CHAPTER VIII   DWINDLE OF JURISDICTION

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CHAPTER VIII

Dwindle of Jurisdiction

8.1 Judicial Review and Jurisdiction to redecide

The scope and jurisdiction of Supreme Court under article 136 dwindled owing to limitations imposed by *L. Chandrakumar v. Union of India*. The Court ruled that appeal lay to division bench of High Courts. The power under article 136 to hear directly an appeal from the order of tribunal is different from the power to hear appeal from the decision of the division bench of High Court. The difference is understood by distinguishing power of judicial review and jurisdiction to redecide.

The term judicial review has restrictive connotation as compared to judicial control. Judicial review is supervisory rather than corrective in nature. Judicial review is denoted by writ jurisdiction under articles 32 and 226 of Constitution. Judicial control, on the other hand, is broader and includes judicial review. Judicial control comprises all methods through which a person can seek relief against the administration through courts such as appeal, writs, declaration, injunction etc.

The system of judicial review is radically different from appeal. While hearing an appeal court is concerned with merits of a decision. The Court is concerned with legality of an order while subjecting any administrative act into judicial review. In an appeal the question is correctness of a decision. In judicial review the question is legality of a decision. The right of appeal is always statutory. On the other hand judicial review is the exercise of court’s inherent power to keep all bodies exercising judicial power within jurisdiction. No statutory authority is necessary to exercise judicial review. The basis of judicial review is common law. The court is performing only ordinary functions of a superior court of law.

Judicial review thus is a fundamental mechanism for keeping public authorities within due bounds to uphold rule of law. On appeal the court substitutes the decision of

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1 AIR 1997 SC 1125.
the primary authority. This is not permissible under judicial review. The power to decide belongs to the administrative authority and the court can only quash it and remand for fresh disposal. In *Council of Civil Service Union v. Minister for the Civil Service*\(^2\) the House of Lords held that judicial review should not be available if the particular decision under challenge was not justiciable.

Judicial review is highly complex and developing subject. It has long history. Its scope and extent vary from case to case. It is a basic feature of the Constitution.\(^3\) The Court in exercise of its power of judicial review zealously guards human rights and fundamental rights. The scope and extent of power of judicial review of the High Court contained in article 226. The power of judicial review is practically illimitable and courts guard it jealously\(^4\). Every administrative action is subject to judicial review. The only limitations are self-imposed. Where the court feels that justice is delayed, denied or miscarried, it can step in.

It is the law that while exercising judicial review court is concerned with the decision making process than the merit of the decision. The court is not competent to redecide the matter. That jurisdiction belongs to the administrative authority. It is the legislature which determines the question regarding jurisdiction to decide particular matters. If legislature provides an appellate authority, it becomes competent to substitute the decision of the primary authority. Article 136 confers such a general jurisdiction in the Supreme Court.

Thus appellate jurisdiction is broader than writ jurisdiction. While hearing an appeal the appellate court may reexamine both questions of fact as well as law. It can appreciate evidence and substitute findings of the primary authority. An appellate court examines the matter on merits and may modify the decision. Right of appeal is created by a statute and not inherent in a court. It is a vested right from the time the matter is filed before the primary authority. If the right to appeal is taken, it would not affect the vested right if the appellate forum existed. An appeal is a continuation of the original proceeding rather than a new action.

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Under section 107 of Civil Procedure Code, appellate court has power to determine a case finally, to remand a case, to frame issues and refer them for trial and to take additional evidence or to require such evidence to be taken. The appellate forum then has the same powers and duties of the primary authority. It is generally desirable that appellate court should not appraise oral evidence. On the other hand, judicial review is independent of any statutory provision. But in scope writ jurisdiction is narrower than appellate jurisdiction because writ jurisdiction is of supervisory nature. The Supreme Court has repeatedly asserted that power of writ court is that of a court of review and not that of a court of appeal\textsuperscript{5}.

The Supreme Court has explained in \textit{S. R. Bommai v. Union of India}\textsuperscript{6} that in judicial review a court is not concerned with the merits of the decision under review, but with the manner in which the decision had been taken or the order made. In review, court does not probe the merits of the dispute. It is no part of the duty or power of the court to substitute its decision for that of the tribunal or the authority deciding the matter under the court’s review.

