UNIT 7 CENTRAL AND STATE ADMINISTRATIVE TRIBUNALS*

Structure

7.0 Objectives

7.1 Introduction

7.2 Administrative Tribunals: Evolution

7.3 Structure of the Administrative Tribunals

7.4 Composition of the Administrative Tribunals

7.5 Administrative Tribunals: Jurisdiction, Powers and Authority

7.6 Procedure for Application to the Administrative Tribunals

7.7 Advantages and Limitations of the Administrative Tribunals

7.8 Conclusion

7.9 Glossary

7.10 References

7.11 Answers to Check Your Progress Exercises

7.0 OBJECTIVES

After reading this Unit, you should be able to:

- Discuss the evolution of the administrative tribunals;
- Explain their structure and composition;
- Describe the jurisdiction, powers and authority of the administrative tribunals;
- State the procedure for application to the tribunals; and
- Highlight the advantages and limitations of the administrative tribunals.

7.1 INTRODUCTION

The functions of the state are exercised through legislature, executive and judiciary. The legislature has the power to formulate laws, while the executive is entrusted with the task of implementation of laws. It is the judiciary that examines the various disputes in order to protect the citizens' rights. The fundamental rights guaranteed to the citizens under the Indian Constitution provide for right to constitutional remedies through adjudication or dispute settlement machinery. This machinery has judicial authorities, quasi-judicial bodies including courts and tribunals. In India, the administrative tribunals have been set up, to look into various activities such as trade, industry, taxation, service matters, etc.

The personnel employed in government organisations as individual employees may

*This Unit has been adopted from BPAE-104, Block 3

have certain grievances, and complaints regarding their service matters. These need to be looked into expeditiously and with objectivity and fair play. Hence, an appropriate institutional structure in the form of administrative tribunals was set up in our country entrusted with the responsibility of adjudication of service disputes of public service personnel.

In this Unit, we shall study about the evolution of administrative tribunals with special reference to the Central Administrative Tribunal, State and Joint Administrative Tribunals, their jurisdiction, powers and authority. The composition of the tribunal and its functioning shall also be dealt with. The Unit shall also discuss the advantages and limitations of the tribunals.

7.2 ADMINISTRATIVE TRIBUNALS: EVOLUTION

The growth of administrative tribunals both in developed and developing countries has been a significant phenomenon of the twentieth century. In India also, innumerable tribunals have been set up from time to time both at the centre and the states, covering various activities such as trade, industry, banking, taxation etc. The question of establishment of administrative tribunals to provide speedy and inexpensive relief to the government employees relating to grievances on recruitment and other conditions of service had been under the consideration of Government of India for a long time. Due to their heavy preoccupation, long pending and backlog of cases, cost and time factors, judicial courts could not offer the much needed remedy to the government employees, with regard to their disputes with the government. The dissatisfaction among the employees, irrespective of the class, category or group to which they belong, is the direct result of delay in their long pending cases or cases not attended to properly. Hence, a need arose to set up an institution, which would help in dispensing prompt relief to the aggrieved employees who perceive a sense of injustice and lack of fair play in dealing with their service grievances. This, it has been felt would motivate the employees better and raise their morale which in turn would increase their productivity.

The First Administrative Reforms Commission (1966-70) recommended the setting up of Civil Service Tribunals to function as the final appellate authority, in respect of government orders inflicting major penalties of dismissal, removal from service and reduction in rank. As early as 1969, a Committee under the chairmanship of J.C. Shah had recommended that having regard to the very large number of pending writ petitions of the employees in regard to the service matters, an independent tribunal should be set up to exclusively deal with the service matters.

The Supreme Court in 1980, while disposing of a bunch of writ petitions observed that the public servants ought not to be driven to or forced to dissipate their time and energy in the court-room battles. The Civil Service Tribunals should be constituted which should be the final arbiter in resolving controversies relating to conditions of service. The government also suggested that in the first instance, public servants might approach fact-finding administrative tribunals .

The matter came up for discussion in other forums also and a consensus emerged that setting up of Civil Service Tribunals would be desirable and necessary, in public interest, to adjudicate the complaints and grievances of the government employees. The Constitution of India was amended to enable the setting up of Civil Service Tribunals (through 42nd amendment Article 323-A). 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.

