rights of parties.
- **Here the discussion is limited to Administrative Tribunals**

Court	Administrative Tribunal
<p>1. In the traditional judicial system the <u>judicial powers are derived from the state (Constitution permits creation of judiciary)</u></p>	<p>The administrative tribunal is created by the statute and invested with judicial power</p>
<p>2. Court can try all suits of civil nature unless barred by law.</p>	<p>The administrative tribunal can try cases of special matter</p>
<p>3. Judges are expert in Law</p>	<p>Members of the administrative tribunal are experts in administrative matters</p>
<p>4. Judges are bound by all the rules of evidence and procedure codes</p>	<p>Members of the CAT/SAT are not bound by rules (Evidence Act/CPC) but bound by the principles of nature of Justice</p>
<p>5. Courts are expensive and time-consuming</p>	<p>The Administrative Tribunals are inexpensive, and faster way to resolve disputes</p>
<p>6. Courts can try civil and criminal matters</p>	<p>Tribunals can adjudicate only civil or administrative matters</p>

Rationale for Administrative Tribunals

- **Need for expertise** – Sometimes, disputes are technical. The traditional judicial system cannot be expected to appreciate and decide them. The reason is obvious because the **judge is a generalist**. On the other hand, Administrative Tribunals are usually manned by experts who can deal with and solve these problems.
- **Flexibility** - Administrative adjudication, **not restrained by rigid rules of procedure and canons of evidence**, can remain in tune with the varying phases of social and economic life.
- **Relief to Courts** - The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with ordinary suits.

Principles of Natural Justice

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Introduction

- Administrators exercise administrative, quasi-judicial and quasi-legislative powers.
- PNJ denote fairness in procedure or *Procedural Fairness*
- Justice- **Simple & elementary**
- NJ=branch of public law
- Rules of NJ=**not embodied rules**
- They **do not supplant the law only supplement it**
- PNJ **are flexible** and whether they were observed in a given case or not depends upon the facts and circumstances of each case

Against whom NJ may be enforced

- Courts
- Judicial Bodies (CIC/CAT/Lok Adalat)
- Quasi-judicial authorities
- **Administrative authorities(Quasi-judicial/Purely administrative orders)**
- **Purely administrative orders:- Notice and hearing only when there are civil consequences** (everything that affects a citizen in his civil life)

2+1 Basic Principles

1. *Nemo debet esse iudex in propria causa*:- **NO BIAS**

{No man shall be a judge in his own cause}

LIKELIHOOD OF BIAS(JUSTICE MUST BE SEEN /B
DONE [Judges= Recuse (potential conflict of interest)]

2. *Audi alteram partem* :- HEAR THE OTHER SIDE

{Both sides must be heard}[**No man should be
condemned unheard**]

NOTICE & HEARING

3. Reasoned Decisions= Giving Reasons (DECISIONS)

Absence of Bias/interest or prejudice

- *Justice must not only be done , but manifestly and undoubtedly be seen to be done*(Lord Hewart)
- *Judges, Like Ceaser's wife should be above suspicion*
- One who **must** avoid attracting negative attention or scrutiny (because they are involved with a famous or prominent figure). Julius **Caesar** used the phrase "**Caesar's wife must be above suspicion**" to explain why he divorced his wife, Pompeia.
- *Conduct should not raise suspicion*

CJI(Ranjan Gogoi)Sexual Harassment Case

- An ex-Supreme Court staff alleged in media that the then CJI Ranjan Gogia had sexually harassed her
- The Supreme Court bench of Justices Arun Mishra, R F Nariman and Deepak Gupta suo moto held that former SC Judge Justice A K Patnaik will hold enquiry regarding alleged conspiracy.
- Also constituted a 3-judge internal panel of Justices SA Bobde, Indira Banerjee and Indu Malhotra to probe the allegations
- Observations-The Internal Investigative Committee gave a clean chit to CJ. The complaint had stayed away from the probe citing likelihood of bias. Details of the inquiry report have not been made public.

Types of Bias(4 types)

- Pecuniary Bias (financial interest)
- Personal Bias
- Official Bias or bias as to subject matter (**RARELY**
invalidates proceedings)

Pecuniary Bias

- *Least pecuniary interest in the subject matter of the litigation will disqualify any person from acting as a judge.*
- There is a presumption that any financial interest in the matter in dispute disqualifies a person from adjudicating

J.Mohapatra &Co v. State of Orissa(1984)

- Some of the members of the Committee set up for selecting books for educational institutions were themselves authors whose books were to be considered for selection.
- Madon J observed “It is *not the actual bias* in favour of the author member that is material, *but the possibility of such bias*”

Personal Bias

- *Here a judge may be a relative, friend or business associate of a party.*(RECUSE)
- **Prejudiced towards the other**=He may have some personal grudge, enmity or grievance or professional rivalry against such party
- **Prejudice** = an unfavorable opinion or feeling formed beforehand or without knowledge, thought, or reason
- **Proceeding/Enquiry is vitiated**
Vitiate= become ineffective

State of U.P. v. Mohd. Nooh(1958)

- A departmental enquiry was held against A by B. *As one of the witnesses turned hostile, B left the enquiry, gave evidence against A, resumed to complete the enquiry and passed an order of dismissal.* The Supreme Court set aside the order of dismissal

A.K.Kraipak v. Union of India (1969)