The writ court does not sit as an appellate court to scrutinize the decision of the lower authority on merits. The writ court does not substitute the decision of the authority concerned in which the statute has vested discretion. The courts often assert that it is not their function as review courts to substitute wisdom and discretion of the authority to whom the question is entrusted by law. The principle was stated firmly by the House of Lords in \textit{Chief Constable of the North Ways Police v. Evans}\textsuperscript{7} that judicial review was concerned not with the decision as such, but with the process of decision making. The Supreme Court observed in \textit{Tata Cellular v. Union of India}\textsuperscript{8} that under article 32, it did not sit as a court of appeal but merely reviewed the manner in which the decision was made, particularly, as the court did not have expertise to correct administrative decisions. If the review court substitutes its own decision for the administrative decision, it is quite


\textsuperscript{6} AIR 1994 SC 1918.

\textsuperscript{7} (1982) 1 WLR 1155.

\textsuperscript{8} (1996) SCC 11.
possible that judicial decisions may itself be fallible. The Court therefore confined itself to the question of legality. This means that writ court gives relief on a more restricted basis than what an appellate court may do. For example, a writ court does not issue a writ merely because; in its opinion the decision of the lower body is wrong or erroneous. A writ court does not examine the correctness of the decision impugned. The Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra*⁹ observed thus:

the court, in exercise of the power of judicial review is not concerned with the correctness of the findings of act on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision making process.¹⁰

### 8.2 Judicial Review in service jurisprudence

To understand whether tribunals established under articles 323A and 323B are bestowed with the power of judicial review or not, debates on 42nd Constitutional Amendment are to be examined. Whether an enactment can confer such a great constitutional power on such tribunals is a moot question. In this context jurisdiction of other tribunals instituted prior to the constitutional amendment are also to be perused.

The framers invested High Courts with power of judicial review under 226 and 227. The High Courts played significant role in evolving service jurisprudence in exercise of the power of judicial review. Due to the growth in number of employees in public field and manifold problems touching their services and the implicit faith and confidence in High Courts as the unfailing protector of their rights, led to gradual increase in institution and pendency of service cases in High Courts. This focused the attention of the Union Government on the problem of finding and effective alternative institutional mechanism.

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⁹ AIR 1999 SC 625.
¹⁰ *Ibid* at 627.
for disposal of such specialized matters. Mr. Justice J.C. Shah, the Chairman of a committee set up by the Union Government in 1969 recommended setting up of independent tribunal to handle service matters pending before High Courts. The 124th Report of the Law Commission of India cited that in Australia, tribunals outside the established courts had been created on the belief that the established courts were too remote, legalistic, expensive and above all slow.\(^\text{11}\)

8.3 Parliamentary debates on 42\(^{\text{nd}}\) Amendment

The parliamentary debates reveal detailed information on 42\(^{\text{nd}}\) amendment relating to tribunals.\(^\text{12}\) Under 44th Amendment Bill clause 46 related to establishment of tribunals. The Bill did not touch the appellate jurisdiction under article 136. The members doubted whether the Supreme Court would have jurisdiction under article 32 to adjudicate service disputes in which fundamental rights were involved\(^\text{13}\).

Members suggested that employee should be allowed to appeal before the High Courts even on points of facts.\(^\text{14}\) It is true that tribunals manned by experienced administrators can expeditiously dispose of service matters. But there was one difficulty. Jurisdiction of all courts including High Courts was sought to be excluded in matters which fell within the jurisdiction of the tribunal. In the result an aggrieved employee had to rush to the Supreme Court located in New Delhi. The exorbitant and prohibitive litigation expenditure was a hurdle. So an appeal on a question of law to High Court was desirable.

Disputes, complaints, conditions of service etc, i.e. everything could be referred to tribunal. The tribunal gets an all pervasive jurisdiction in service matters. Hence it was generally felt that the supervisory redressal mechanism of article 136 appeal was deficient. Shri. K. R. Narayan.Rao\(^\text{15}\) suggested that there should be an administrative appellate tribunal. If the suggestion had been accepted Chandrakumar could have avoided.

\(^\text{11}\) 124\(^{\text{th}}\) report of law commission of India.
\(^\text{12}\) 44\(^{\text{th}}\) amendment bill debate on November 1\(^{\text{st}}\) 1976 in Lok Sabha.
\(^\text{13}\) see LXV Lok Sabha Debates, 1976 p. 85.
\(^\text{14}\) Ibid. at p. 87. Shri.B.R.Shuka, M.P from Baharaich.
\(^\text{15}\) Ibid. Shri .K.R.Narayan.Rao, M.P from Bobhili, p.93.
Regarding the composition of the tribunal, Shri. S. M. Banerjee\(^\text{16}\) suggested a very valuable advice that tribunal should be comprised of High Court judges, Supreme Court judges, eminent persons even retired ministers and retired M.P’s or even existing M.P’s, eminent economist and eminent politicians. There are some good administrators who enjoy the confidence of the public but at the same time they might be too rigid in their attitude. Once a decision had been taken by some officer in service it might become very difficult for any other officer or administrator to reverse the decision.

