

**SEMINAR ON
LABOUR LAW**

**CENTRAL ADMINISTRATIVE
TRIBUNAL
AND
STATE ADMINISTRATIVE
TRIBUNAL**

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1. THE ADMINISTRATIVE TRIBUNALS ACT, 1985

An Act to 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 or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto.

2. Act not to apply to certain persons. -The provisions of this Act shall not apply to-

- (a) Any member of the naval, military or air forces or of any other armed forces of the Union;
- (b) Any officer or servant of the Supreme Court or of any High Court or courts subordinate thereto;
- (c) Any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that Legislature.

3. Definitions.

“Service matters”, in relation to a person, means all matters relating to the conditions of his service 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 as the case may be, of any corporation or society owned or controlled by the Government, as respects-

- (i) Remuneration (including allowances), pension and other retirement benefits;
- (ii) Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) Leave of any kind;
- (iv) Disciplinary matters; or
- (v) Any other matter whatsoever;

“Service rules as to redressal of grievances”, in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal otherwise than under this Act, or any grievances in relation to such matters;

4. Establishment of Administrative Tribunals. –

- (1) The Central Government shall, by notification, establish an Administrative Tribunal to be known as the Central Administrative Tribunal, to exercise jurisdiction, powers and authority conferred on the Central Administrative Tribunal by or under this Act.
- (2) The Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State, to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State by or under this Act.
- (3) The Central Government may, by notification, establish a Joint Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunals for two or more States by or under this Act.
- (4) The Central Government may provide for such other supplemental, incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient for giving effect to the agreement.

The Bench or Benches of the Central Administrative Tribunal shall be deemed, in all respects, to be the Central Administrative Tribunal, or the State Administrative Tribunal for that State established under the provisions of Article 323-A of the Constitution and this Act.

5. Composition of Tribunals and Benches thereof. –

- (1) Each Tribunal shall consist of a Chairman and such number of Vice-Chairmen and Judicial and Administrative Members as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.
- (2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.

6. Qualifications for appointment as Chairman, Vice-Chairman or other Members. -

- (1) A person shall not be qualified for appointment as the Chairman unless he-
- (a) Is, or has been, a Judge of a High Court; or
 - (b) Has, for at least two years, held the office of Vice-Chairman ;
- (2) A person shall not be qualified for appointment as the Vice-Chairman unless he-
- (a) Is, or has been, or is qualified to be, a Judge of a High Court; or
 - (b) Has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or
 - (bb) Has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or
 - (c) Has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member].
- (3) A person shall not be qualified for appointment as a Judicial Member unless he-
- (a) Is, or has been, or is qualified to be, a Judge of a High Court; or
 - (b) Has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years.
- (3-A) A person shall not be qualified for appointment as an Administrative Member unless he-
- (a) Has, for at least two years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or
 - (b) Has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India,

7. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.

In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman may, by notification, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

8. **Term of office** -The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.
9. **Resignation and removal.** The Chairman, Vice-Chairman or other Member may, by notice in writing under his hand addressed to the President, resign his office:
10. **Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.** The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice-Chairman and other Members shall be such as may be prescribed by the Central Government:
11. **Provision as to the holding of offices by Chairman, on ceasing to be such Chairman, etc.**
12. **Financial and administrative powers of the Chairman.**
13. **Staff of the Tribunal-** The appropriate Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit.
14. **Jurisdiction, powers and authority of the Central Administrative Tribunal. –**
 - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to-
 - (a) Recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
 - (b) All service matters concerning-
 - (i) A member of any All India Service; or
 - (ii) A person not being a member of an All India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) A civilian not being a member of an All India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence;

And pertaining to the service of such member, person or civilian, 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 or society owned or controlled by the Government;

- (c) All service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.
- (2) The Central Government may, by notification, apply to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:
- (3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or societies all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to-
 - (a) Recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and
 - (b) All service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

15. Jurisdiction, powers and authority of State Administrative Tribunals. –

- (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to-
 - (a) Recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

- (b) All service matters concerning a person not being a person referred to in Clause (c) of this sub-section or a member, person or civilian referred to in Clause (b) of sub-section (1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government;
 - (c) All service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.
- (2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of subsection (3) to local or other authorities and corporations or societies controlled or owned by the State Government:
- (3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to-
- (a) Recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and
 - (b) All service matters concerning a person [other than a person referred to in Clause (b) of sub-section (1) of this section or a member, person or civilian referred to in Clause (b) of subsection (1) of Section 14] appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.
- (4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.

