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ADMINISTRATIVE TRIBUNAL UNDER ADMINISTRATIVE LAW

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ABSTRACT:

In the study of Administrative law, the term, the 'tribunal' is in a more specialized sense, and it indicates only those quasi- judicial organizations that are outside the scope of the ordinary courts of law. Legally speaking in India, there is no dualistic separation of power as is found in most western democracies where the law courts consists of judiciary solely for the purpose of protecting individual rights an promoting justice. Hence, cognizant of the need to establish an efficient courts system devoid of unnecessary challenges, powers of the court were conferred on the executive officers thereby leading to the formation of administrative tribunals or administrative organs, which are quasi-political bodies. The Constitution states, among other things that Parliament has the power to make law creating one or more administrative tribunals to have jurisdiction within or related to the employment terms and conditions of the employees of the Republic or of any public authority; it is therefore enacted as follows:- An Act to establich Administrative Tribunals in the year of Nineteen Eighty, 1980.

KEYWORDS: Administrative, Disputes, Tribunal, Court, Organisation, Decisions

Introduction

The Preamble of the Indian Constitution declares and guarantees that India will be at all times a sovereign, socialist, secular, democratic republic. To the makers of the Constitution, these aspects were essential for achieving the vision of a balanced society and a state premised on the tenets of welfarism. Centred on the organisation of the law and administration of justice, the welfare state concept is applicable. The opening words of the Indian Constitution make it categorically clear that 'justice'— that is social, economic as well as political justice will be guaranteed to each and every citizen of the country. Justice is what we seek, and law helps to achieve that goal. In a democratic state, for justice to be achieved, every law should recognize the principle that 'the welfare of the people shall be the supreme law' 'Salus Populi est Suprema Lex.' "Law in accordance with Justice" is different from "Justice according to Law," from where the concept of welfarism emanates.

What was the Objective of the tribunal?

The Governement can present its case through its deparmental Officers or legal practitioners. Thus, the objective of the tribunal is to provide for speedy and inexpensive Justice to the litigants. The Act provides for establishment of central Administrative Tribunal and the state Administrative tribunal.

Definition: Restoring to a standard definition of the term 'tribunal' is neither straightforward nor scientific. According to the dictionary"tribunal" menas a seat or a bench upon which a judge or judges sit in a court" a Court of Justice". But this definition seems to be bery expansive in that it goes ahead to include every other structure which acts as a court in the legal sense, social order included. In Administrative law, however, this term is restricted in scope to mean bodies performing quasi-judicial functions other than the ordinary courts of law.

The Supreme court defined : The expression Tribunal as used in Article 136 does not mean the same thing as 'court' but includes, within its

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ambit, all adjudicating bodies, provided they are constituted by the state and are invested with judicial as distinguished from administrative or executive functions[37].

According to The Franks committee: Tribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject.

Tribunalisation in India:

The Constitution (Sir Rajagopalachari) Appropriation Act 1976 42nd Amendment Act, introduced Part XIV-A which entitled. Article 323A and 323B dealing with the establishment of tribunals for administrative and other purposes. In terms of this constitutional provisions, tribunals have to be organized and set up in such a way that the uprightness of the Judicle system enshrined in the Constitution which is one of the Elephantine frameworks of the Constitution is not degraded, The Introduction of Article 323A and 328B was primarily aimed at restricting the High Court's jurisdiction under Article 226 and Article 227, except the jurisdiction of the Supreme Court under Article 136 and for promoting, a speedy effective remedy or apparatus to address such judicial matters that cannot be ordinarily entertaining through the courts of law. This was done with the objective of establishing the tribunals excluding the high court jurisdiction, solely to ease the congestion and lower the high volume of cases. Hence, a system of tribunals is installed within the hierarchy of civil and criminal courts under the apex authority of the judiciary i.e. the Supreme Court of India. From a functional point of view, an Administrative tribunal is neither a pure judiciary organ, nor a full component of executive power, but it lies in between the two. This is the reason that an administrative tribunal is also termed as 'quasi judicial' body.

VALIDITY OF THE ADMINISTRATIVE TRIBUNALS ACT OF 1985 UNDER THE CONSTITUTION

The act of 1985 on administrative tribunals had the concurrence of Parliament in the exercise of powers conferred under Article 323-A of the Constitution. The said line of Section 28 of the Act restrained the exercise of judicial review of service matters by the High Courts under Articles 226 and 227. It has not completely banished the cosmos of judicial review however owing to the fact that the Article 136 power of the Supreme Court in any case remains supplanted.