Shri. K. Ayathebar\(^\text{17}\) suggested that tribunals were going to decide very important and vital cases. Hence it should be presided over by persons of not lesser than a High Court Judge in the case of state tribunal and not lesser than a Supreme Court Judge in the case of Central tribunal. The other members could be administrative officers with the required competence and experience. Regarding retired officers he was of opinion that such appointment would lead to corruption because they would not care for any honesty in administration.

Shri. B. V. Nair\(^\text{18}\) reiterated the recommendations of Sardar Swaran Singh Committee Report that tribunal should be manned by persons of highest integrity, independence and requisite caliber and that Parliament when it made the law in this respect should make adequate provision. Shri. H. R. Gokhale\(^\text{19}\) suggested that Parliament should ensure that tribunals would function within specified limits and purpose. He emphasized that it was incorrect to say that a tribunal had power to issue a writ.

8.4 Articles 323 A and 323 B Objects and reasons

Statement of objects and reasons appended to the Constitution (44\(^\text{th}\) amendment) Bill, 1976\(^\text{20}\) read thus:

To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters, and certain other matters of

\(^{16}\) *Ibid. at p. 95.,* Shri. S. M. Banerjee, M.P.

\(^{17}\) *Ibid. at p. 99.,* Shri. K. Ayathebar, M.P.

\(^{18}\) *Ibid. at p. 103.,* Shri. B. V. Nair, M.P.

\(^{19}\) *Ibid. at p. 115.,* Shri. H. R. Gokhale.

\(^{20}\) Bill No. 91 of 1976.
special importance in the context of the socio economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution. It is also necessary to make certain modifications in the writ jurisdiction of the High Courts under article 226.

The development of the law relating to administrative tribunals had been furthered by the 42nd Constitution Amendment Act, 1976. It inserted articles 323A and 323B in the Constitution.

Article 323A reads thus:-(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the government.

(2) A law made under clause(1) may—
(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;
(b) specify the jurisdiction, powers(including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause(1);
(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment;
(f) repeal or amend any order made by the President under clause(3) of article 371D;
(g) contain such supplemental, incidental and consequential provisions(including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Article 323B reads thus:- (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause(1) are the following, namely:-
(a) levy, assessment, collection and enforcement of any tax;
(b) foreign exchange, import and export across customs frontiers;
(c) industrial and labour disputes;
(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;
(e) ceiling on urban property;
(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

21 Article 323A reads thus:-(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the government.

(2) A law made under clause(1) may—
(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;
(b) specify the jurisdiction, powers(including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause(1);
(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action on which such suits or proceedings are based had arisen after such establishment;
(f) repeal or amend any order made by the President under clause(3) of article 371D;
(g) contain such supplemental, incidental and consequential provisions(including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

22 Article 323B reads thus:- (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause(1) are the following, namely:-
(a) levy, assessment, collection and enforcement of any tax;
(b) foreign exchange, import and export across customs frontiers;
(c) industrial and labour disputes;
(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;
(e) ceiling on urban property;
(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;
Constitution. These articles provide for tribunal system in the country. There are some common features applicable to both the articles. They empower the legislature to set up administrative tribunals for adjudication of disputes between state and individual, relating to certain specified matters. Their powers include power to punish for their contempt. But article 323A is confined to matters relating to the public services. Article 323A provides that Parliament may by law establish tribunals for adjudication of disputes concerning recruitment and conditions of service of persons appointed to public service under Central, State or any Local or other authority or a corporation owned or controlled by the Government of India. The law made by Parliament for the purpose may specify the jurisdiction and procedure of the tribunals. Under clause 2(d), the law may exclude the jurisdiction of all courts except that of the Supreme Court under article 136 with respect to the service matters falling within the purview of the tribunals.

At the same time article 323B relates to tribunals relating to any of the matters specified in clause (2), such as taxation, foreign exchange, labour dispute, land reforms,

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
(h) rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants;
(i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;
(j) any matter incidental to any of the matters specified in sub-clauses (a) to (i).

