

# **RMM LAW COLLEGE SAHARSA**

## **ADMINISTRATIVE LAW**

**IIIrd Part**

**Paper -VII**

**TOPIC-** Administrative tribunal sin India

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## Jurisdiction of Central Tribunal

[Section 14](#) states that the Central Tribunal from the day of the appointment shall exercise all the jurisdiction, powers and authority in relation to the following matters which were within the jurisdiction of other courts (except the Supreme Court) before the enactment of this Act:

1. Recruitment of any civil service of Union or All India service or civil post under the Union or civilian employees of defence services;
2. All service matters of the above-mentioned employees, and also of employees of any local or other authority within the territory of India or under the control of the Government of India or any corporation or society owned or controlled by the Government;
3. All service matters of such persons whose services have been placed by the State Government or any local or other authority or any corporation at the disposal of the Central Government.

## Procedure and Powers of Tribunals

[Section 22](#) of the Administrative Tribunals Act, 1985 lays down the powers and procedure of tribunals discussed below-

1. A tribunal is not bound to follow the procedure laid down by the [Code of Civil Procedure, 1908](#). It has the power to regulate its own procedure but must abide by the principle of natural justice.
2. A tribunal shall decide the applications and cases made to it as rapidly as possible and every application shall be decided after scrutinizing the documents and written submissions and perceiving the oral arguments.
3. Tribunals have the same powers as vested by the civil courts under the Code of Civil Procedure, 1908, while trying a suit, with regard to the following subject-matter-
4. Summoning and enforcing the attendance of any person and examining him on oath;
5. Production of documents;
6. Receiving evidence on affidavits;
7. Ask for any public record or document from any office under [Section 123](#) and [124](#) of the Indian Evidence Act, 1872;
8. Issuing commissions for the examination of witnesses and documents;
9. Reviewing its decisions;
10. Deciding the case ex-parte;
11. Setting aside any order passed by it ex-parte;
12. Any other matter prescribed by the Central Government.
13. Leading Case Laws

**Case:** [S.P. Sampath Kumar v. Union of India\[2\]](#)

**Facts:** The constitutional validity of the Administrative Tribunals Act, 1985, was predominantly challenged on the ground that this Act excludes the jurisdiction of High Courts under Articles 226 and 227 with regard to service matters and hence, destroyed the concept of judicial review which was an essential feature of the Indian Constitution.

**Judgment:** A five-Judge Bench of the Court upheld the validity of the Act except Section 6(1)(c). The court held that although this Act has excluded the jurisdiction of judicial review exercised by the High Courts in the service matters it has not entirely excluded the concept of judicial review. The

jurisdiction of the Supreme Court under Article 32 and 136 has not been excluded by this Act and kept unscathed.

Thus, there still exists an authority where matters of injustice can be entertained by judicial review. The judicial review which is the part of the basic structure of the Indian Constitution can be taken away from a particular area only if an alternative effectual institutional mechanism or authority is provided.

However, Section 6 (1)(c) of the Act was held to be unconstitutional as it gave unrestricted power to the Government to appoint the Chairman, Vice-Chairman and other members of the tribunals. These appointments must be made by the Government in a meaningful and effective manner only after consulting the Chief Justice of India.

The court recommended that the term of 5 years prescribed under the Act for Chairman, Vice-Chairman and other members of the tribunal is not rational because it would act as dissuasion for the good and generous people to accept the job in the tribunal and should, therefore, be reasonably extended.

The directions given by the Supreme Court came into effect through the Administrative Tribunals (Amendment) Act, 1987.

**Case:** [\*Union of India v. R. Gandhi, President, Madras Bar Association\*](#)[3]

**Facts:** The constitutionality of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) on the following grounds-

1. Parliament does not have authority to vest the judicial functions in any tribunal that have been traditionally performed by the High Courts since so long.
2. Transferring the entire company jurisdiction of the High Court to the tribunal are violative of the doctrine of Rule of Law, Separation of Powers and Independence of the Judiciary.
3. The various provisions of Part 1B and 1C of the Companies Act are defective and unconstitutional, being in breach of constitutional

principles of Rule of Law, Separation of Powers and Independence of the Judiciary.

