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STATUS AND WORKING OF ADMINISTRATIVE TRIBUNALS: PERSPECTIVES IN INDIA

"The Administration of Justice, is the firmest pillar of Government"

-George Washington

Abstract:

In accordance to Art 323A and 323B of the Indian Constitution, Service tribunals have been established and set up to deal with service related issues and other matters concern with civil servants per se. These tribunals are quasi-judicial in nature and serve both judicial and administrative purposes. Hence, provisions of Evidence Act and Civil Procedure Code do not apply. Service tribunals are signs of welfare state where people are allowed to condemn their grievances against administrative authorities. The tribunals are thus set up to avoid the mainstream litigation approach in courts by civil servant, but sometimes turns out to be a bye pass to courts. Natural justice principles being one of the important aspects of administrative law, tribunals have moved into a phase where by they have started constructing their own interpretation to principles of Natural Justice. This is one of the major lacunas. To be emphasized on the fact that rule of law is to be ensured, these tribunals ought to have effective adjudicatory mechanisms. With the passing of the Administrative Tribunals Act in the year 1985, various tribunals were established to ensure speedy justice. But there lies so many loopholes right from ineffective members and adjudicatory methods to lack of infrastructural facilities. The paper would also focus on how the tribunals are not a substitute to the Courts as far as adjudication of service matters is concern. Moreover, the paper goes in lines with the analyses of the Administrative Tribunals Act and gives emphasis on the need for effective mechanisms of working in a 'need of the hour' manner.

Keywords: Service Law, Civil servants, Administrative Tribunals, Natural Justice, Quasi-judicial.

Research Questions:

1. What is the role of Service Tribunals in India?
2. How far has the Administrative Tribunals Act, 1985 gone to, to ensure Administrative Justice in India?
3. Are the principles of Natural Justice working properly, as far as quasi-judicial functions? If no, reasons and way forwards.

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I. Introduction:

Tribunals are quasi-judicial in nature. Article 323-A of the constitution of India provides for the establishment of administrative tribunals by parliamentary law for settlement of disputes relating to recruitment and conditions of service of government servants under the Union and the States.

They are courts of justice where judgments are pronounced or may be boards or committees that are constituted to adjudicate matters relating to certain kind. Therefore, tribunals are adjudicatory bodies that fall under the ambit of judicial or quasi-judicial functionaries that are different from purely administrative or executive functionaries [1]. Supreme Court, in its various pronouncements has established this meaning of a tribunal. Tribunals were primarily established to provide speedy redressing mechanisms. Moreover, since these tribunals are statutory bodies, they have a well-established decentralized form of governance.

Targeting Welfare legislations is the main objective of these tribunals, in order to address the socio-economic discrepancies in the country. Professor Balram Gupta puts forth his say that for an authority to be considered a tribunal, there should exist some judicial power and that the authority has been constituted by the state[2]. Professor M.P. Jain says that tribunals are not just acting judiciary but has also been part of judicial functions are also invested there within[3].

Article 323-B under the constitution of India provides for the establishment of tribunals for determining disputes, complaints relating to tax, imports, exports, labor and industrial disputes, service matters, supply of essential commodities, elections to the Parliament and the State legislature.

[1] 'Administrative Tribunals' available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/68357/14/14_chapter%207.pdf
[2] Jain M. P., and S. N. Jain, Principles of Administrative Law. Nagpur: Lexis Nexis, India, 2010
[3] *Ibid.*

Under the constitution of India, there has been no clear-cut definition of 'Administrative Tribunals' But, nevertheless, Art 227 and Art 136 of the Constitution merely provides for 'tribunals'[4]. The meaning of the word 'Administrative Tribunal' can be inferred through various judicial interpretation of the courts. H.M Servai propounded that it is necessary for administrative tribunals to be in existence as in course of the development of Administrative Law. Thus, these tribunals act in accordance to the authorities outside the court system. They are rather treated seen as an executive body than a court of Law. By Judicial, it means that the facts have to be decided and applied impartially without taking into consideration of the executive policy. Hence, they are a mixture of both. At times, the administrative tribunals are required to act more judicially and not merely judiciously and hence came in the concept of quasi-judicial. Therefore, this is the time where a tribunal exercises powers of a civil court for certain procedural matters, though the provisions of Civil Procedure Code do not apply.

