

Constitutional Law and Public Administration in India

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Administrative Tribunals – I

Tribunals have been on the rise and that too administrative tribunals, which unlike the regular courts are an administrative as well as a judicial body. There are various kinds of tribunals in our country. The most essential part of tribunals is that they have respective powers and functions and in essence. There are three kinds of tribunals. The first kind of tribunal is the Constitutional tribunal that exists in our country. Constitutional tribunals take care of the interstate disputes that take place within the gamut of the pan-India level. For instance, there are the various interstate river tribunals, wherein disputes like the Kaveri disputes, they go, and they are adjudicated in these tribunals. And all these tribunals, they are specialized bodies to deal with a specific kind of an issue. The next kind of a tribunal is an administrative tribunal, which generally serves for the purpose of adjudicating service matters.

For example, there are various tribunals in the various bodies of the government of India and in the state governments as well. And then we have the statutory tribunals, which means that they have been formed by the incoming or by the enactment of a statute that has been enacted by the Parliament, which is the national green tribunal, the consumer centers that are there, the consumer commissions that are there, the state commission, the national commission, and the district commissions as well. Then we have the RTI commissions on various levels. So, these are the three levels of tribunals that exist in India. First being the Constitutional tribunal, the second being the administrative tribunal, and the third being the statutory tribunals.

Is there a difference between a tribunal and a court? There is a very thin line of difference between a tribunal and a court. In a sense, they may look similar because they are carrying out the same function that a normal ordinary court in our country generally takes care of, that is adjudication of disputes. But the change and the sense that is there in a tribunal apart from a court is about the adjudicating authorities who become the people who actually adjudicate these issues.

So, therefore, tribunals are vested with judicial power of the state under a particular statute or a statutory rule. And these bodies are known as quasi-judicial bodies because per se, they are not complete judicial organs, they assist the judiciary in our country and therefore, they are called as quasi-judicial bodies. Another reason why they are called as quasi-judicial bodies is they replicate the court proceedings in a manner in which it happens in a court that follows the Code of Civil Procedure in civil cases and the Code of Criminal Procedure in criminal cases. But what is of a sense out here is in a tribunal, these code of conduct in a civil matter and in a criminal matter are not followed per se. They are not followed by the way they are written in the books of law as it is written in the Code of Civil Procedure or as it is written in the Code of Criminal Procedure.

So, the working of these tribunals is quite lenient. The manner in which they function, the manner in which they adjudicate disputes, the manner in which they take up evidence are not followed by the Evidence Act. It is quite a liberal method that they follow in order to ensure that the litigants are not forced by the tribunal system or per se what we call as the evidence system that is there. The rules per se that are there rather they are easy going and they understand, and it is easy for the litigants to get their disputes adjudicated. These are bodies that possess the trappings of a court, they are a court, they work like a court, but they do not follow the statutory methods that are followed in a court of law strictly. It is not that they do not follow at all. They do not follow the rule as per the word. They do follow in spirit but not in word. There are various Constitutional statuses that are accorded to these tribunals under Articles 136, 227, 323A and 323B of the Constitution of India. There are many reasons for the growth of these tribunals.

There may be a question when a country like India has a Supreme Court, High Courts across all the states in the country, then there are district courts, then there are magistrate courts for civil criminal disputes. What was the need for the tribunals in a country like India? The reasons are manifold. Primarily the reasons for growth of tribunals being first, India is a welfare state which means we look after our people and that is our primary responsibility as a state. Being a welfare state does not only mean providing food, shelter, and other amenities to your people, it also comes down to the most primary thing that is justice. Welfare also equates to justice.

Therefore, one of the reasons why these tribunals came up is to ensure that the state goes on for its welfare activities, that is, if there is a dispute and it's taking time to get redressed by a normal court because a normal court is already burdened with a lot of cases. For instance, to buy a mobile phone from a market and you have paid 50,000 rupees After 10 days this phone has stopped working. When the shop owner on contact says that you do not have a warranty because for a warranty you were supposed to pay Rs. 10,000 extra and this is some hardware deficiency that is there in the phone/only software deficiency can be taken care of that will arise or may have arisen in your phone. Under these circumstances if a person would have to approach the normal court it would have taken a lot of time for

him to get his dispute adjudicated because what he wants is either a replacement for this particular phone or to get his money back.