- 16. Jurisdiction, powers and authority of a Joint Administrative Tribunal.** -A Joint Administrative Tribunal for two or more States shall exercise all the jurisdiction, powers and authority exercisable by the Administrative Tribunals for such States.
- 17. Powers to punish for contempt.** -A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to the modifications that-
- (a) The references therein to a High Court shall be construed as including a reference to such Tribunal;
 - (b) The references to the Advocate-General in Section 15 of the said Act shall be construed -
 - (i) In relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and
 - (ii) In relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.
- 18. Distribution of business amongst the Benches.** Where any Benches of a Tribunal are constituted, the appropriate Government may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

PROCEDURE FOR DETERMINATION OF SERVICE DISPUTE

19. Applications to Tribunals. –

- (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.
- (2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

- (3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.
- (4) Where an application has been admitted by a Tribunal under subsection (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

20. Applications not to be admitted unless other remedies exhausted. –

- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.
- (2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -
 - (a) If a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) Where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation. -

- (1) A Tribunal shall not admit an application, -
- (a) In a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) In a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where-
- (a) The grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) No proceedings for the redressal of such grievance had been commenced before the said date before any High Court,
- The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.
- (3) Notwithstanding anything contained in sub-section (1) or subsection (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

22. Procedure and powers of Tribunals. -

- (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 19,08), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, 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.

- (2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments, as may be advanced.
- (3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely: -
 - (a) Summoning and enforcing the attendance of any person and examining him on oath;
 - (b) Requiring the discovery and production of documents;
 - (c) Receiving evidence on affidavits;
 - (d) Subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - (e) Issuing commissions for the examination of witnesses or, documents;
 - (f) Reviewing its decisions;
 - (g) Dismissing a representation for default or deciding it ex parts;
 - (h) Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - (i) Any other matter which may be prescribed by the Central Government.

23. Right of applicant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers. - A person making an application to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

24. Conditions as to making of interim orders. -Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless-

- (a) Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and
- (b) Opportunity is given to such party to be heard in the matter:

- 25. Power of Chairman to transfer cases from one Bench to another.** -On the application of any of the parties and after notice to the parties and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.
- 26. Decision to be by majority.** -If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those, who first heard it.
- 27. Execution of orders of a Tribunal.** -Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in Clause (a) of subsection (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed.
- The order of the Tribunal should be complied with within the time-limit prescribed in the order or within six months of the receipt of the order where no such time-limit is indicated in the order.
- 28. Exclusion of jurisdiction of courts except Supreme Court.** -On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service, or post, no court except-
- (a) The Supreme Court; or
 - (b) Any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947), or any other corresponding law for the time being in force, Shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

29. Transfer of pending cases. - Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that, it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

29-A. Provision for filing of certain appeals. -Where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie-

- (a) To the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986, receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or
- (b) To any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.

30. Proceedings before a Tribunal to be judicial proceedings. All proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

31. Members and staff of Tribunal to be public servants. -The Chairman, Vice-Chairman and other Members and the officers and other employees provided under Section 13 to a Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

32. Protection of action taken in good faith. -No suit, prosecution or other legal proceeding shall lie against the Central or State Government or against the Chairman, Vice-Chairman or other Member of any Central or Joint or State Administrative Tribunal, or any other person authorized by such Chairman, Vice-Chairman or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

- 33. Act to have overriding effect.** -The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- 34. Power to remove difficulties.** –the Central Government may, by order published in the Official Gazette, make such provisions, necessary or expedient for removing the difficulty.
- 35. Power of the Central Government to make rules.** - The Central Government may, subject to the provisions of Section 36, by notification, make rules to carry out the provisions of this Act.
- 36. Power of the appropriate Government to make rules.** -The appropriate Government may, by notification, make rules to provide for all or any of the following matters, namely: -
- (a) The financial and administrative powers which the Chairman of a Tribunal may exercise over the Benches of the Tribunal under Section 12;
 - (b) The salaries and allowances and conditions of service of the officers and other employees of a Tribunal under sub-section (2) of Section 13; and
 - (c) Any other matter not being a matter specified in Section 35 in respect of which rules are required to be made by the appropriate Government.
- 36-A. Power to make rules retrospectively.** -The power to make rules under Clause (c) of sub-section (2) of Section 35 or Clause (b) of Section 36 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.
- 37. Laying of rules.** - Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