This Act empowered the Parliament to provide for adjudication or trial by administrative tribunals, of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the union or of any state or local or other authority within the territory of India or under the control of the government or of any corporation owned or controlled by the government.

In pursuance of the provisions of Article 323-A of the Constitution, the Administrative Tribunals Bill was introduced in Lok Sabha on 29th January, 1985 and it received the assent of the President of India on 27th February, 1985. As per the Supreme Court Judgement dated18 March1997, the appeals against the orders of an administrative tribunal shall lie before the Division Bench of the concerned High Court.

The aggrieved person can personally appear before the tribunal. The government can present its case through its departmental officers or legal practitioners. The objective of the tribunal is to provide speedy and inexpensive justice to the litigants.

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.

7.3 STRUCTURE OF THE ADMINISTRATIVE TRIBUNALS

The Administrative Tribunals Act 1985 provides for the establishment of one Central Administrative Tribunal, a State Administrative Tribunal for each state and a Joint Administrative Tribunal for two or more states. The Central Administrative Tribunal (CAT) with its principal bench at Delhi and other benches at Allahabad, Mumbai, Kolkata and Chennai was established on 1st November, 1985. The Act vested the Central Administrative Tribunal with jurisdiction, powers and authority of the adjudication of disputes and complaints with respect to recruitment and service matters pertaining to the members of the All-India services and also of any other civil service of the Union or those holding a civil post under the Union or a post connected with defence or in the defence services being a post filled by a civilian.

The Act provides for establishment of State Administrative Tribunals (SATs) to decide the service cases of state government employees. There is a provision for setting up of a Joint Administrative Tribunal for two or more states. On receipt of specific requests from the Governments of Orissa, Himachal Pradesh, Karnataka, Madhya Pradesh and Tamil Nadu, administrative tribunals have been set up, to look into the service matters of concerned state government employees.

7.4 COMPOSITION OF THE ADMINISTRATIVE TRIBUNALS

Each tribunal shall consist of a Chairman, and such number of Vice-chairmen and judicial and administrative members as the appropriate government (either the central

government or any particular state government singly or jointly) may deem fit. A bench shall consist of one judicial member and one administrative member. The bench at New Delhi was designated the Principal Bench of the Central Administrative Tribunal and for the State Administrative Tribunals. The places where their principal and other benches would sit are specified by the state governments by notification.

Qualifications for Appointment

In order to be appointed as Chairman, a person can be chosen only if he/she is a High Court Judge or a retired person but, a person to be selected as the Vice Chairman prior to the initiation of the Act shall be chosen to the post of Chairman, if he/she has worked as Vice Chairman for a term of at least two years.

To be an administrative member, a person should have experience as the Secretary in the central government or belonging to other services under the Government of India or under the state government and has received salary equivalent to that of Government Secretary or has worked as Additional Secretary for the term prescribed under the Act. The persons under the All India Services shall also be eligible to be appointed as administrative members according to the terms specified in the Amendment Act, 2006.

A person shall be appointed as the judicial member, if he/she is working in the legal affairs department as Secretary of the central government or has held such other post in the legislative department. A member secretary under the Central Law Commission can also be appointed as judicial member.

Appointments

The Chairman, Vice-Chairman and every other member of Central Administrative Tribunal shall be appointed by the President and, in the case of State or Joint Administrative Tribunal(s) by the President after consultation with the Governor(s) of the concerned State(s) . But no appointment can be made of a Chairman, Vice-Chairman or a judicial member except after consultation with the Chief Justice of India.

Term of Office

The Constitutional Amendment Bill 2012, approved by the central government provides that the Chairman, Vice-Chairman or other members shall hold office for a term of five years from the date on which he enters upon his office or until he/she attains the age of

a) Sixty eight, in the case of Chairman or Vice-Chairman

b) Sixty five, in the case of member, whichever is earlier Resignation or Removal

The Chairman, Vice-Chairman or any other member of the Administrative Tribunal may, by notice in writing under his hand addressed to the President, resign from his office; but shall continue to hold office until the expiry of three months from the date of receipt of notice or expiry of his term of office or the date of joining by his successor, whichever is earlier.