The case of S.P. Sampath Kumar v. UOI [38]was a milestone in which the Supreme Court heard constitutional validity arguments against the Act. The question posed was certainly of wider ramifications. Constitution Bench approved the Administrative Tribunals Act of 1985 as passed by parliament. Then-judge Ranganath Misra, J ., speaking for the majority, stated "It should be noted that the judicial review by this Court is left wholly unaffected in the present scenario so as to provide a remedy for bringing inter alia such matters of major importance and serious injustice for determination and correction." As a result, the exclusion of their jurisdiction by the High Courts does not completely eliminate judicial review. Another entity that would provide judicial scrutiny could be made in place of the High Court. Within the overarching structure of the legal regime, a Tribunal has been perceived more as a replacement to the High Court than as an auxiliary of it. Nevertheless, it is necessary to add that the Tribunal was meant to be not only its physical embodiment and due process equivalent but also its judicial and substantive equivalent. All powers of the Court in relation to the matters indicated in the sections 14 and 15 of the Act rest with the which can be a Central or a State Tribunal. Thus, The Tribunal of High Court may be considered as a substitute for the High Court and may exercise its powers.

[37] Durga shankar Mehta v. Raghuraj Singh AIR 1954 SC 520

[38] 1987 SCR (3) 233 1987 SCC Supl.

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The Supreme Court, in the matter of L. Chandra Kumar v. UOI[39], again revisited the Constitutionality of Administrative Tribunals Act, 1985 in its entirety. In this instance, the Court held that the decision in Sampath Kumar case had to be made because the underlying litigation in relation to the High Court erupted in an unprecedented manner and therefore an alternative inquisitorial procedure was imperative in resolving the matter. It is however well known and a truism that tribunals have not been functioning efficiently thereby necessitating that drastic measures were needed to enhance their quality by ensuring that they survived constitutional scrutiny. In addition the court held that because the constitutional protections ensured to the SC and the High Court judges which serves to insulate them from bias are not extended to the members of the tribunal, the status of such members cannot justifiably be seen as a substitute, full or partial, in relation to the main organ of the state when it comes to the exercise of constitutional interpretation.

In this context, the court concluded that Administrative Tribunals can only be ancillary to the High Court and cannot take its place. As a result, A provision in the Administrative Tribunals Act of 1985, Section 28 dealing with the 'exclusion of jurisdiction' was struck down as unconstitutional along with Article 323 A (2) (d) and Article 323 B (3) (d) which restricted the scope of the SC and High Courts in respect of Articles 226, 227 and 32 of the Constitution.[40]

FACTORS CONTRIBUTING TO THE EXPANSION OF ADMINISTRATIVE TRIBUNALS AND THEIR ATTRIBUTES

According to Dicey's concept of the Rule of Law, it is incumbent upon the courts to enforce the common law of the land. His view was that administrative tribunals should not be set up. According to classical legal doctrine as well as the doctrine of separation of powers, it was the ordinary courts of law that had the jurisdiction to determine disputes between the parties. However, it has been borne out by experience, that the sphere of governmental activities has expanded, and ordinary courts of law are not designed to deal with the complex problems which emerge in the changed soci-economic conditions.

The establishment of administrative tribunals bases itself on the following reasons:

1. It has been realized that the traditional system of justice cannot determine and clear every dispute that needed determination and clearance. It was overtly procedural, complex, costly, inexperienced and sluggish. It was already overwhelmed, hence it was naive of one to expect that even grossly rising concerns like conflicts between the unions and management, lockouts, strikes, and the like would be settled at a glance. There are no two ways about it; such burning concerns cannot be settled by a bare statutory interpretation; other factors which the law provides for must be put in place. For this reason, labour courts and industrial tribunals came up into existence, which knew and understood how to work on these complex issues.
2. The administrative authorities can provide such relief from technicalities. They do not take a functional approach instead a juridical and theoretical one. The judiciary in earlier days acted very strictly, conservatively and in a technical way. Legal tribunals cannot pronounce a decision on an issue without adherence to formalities and technicalities. However, administrative tribunals are not bound by standards of evidence and procedure and can tackle complicated matters by employing a more pragmatic approach.
3. The regulatory bodies can resort to protective measures like licensing and rates control. They do not have to wait till issues are raised before them by the

[39] L. Chandrakumar v. Union of India [AIR 1997 SC 1125]
[40] Indian constitution

contested parties in comparison to ordinary law courts. Oftentimes these preventative measures can be more rewarding and more efficient than chasing after individuals who have already broken the law.

4. Administrative authorities posses the capability to undertake effective measures aimed at the implementation of the above mentioned preventive measures such as, licence cancellation, revocation or suspension, destruction of contaminated goods, etc., which are not usually available through the ordinary courts of law.
5. In the normal judicial systems, it is after one has presented their case and all the evidence on record has been considered that a ruling is made. Where the administrative authorities are given wide latitude and may make their findings on the basis of the administrative policy as well as relevant other factors, this does not fit the context of decision making.