GOVERNMENT OF INDIA'S ORDERS

- 1) Timely submission of the statements and appearance by Standing Counsel or authorized officer before the Benches on the due dates to be ensured. Letter of authority authorizing a departmental officer to present the case to be sent to the Registrar.
- 2) Appointment of counsel outside Central Government Counsel/ Panel Counsel to be only with the approval of the Minister of the Administrative Ministry.
- 3) Correspondence can be had only with the Counsel for defence and not directly with the Chairman or Registry.
- 4) Standing Counsels responsible for equal distribution of cases among various Counsels and for proper defence of cases on the due dates. Senior Standing Counsel alone to be approached by the Department/Office in the first instance.
- 5) Engagement of Advocates to act as Presenting Officers (Counsels) and fees payable to them.
- 6) No monthly retainer except for Senior Standing Counsel at Delhi.
- 7) Rates of fees for Counsels in various High Courts as revised with effect from 1-4-1987, applicable to Counsels presenting cases before CAT.
- 8) Need for proper utilization of services of Panel Counsels/Central Government Counsels for conduct of cases on behalf of the Union of India. –
- 9) Private practice by Central Government Counsels in cases before CAT against Government. –It has been decided in consultation with the Department of Legal Affairs that every Counsel in the Tribunal will have the right to private practice which should not, however, interfere with the efficient discharge of his duties as a Counsel for the Government of India.
- 10) Primary responsibility for contesting cases will be with the Administrative Ministry/Department concerned on the basis of specific facts and circumstances relevant to them and not with the Ministry of Personnel, Public Grievances and Pensions.-

GOVERNMENT OF INDIA'S NOTIFICATIONS

Tribunal not to interfere in penalty awarded in disciplinary proceedings.-A number of cases have come to the notice where the CAT, though agreeing with the decision of the disciplinary authority to hold the charges against a delinquent Government servant as proved, have modified the quantum of penalty on their own discretion. The question whether the Tribunal could interfere with the penalty awarded by the competent authority on the ground that it is excessive or disproportionate to the misconduct proved, was examined by the Supreme Court in the case of *Shri Parma Nanda¹ v. State of Haryana and others* and the Court held that the Tribunal could exercise only such powers which the civil courts or the High Courts could have exercised by way of judicial review. The Supreme Court in that case further observed as under: The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

One exception to this proposal under Art 311(2) (a): There may be cases where the penalty is imposed under Clause (a) of the second proviso to Art. 311 (2) of the Constitution. Where the person without inquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under Clause (a).

CAT has no power to substitute its own discretion for that of the authority-Reiterated by the Supreme Court. - In a recent judgment in the case of *State Bank of India v. Samarendra Kishore Endow²* the Supreme Court has reiterated the said ruling that a High Court or Tribunal has no power to substitute its own discretion for that of the authority. In this judgment, the Supreme Court has observed as under-

On the question of punishment, learned Counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of that Tribunal is similar

¹ *Shri Parma Nanda v. State of Haryana and others* [1989 (2) Supreme Court Cases 177

² 1994 (1) SLR 516

to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It “is not an appeal from a decision, but a review of the manner in which the decision was made”. In other words, the power of judicial review is meant “to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court.”

It would perhaps be appropriate to mention at this stage that there are certain observations in *Union Bank of India v. Tulsiram Patel*³ which, at first look appear to say that the Court can interfere where the penalty imposed is “arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service.” It must, however, be remembered that Tulsiram Patel dealt with cases arising under proviso (a) to Article 311 (2) of the Constitution. Tulsiram Patel overruled the earlier decision of this Court in *Challappan*⁴ While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by High Court. These observations are not relevant to cases of penalty imposed after regular inquiry.

CAT/Court has no power to direct promotion of a person, but can merely direct consideration/reconsideration.- The Supreme Court in its judgment in the case of *State of Madhya Pradesh v. Shri Srikant Chapekhar*⁵ has held as follows: - “We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal out stepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal, then the only direction which can be given is to reconsider his case in

³AIR 1985 SC 1416

⁴AIR 1975 SC 221 (6)

⁵JT 1992 (5) SC 638

accordance with law. It is not within the competence of the Tribunal, in the fact of the present case, to have ordered deemed promotion of the respondent.” From the above observations of the Supreme Court, it is clear that the Courts or Tribunals cannot direct promotion of a person, but can merely direct consideration/reconsideration of a person or a case in accordance with the law.

Inclusion of the Corporations/Societies/other Authorities owned or controlled by Government within the purview of the CAT.

1. Central Board of Trustee constituted under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
2. Employees State Insurance Corporation
3. Central Board for Workers Education
4. National Labour Institute
5. National Council of Safety in Mines, Dhanbad
6. Council of Scientific and Industrial Research
7. Central Social Welfare Board
8. Indian Council of Agricultural Research
9. Sport Authority of India

Application of ‘doctrine of precedent’ to Administrative Tribunals

Another important question to be discussed is whether the law declared by an earlier bench of the tribunal is binding on the subsequent co-ordinate or smaller benches of the tribunal?

In *Union of India v. Sudhir Kumar Jaswal*⁶, while answering the above question affirmatively, the apex court has held that where a subsequent bench of the tribunal took a view different from that taken by an earlier bench, it ought to have referred the matter to a larger bench. Thus, a wrong decision given in the teeth of the earlier decision based on the decision of the Supreme Court could not be sustained in the name of equity. The same view was reiterated by the apex court in *K. Ajit Babu v. Union of India*⁷.