Since there exists no specific or precise definition for 'tribunal', the Supreme Court's interpretations are important to consider. The views of the apex court can be seen in the following cases: In the case of Durga Shankar Mehtha V. Raghuraj Singh[5], the Supreme Court expressed that a 'Tribunal' as used in Article 136 does not mean the same thing as 'court' but is included within the ambit of court, all adjudicating bodies provided they are constituted by the state and invested with judicial as distinguished from administrative or executive functions". Similarly in the case if Bharat Bank Ltd. v/s Employees[6], it was held that the though tribunals are courts, they do not full fledged function as a court of law. It was also held in the case of Associated cement companies Ltd. V. P.N. Sharma[7] that, a tribunal is an adjudicating body that decides on controversies between parties on exercising judicial functions apart from purely administrative functions. They possess only some traits of the courts, not all of them.

II. Service Tribunals:

[4] *Ibid.*
[5] Massey, I. P. Administrative Law. Lucknow: Eastern Book Co., 2008.
[6] Chandrakanthi. L, 'ADMINISTRATIVE TRIBUNALS UNDER INDIAN CONSTITUTION: AN OVERVIEW', (2016) available at: <http://ijldai.thelawbrigade.com/wpcontent/uploads/2016/07/Chandrakanthi.pdf
[7] *Ibid.*

In accordance to Art.323 of the Constitution of India, enables provisions for the establishment of Administrative Tribunals across the country by the laws made by the parliament for conductivity of disputes that pertain to service matters of government servants, and also their conditions of service[8]. Therefore, It is to be noted that it is also put in within the circle of administrative tribunals thus governing employees of any local or other authorities within the territory of the country or the authorities that are under the control of the Indian government. This can also extend to any sort of corporations that are owned and controlled by the Government of India itself. This provision of the Constitution of India also suggests for establishment of separate tribunals pertaining to administrative matters for a particular state or for two or more states where joint administrative tribunals are suggested. Through this provision, the parliament has put forth certain ideas and envisaged on the matters relating to service law in the country and the growing need of the same, considering the fact that India is a Welfare State. Thus there is an appreciation of the need for impartial and speedy justice to the public servants and the public in general thus fulfilling the aspect of public administration in a substantive manner.

There exists an exclusion clause with regard to the jurisdiction and power of all the courts except the Supreme Court in accordance to Art 136 of the Constitution. The main reason why this was done is that certain matters falling within the jurisdiction of the Tribunals thus reducing the huge amount of arrear of cases that are pending before various High Courts and the Supreme Court. Moreover, one of the main reasons was to ensure secure and speedy disposal of service matters that arose out of public servants and other public officials. To be considering the need for establishing service tribunals in the country and the render efficacious reliefs and justice to service community, the Supreme Court laid down the following in the case of K.K. Dutta V. Jin Lon[9]:

"*Public servants ought not to be driven or required to dissipate their time and energy in court- room battles. The constitution of service Tribunals by the State Governments with an apex Tribunal at the Centre, which in the generality of cases should be the final arbiter of controversies relating to condition of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeal in service matters. The proceedings of such Tribunals can have the merit of*

[8] Massey, I. P. Administrative Law. Lucknow: Eastern Book Co., 2008.

[9] Administrative Tribunals Act, 1985.

informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions, which will satisfy many."

III. Administrative Tribunals Act, 1985:

The tribunals were established in force after almost ten years after Art. 323A was inserted through a Constitutional Amendment. It adjudicates or tries disputes and complaints relating to recruitment and condition of service of Government servants. It also includes the employees of any local or other authority within the territory of India or under the control of Government of India. The statement of objects and reasons while putting forth the need for speedy disposal of cases, clearly gives out the fact that of the pendency of a large number of cases with regard to a number of service matters before the various courts. In accordance to the passing of the said legislation, there came into certain lacunas in the legislation that were found. This can be clearly seen in the case of S.P. Sampat Kumar V. Union of India[10]. In the said case, not just various provisions of the Act came before the Supreme Court, but also the constitutional validity of Article 323A came about. One of the main contentions of the petitioner in this case was that, the writ jurisdiction of the High Court couldn't be at any cost removed or taken away by any Constitutional Amendment.

