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Role of the Administrative Tribunal: Whether Confined to Judicial Review?

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India is a democratic nation that aspires to become a welfare state. It has an independent judiciary, meaning that neither the executive nor the legislature are in charge of it. In India, there was no mechanism for tribunals, which put a strain on the Supreme Court and High Courts and resulted in ongoing litigation. The Administrative Tribunals Act, of 1985¹, passed due to the recommendations of numerous committees and even the Supreme Court, established administrative tribunals in India. Through this paper, we will learn about how the administrative tribunal evolved in our country. The paper's topic comprises the tribunals' characteristics, the administrative tribunal act of 1985, classifications of administrative tribunals, advantages and disadvantages of tribunals, and how tribunals are different from courts. Through this report, we would be able to study certain cases like S.P. Sampath Kumar v Union of India in which section 28 of the administrative tribunal act, 1985² is constitutional or not has been held. We will also discuss a landmark case of L. Chandra Kumar v Union of India and Ors³ in which it was determined that the ability to perform judicial review of administrative and legislative action is entirely vested in the Supreme Court and High Courts under Articles 32⁴ and 226⁵ of the Constitution.

¹Administrative Act 1985

² Administrative Act 1985, s 28

³ L Chandra Kumar v Union of India and Ors (1990) SC 2263

⁴ Constitution of India 1950, art 32

⁵ Constitution of India 1950, art 266

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INTRODUCTION

The administration of government keeps evolving in today's contemporary world from a laissez-faire state to a welfare state. This has led to a rise in various functions of government; the executive is considered to be a more powerful authority which also led to a rise in exercising legislative functions. This gives rise to more litigation and controls the rights of individuals and creates a conflict between them and authorities. Thus rise in welfare philosophy leads to an increase in governmental functions and executives seem to perform quasi-legislative and quasi-judicial functions. Consequently, the traditional functions of the several departments of government under the doctrine of separation of powers – under which the legislative, executive branch and court system were each granted the right to make laws, carry them out, and interpret them, respectively – have become less clear.

But now the concept of the welfare state is changing rapidly because the state is involved in hosting various socio-economic activities such as health, education, occupation, income, and various other welfare measures associated with it. The issues arising from disputes on subject matter not only raise a legal question but affect society at large. Our legal system is extremely archaic and ineffective in both its structure and operation. Due to the inherent procedural restrictions, the courts found it impossible to settle these issues promptly, resulting in a huge backlog of cases at all levels of the legal system. As a result of these increased governmental interventions, courts were overrun with lawsuits that were both directly related to the cases and unrelated. Many people also believed that the judges lacked the necessary skills and training to handle the intricate socioeconomic and technical issues at hand. To resolve such disputes fairly and effectively, it was believed that specialized adjudicatory bodies, such as tribunals, were required.

According to Black's Law Dictionary Tribunals are “*the seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise.*” Tribunals refer to a specialized body created under the statute to discharge the

quasi-judicial function on various matters such as taxation, industrial and labor, land reforms, rent and tenancy rights, etc. The main objective of setting up a tribunal is to reduce the burden of cases of the judiciary and bring subject matter expertise for such technical matters.

According to Servai, 'The development of administrative law in a welfare state has made administrative tribunals a necessity'⁶. Administrative tribunals refer to authorities that simplify and check the applicability of law when any act of public administration is questioned in the legal suit by the court in the common court system. They cannot be categorized as either court or executive body. Instead, they combine the best aspects of both. They are judicial in the sense that facts must be decided and applied impartially by the tribunals without taking executive policy into account. They are administrative in the sense that the reasons for preferring them to ordinary courts of law are administrative in nature.

EVOLUTION OF THE TRIBUNAL SYSTEM IN INDIA

After independence, administrative-related issues developed day by day in India, and various laws were enacted to provide the administration with the authority to decide such disputes. Soon after independence, India became a republic state with a welfare state policy, placing the duty on the government to provide welfare services to its population. This quasi-judicial power granted to the administration has resulted in a large number of pending lawsuits through which administrative bodies come to their decision.