⁶ (1994) 4 SCC 212

⁷ (1997) 6 SCC 473

A special seven-Judge Bench of the Supreme Court has ruled that Section 28 relating to “exclusion of writ jurisdiction of the High Court” is unconstitutional. The press report in this regard is reproduced below. Consequential amendments to Section 28 are awaited.

Tribunals subject to judicial scrutiny. -A special seven-Judge Bench of the Supreme Court, in a significant judgment, unanimously ruled that the decisions of tax and administrative tribunals would be subject to judicial scrutiny of the High Courts. It said that Clause 2 (d) of Article 323-A and Clause 3(d) of Article 323-B of the Constitution - to the extent of empowering the appropriate legislature to exclude the (writ) jurisdiction of the High Courts and Apex Court under Articles 226, 227 and 32 of the Constitution, in making laws for the Constitution of Administrative Tribunals (in ‘service matters’) and tax tribunals, respectively-”are unconstitutional”.

The Chief Justice, Mr. A.M. Ahmadi, who delivered the judgment, said that Section 28 of the Administrative Tribunals Act, 1985 - excluding the writ jurisdiction of the High Court and “exclusion of jurisdiction clauses” in all other legislations enacted under Articles 323-A and 323-B of the Constitution - would, to the same extent, be unconstitutional. “The jurisdiction conferred upon the High Courts under Articles 226 and 227, and upon the Supreme Court under Article 32 of the Constitution, is part of the inviolable basic structure of the Constitution”, the Bench said.

The Bench, besides the Chief Justice, comprised of Mr. Justice M.M. Punchchi, Mr. Justice K. Ramaswamy, Mr. Justice S.P. Bharucha, Mr. Justice Saghir Ahmad, Mr. Justice K. Venkatswami and Mr. Justice K.T. Thomas.

The Bench further said that the power vested in the High Courts to exercise “judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution”. The Bench held that “that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this (Apex Court) under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure”. “Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded”, the Bench said.

The Bench made it clear “that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a single-member Bench of the Administrative Tribunal, the proviso to Section 5 (6) will automatically apply and the Chairman or the member concerned shall refer the matter to a Bench consisting of at least two members, one of whom must be a Judicial Member.

Does jurisdiction to decide disputes and complaints in service matters include jurisdiction to decide constitutional validity of service laws?

In view of the express provision contained in clause (d) of article 323A(2), and in view of clause (3) of article 323A there was no room for doubt that every dispute in respect of service matters of public servants fall within the jurisdiction of the concerned High Court over those matters stands totally excluded. In other words, the administrative tribunal substitutes the jurisdiction of the High Court in respect of disputes and complaints in service matters. Consequently the jurisdiction of the High Courts stands denuded to that extent. Therefore, on and after the date of conferment of jurisdiction on the administrative tribunal, the High Courts have no power to retain or entertain any petition in respect of disputes and complaints in service matters. As the jurisdiction and power to decide the constitutional validity of service law is entirely of a different dimension, the following fundamental question was raised before the High Court of Karnataka in the case of *S.M.Pattanaik v. Secretary to Government of India*.⁸

However, the Court held that the jurisdiction to decide disputes and complaints did not, under the scheme of the Constitution, include the jurisdiction to decide constitutional validity of service law and accordingly answered the question in the negative. In coming to the conclusion, the High Court relied on the ratio of the four Constitution bench decisions of the Supreme Court in *Jugul Kishore v. Sitamarhi Central Co-operative Bank*,⁹ *East India Commercial Company v. Collector of Customs*¹⁰, *Chief Justice, Andhra Pradesh v. Dikshitalu*¹¹, and *Raja Ganga Pratap v. Allahabad Bank*¹², in which the Supreme Court had interpreted the provisions of the Constitution relating to the position and role assigned to the High Courts under the Constitution and had also laid down the guiding principles for the interpretation of constitutional provisions.

In view of the respective and mutually exclusive jurisdiction of the High Courts and of the Administrative Tribunals, it is necessary to clarify as to the categories of cases, which fall within the exclusive jurisdiction of the High Courts and of the Administrative Tribunals. In this behalf, it is necessary to note that there is a clear difference between enforcement of fundamental rights and other provisions of the Constitution as reflected in the laws enacted or otherwise, while questioning the legality of an order imposing penalties on a civil servant or affecting any of his conditions of service or any of his rights in matters relating to recruitment, and, enforcement of the fundamental

⁸ IL R 1986 Kar 3954

⁹ AIR 1967 SC 1494

¹⁰ AIR 1962 SC 1893

¹¹ AIR 1979 SC 193

¹² AIR 1958 SC 293

rights and other provisions of the Constitution by way of challenging the constitutional validity of the law regulating the conditions of service or recruitment. The first category would be squarely within the jurisdiction of the Tribunal and therefore excluded from the jurisdiction of the High Court and the second category is exclusively within the jurisdiction of the High Courts and not included in the jurisdiction of the Tribunal.