(3) a law made under clause (1) may-
(a) provide for the establishment of a hierarchy of tribunals.
(b) specify the jurisdiction, powers (including the powers to punish for contempt) and authority which may be exercised by each of the said tribunals;
(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
(d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;
(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

4. The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law or the time being in force. Explanation: - In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.
elections, essential goods, offences and incidental matters relating to such matters. Such a law may establish a hierarchy of tribunals; specify their powers and jurisdiction, lay down their procedures. Under article 323B, clause 3(d), the law establishing such tribunals may exclude the jurisdiction of all courts except that of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of these tribunals. Article 323B, clause 4 declares that it has overriding effect over any other constitutional or legal provision.

The Constitution (42nd Amendment) Act did not impose any condition as to how the administrative tribunals will arrive at their decisions. The article is not self-executory. It enables the legislature to make law to set up such tribunals and ancillary provisions. They drastically change the character of the Indian judicial system. The underlying idea is to lighten the load of work on the courts. For example, a large number of service cases come before the High Courts through writ petitions. Shri. K. P. Singh Deo, the then Minister, piloting the bill in the Lok Sabha on 29th January 1985 gave the number of cases in service matters of Government servants pending in the High Courts as 63,800. The disposal of cases was taking a very long time, i.e. more than a decade. In view of the worsening position of judicial arrears the then Chief Justice of India proposed for the constitution of tribunals for service matters.

8.5 The Objects and reasons of Administrative Tribunals Act

The Administrative Tribunals Act, 1985 was passed to implement article 323A. In the statement of objects and reasons for introducing the Bill, it was mentioned that setting up of such administrative tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by administrative tribunals speedy relief in respect of their grievance. The Act provided for adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services

23 See Indian Express dt. 30.1.85, New Delhi. K.N. Goyal; Administrative Tribunals Act, 1985 (1st edn.)
and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of (any corporation owned or controlled by the Government in pursuance of article 323A of the Constitution) and for matters connected therewith or incidental thereto. The object of enacting the Administrative Tribunals Act was (a) to relieve the congestion in courts; and (b) to provide for speedier disposal of disputes relating to service matters. The setting up of the administrative tribunals is founded on the premise that specialist body comprising both trained administrators and those with judicial experience would, by virtue of their specialized knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-root experience would best serve the purpose. The administrative tribunals are distinguishable from ordinary courts with regard to their jurisdiction and procedure. They are free from the shackles of many of technicalities of the ordinary courts. The procedural simplicity of the Act can be appreciated from the fact that the aggrieved person can also appear before it personally. Only a nominal fee of Rs. 50/- is to be paid by litigant for filing an application before the tribunal. The establishment of Administrative Tribunals was a right step in the direction of providing in effective alternative authority to the government employees who feel aggrieved by the decisions of the government, for judicial review of service matters to the exclusion of all courts including High Courts other than the Supreme Court, with the end in reducing the burden of such courts and of securing expeditious disposal of such matters.

Various provisions in the Administrative Tribunal Act reveal that tribunal could not be a real substitute or alternative to that of the High Court. The Central Administrative Tribunal was established to exercise the jurisdiction, powers and

27 Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Seventeenth report of administrative tribunals (Amendment) Bill, 2006, December 2006, paragraph 6
28 Rule 7 of Central Administrative Tribunal (procedure) Rules, 1987
29 (1986) 4 SCC 458
30 See sections dealing with Composition of the tribunal, independence, integrity, impartiality, procedural informality, infrastructure, tenure, emoluments etc,
31 Administrative Tribunals Act, 1985, S. 4 (1)
authority conferred on it by the Act. State Administrative Tribunals\textsuperscript{32} were established by the Central Government to exercise the jurisdiction, powers and authority conferred on it by the Act. Each tribunal shall consist of a chairman and such number of vice-chairmen and judicial and administrative members.\textsuperscript{33} A person is or has been a judge of High Court is qualified to become the chairperson of the tribunal.\textsuperscript{34} The vice-chairperson is also be a person qualified to become the judge of the High Court or was holding the post of secretary to the Government of India for two years or held the post of an Additional secretary to the Central Government for five years or for three years held the post of a judicial member or administrative member.\textsuperscript{35} The judicial member should also be a person qualified to become a judge of High Court or has been a member of the Indian legal service.\textsuperscript{36} An administrative member should be a person who held the post of an additional secretary to the Union Government for two years or for three years held the post of a joint secretary to the Government of India.\textsuperscript{37} The chairman, vice-chairman and every other member of Central Administrative Tribunal shall be appointed by the President of India\textsuperscript{38} and that of State Administrative Tribunal by the President of India in consultation with the Governor of the concerned State.\textsuperscript{39} The appointment of the chairman, vice-chairman or a member shall be appointed after consultation with the Chief Justice of India.\textsuperscript{40} The Central Administrative Tribunal shall exercise all jurisdiction, powers and authority exercisable by all Court except the Supreme Court in relation to recruitment and all service matters to any All India Service or Civil Service or Defense Service.\textsuperscript{41} The State Administrative Tribunal shall exercise the jurisdiction powers and authority of all courts except that of the Supreme Court in relation to the recruitment to the state civil service.\textsuperscript{42} A tribunal shall have and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court and may exercise the