For these reasons there is something called a consumer dispute redressal forum. There is a district consumer redressal forum, there is a state consumer redressal forum and then there is a national commission for consumer disputes. Such kind of disputes they would unnecessarily burden the judiciary who generally take care of larger kind of disputes was something that is a little more complex rather this is a kind of dispute that can be solved by someone who knows how the Consumer law in our country functions and such a person a judge with 20 years of experience need not be. He can be a lawyer with 5 years of experience or 10 years of experience and be a judge of the district consumer forum. So, therefore, to increase or to decrease such kinds of disputes and to increase the welfare and to decrease such kinds of disputes and to address these disputes in a timely manner all these tribunals and various kinds of tribunals have come up in our country.

The traditional courts at times are very slow in the manner in which they dispose of their cases. Their disposal rates are very low owing to the large number of methods that they have to follow. The procedure that they have to follow that is quite intense rather in a tribunal that procedure has been relaxed and therefore these tribunals have been on an increase because it is increasing the welfare act of the state and third and the most prominent point that we have been discussing in pieces and to bring it out into words tribunals are rapid they are efficient, and they are subject specific. They will not deal with every kind of an issue for example a consumer forum will only deal with disputes related to a consumer, a dispute related to the deficiency of a particular service or a particular product in a similar manner. A different tribunal for example a national green tribunal that has come into existence by the coming of a statute that is the national green tribunal act only adjudicates matters that are related to the domain of environmental law.

Therefore, you would only have people who have knowledge and expertise in environmental law. It will not deal into any other kind of dispute. The dispute that it will deal with is related to the subject domain of environmental law only. As to composition, a regular court has a list of mandatory criteria that needs to be fulfilled before a person is appointed as a judge to the High Court or the district court or as a magistrate or as a judge of the Supreme Court of India. However, in the case of a tribunal there are two kinds of people who actually comprise the bench or the jury as we may call it. They are called the judicial members and the technical or expert members.

A judicial member as the name goes will be from the side of a law background a judicial member will have the law background and the legal knowledge associated with him. However, an expert or technical member may not be a person from the law background; he may be a person who is a subject expert in that particular area. Next with regards to the power of all of these tribunal they try cases in special matters, and they are not bound by

all the rules of evidence and procedure as in a normal court. So, this is the essence of a tribunal and why it has taken rapid growth in a country like India.

Tribunals bar the jurisdiction of civil courts. Whenever a dispute arises as a litigant or as a lawyer you need to know where you file the case for the first instance. If in case it's a consumer case you should not go to the High Court directly because the High Court may tell you to first approach the first authority that actually will adjudicate this matter and the award, or a decision of a tribunal are deemed to be a decree of a civil court. So it isn't that order, or a judgment of a tribunal does not have any relevance. It has the same amount of relevance as any decree or an order of a civil court. In this particular case that is *Durga Shankar Mehta v. Thakur Raghuraj* the question arose of a tribunal.

Tribunal as used in Article 136 does not mean the same thing as a court of law, but it includes all adjudicating bodies constituted by the state invested with judicial as distinguished from administrative or executive function. The High Courts and Supreme Court have various kinds of jurisdictions. For example, the Supreme Court has three kinds of jurisdiction: the original jurisdiction, the appellate jurisdiction, and the advisory jurisdiction. Under the original jurisdiction it will take up matters at the first instance. However, under the appellate jurisdiction it will take up matters that have been adjudicated by other courts and have come for an appeal before the Supreme Court.

And under the advisory jurisdiction it is the advice that the President of India seeks from the judges of the Supreme Court of India. This is the role of the jurisdiction of the Supreme Court with regards to the administrative and executive function. High Courts and supreme courts conduct a lot of administrative and executive functions which tribunals in a sense generally abstain from conducting. What are these administrative or executive functions that these High Courts and Supreme Court of India conduct? Under the administrative function the High Court's generally direct their subordinate courts to function in one proper manner or to function in a particular manner. For example, in Maharashtra there is the Bombay High Court.