A few illustrations would show the clear difference between the two categories:

- (1) Articles 14 and 16 confer right to equality and equal opportunity in matters relating to employment under the State:
 - (a) A challenge to an order of termination of service on the ground that it is discriminatory and violative of Articles 14 and 16 of the Constitution does not involve constitutional validity of any law but only would involve question of constitutional validity of the order (*Government Branch Press, Mercara v. D.B. Belliappa*¹³).
 - (b) A challenge to an order of termination of service on the ground that the rule which authorized termination of service without assigning any reason, itself was violative of Articles 14 and 16, would be a case involving constitutional validity of the law, for, unless the rule is held to be void the termination of service cannot be set aside. (*Motiram Deka's case*¹⁴; *T.C. Srinivasa Murthy v. Union of India*,¹⁵).
- (2)
 - (a) A complaint that a selection and appointment made was in violation of the order providing for reservation of posts in favour of backward classes, whether by exceeding reservation or not giving effect to the reservation and thereby the right guaranteed under Articles 14 and 16 was denied, is a matter which does not involve any question of constitutional validity of the law.
 - (b) But a complaint that reservation order itself is, unconstitutional on the ground of arbitrary classification or excessive reservation would be involving constitutional validity of the law.
- (3)
 - (a) If a civil servant says that though he was senior, his case was not considered for promotion as required under the rule and seeks a direction for his promotion, it is only a case of enforcement of the relevant rule as also right guaranteed under Articles 14 and 16 of the Constitution. (*District Registrar v. N.B. Kayya Kutti*¹⁶ and *Union of India v. M.L. Capoor*¹⁷).

¹³ AIR 1979 SC 429

¹⁴ AIR 1964 SC 600

¹⁵ 1982 (1) LLJ 268

¹⁶ AIR 1979 SC 1060

¹⁷ AIR 1974 SC 87

- (b) If non-promotion of civil servant is challenged on the ground that the rule, which denied him the promotion, was violative of Articles 14 and 16, it would be a case involving the question of constitutional validity. (See: *N.S. Mehta v. Union of India*¹⁸, *Smt. Juthika Bhattacharya v. The State of M.P.*¹⁹; and *S.L. Sachdev v. Union of India*²⁰).
- (4) Article 311(2) of the Constitution ensures security of tenure to civil servants.
- (a) If an order imposing penalty of dismissal or removal from service is challenged on the ground that it was violative of Article 311(2) and/or the rules regulating disciplinary proceedings, it would be a case of enforcement of the rule concerned and also Article 311(2).
- (b) If an order which brought about the termination of service of a civil servant is challenged on the ground that the Rule or Law pursuant to which determination of tenure was brought about is violative of Article 311(2), it would be a case of challenge to the constitutional validity of the law (See: *Motiram Deka* and also *G.S. Sidhu v. State of Punjab*)²¹.

Therefore, A clear distinction must be made between:

- (1) The cases in which the provisions of Article 14 or 16 or 311 or any other provision of the Constitution are invoked while challenging the legality of an order or action on the ground that the provision of a law intended to give effect to those Articles of the Constitution had been violated, or in the absence of any such law, the provision of the Constitution itself was violated
- (2) The cases in which the provisions of a law regulating recruitment and conditions of service under which an order or action, the legality of which is challenged, was made or taken, itself is challenged on the ground that it is violative of Articles 14 and 16 or 311 or any other provision of the Constitution.

It is only the second category of cases, which could be retained or entertained by the High Courts.

In *S.P. Sampath Kumar v. Union of India and others* (J.T. 1986 SC 996) the Constitution Bench has held that the Act is a law made by Parliament under cl (1) of Art 323A to exclude the jurisdiction of the High Court under Arts 226 and 227 of the Constitution. Section 28 of the Act which bars the jurisdiction of all courts except the Supreme Court is relatable to cl. 2(d) of Art 323A for adjudication of service matters including questions involving the validity or otherwise of such laws on the ground that they abridge the fundamental rights under Arts 14 and 16(1) of the Constitution, and that the Administrative Tribunal set up under section 4 of the Act is a substitute for and not

¹⁸ AIR 1977 SC 1673

¹⁹ AIR 1976 SC 2534

²⁰ AIR 1981 SC 111

²¹ AIR 1964 SC 1571

supplemental to the High Court, providing an equally efficacious alternative remedy for adjudication of such disputes. It has further held that the establishment of the Administrative Tribunal under the Act therefore takes away the jurisdiction and power of the High Courts to interfere in such matters but it is not violative of the doctrine of judicial review which is a fundamental aspect of the basic structure of our Constitution because Section 28 of the Act which bars the jurisdiction of the High Court under Arts 226 and 227 of the Constitution preserves the jurisdiction and power of the Supreme Court under Arts 32 and 136 of the Constitution. It accordingly follows that the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Arts 14 and 16(1) of the Constitution.