The Supreme Court upholding the constitutional validity of Article 323A and the Amendment Act, it pointed out the fact that, the Constitution of India gives permission to the Parliament to interfere into the jurisdiction of the High Courts under Article 226 and 227. This relaxation is accompanied by a proviso clause that says that the power of interference shall be exercised effectively and efficiently by a closely comparable institution or body[11]. Therefore the apex court in the above case made following observation the following observation as the proviso interpretation[12]:

"*However, has to be kept in view is that the Tribunal should be a real substitute for the High Court not only in form and de jure but in content and de facto". It has to be ensured "That the substitute institution-the Tribunal must be a worthy successor in all respects.*

[10] S.P. Sampat Kumar V. Union of India, 1987 SCR (3) 233.
[11] Takwani, C. K. Administrative Law. Lucknow: Eastern Book Co., 1980.
[12] *Ibid.*

In the case of L. Chandra Kumar v. Union of India[13] after the introduction of Article 323-A and 323-B of the Constitution Of India, the Central Administrative Tribunals (CAT) were established in 1985. The establishment CAT excluded the jurisdiction of the Supreme Court under Article 32 of the constitution and the High Court under Article 226 of the constitution. The question is that whether the tribunals can act as effective substitutes for the High Court in discharging the power of judicial review as decided in Sampath Kumar v. Union of India[14]. If not, what are the changes required?

The Supreme Court held that the power conferred by Article 323-A (2) (d) and by Article 323-B (3)(d) of the Constitution of India, to totally exclude the jurisdiction of 'all courts', except that of Supreme Court under Article 136 runs contrary to the power of judicial review conferred on the High Court under Article 226/227 and on the Supreme Court under Article 32 of the Constitution of India.

The court therefore held that the jurisdiction of the High Court under the Articles 226/227 and of the Supreme Court under Article 32 is retained and the tribunals should function only as a supplementary body. It further held that the jurisdiction of the Tribunals would be subject to the review of the High Court under Articles 226/227 and it has power of judicial superintendence over decisions of all courts including Tribunals within their jurisdiction, which is the basic structure of the Constitution.

Thus, above decision of Supreme court overrules its earlier decision in Sampath kumar v. Union of India.[15]

IV. Analyses:

In lights of the above mentioned, it is well inferred that the tribunal has in the recent past become the sole authority and has taken up the complete responsibility of dealing with service related issues that are arising therewith. Thus, a tribunal can at no cost decline the jurisdiction in any matter as far as public servants are concern. But to address the lacunas that exist and that may arise in future, Administrative Tribunals ought to have in mind the concept of how the principle of Natural Justice should work effectively and cautiously as far as service matters are concern. Also, these tribunals have to really efficacious when in comes to hearings and proceedings of matters before it. It has to ensure that there is no picture of biasness being played and must also not be prejudice to any aggrieved party

[13] (1995) 1 SCC 400 : (1995) AIR SCW 1200)
[14] 1987 SCR (3) 233
[15] 1987 SCR (3) 233

and hence must be fulfilling the constitutional provisions and justifications such as equality, freedom and life.

It can be notice in the Supreme Court case of M.B.Mazumder V. Union of India[16]. In this case it can be held that the members of the Administrative tribunals cannot be treated the same as that of the judges of the High Court. As it is a clear fact that a tribunal is a quasi-judicial body and has all means to exercise both judicial and executive functions as far as administrative issues are concern. Placing them on the same scale should be reconsidered by means of legislative interpretations and the rules that are enshrined under Art. 309 of the Constitution. This can be seen as a view taken by the Supreme Court in the case of State of Orissa V. Bhaawan Saraai[17]. In this case it was held that a tribunal that is established under the respective Act is nonetheless, but a tribunal and can therefore not go in parallel side tracking the decisions of the High Court concerned therewith.

Tribunals can also exercise their powers to achieve certain objectives such as speedy disposal of cases and thus reduce the cost of litigation. Therefore, effective measures such as improved efficiency and performance may lead to increase in the confidence of the public on such tribunals. Hence, it can be said that there exists a clear path in which a tribunal can act as an effective instrument of judicial review, which is one of the basic features of the Constitution[18].

V. Conclusion:

There are many tribunals with respect to many areas of the subject. It is to be noted that the quasi judicial system has not be working and growing in the way and direction it is looked to be and is thus lacking the sign of its goals. Tribunals are free to exercise and interpret the principles of natural justice in any which manner as there exists no definite or strict norms with regard to the same. There is a lot of ambiguity and vagueness and are existing in the current administrative adjudicatory mechanism. Therefore, it is very important to figure out and anticipate the future of tribunal system in India and therefore can turn out to be pit fall type of delivering justice. Having in mind the social views of the

[16] M.B.Mazumder V. Union of India, 1990 AIR 2263.
[17] State of Orissa V. Bhaawan Saraai, 1952 AIR 12.
[18] Jain M. P., and S. N. Jain, Principles of Administrative Law. Nagpur: Lexis Nexis, India, 2010.

country, it is very important and is a need of the hour to uphold the value of legal and socio-economic justice as far as quasi-judicial pattern of justice delivery is concern.