**Judgment:** the court upheld the constitutionality of NCLT and NCLAT in exercising the powers and jurisdiction of the High Court subject to necessary changes to be made in the [Companies Act, 1956](#) as amended in 2002, through suitable amendments

The court acknowledged and upheld the constitutional power of the Parliament to constitute tribunals for adjudication of disputes. The legislative competence of Parliament to provide for the creation of courts and tribunals can be traced to [Article 245](#), [246](#) and [247](#) of the Constitution read with various entries in the Union List and the Concurrent List which is in no way affected or controlled by Article 323A or 323B of the Constitution.

The court further added that it cannot be assumed that constitution of tribunals and transferring judicial powers per se infringe the rule of law, separation of powers and independence of the judiciary because the Constitution enables both courts and tribunals to exercise judicial powers.

What matters the most is whether the constituted tribunals respect and maintain the principles of separation of powers, rule of law and independence of the judiciary. The constitution of NCLT and NCLAT must be subject to judicial review so that the court in the exercise of judicial review look into the matter to check if these principles are compromised by such tribunalisation and may interfere in between to preserve the same.

## **Advantages of Administrative Tribunals**

The concept of administrative tribunals was introduced because it has certain advantages over ordinary courts. Few of them are mentioned below-

- **Flexibility:** The introduction of administrative tribunals engendered flexibility and versatility in the judicial system of India. Unlike the procedures of the ordinary court which are stringent and inflexible,

the administrative tribunals have a quite informal and easy-going procedure.

- **Speedy Justice:** The core objective of the administrative tribunal is to deliver quick and quality justice. Since the procedure here is not so complex, so, it is easy to decide the matters quickly and efficiently.
- **Less Expensive:** The Administrative Tribunals take less time to solve the cases as compared to the ordinary courts. As a result, the expenses are reduced. On the other hand, the ordinary courts have cumbersome and slow-going, thus, making the litigation costly. Therefore, the administrative tribunals are cheaper than ordinary courts.
- **Quality Justice:** If we consider the present scenario, the administrative tribunals are the best and the most effective method of providing adequate and quality justice in less time.
- **Relief to Courts:** The system of administrative adjudication has lowered down the burden of the cases on the ordinary courts.

## **Drawbacks of Administrative Tribunals**

Although, administrative tribunals play a very crucial role in the welfare of modern society, yet it has some defects in it. Some of the criticisms of the administrative tribunal are discussed below-

- **Against the Rule of Law:** It can be observed that the establishment of the administrative tribunals has repudiated the concept of rule of law. Rule of law was propounded to promote equality before the law and supremacy of ordinary law over the arbitrary functioning of the government. The administrative tribunals somewhere restrict the ambit of the rule of law by providing separate laws and procedures for certain matters.

- Lack of specified procedure: The administrative adjudicatory bodies do not have any rigid set of rules and procedures. Thus, there is a chance of violation of the principle of natural justice.
- No prediction of future decisions: Since the administrative tribunals do not follow precedents, it is not possible to predict future decisions.
- Scope of Arbitrariness: The civil and criminal courts work on a uniform code of procedure as prescribed under C.P.C and Cr.P.C respectively. But the administrative tribunals have no such stringent procedure. They are allowed to make their own procedure which may lead to arbitrariness in the functioning of these tribunals.
- Absence of legal expertise: It is not necessary that the members of the administrative tribunals must belong to a legal background. They may be the experts of different fields but not essentially trained in judicial work. Therefore, they may lack the required legal expertise which is an indispensable part of resolving disputes.

It can be concluded that in the present scenario, the administration has become an important part of the government as well as the citizen's life. Due to this increasing role, it is important to establish a competent authority for the redressal of people's grievances and adjudication of the disputes. Therefore, the concept of administrative tribunals was emerged and is dynamically flourishing in India holding certain flaws and strengths.