They cannot be removed from office except by an order made by the President on the grounds of proven misbehavior or incapacity after an inquiry has been made by a judge of the Supreme Court; and after giving them a reasonable opportunity of being heard in respect of those charges.

As per the Constitutional Amendment Bill 2006,the central government ,if it is of the opinion that the continued existence of CAT or any of its branches is not necessary, it may by notification abolish any of them.

Eligibility for Further Employment

The Chairman of the Central Administrative Tribunal shall be ineligible for further employment under either Central or State government, but Vice-Chairman of the Central Tribunal shall be eligible to be the Chairman of that or any other State Tribunal or Vice-Chairman of any other State or Joint Tribunals (s).

The Chairman of a State or Joint Tribunal(s) shall, however, be eligible for appointment as Chairman or Vice-Chairman or any other member of the Central Tribunal or Chairman of any other State or Joint Tribunals. The Vice-Chairman of the State or Joint Tribunal can be the Chairman of the State Tribunal or Chairman, Vice-Chairman of the Central Tribunal or any other State or Joint Tribunal. A member of any Tribunal shall be eligible for appointment as the Chairman or Vice-Chairman of such Tribunal or Chairman, Vice-Chairman or other member of any other Tribunal.

Other than the appointments mentioned above, the Vice-Chairman or member of a Central or State Tribunal, cannot be made eligible for any other employment under the Government of India or under the Government of a State.

The Chairman, Vice-Chairman or other member shall not appear, act or plead before any Tribunal of which he/she was the Chairman/Vice-Chairman/member.

The Chairman shall exercise (or delegate to Vice-Chairman or any other officer of the Tribunal) such financial and administrative powers over the benches, as are vested in him.

The salaries and allowances and other terms and conditions of service, including all retirement benefits in respect of Chairman, Vice-Chairman and members of the Tribunal shall be such as prescribed by the Central Government and cannot be varied to their disadvantage, after appointment.

The Administrative Tribunals (Amendment) Act 2006 was enacted on 29 December, 2006 to make alterations to the Administrative Tribunals Act 1985 and certain changes were brought about in the Act. A new provision was included according to which a person can be chosen to the post of chairman only if he/she is a High Court judge or retired person but, a person to be selected as the Vice Chairman prior to the initiation of the Act shall be chosen to the post of Chairman if he has worked as Vice Chairman for a term of two years.

Check Your Progress 1

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of this Unit.

1) Explain the need for setting up of administrative tribunal.

.....

.....

.....

.....

2) What are the different types of administrative tribunals?

.....

.....

.....

.....

7.5 ADMINISTRATIVE TRIBUNALS: JURISDICTION, POWERS AND AUTHORITY

Chapter III of the Administrative Tribunals Act deals with the jurisdiction, powers and authority of the tribunals. Section 14(1) of the Act vests the Central Administrative Tribunal to exercise all the jurisdiction, powers and authority exercisable by all the courts except the Supreme Court of India under Article 136 of the Constitution. This relates to matters of recruitment and other service matters in respect of officers belonging to All India Services or of members of Civil Services of the Union or those holding civil posts under the Union or Defence Services. No court in the country, except the Supreme Court is entitled to exercise any jurisdiction or authority in matters of service disputes. The same authority has been vested in the State and Joint Administrative Tribunals.

One of the main features of the Indian Constitution is judicial review. There is a hierarchy of courts for the enforcement of legal and constitutional rights. One can appeal against the decision of one court to another, like from District Court to the High Court and then finally to the Supreme Court. But there is no such hierarchy of administrative tribunals and regarding adjudication of service matters, one would have a remedy only before one of the tribunals. This is in contrast to the French system of administrative courts, where there is a hierarchy of administrative courts and one can appeal from one administrative court to another. But in India, with regard to decisions of the tribunals, one cannot appeal to an Appellate Tribunal. Though Supreme Court under Article 136 has jurisdiction over the decisions of the tribunals, as a matter of right, no person can appeal to the Supreme Court. It is discretionary with the Supreme Court to grant or not to grant special leave to appeal.