"The Courts held that these bodies must maintain procedural safeguards while arriving at their decisions and observe principles of natural justice-their opinions were substantiated by the 14th Law Commission Report."⁷ To prevent judicial machinery from pending litigation which arises due to new socio-economic policies by the legislature, the government established several tribunals. The tribunals were established with the object of providing a speedy, cheap, and decentralized determination of disputes arising out of the various welfare legislations. Another

⁶ HM Servai, *Constitutional Law of India* (4th edn, Universal Law Publishing 2017)

⁷ R Nayak, 'Administrative justice In India: An Overview Butterworths' (2022) 2(4) *International Journal of Legal Developments and Allied Laws* <<https://thelawbrigade.com/wp-content/uploads/2019/05/Chandrakanthi.pdf>> accessed 10 May 2023

main reason for new development is that procedures and legal aspects of traditional courts to get justice are very complex and a person hardly gets justice in technical matters.

Ordinary judges who were raised according to the rules of law and jurisprudence are unable to comprehend the technical issues that arise as a result of today's intricate economic and social systems. The only administrators who can handle such issues wisely are those with expert knowledge. Many administrative tribunals have been created to satisfy this requirement. In India, tribunals were established soon after independence. The most essential duty is performed by a statutory tribunal established by the legislature to decide specific disputes originating from administrative decisions or to make judicial rulings.

The tribunal system in India started evolving during the period of emergency for administration and functioning. Through the 42nd Amendment in the year 1976 Parliament inserted Articles 323A⁸ and 323B⁹ in the Constitution of India. Article 323A gives parliament the power to constitute administrative tribunals (both at the central and state levels) for deciding disputes related to appointment and conditions of service of public servants. Article 323B enumerated certain subject matters such as (taxation, foreign exchange, and industrial and labour disputes) for which parliament and the state legislature may next law to constitute a tribunal.

“In 2010, the Supreme Court clarified that the subject matters under Article 323B are not exclusive, and legislatures are empowered to create tribunals on any subject matter under their purview as specified in the Seventh Schedule of the Constitution”.¹⁰

CHARACTERISTICS OF ADMINISTRATIVE TRIBUNAL

The following are some of the characteristics of administrative tribunals that distinguish them from the traditional court system:

1. Administrative tribunals must be created by any statute.
2. Administrative tribunals must have some features of ordinary courts but not all.

⁸ Constitution of India 1950, art 323A

⁹ Constitution of India 1950, art 323B

¹⁰ *Union of India v R Gandhi and Ors* (2010) 11 SCC 1

3. Administrative tribunals perform quasi-judicial functions in accordance with the provisions established by due process of law and act to be bound judicially in every circumstance.
4. Administrative tribunals need not follow any procedure established by law; they have their own procedure as prescribed under the statute.
5. Administrative tribunals are independent bodies established under statutes to discharge judicial and quasi-judicial functions.
6. Administrative tribunals have power in procedural matters similar to ordinary courts to summon witnesses, administer the oath, and production of documents, etc.
7. Administrative tribunals are bound to follow the principles of natural justice while adjudicating any matter.
8. Key characteristics of Administrative tribunals while adjudicating any disputes are fair, open, and impartial acts.
9. The constitutional right to file a writ of certiorari and prohibition is available to citizens against the decision of Administrative tribunals.

ADMINISTRATIVE TRIBUNAL ACT 1985

Administrative tribunals are quasi-judicial entities created by an Act of Parliament or State Regulations and entrusted with carrying out judicial tasks. As a result, institutions other than courts undertake judicial tasks. The Tribunals were not included in the Constitution at the time but were added by the 42nd Amendment Act of 1976.¹¹

This amendment created a new Part XIV (14-A) of the Constitution, named 'Tribunals,' which includes two Articles 323A and 323B. Article 323A authorizes the creation of Administrative Tribunals, and the Administrative Tribunals Act, 1985 was enacted by Parliament in compliance with the Indian Constitution's provisions. The Act empowers the Central Government to establish a Central 'Administrative Tribunal' (CAT) and a 'State Administrative System'. Section 323B concerns the Tribunal, among other matters.¹²

¹¹ *Ibid*

¹² Constitution of India 1950, art 323(A)-323(B)

The tribunal should be made up of a Chairman, a Vice-Chairman, and any other members chosen by the competent authorities. The president will appoint members to the central tribunal, but in the event of a state, the president will work with the governor to make the appointment. The Act specifies the requirements for that purpose.