ADMINISTRATIVE TRIBUNALS: EVIDENCE AND PROCEDURE GUIDELINES AND NATURAL JUSTICE PRINCIPLES

With regards to the legal prerequisites that govern their operations, it is to be noted that administrative tribunals are inherently vested with the power to manage their own proceedings. As a rule, these bodies exercise similar powers as civil courts in the entire range of programs related to the witness summons and attendance enforcement, interrogations and inspections, production of evidence, etc., as provided for in the 1908 Code of Civil Procedure regarding civil cases. In accordance with Code of Criminal Procedure of 1973, Sections 345 and 346 and Sections 193, 195, and 228 of the Indian Penal Code, 1860, administrative tribunal procedures are treated as judicial processes. However, these courts do not have to abide by strict laws of evidence or procedures provided there is respect for natural justice and fair play. In accordance with the Administrative Tribunal (Early Retirement) Rules, 2002, Their processes are not bound by rules of technical evidence, thus They may freely act upon inadmissible hearsay evidence or decide on their own the admissibility of documents, the onus of proof, and other matters. The case of 'Dhakeswari Cotton Mills Ltd. v. CIT[41]' is significant in the sense that the Supreme Court held that documents more likely than not inadmissible in the court of law as evidence would govern the action of the Income Tax Officer who was not also bound by rigorous standards of evidence and pleadings. The following remarks were made by the Supreme Court in the case of State of Mysore v. Shivabasappa[42]: "To speak of tribunals performing Quasi-judicial authorities, the same applies to courts on principles of proof, they are not the same. Under which, unlike courts, they are entirely autodidactic in all the information relevant to the issues under investigation, and there are no barriers in accessing such information from any source and through any means. The only obligation that the law imposes is that the subject of adverse information should be given an opportunity to challenge that information before any steps are taken on the basis of that information. What is a fair opportunity, is always dependent on the facts and circumstances of the case, but if one has been provided the process will not be impugned on the basis that the proceedings were conducted in a manner inconsistent with rules of evidence in courts as to inquiry evidence. Case of prosecution is built depending on the facts of each individual case and case gives an incidence when free speech must yield to more stringent goal such as the pursuit of legitimate government interests, the obstruction of justice. However, if it is a permissive attitiude or practice, the argument that the proceedings were not conducted in accordance with the standards of evidential inquiry in courts in respect of the prosecution of criminal cases will not hold water where such principles have been allowed to operate.

[41] 1955 AIR 65 | 1955 SCR (1) 941
[42] (1964)ILLJ693KANT, (1964)1MYSLJ

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ADMINISTRATIVE TRIBUNALS: ARE THEY SUBJECT TO SUPREME COURT AND HIGH COURT RULINGS?

As per Article 141, the law as pronounced by the Supreme court will be the law of the land which is applicable to all the courts in India without exception. Article 141 is not limited to regular courts but also includes administrative tribunals making it very wide in coverage. While country federal structure has a provision for a supreme law of the land for all states supreme court but no such provision exists in respect of law declared by high court. So how high court's declaration of law is expected to bind all the regional subordinate courts and tribunals under its jurisdiction arises. More specifically, these statements which will be made by a High Authority having general jurisdiction over a variety of fields will hold the same relevance even when procedural rules are absent. Once again, the High Court is considered the top court of the region just as the Supreme Court is regarded as the highest court in the country. Apart from writ jurisdiction, the High Court performs, as does the Supreme Court, supervision over all the lower courts and tribunals which fall within the territorial scope of its jurisdiction. . In the case of East India Commercial Co. Ltd v. Collector of Customs [43], this matter was squarely brought before the Supreme Court. The Court held: "Thus we assert that the statute proclaimed by Regulatory authorities or tribunals under the state's apex court are enforceable by it and these authorities/tribunals cannot ignore it while determining the substantive rights within the ambit of a procedure or even while commencing one. This is highly inappropriate and unacceptable where the court acknowledges the decision of the Supreme Court and tries to distinguish it without any distinguishing features. Disobedience of such order may be treated as contempt of court as it appears is the deliberate and intentional disobedience of the order of a superior court."

Findings and suggestions

The primary goal of attending court is to resolve cases in an effective and timely manner. It is the administrative tribunal that carries out those duties. It is an addition to the old courts. In India, the idea of an administrative tribunal has gained traction for a number of reasons, including a lack of cases and costly, inept government oversight. Additionally, the tribunal court's ruling becomes harder to appeal, which facilitates the expeditious resolution of disputes. However, in order to make improvements and satisfy the victims, some adjustments must be made to the tribunal system as it currently exists.

It can be concluded that the present scenario, evel of administration has grown in limts of government and people equally. In view of increasing faith and dependence of the people, a mechanism for redressal of people's grievances and settling their disputes becomes all the more necessary. Hence, the idea of administrative tribunals has taken shape and is flourishing in India with certain weaknesses and strengths. The reader should remember i will not provide photocopy of this work and will provide full acknowledgement for this notionary definition.

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