The said question has, however, been considered by a seven judge constitutional bench of the apex court in *L. Chandra Kumar v. Union of India*²² where the court, while holding that “though the subordinate judiciary or tribunal created under the ordinary legislation cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental – as opposed to a substitutional role in this respect”, has observed as follows: If the power under Article 32 of the Constitution, which has been described as the “heart” and “soul” of the Constitution, can be additionally conferred upon “any other court”, there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under article 323—B of the Constitution. It is to be remembered that, apart from the authorization that flows from articles 323 – A and 323 – B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.

²² (1997) 3 SCC 261

Whether law declared by High Court is binding on Administrative Tribunal or not?

Much Before the enactment of the Forty—Second Constitutional Amendment Act and the consequential Administrative Tribunals Act, 1985, the constitution bench of the Supreme Court in the case of *East India Commercial Company v. Collector of Customs*²³ had held that the law declared by a High Court is binding on all the tribunals located within the territory with respect to which the High Court exercises its jurisdiction. There are already large numbers of decisions rendered by the High Courts on questions of law concerning service matters, before the constitution of the tribunal. Further even under the scheme of the Administrative Tribunals Act, 1985, proceedings pending in writ appeals are not transferred to the Administrative Tribunal. The question is, whether the decision rendered by the High Court concerned earlier to the constitution of the tribunal or by an appellate bench of the High Court after the constitution of the tribunal, are binding or not on the Administrative Tribunal, for, if they are not binding on the Administrative Tribunal and the questions could be re-opened before the tribunal, the possibility of conflicting decisions could not be excluded. Further even in service matters, incidental questions relating to procedure, privilege and questions relating to interpretation of constitutional provisions arise for consideration, and the question would be, if there is already a pronouncement of the High Court concerned, whether such declaration of law will not bind the tribunal though it is located within the High Court territorial jurisdiction of the concerned. This was another question of great constitutional importance, which was considered by the apex court in *State of Orissa v. Bhagaban Sarangi*²⁴ in this case the apex court has ruled that the “Tribunal in this case (Orissa Administrative Tribunal) is nonetheless a Tribunal. It is bound by the decision of the high court of the state and it cannot side-track or by pass it”.

SC wants independent agency to oversee tribunals. A seven-Judge Bench of the Apex Court has held that the decisions of the Administrative Tribunals (to adjudicate special category of service matters) and tax tribunals - constituted under appropriate laws made under Articles 323-A and 323-B of the Constitution were amenable to scrutiny (under Articles 226 and 227 of the Constitution) before a Division Bench of the respective High Courts. To maintain the sanctity of the judicial proceedings, the Bench added, it invoked “the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.” The Bench recommended that the Union of India initiate action in regard to setting up of a wholly independent agency - under a single nodal Ministry, the Ministry of Law, to oversee the working of the tribunals, after consulting all concerned.

²³ AIR 1962 SC1893

²⁴ (1995) 1 SCC 399

Whether power of superintendence of High Courts under articles 226 and 227 is excluded in respect of Administrative Tribunals?

The constitution bench of the Supreme Court in case of *Jugal Kishore*²⁵ has held that every tribunal situate within the territorial jurisdiction of the high court is subject to the power of Superintendence and control of the High Court concerned. Clause (7) of article 371D which provided for the constitution of an Administrative Tribunal for Andhra Pradesh expressly excluded the power of superintendence of the Andhra Pradesh High Court over the said tribunal. There is no such clause either in article 323A 323B. Further, article 226 empowers a High Court to ensure that tribunal situated within its territorial jurisdiction do not exceed their jurisdiction and also to compel any tribunal by *mandamus* to discharge its duty, if there is failure to do so. Therefore, if in a given case a writ petition is filed before a High Court praying either for the issue of a writ of prohibition against the Administrative Tribunal not to proceed with a case on the allegation that it had no jurisdiction to entertain and proceed with a case or to decide a case expeditiously on the ground that there is delay in disposal of the case by the Administrative Tribunal, the question would be whether the High Court has or has not the power to entertain and decide such petitions particularly for the reason that a clause like clause(7) incorporated in article 371D is not incorporated in article 323A and further that would not be a service matter in respect of which the jurisdiction of the high court is excluded. A related question would be, whether under the scheme of the Constitution, a tribunal could be constituted within the territorial jurisdiction of the High Court, which is not amenable to the writ jurisdiction of the High Court and which is not bound by the law declared by the High Court?