CLASSIFICATION OF TRIBUNALS IN INDIA

Central Administrative Tribunal (CAT): Its origins can be traced back to Article 323 A of the Constitution, which authorises the Central Government to establish administrative tribunals by Act of Parliament to resolve disputes and grievances concerning the recruitment and employment conditions of persons appointed to public services and related posts. In relation to service matters involving employees covered by this Act, the Tribunal has the same powers as the High Court and is not required to follow the procedure prescribed by law (CPC), but is bound by the principle of natural justice. To appeal against CAT judgements, the Supreme Court of India is the appropriate forum.

State Administrative Courts (SAT): These tribunals can be established by the central government and parliament. Similarly, we see the State Legislature under Article 323 B¹³ for various matters like collection, assessment, levy, and recovery of any tax related to land reforms covered by Article 31A.

Joint Administrative Courts (JAT): This may be established at the request of two or more States jointly exercising administrative control over two or more States. For example, there are various courts such as the Armed Forces Tribunal (AFT), Central Administrative Court (CAT), National Green Tribunal (NGT), Income Tax Appellate Tribunal (ITAT), Securities Appellate Tribunal (SAT), Water Disputes Court.

¹³ Constitution of India 1950, art 323

Customs and Excise Revenue Appellate Tribunal (CERAT): The CERAT Act¹⁴ was enacted by the Parliament in 1986. The Tribunal delivers decisions in cases, complaints or offences involving excise and customs taxes. The Supreme Court hears appeals of the CERAT's rulings.

Income Tax Appellate Tribunal: The Income Tax Act of 1961¹⁵ established this tribunal. A person who feels wronged by an order made by the Deputy Commissioner, Commissioner, Chief Commissioner, or Director of Income-tax may appeal to the Tribunal, which has benches in several cities. The High Court is the proper forum for an appeal against the Tribunal's ruling. If the High Court deems it appropriate, an appeal may also be made to the Supreme Court.

Industrial Tribunal: The Industrial Disputes Act of 1947¹⁶ authorized the establishment of this Tribunal. Both the Central government and the State governments can make up its composition. The Tribunal investigates disputes between employers and employees regarding wages, the time and method of payment, compensation and other benefits, working hours, gratuities, layoffs, and the closure of an establishment. The Supreme Court is the proper forum for appeals of the Tribunal's ruling.

National Green Tribunal (NGT): Pursuant to the National Green Tribunal Act, 2010¹⁷, the National Green Tribunal was established on 18 October 2010 for the effective and expeditious disposal of cases relating to the protection and conservation of forests and other natural resources along with the implementation of any statutory law relating to the environment as well as the provision of assistance and compensation for harm caused to individuals and property, as well as matters connected or related thereto. It is a specialized institution with the required expertise for managing multidisciplinary environmental disputes. The tribunal's jurisdiction deals with environmental matters only to reduce the workload of cases heard in the higher judiciary. The tribunal must deal with the appeal and the application within 6 months of its submission.

¹⁴ CERAT Act 1986

¹⁵ Income Tax Act 1961

¹⁶ The Industrial Disputes Act 1947

¹⁷ National Green Tribunal Act 2010

National Company Law Tribunal (NCLT): On 1 June 2016, the Central Government established the National Company Law Tribunal (NCLT) under Section 408 of the Companies Act, 2013 (18 of 2013). The NCLT was formed in the first phase with one major bench in New Delhi and 10 other benches established by the Ministry of Corporate Affairs in New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata, and Mumbai. The NCLT is a quasi-judicial body established to resolve civil disputes under the Companies Act. The NCLT is led by the President and is made up of 16 judicial members and 9 technical members from across India¹⁸