The administrative tribunals have the authority to issue writs. In disposing of the cases, the tribunal observes the canons, principles and norms of 'natural justice'. The Act provides that "a tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure 1908, but shall be guided by the principles of natural justice. The tribunal shall have power to regulate its own procedure including the fixing of the place and time of its enquiry and deciding whether to sit in public or private".

A tribunal has the same jurisdiction, power and authority, as those exercised by the High Court, in respect of "contempt of itself" that is, punish for contempt, and for the purpose, the provision of the Contempt of Courts Act 1971 have been made applicable. This helps the tribunals is ensuring that they are taken seriously and their orders are not ignored.

7.6 PROCEDURE FOR APPLICATION TO THE ADMINISTRATIVE TRIBUNALS

The procedure for application to the Tribunals is laid down in the Act. A person aggrieved by any order pertaining to any matter within the jurisdiction of the tribunal may make an application to it for redressal of grievance. Such applications should be in the prescribed form and have to be accompanied by relevant documents and evidence and by such fees as may be prescribed by the central government but not exceeding one hundred rupees for filing the application. The tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules. This includes making of any administrative appeal or representation. Since consideration of such appeals and representations entails delay, the applicant can make an appeal before the tribunal, if a period of six months has expired after the representation was made and no order has been made. But an application to the tribunal has to be made within one year from the date of final order of rejection of the application or appeal or where no final order of rejection has been made, within one year from the date of expiry of six months period. The tribunal, may, however, admit any application even after one year, if the applicant can satisfy the tribunal that he/she had sufficient cause for not making the application within the normal stipulated time.

Every application is decided by the tribunal on examination of documents, written representation and at times depending on the case, on hearing of verbal arguments. The applicant may either appear in person or through a legal practitioner who shall present the case before the tribunal. The orders of the tribunal are binding on both the parties and should be complied within the time prescribed in the order or within six months of the receipt of the order where no time-limit has been indicated in the order. The parties can approach the Supreme Court against the orders of the tribunal by way of appeal under Article 136 of the Constitution.

The administrative tribunals are not bound by the procedure laid down in the Code of Civil Procedure 1908. They are guided by the principles of natural justice. Since these principles are flexible and adjustable according to the situation, they help the tribunals in molding their procedure keeping in view the circumstances of a situation.

7.7 ADVANTAGES AND LIMITATIONS OF THE ADMINISTRATIVE TRIBUNALS

The rendering of administrative justice through administrative tribunals serves the varied and complex needs of modern society more adequately than any other method. It has also proved useful and effective. There are certain advantages of the tribunals which are:

Appropriate and Effective Justice: The administrative tribunals are not only the most appropriate means of administrative justice, but also the effective means of providing fair justice to individuals. Now the public service employees feel assured that in case of denial of justice and fair play to them, the tribunals restore to them the benefits that rightfully belong to them.

Flexibility: There is a considerable amount of flexibility and adaptability in the functioning

of tribunals. Principles of natural justice play an important role in the operation of tribunals. They are not bound by rigid rules of procedure of previous decisions of rule of law. The rules of natural justice are adaptable to the situation. While justice by the courts tends to be highly technical, tribunals are free from technicalities of law.

Less Expensive: Justice provided by administrative tribunals is inexpensive in terms of costs involved. This is in contrast to the long and cumbersome procedures involved in judicial courts and huge costs incurred in engaging lawyers, court fees and other incidental expenses. Hence, the tribunals have now become popular judicial forums which provide easy accessibility to the government employees, who are encouraged to move the tribunal even in minor service matters.

Relief to Courts: The administrative tribunals have provided great relief to the judicial courts which are preoccupied with so many petitions relating to civil, criminal and Constitutional matters.

Despite these advantages, there are certain limitations in the functioning of tribunals. These include:

i) The administrative tribunals do not rely on uniform precedents and hence, this might lead to arbitrary and inconsistent decisions.

ii) There is no hierarchy of administrative tribunals and this has completely excluded the scope of judicial review on service matters.

iii) The tribunals consist of administrative members and technical heads who may not possess any background of law or judicial work.

iv) The administrative tribunals as discussed earlier have the power to issue writs, which till now was exercised only by Supreme Court and High Court under the Constitution.

v) One more inadequacy noticeable in the present administrative tribunals is from the structural - functional angle. This is the absence of an appellate forum within the tribunal which causes considerable inconvenience. For example, if a bench of tribunal gives a judgement, it has got applicability all over the country as there is only one Central Administrative Tribunal for whole of India and the various benches located in different parts of the country are parts of the same tribunal. If there was such an appellate mechanism within the tribunal system, wherein appeals can be filed against any unsatisfactory judgement, it would have been a desirable form of obtaining justice both for the government employees as well as the government.