The Bombay High Court has administrative duties as well. It will ensure how a particular subordinate civil court, or a criminal court will function. There will be a code of conduct, there will be a rule, there will be a manner in which the administrative functions of this court will actually take place. This is the administrative function of a particular High Court and similarly this is similar to all other high courts as well. Under the executive functions they do issue various notices, various kinds of orders for its various subordinate courts to function and under the administrative and executive functions High Courts and Supreme Courts they do appoint judges as well.

Supreme Court plays a major role in appointing judges in various High Courts in India and the High Court of a particular state plays a major role in appointing various kinds of judges

where may be the district judge or the civil judge, the magistrate. So, these are the administrative and the executive functions that a normal High Court and Supreme Court in our country would actually take care of which is distinguished by a tribunal in its assents. A tribunal generally abstains from these kinds of duties and will generally not find itself carrying out these kinds of duties because it does not have the power to carry out such kinds of functions and duties.

As to the growth of administrative tribunals in India. Part XIV Articles 323a and 323b were inserted by the 42nd Amendment of the Indian Constitution which provided for tribunals that deal with administrative matters. The objective was excluding the jurisdiction of the High Courts under Article 226 and 227 except for the Supreme Court under Article 136. Again, these tribunals were formed to be bodies originating efficacious alternative institutional mechanisms for specific judicial cases. Not all kinds of judicial cases, but specific judicial cases. Third, an administrative tribunal is neither an exclusive judicial body nor an absolute administrative body and therefore it is called a quasi-judicial body and it lies between a complete judicial and an absolute administrative body it somewhere lies in between these two organs and compartments.

Tribunals have some general features. A tribunal comes with a statutory origin for example a national green tribunal comes via the act of the Parliament there will be an act of the Parliament and that is how it will come into picture. Then these tribunals have the features of an ordinary court in spirit not in word. It performs quasi-judicial and judicial functions bound to act judicially in every circumstance or circumstances as it may be. Every order that a tribunal gives should be reasoned enough. It cannot just give an order without a reason. As mentioned earlier as well, tribunals are not bound by strict rules of evidence and procedure. So, it is relaxing for the lawyers and the people appearing before a tribunal to not be in a watertight compartment with regards to evidence and procedure. Also, in these commissions for example in a consumer commission you as a deficit or as a consumer who has faced some harshness are also allowed to appear and to make your own submission. You need not necessarily take up a lawyer.

Next these tribunals are independent bodies, and they are not subject to administrative interference while discharging their functions. They do not come as a subordinate, but they are independent bodies, and they are free to function in a manner within their prescribed rules in a manner which is a right as per the spirit of law. Next in procedural matters they possess the power to summon witnesses, administer oaths and compel the production of documents to litigants as well and to lawyers as well and eventually as all courts of law in our country they are bound by the principles of natural justice. we would be dealing with what the principles of natural justice are but, in a sense, these are some of the features that are there in a tribunal. Further tribunals also need to be fair and open, and their judgment should be impartial and indispensable and prerogative writs of certiorari and prohibition are available against the decisions that are given by a tribunal as well.

There are various kinds of tribunals. For service matters under Article 328 the tribunals have come into existence. This has not come into existence by a statute rather it has come into existence by an Article of the Constitution. So, establishment of administrative tribunals by law made by Parliament. So, when the Parliament enacted the law, it came into existence.

With regards to the function for service matters adjudication of disputes and complaints regarding recruitment, conditions of service of government servants of the centre and the state. This is the domain in which they will function because when a particular government servant enters the government to work there are various kinds of disputes that arise. For example, disputes regarding recruitment of a particular person. What if the recruitment was not done in the manner in which it should have been then there are conditions for a particular service of the government servants. Every service has its own peculiar kind of conditions.