JUDICIAL INTERPRETATION

S.P. Sampath Kumar v Union of India:¹⁹ in the Sampath Kumar case, a Constitution Bench was formed to determine whether Section 28 of the Administrative Tribunals Act, 1985²⁰ is constitutional because it limits the judicial review powers of the Supreme Court and High Courts, which are enshrined in the Constitution and are part of the fundamental structure. The Supreme Court stated that judicial review is part of the fundamental framework. The Supreme Court also ruled that the establishment of an alternate mechanism to the High Court did not undermine the basic structure. The Administrative Tribunal established by the Act is a true substitute for the High Court. The Supreme Court, on the other hand, took a firm stance against the Tribunal Chairperson Appointment procedure. The Chairperson may be a person who formerly held the rank of Secretary or equivalent in the Government of India, according to Section 6(1)(c) of the Act²¹. Because these tribunals were supposed to serve as alternatives to the High Court, it is immoral for bureaucrats to hold such a position. As a result, this clause was ruled unlawful. The Chairman shall be a retired or retiring Chief Justice of the High Court. Other members should be appointed by a committee comprised of sitting Supreme Court justices. It was also suggested that the Chief Justice of India be contacted before making this decision.

¹⁸ Company Act 2013, s 408

¹⁹ *S.P. Sampath Kumar v Union of India* (1987) SC 386

²⁰ Administrative Tribunal Act 1985, sec 28

²¹ Administrative Tribunal Act, s 6

L. Chandra Kumar versus Union of India and Ors:²² It was determined that the ability to perform the judicial review in relation to administrative and legislative actions is solely vested in the Supreme Court and the High Court under Articles 32 and 226 of the Constitution²³. The Supreme Court ruled that the lower judiciary would not be able to effectively replace the higher judiciary in matters of explanation and judicial review because the court heard arguments that checks and balances are enshrined in the Constitution to ensure the independence of the higher judiciary that the lower court system does not have, and bodies such as tribunals have been retained.

As a result, the higher judiciary has the authority to undertake judicial reviews, and the High Courts and the Supreme Court are normally insufficient to judge whether legislative and administrative action is constitutional or not. However, it was determined that these tribunals and the lower judiciary, in addition to the higher judiciary, could exercise their judicial review power. By applying the terms of Article 32(3), the court maintained the same.

ADVANTAGES OF ADMINISTRATIVE TRIBUNAL

Administrative tribunals were created because they have benefits over traditional courts. Some of them are listed below -

Speedy resolution of disputes: Administrative tribunals are specialized judicial forums that deal with specific types of disputes related to administrative actions. The main advantage of these tribunals is that they offer a speedy resolution of disputes as compared to regular courts.

Expertise: Administrative tribunals are composed of experts in their respective fields. This ensures that cases are dealt with by people who have relevant knowledge and experience in the area in question.

Specialized Jurisdiction: Administrative tribunals have jurisdiction over specific types of disputes such as labor disputes, tax disputes, and environmental disputes. This means that they

²² *L Chandra Kumar v Union of India and Ors* (1997) 3 SCC 261

²³ Constitution of India 1950, art 32

have a deeper understanding of the subject matter, and this can lead to more accurate and fair decisions.

Accessibility: Administrative tribunals are usually spread across different regions of a country, which makes them easily accessible to individuals who need to resolve disputes related to government actions. This reduces the travel time and costs that are incurred when parties have to go to regular courts located far away.

Appeals process: Administrative tribunals usually have a separate appeals process, which is faster and less expensive than the regular court appeals process. This helps in resolving cases quickly and ensures that justice is not delayed.

Flexibility: Administrative tribunals are more flexible in their procedures and decision-making processes. They can consider the unique circumstances of a case and make decisions based on equity and good conscience, rather than simply following strict legal procedures.

Efficiency: Administrative tribunals are designed to resolve disputes in a timely and efficient manner. This is because they are specialized forums that can handle specific types of cases quickly and effectively, without the delays and backlogs that can occur in regular courts.