Check Your Progress 2

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of this Unit.

1) Discuss the procedure for making an application to initiate the matters before the administrative tribunals for redressal of grievances.

.....

.....

.....

.....

2) What are the limitations of administrative tribunals?

.....

.....

.....

.....

7.8 CONCLUSION

The number of administrative tribunals is on the increase. This system has proved useful and effective. It not only provides relief to the ordinary court but also ensures speedy and inexpensive justice for the public functionaries in cases involving their service matters. Administrative tribunals claim a number of advantages which the ordinary court of law do not possess e.g. low costs involved in fighting the case, accessibility, freedom from technicality, greater flexibility, expeditious disposal of the cases and expert knowledge in specified field.

Despite these advantages, there are two important factors which are posing problems in their effective functioning. Firstly, usually they are not manned by trained and experienced persons from judicial field, which is important to provide an adequate review of administrative action; and secondly, it is said that the officials working in the tribunals generally do not have the impartial outlook and detachment which judicial officers would have.

Thus, it is essential to have a judicial umbrella over the tribunals to help in maintaining the 'quality of justice'. Therefore, there is a need for introducing more and more judicial elements in the administrative tribunals. Simultaneously, the law courts too should have sympathy and clear understanding of the administrative element to eliminate the unpleasant features. In this Unit, we have read about the evolution of administrative tribunals, the objective of which is adjudication of disputes relating to service matters of public service personnel. It has given us an idea about the different types of tribunals, their structure, composition, jurisdiction, powers and authority. It has also highlighted the procedure for application to the tribunals and also the advantages and limitations.

7.9 GLOSSARY

Bench/Bar : Traditionally the bench symbolically represents the judges and the bar, similarly represents the lawyers.

Writ : It is a legal document that orders a particular person to do or not to do a particular thing.

7.10 REFERENCES

Basu D.D. (2015). *Administrative Law* (7th *Ed.).* New Delhi, India: Prentice Hall of India.

Gupta, B. K. (1985). A*dministrative Tribunals and Administrative Justice (*A

review of the A*dministrative Tribunals Act, 1985).* New Delhi, India: IIPA.

Jain, P.C. (1981). A*dministrative Adjudication – A Comparative Study of France, U.K., U.S.A. and India*. New Delhi, India: Sterling Publishers Pvt. Ltd.

Maheshwari, S.R. (2001). *Indian Administration.* New Delhi, India: Orient Longman.

Nayak, R. (1989). A*dministrative Justice in India.* New Delhi, India: Sage Publications.

Saxena, H.S. (1996). *Central Administrative Tribunal (CAT) Redress against Administrative Wrongs*. New Delhi, India: Deep and Deep Publications.

7.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Your answer should include the following points:

   - To provide speedy and inexpensive relief to the employees in dealing with their service grievances.
   - Judicial courts because of their heavy preoccupation, long pending and backlog of cases, costs involved and time factors could not offer the much needed remedy to the government employees.

2) Your answer should include the following points:

   - Central Administrative Tribunals
   - State Administrative Tribunals
   - Joint Administrative Tribunals

Check Your Progress 2

1) Your answer should include the following points:

   - An application should be in a prescribed form, accompanied by relevant documents, evidence and prescribed fee.
   - The tribunal may admit an application on being satisfied that the applicant has availed of 'all the remedies' available to him under the relevant service rules.

2) Your answer should include the following points:

   - Arbitrary and inconsistent decisions
   - Exclusion of the scope of judicial review on service matters
   - Lack of background of law and judicial work amongst members
   - No clear cut provision regarding the sharing of authority of issuing of writs between the courts and tribunals.
   - Absence of an appellate forum within the tribunal.