The apex court while dealing with the above question in *L. Chandra Kumar* has categorically held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdiction is also part of the basic structure of the Constitution. Relying on *L. Chandra Kumar*²⁶, the apex court has, in *T. Sudhakar Prasad v. Government of A.P.*²⁷, further observed as follows:

Thus, the Administrative Tribunal set-up under the Administrative Tribunals Act, 1985, are amenable the judicial review and judicial superintendence power of the High Court concerned under article 226/227 of the Constitution of India.

²⁵ AIR 1967 SC 1494

²⁶ (1997) 3 SCC 261

²⁷ (2001) 1 SCC 516

Jurisdiction of administrative tribunal does not extend to members of subordinate judiciary and officers and servants of subordinate courts

Section 2 of the Act, as originally enacted, excludes the jurisdiction of the Administrative Tribunal in respect of: (i) any member of the naval, military or air force or of any other armed forces of the Union; (ii) any officer or servant of the Supreme Court or of any High Court; (iii) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State legislature or a house thereof or, in the case of a Union territory having a legislature, of that legislature. In view of this provision, the service matters in respect of civil servants other than the above three categories fall within the jurisdiction of the Administrative Tribunal and consequently the High Court would have no jurisdiction to entertain a writ petition. However, there was no express provision excluding the officers and servants of subordinate judiciary from the jurisdiction of the Administrative Tribunals. Thus, in the absence of such an exception, the question that emerged was whether the members of the subordinate judiciary have to approach the Administrative Tribunal in respect of disputes or complaints, against the decision rendered by the High Court on the administrative side. However, prior to the establishment of the Administrative Tribunals, the constitution bench of Supreme Court, in *Dikshitalu*, had ruled that in view of article 235 of the Constitution, the effective control over the members of subordinate judiciary and over the officers and servants of the subordinate courts is vested in the High Court and therefore the Andhra Administrative Tribunal had no jurisdiction to decide disputes of members of judicial service or officers and servants of subordinate courts. In view of the *ratio* of that decision, notwithstanding the omission to specify in section 2 of the Act “*the members of judicial service and officers and servants of subordinate courts*”, the Administrative Tribunal cannot exercise jurisdiction in respect of their disputes and complaints in service matters. Thus, relying on the judgment of the Supreme Court in *Dikshitalu*, the following question was raised before the Karnataka High Court in the case of *Kaverappa v. District and Sessions Judge, Mysore*²⁸:

Accordingly, an express provision was made in section 2 of the Administrative Tribunals (Amendment) Act, 1987 excluding the ‘officers and servants of the subordinate courts’ from the purview of Administrative Tribunals Act, 1985. The said amendment came into force with effect from 22nd December 1987.

²⁸ ILR 1987 Kar 892

Jurisdiction of Administrative Tribunal in the absence of an order: Section 19 of the Administrative Tribunals Act provides that a person aggrieved by any ‘order’ pertaining to any matter within the jurisdiction of a tribunal may make an application to the tribunal for the redressal of his grievance. Relying on section 19, the following question was raised before the High Court of Karnataka in the case of *Dr. Kashama Kapur v. Union of India*²⁹. Thus, the tribunal has the power to entertain applications/complaints against administrative inaction and give appropriate relief.

Power to reduce penalty No such court had the power to interfere with the quantum of penalty and reduce the penalty when found excessive having regard to the gravity of the charges proved. It is only the industrial tribunal/labour court, which has the power under section 11-A of the Industrial Disputes Act, 1947, to reduce the penalty of dismissal or removal from service. But its jurisdiction is not shifted to the tribunal. On the other hand, it is expressly saved. In the absence of such an express provision conferring the power to interfere with the quantum of penalty, the question is whether the administrative tribunals can interfere with the quantum of punishment imposed in the disciplinary proceedings? The apex court while dealing with the above question, in *Union of India v. Parma Nanda*, has held that the tribunal has ordinarily no power to interfere with the punishment awarded by competent authority in departmental proceedings on the ground of penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, *mala fide* or perverse. It was further observed that the jurisdiction of the tribunal to interfere with the disciplinary matters or punishment could not be equated with an appellate jurisdiction. The tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse.

Power to punish for contempt of itself: Section 17 of the Administrative Tribunals Act, 1985 expressly provides that the tribunals shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise under the provisions of the Contempt of Courts Act, 1971. The question whether the said provision of the Act has ceased to exist in view of the decision of the Supreme Court in *L. Chandra Kumar*³⁰ was specifically raised before the apex court in *T. Sudhakar Prasad v. Govt. of A.P.*³¹. The apex court while holding that section 17 of the Act is constitutionally valid in view of sub-clause (b) of clause (2) of article 323—(A) as well as sub-clause (g) thereof, has observed:

²⁹ ILR 1986 Kar 4007

³⁰ (1997) 3 SCC 261

³¹ (2001) 1 SCC 516

CONCLUSION

With a view to easing the congestion of pending cases in various High Courts and other Courts in the country, Parliament had enacted the Administrative Tribunals Act, 1985 which came into force in July, 1985 and the Administrative Tribunals were established in November, 1985 at Delhi, Mumbai, Calcutta and Allahabad. Today, there are 17 Benches of the Tribunal located throughout the country wherever the seat of a High Court is located, with 33 Division Benches. In addition, circuit sittings are held at Nagpur, Goa, Aurangabad, Jammu, Shimla, Indore, Gwalior, Bilaspur, Ranchi, Pondicherry, Gangtok, Port Blair, Shillong, Agartala, Kohima, Imphal, Itanagar, Aizwal and Nainital.