\begin{itemize}
\item \textsuperscript{32} Ibid. S. 4(2)
\item \textsuperscript{33} Ibid. S. 5(1)
\item \textsuperscript{34} Ibid. S. 6 (1) (a)
\item \textsuperscript{35} Ibid. S. 6 (2)
\item \textsuperscript{36} Ibid. S. 6 (3) (a), (b)
\item \textsuperscript{37} Ibid. S. 6 (3A) (a), (b)
\item \textsuperscript{38} Ibid. 6(4)
\item \textsuperscript{39} Ibid. S.6 (5)
\item \textsuperscript{40} Ibid. S.6 (7)
\item \textsuperscript{41} Ibid. S.14 (1) (a), (b)
\item \textsuperscript{42} Ibid. S.15 (1)
\end{itemize}
provisions of Contempt of Court Act, 1971. 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 and it shall have power to regulate its own procedure. Tribunal shall exercise same powers as are vested in a civil court under the code of Civil Procedure, 1908. A person making an application may either appear in person or through a legal practitioner. Section 28 empowers tribunal to exercise any jurisdiction, power or authority in relation to recruitment or service matters except that of the Supreme Court or any industrial tribunal, labour court or other authority constituted under the Industrial Disputes Act, 1947.

After the constitution of Tribunal, it received 13,350 cases on transfer from High Courts and Sub-ordinates Courts. The total number of cases received on transfer as well as those instituted directly at various benches of the tribunal till 30.06.2006 was 4,76,336 of which the tribunal disposed of 4,51,751 cases which constitutes a disposal of 94%. The institution of cases in the tribunal has increased tremendously and the rate of disposal of the cases has also cognitively increased.

8.6 Constitutional Validity of the Act

The Supreme Court on many occasions examined the constitutional validity of various provisions of the Administrative Tribunals Act, 1985. In *S.P. Sampath Kumar v. Union of India* the constitutional validity of Administrative Tribunals Act, 1985 was challenged on the ground of exclusion of power of judicial review both of Supreme Court under article 32 and High Courts under articles 226 and 227. The Court did not care to distinguish judicial review or the power to redecide on merits. The Court assumed that it was the power of judicial review that was excluded. Judicial review was a basic feature of the Constitution. It is the law that power of judicial review cannot be taken away. To get over the difficulty the Court relied on an observation by Justice Bhagawati in *Minerva*.

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43 Ibid. S.17  
44 Ibid. S.22 (1)  
45 Ibid. S.22 (3)  
46 Ibid. S.23 (1)  
47 [http://cgat.gov.in/intro.htm](http://cgat.gov.in/intro.htm) visited on 10/12/2008  
48 AIR 1987 SC 386.  
49 Ibid. at 138-139.
Mills v. Union of India\(^{50}\) that judicial review could be taken away if effective alternative institutional mechanism was provided.