Accountability: Administrative tribunals are accountable to the public and the government. They are required to provide regular reports on their activities and decisions, and they can be subject to review by higher authorities. This means that they are more transparent and responsive than regular courts, and they can be held accountable for their actions.

DISADVANTAGES OF ADMINISTRATIVE TRIBUNAL

The disadvantages of administrative tribunals in India:

Lack of Independence: The Indian administrative tribunals lack autonomy and independence in their functioning. They are often influenced by the government, and their decisions could be prejudiced.

Delay in the delivery of justice: The administrative tribunals are not very efficient in disposing of cases quickly. The bureaucratic red tape and complicated procedures lead to the delay in the delivery of justice.

Restricted Jurisdiction: The powers and functions of administrative tribunals are limited to specific domains or areas. They lack the jurisdiction or authority to adjudicate on broader issues, meaning certain cases are pushed to regular courts.

Inadequate Resources: The administrative tribunals in India suffer from inadequate resources like equipment, manpower, and the latest technology. This lack of resources leads to a backlog of cases, and justice may not be delivered to the aggrieved parties.

Limited Public Participation: The functioning of the administrative tribunals is not transparent and accountable. The public is not allowed to participate in the working of administrative tribunals. It is seen as a closed system with insufficient transparency.

DIFFERENCE BETWEEN A COURT AND AN ADMINISTRATIVE TRIBUNAL

When comparing administrative tribunals to courts, administrative tribunals are those that perform judicial tasks apart from the courts and are more accessible, less formal, and less costly. The word 'Courts' refers to places where justice is administered or refers to judges who perform judicial functions. Courts are established by the state for the administration of justice which is for the exercise of the judicial power of the state to maintain and uphold the rights, punish wrongs, and adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute or to determine controversies arising out of any administrative law.

“Justice Hidayatullah after analyzing the meaning of the word ‘court’ in various statutes observed in *Harinagar Sugar Mills Ltd. v Shyam Sunder*²⁴: All tribunals are not courts, though all courts are tribunals. The word ‘court’ is used to designate those by the state for the

²⁴ *Harinagar Sugar Mills Ltd v Shyam Sunder* (1961) SC 1669

administration of justice, the exercise of the judicial power of the state to maintain and uphold rights, and punish wrongs, whenever there is infringement".²⁵

Administrative courts are set up to handle disputes in a less formal, less expensive, and speedier manner than the regular court system. Furthermore, the members of the decision-making court (judges) usually have specialized knowledge of the issues before them. Judges, on the other hand, are required to have a broad understanding of numerous areas of the law rather than specialized competence in the law under review. Your case may be considered in court by an arbitrator or, if the topic is difficult, by a jury. These arbitrators have been trained and have held hearings, but they are not judges. However, the arbitrator, like a judge in a court of law, is responsible for a fair hearing and a final decision on the matter. They do so by reviewing the material and applying applicable laws, case law, and policies to your situation.

CONCLUSION

Tribunals are quasi-judicial bodies created by statute. It offers a speedier adjudication method than regular courts, as well as technical competence on the subject issue. Thousands of cases are pending in the courts in order to obtain justice. The purpose of establishing an Administrative tribunal is to provide speedy justice to civil servants, which is not available in the traditional judicial system because the tribunal does not have to follow the procedure prescribed in the parent act by following the principle of Natural Justice.

"Administrative Tribunal acts as a dispute-settling mechanism and helps in reducing the pending cases before the court. In resolving disputes, the tribunals have demonstrated a singular lack of expertise and rationality. Another reason for their failure is the constitution of the tribunals and the method of appointment of the personnel. Persons with expertise and the right qualifications do not want to sit on these tribunals thus leading to the unsatisfactory functioning of these tribunals"²⁶. Judicial officers must have expert knowledge in their respective fields. A mixture of both will ensure a truly efficient and effective tribunal system.

²⁵ *Ibid*

²⁶ SP Sathe, *Administrative Law* (6th edn, Butterworths New Delhi 1999)