The Central Administrative Tribunal has been established for adjudication of disputes 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 other local authorities within the territory of India or under the control of Government of India and for matters connected therewith or incidental thereto. This was done in pursuance of the amendment of Constitution of India by Articles 323A. In the statement of objects and reasons on the introduction of the Administrative Tribunals Act, 1985, it was mentioned that the setting up of such Administrative Tribunals exclusively would go a long way in reducing the burden on the various courts and reduce pendency and would also provide to the persons covered by the Administrative Tribunals a speedy and relatively cheap and effective remedy. In addition to Central Government employees, the Government of India has notified 45 other organizations to bring them within the jurisdiction of the Central Administrative Tribunal. The provisions of the Administrative Tribunals Act, 1985 do not, however, apply to members of paramilitary forces, armed forces of the Union, officers or employees of the Supreme Court, or to persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State/Union Territory Legislatures.

After the constitution of the Tribunal in 1985, in the beginning, under Section 29 of the Administrative Tribunals Act, 1985, the Tribunal received on transfer from the High Courts and Subordinate Courts 13,350 cases, which were pending there. Thereafter, till November 2001, 3,71,448 cases were instituted in the Tribunal. Out of these, 3,33,598 cases have already been disposed of. The total number of cases received on transfer as well as those instituted directly at various Benches of the Tribunal till 30.06.2006 is 4,76,336, of which the Tribunal has disposed of 4,51,751 cases leaving a balance of 24585 cases which constitutes disposal of 94%.

The institution of cases in the Tribunal has increased tremendously but the rate of disposal of the cases has also quantitatively increased and in the Principal Bench of the Tribunal at New Delhi, the disposal is 94%. During the year 2000, over 91% of cases of the Principal Bench of the Tribunal have been upheld in Writ Petition by the Delhi High Court and so quantitatively also the Tribunal has performed well.

The Tribunal follows the principles of natural justice in deciding cases and the procedure, prescribed by Evidence Act or CPC does not apply. The Tribunal is also a specialized organization, which deals with only service matters in respect of the Central Government employees and other employees who have been notified. Principal Bench here is dealing presently with the cases instituted in the year 2005 and 2006 and the total number of cases pending at the end of June, 2006 is 2708. The Central Administrative Tribunal is doing its best to expedite the disposal of cases. For the year 2001 and right up to June, 2006 the overall disposal of cases has exceeded the number of freshly instituted cases, as a result of which the total pendency has reduced. Where the pendency of cases is on higher side in any Bench, Members are being deputed from other Benches to that Bench for wiping out the pendency. The original Applications in the Principal Bench are generally disposed of in four to six months, thus justifying the aim of the Legislature in setting up the Administrative Tribunals to provide a speedy, relatively inexpensive and efficacious remedy to the employees who feel aggrieved.

The Central Administrative Tribunal is empowered to prescribe its own rules of practice for discharging its functions subject to the Administrative Tribunals Act, 1985 and Rules made there under. For this purpose, the Central Administrative Tribunal Rules of Practice, 1993 have been notified. Similarly, for the purpose of laying down a common procedure for all Benches of the Tribunal, the Central Administrative Tribunal (Procedure) Rules, 1987 have been notified. Under Section 17 of the Administrative Tribunal Act, 1985, the Tribunal has been conferred the power to exercise the same jurisdiction and authority in respect of contempt of itself as a High Court.

The employees of the Central Administrative Tribunal are required to discharge their duties under the general superintendence of the Chairman. Salaries and allowances and conditions of service of the officers and other employees of the Tribunal are specified by the Central Government. Pursuant to these provisions the Central Government have notified the Central Administrative Tribunal Staff (Conditions of Service) Rules, 1985. There are 1288 posts classified in 38 categories for assisting the Tribunal in discharging its functions. The Central Administrative Tribunal is a Growing institution with increasing responsibilities and load of work.

BIBLIOGRAPGY

1. Service Law – By P.K. Mazumdar
2. Service Law – By S.K.P. Shrinivas
3. Services under the State – Justice M Rama Jois
4. Service Law - Mallick
5. [www. Google .com](http://www.Google.com)
6. [www. Yahoo.com](http://www.Yahoo.com)