- One N was a candidate for selection to the Indian Forest Service and was also a member of the Selection Board. N *(Naquishband) did not sit on the Board when his name was considered (deliberations)*. Name of N was recommended by the board and he was selected by the Public Service Commission. The candidates who were not selected filed a writ petition for quashing the selection of N (PNJ Violated)
- *Contention = PNJ not applicable to administrative functions*

Official bias /Bias as to subject-matter

- This may arise when the *judge has a general interest in the subject-matter*
- Only rarely will this bias invalidate proceedings.
(DP/DE)

Krishna Bus Service(P) Ltd v. State of Haryana(1985)

- The legality and validity of the notification issued by the State Government conferring the powers of DY. Superintendent of Police on the General manager, Haryana Roadways was challenged by private operators of motor vehicles inter alia on the ground of interest and bias.

Krishna Bus Service(P) Ltd v. State of Haryana(1985)

- Upholding the contention and quashing the notification, **the Supreme Court observed:**

The General Manager of Haryana Roadways who is a rival in business of the private operators of motor vehicles cannot be expected to discharge his duties in a fair and reasonable manner.

Test: Real likelihood of Bias

- A pecuniary interest, however small it may be, disqualifies a person from acting as a judge. Other interests, however, do not stand on the same footing. *Here the test is whether there is a real likelihood of bias in the judge.*
- Prof. De Smith says, a 'real likelihood' of bias means at least substantial possibility of bias
- Vaughan Williams LJ says that *the court will have to judge the matter 'as a reasonable man would judge of any matter in the matter of conduct his own business'.*

Hear the Other Side (Audi alteram partem)

- Generally , this maxim includes two elements:
 1. Notice
 2. Hearing

Notice

- *Even if there is no provision in the statute about giving a notice, if the order in question adversely affects the rights of an individual*, the notice.
- **State of J&K v. Haji Wali Mohammed(1972)**: To give 24 hours time to dismantle a structure alleged to be in a dilapidated condition is not proper and the notice is not valid.
- **K.D.Gupta v. Union of India(1989)**: Where a notice regarding one charge has been given, the person cannot be punished for a different charge for which no notice or opportunity of being heard was given.

Cross-examination

- Cross-examination was ***never considered to be part and parcel of the doctrine of natural justice***. It always depends on the facts and circumstances of each case whether an opportunity of cross-examination should be given to a party against whom proceedings have been initiated.
- **If a statute permits cross-examination of witnesses at the enquiry or adjudication, obviously, the opposite can claim right to cross-examine them.**
Normally, in disciplinary proceedings as also in domestic enquiries, right of cross-examination is not denied (DE=Industrial worker)

Hira Nath Mishra v. Rajendra Medical College(1973)

- A complaint was made that some male students entered quite naked into the compound of the girls' hostel late at night. They were rusticated from the college. Their prayer to cross-examine female students who had seen them was denied. The Supreme Court upheld the action observing :Those girls would have been ***exposed themselves to retaliation and harassment*** thereafter. The ***college authorities are in no position to protect the girl students outside the college precincts.***
- **(Evidence Condition=should not disclose identity)**

Hearing at appellate stage

- A peculiar situation sometimes arises. It may happen that there may be non-compliance with NJ at the initial stage but hearing might have been given by the appellate authority. The question obviously arises: Whether a hearing afforded at the appellate stage can be treated as an acceptable substitute for a hearing not afforded at the *initial stage?* In other words, can failure of NJ at the first stage be cured by complying with NJ at the subsequent stage?
- NO

Right of Counsel

- The right of representation by a lawyer is **never considered to be a part of NJ and it cannot be claimed as of right, unless the said right is conferred by the statute.**
- Some statutes **do not permit** appearance of legal practitioners, **e.g. factory laws**; some statutes **permit appearance** of advocates only with the **permission of the tribunal concerned**, e.g. Industrial Disputes Act, 1947; while in some statutes, the **right to be represented through an advocate is recognised, e.g. Income Tax Act, 1961**

Right of Friend

- In *departmental proceedings and domestic enquiries, an employee or a workman is normally allowed to represent his case through his friend, co-worker or representative of the Union.*

According to the SC, it is desirable that in domestic enquiries, employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request.

- **DEFENCE ASSISTANT/ Presenting Officer**

Speaking Orders(Reasoned Decisions)

- A speaking order means an order speaking for itself. To put it simply, every order must contain reasons in support of it.
- **Giving of reasons in support of an order is considered to be the third principle of NJ.**
According to this, a party has a right to know not only the result of the enquiry but also the reasons in support of the decision.

Where order is subject to appeal/ revision

- If the order passed by the adjudicating authority is subject to appeal or revision, the appellate or revisional court will not be in a position to understand what weighed with the authority and *whether the grounds on which the order was passed were relevant, existent and correct* and the exercise of the right of appeal would be futile

- **Introduction**

Equity is that body of law administered by the common law, which was earlier developed and nourished in the Court of Chancery. It is governed by different principles, rules, and remedies. Equity means fairness, power, justice. There was a large body of principles that became the law of equity. According to the meaning of equity, 'the rules developed to mitigate the severity of common law.' It is the rule of conduct that ought to be followed by the people. In its broader sense, the word "equity" means fair or just, but according to its legal meaning, it is the rules formed to fulfill the common law's gravity.