So, all of these things need to be taken care of. employees of local or other authority within India under the control of government of India cooperation owned or controlled by the government these are the people who will approach these service tribunals in case they face any kind of difficulties during the period of their service. These tribunals are to be established separately for the centre and the states or two or more states. So, they are not just one, they are multiple and a multitude of tribunals service matter tribunals across India. statute must provide for jurisdiction as well.

If you are not happy with the order of the tribunal you are free to approach the Supreme Court under the special jurisdiction of the Supreme Court of India. With regards to other matters, Article 323B empowers Parliament and state legislatures to establish tribunals to adjudicate matters specifically mentioned under Article 323B. They are related to levy assessment collection and enforcement of any tax foreign exchange and export industrial and labour disputes and therefore you have your labour commissions production procurement supply and distribution of food stuff rent and its regulation and tenancy issues etc. So the statute or the law defining the jurisdiction, the procedure and the power of such tribunals and *L Chandra Kumar v. Union of India* Article 323A(2)(d) and 323B(3)(d) was tracked down.

There is something called exclusion of jurisdiction of High Courts. under Article 226, 227 and under Article 32 of the Supreme Court tribunals they exercise their right under 323a and 323B and they act as a court of first instance in the concerned areas. For such matters you cannot directly approach the High Court you need to approach the tribunals under their exclusive jurisdiction based on these Articles. You cannot approach a Supreme Court under Article 136 against rulings of tribunals. High Courts are to be approached first under Article 226 and 227 because there are various kinds of courts in our country, and they have a degree of precedence.

The Supreme Court being at the top then you have the High Courts then you have the district courts. So, it is a mountain like structure wherein at the tip of the mountain you have the Supreme Court and as you come down you have the High Courts and various other courts. So when you get an order from a particular court you need to approach the particular High Court in that state under Article 226 or 227 which is the jurisdiction under which you can approach a particular court that is the writ jurisdiction of the High Courts and then if you are not happy you can eventually approach the Supreme Court of India under Article 32 or under Article 136 which is the special leave petition of the Supreme Court of India.

There is also a Railway Claims tribunals. Suppose you are traveling by the railway and your AC is not functioning in a particular span of journey at a particular time you are traveling from Delhi to Jammu and Kashmir and your AC is not working in between Delhi to a certain point and by the time you reach Srinagar it starts working. So, then you can approach the railways claims tribunals. The railway employees will approach the railway claims tribunal.

You have the Income Tax tribunal for various kinds of income tax matters. the NGT and tribunals related specifically to matters like shares debentures and any kinds of issues that happen in the regulatory market with regards to shares and various other kinds of issues that take place in the share market. Then you have the armed forces tribunals because the armed forces disputes do not come to the regular courts; they are bound via their own code of procedure and their own code of conduct. We also have something known as the administrative tribunals act.

What is the Administrative Tribunals Act? This law was passed in the year 1985 by the Parliament in Pursuance to Article 323A. This Act went on to establish a central administrative tribunal and state administrative tribunal for union and state governments. These tribunals play a very important function in the functioning of the government in our country and in regard to adjudication of disputes. The extent of these tribunals extends to the whole of India. The objective of this Act is to reduce the burden of the courts and to provide speedier remedy in disputes related to service matters.

So, any person who is in the government whether he is a railway employee or employee of any government undertaking say HAL or BHEL he or she will come under the jurisdiction and the purview of the railway tribunals act if there are concerns regarding their services. This is applicable to the armed officers, armed officers and not the Indian army. Officers or servants of High Courts or Supreme Courts, secretarial staff of Parliament. Further, chairman, vice chairman, judicial member, administrative member with a term of five years each chairman up to 65 years are the members for example UPSC, state public commission chairman so on and so forth.

The jurisdiction is if any person is appointed or recruited by any civil service that is the all India service or civil post under the union's civilian or defense service, they will come under the jurisdiction of this particular act if it is related to the service related disputes or matters of the above-mentioned employees, employees of any local or other authority within India under the control of the government of India, service matters of such persons whose services have been placed at the disposal of the central government removed from office on resignation by an order or from the President of India proved misbehavior or incapacity section 9 and decision after an inquiry made by a judge of the Supreme Court. All these issues will be something that is amenable to this tribunal.