Later the Act was amended\(^ {51}\) and the jurisdiction of the apex Court under article 32 was restored. Under article 226 High Courts also had justification to enforce fundamental rights. But that was not saved. The Supreme Court held that section 28 which excluded jurisdiction of High Courts under article 226/227 was not unconstitutional. It also held that administrative tribunals are substitutes of High Courts and could deal with matters involving articles 14, 15 and 16. It advised to change qualifications of the Chairman of the Tribunal which was later amended in 1987.\(^ {52}\) The constitutionality of article 323 A (2) (d) was not challenged in Sampath Kumar.\(^ {53}\) Subsequently in Sakinala Harinath v. Andhra Pradesh\(^ {54}\) the High Court of Andhra Pradesh declared article 323 A(2) (d) as unconstitutional. It held that the provision was repugnant to the ruling in Kesavananda Bharati v. Kerala.\(^ {55}\) Meanwhile the apex Court in R.K. Jain v. Union of India\(^ {56}\) recommended that the ruling in Sampath Kumar\(^ {57}\) be reconsidered. Therefore a Bench of seven judges of the Supreme Court examined the issues in a wider perspective including the constitutionality of article 323A (2) (d). It also considered the power of the Administrative Tribunals to exercise the power and jurisdiction of High Courts under articles 226 and 227 of the Constitution.\(^ {58}\)

The Supreme Court in L. Chandrakumar v. Union of India\(^ {59}\) held that tribunals were not equal to High Courts. It further held that decisions of tribunal should be appealable before a bench of two judges in High Courts under whose jurisdiction the tribunal falls.\(^ {60}\)

\(^{50}\) AIR 1980 SC 1789.  
\(^{51}\) Administrative Tribunals (Amendment) Act 1987 S.3(a)  
\(^{52}\) supra. n. 48.  
\(^{53}\) Ibid.  
\(^{54}\) (1994)1 APLJ (H.C) 1.  
\(^{55}\) (1973)4 SCC 225.  
\(^{56}\) (1993) 4 SCC119.  
\(^{57}\) Supra. n. 48.  
\(^{59}\) supra. n.1.  
\(^{60}\) Ibid. L. Chandrakumar, This is probably a rare instance where a court created an appellate jurisdiction. It is the law that appellate jurisdiction can be created only by exercise of legislative power.
The theory that the tribunals could be a substitute for a High Court\footnote{supra. n.48.} was overruled in \textit{L. Chandrakumar v. Union of India.}\footnote{supra. n.1.}

The Supreme Court overruled \textit{S. P. Sampath Kumar}\footnote{supra. n.48.} where it was held that a tribunal could be a substitute of High Court. In \textit{L. Chandra Kumar}\footnote{supra. n. 1.} the Supreme Court recognized the need for tribunals as distinct from courts, but reiterated that no tribunal could really be a substitute of a High Court. \textit{L. Chandrakumar} has led to some undesirable consequences. A bill have been introduced in Rajya Sabha on 18\textsuperscript{th} March 2006\footnote{The Administrative Tribunals (Amendment) Bill, 2006.} for the abolition of administrative tribunals dealing with service related matters since they had become subject to the jurisdiction of High Courts. The Bill sought to amend the Act of 1985, which envisaged setting up of administrative tribunals. This bill is to bring in line with the judgment of Supreme Court in the case of \textit{L. Chandra Kumar}. Since tribunals became subject to the jurisdiction of High Courts it is no longer necessary to retain power to punish for contempt with them.

The States of Karnataka and Tamil Nadu have sent proposals to abolish respective State Administrative Tribunals. The policy note tabled in the Assembly said that at present there are three for on service matters (the tribunal, the High Court and the Supreme Court). The Government of India has approved the proposal. The Tamil Nadu Government’s decision to abolish the State Administrative Tribunal, before which over 30,000 cases of service matters are pending, has been challenged in the Supreme Court by the Service Bar Association, Chennai. The Association said, the cases pending before the State Administrative Tribunal related to major issues such as dismissal, seniority and compulsory retirement. In some cases the employees had been waiting for relief for more than ten years. If Tribunal was abolished, petitions would have to be filed before the High Court, where delay could occur. The petitions sought a direction to the Government not to abolish the State Administrative Tribunals and to fill the vacancies of Chairman, Vice Chairman and Judicial and administrative members for its effective functioning.
Thus the tribunals under the aegis of articles 323A and 323B exercise only the jurisdiction to decide the matter. The terms *substitute* and *alternative* coined by the Supreme Court in *Sampathkumar* and *Chandrakumar* cannot be easily differentiated. Whatever be the principle, the tribunal exercises functions similar to that of High Court. It can declare unconstitutional all provisions of legislation except that of the parent Act. Though tribunals constituted earlier to the articles are unaffected, the Supreme Court evinced a tendency not to entertain direct appeals. In this way it is vital to note that the extraordinary jurisdiction is now dwindled by not permitting the direct appeals from the decisions of the tribunals. Such anomaly should be eliminated by establishing appellate and national tribunals so that the apex court functions to redress grave miscarriage of justice.