There are reasons for the growth of administrative tribunals in particular. The reasons are more or less the same. First is, it's not fine enough for all these service-related matters to go to the judicial system because the judicial system is for other kinds of matters. They have property related disputes in several cases, they have cases related to murder, kidnapping, so on and so forth in the criminal matter or on the criminal side and second service matters you do not need a judge with 30 years of experience to adjudicate these matters. You need someone who can actually understand what is going on out here. So, you can do away with the technicalities. So, that is another reason why administrative tribunals have been on the rise because they are adjudicating disputes at a faster rate. Then you have your provision for an effective enforcement of preventive measures.

Things are getting on a preventive line at a very fast pace. Then you have decisions in line with departmental policies along with other considerations because every government department in India has its own policies. For instance, every private company has its own HR policies. Likewise, every department in the government has its own policies. Every university, every state or central university has its own policies, be it leave policy, be it medical policies or any kind of policies and therefore you do not need someone who is an expert in law but you need someone who is an expert in these kinds of policies and will actually bring out the best reason.

Another reason is flexibility. These tribunals are very flexible in their workings. You can have a discussion with the judge because you are trying to make the judge understand a particular point of law and then the time in which you get your order is a little faster than what you would get from a normal tradition. Currently we have 14 administrative tribunals in our country. Industrial tribunals, which are also called labour courts, are instituted by the Industrial Disputes Act of 1947.

It consists of a chairman and two members. The composition will vary. You can refer to the Industrial Disputes Act for the same and the objective of the industrial tribunal is the maintenance of peace and harmony in industries by quick disposal of industrial disputes because industrial disputes likewise should not come to a regular court because they would take more time. So, a person who is actually an expert in the field would be the best person

to adjudicate a dispute that arises from an industrial point of view. Next you have the Income Tax Appeal Tribunals set up in January 1941 that specializes in appeals under the Direct Tax Act and if you are not happy with an order given by the Income Tax Appeal tribunal, you can appeal before the High Court if there is a substantial question of law and this tribunal consists of six members. Then there is the Customs Excise Service Tax Appeal tribunal constituted under Section 129 of the Customs Act of 1962.

This has been mandated to decide appeals that come from the Customs Act, the Central Excise Act, the Finance Act, and the Customs Tariff Act 1975. So, there are specific tribunals and there are specific acts that these tribunals are dealing with and the appeal from these tribunal will lie before the Supreme Court depending on the valuation because customs related matters. When the customs officers they seal, they confiscate gold or some drugs of a large quantity, it would matter on the valuation and how important it is with regards to national security as well and therefore the appeal would lie before the Supreme Court or the High Court depending on its kind and nature. Then we have the Appellate Tribunal for Smugglers and Foreign Exchange Manipulators Act constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act of 1976. This here is appeal from the SAFEMA 1976, the NDPS Act of 1985, the PMLA Act of 2002, the prohibition Benami Property Transactions Act 1988 and their subsequent amendments in 2016 and the Foreign Exchange Management Act 1999.

The National Tribunal Bill is headquartered in Delhi. Then we have the Administrative Tribunals which comprises the Central and State Administrative Tribunals set up as we have seen under Article 323A of the Constitution by Administrative Tribunals Act 1985, Service-Related Matters of Government Employees. This is what the Administrative Tribunals generally deal with. Someone has an issue with regards to salary compensation or the like this is where it will go.

Then you have the Railway Claims Tribunal which is constituted under the Railways Act of 1989. Again, the objective of all these tribunals is one and the same, that is to provide speedy disposal of claims against the railway administration. Enquiries into claims against a railway administration for laws, destruction, damage, deterioration, non-delivery of animals, goods entrusted to be carried by the railway. For example, if you have booked say 10 wagons in the railway and they will be carrying coal from one place in Karnataka to the steel factory in Jamshedpur. Out of the 10 wagons, you have seen all of them had goods filled with them. But by the time it reaches the Tata steel plant, you see that only 8 wagons have coal in them, 2 of them do not have. You will approach the Railways Claims tribunal.

Then we have the Securities Appellate Tribunal which was established under the Securities and Exchange Board of India Act 1992. The primary concern of this tribunal is to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India (SEBI). SEBI hears a lot of matters with regards to various kinds of issuance of securities

and the dealings that happen in the share market. So, disposal of appeals against orders passed by the pension fund regulatory, the development authority and also the Insurance Regulatory and Development Authority that is the highest body that takes care of insurance in our country, and it also regulates the insurance mechanism in India. Then you have the Debt Recovery Tribunal which is constituted under the Recovery of Debts and Bankruptcy Act of 1993 which provides speedy redressal to lenders and borrowers.

Basically, the Debt Recovery Tribunal that is the DRAT, also functions through the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) and the financial institutions can approach the tribunal. For example, if a bank goes insolvent this tribunal will be the first one to come into rescue and how do they actually restructure their insolvency plans so on and so forth. We also have something called as the Telecom Dispute Settlement and Appellate Tribunal established under the Telecom Regulatory Authority of India 1997 which performs regulatory functions, adjudicates disputes about service providers and consumers and empowered to issue directions to the service providers and appeals from the decisions are tried, they directly lay before the High Court of the Supreme Court.

National Company Law Appellate Tribunal is the highest body in relation to matters related to the Companies Act in India. Below the NCLAT we have the NCLT that is the National Company Law Tribunal and the NCLAT is the highest body constituted under Section 4, not 10 of the Companies Act 2013. Appeals from orders of the NCLT under the Insolvency and Bankruptcy Court, the Competition Commission of India, the Insolvency and Bankruptcy Board of India and the National Financial Reporting Authority as well. So, the NCLAT performs a wide range of functions with regards and also acts as the last body before you approach the Supreme Court of India.

Next, we have the National Consumer Disputes Redressal Forum. In this you have the state commissions and the registry commissions as well. This was set up under the Consumer Protection Act of 1986. It entertains a complaint valued more than 2 crore rupees. It has appellate and revisional jurisdiction from orders of state and district commissions as well and appeals against orders from National Consumer Disputes Redressal Forum directly can be filed before the Supreme Court. A person can directly approach the National Consumer Disputes Redressal Commission if the complaint or if the value is more than 2 crore rupees. If not, you have to follow the procedure of going to the district commission first, then the state commission and eventually the National Consumer Disputes Redressal Commission and then the Supreme Court of India.

Then you have the Electricity Appellate Tribunal formed as an autonomous body under the Electricity Act of 2003. This body generally hears complaints, appeals or original petition against the orders of state central regulatory commission, joint commission or the

adjudicating officer as well and the order is appealable before the Supreme Court if substantial questions of law are involved.

The Armed Forces Tribunal formed under the Armed Forces Tribunal Act which hears disputes regarding commission appointments and roles and conditions of service of persons governed by the Army Act 1950, Navy Act 1957, the Air Force Act 1950. This will not be applicable to any other person in the country. It only is for the people who are there in the Armed Forces, the Army Air Force and Navy. These also contain judicial and administrative members again because you have people who need the idea of law and also people on the administrative side who know the functioning of the policies of the various tribunals and of the various forces of law and the appeal lies to the Supreme Court in case aggression of law is there and it needs to be certified by the tribunal as well.

There is the National Green Tribunal which was established under the National Green Tribunal Act 2010 which provides for speedy environmental justice. If you have a civil dispute in an environmental matter, you will reach out to the National Green Tribunal. The National Green Tribunal does not adjudicate criminal sanctions or criminal matters. It only deals with civil disputes in environmental law. It comprises judicial members and expert members. Your expert members can be someone who is well read and someone who has the qualification to be called as an expert member in an environmental law matter. They are bound by the Court of Civil Procedure of 1906 and the orders are appealable before the Supreme Court within 90 days without having to go to the High Court in this particular matter. These are the 14 kinds of various tribunals in our country.