ADMINISTRATIVE TRIBUNALS
CHAPTER VII

ADMINISTRATIVE TRIBUNALS

Background

A civil servant on being visited with a major penalty can take recourse to a departmental appeal, against the order imposing the punishment of dismissal, removal or reduction in rank. Thereafter, if he still remains aggrieved at the order of the appellate authority, he can seek recourse to a review of the same order. Even after having exhausted all the departmental remedies, he continues to be aggrieved by penal action of the department, he can seek legal redressal before a court of law. But if an aggrieved civil servants happens to be a member of any central government department, or any other department within the jurisdiction of the Central Administrative Tribunal, he has to seek legal redress before the Tribunal.

For a proper analysis of the working of the Central Administrative Tribunal it is considered essential to look into the functioning of Administrative Tribunals in general.
Administrative tribunals being creatures of law, exercise jurisdiction, powers and authority of law and acts according to procedures duly prescribed by law. Such tribunals adjudicate upon or holds trial of disputes, complaints or offences through adversary proceedings. The chief characteristic of administrative tribunals are, speedy disposal of cases with cheapness, occasioned by informality and flexibility of procedure. The tribunals avoid procedural technicalities and take a functional, rather that a legalistic approach.2

The administrative tribunals, necessitated by socio-economic developments have come to occupy a key position in the administrative process. They have become an inevitable concomitant of a welfare state. Administrative tribunals are indeed an answer to the need for expeditious disposal of cases through minimum formality and technicality, at minimum cost.3

At times, the administrative tribunals are required to act judicially and not merely judiciously. This is so when it exercises powers of a civil court for certain procedural matters.4 Such determination of facts through exercise of judicial process is indeed a power of enormous consequence.5
Administrative Tribunal in India

The system of administrative adjudication through administrative tribunals or quasi-judicial bodies is very much to be found in India. It is a striking characteristic of the Indian legal system that tribunals have been set up under specific statutes to adjudicate upon various matters as provided for. The hallmark of tribunals has been its cheapness, efficiency and informality as is compatible with genuine justice.

The social philosophy of the Constitution, as reflected in the Preamble as well as Part IV, signifies the essence of the administrative process. Yet, administrative law did not receive any separate recognition in our country, prior to the forty second constitutional amendment, 1976. This was in spite of the fact that the first law commission setup way back in 1955 felt the necessity of setting up of tribunal⁶. The Commission⁷ had recommended that appeals from quasi-judicial bodies on facts should lie to an independent tribunal. It observed that such tribunals ought to be presided over by a person qualified to be a judge of the High Court and be assisted by a person or persons having administrative and technical knowledge. However, the Law
Commission did not favour the system of administrative courts, as it wanted review of administrative action to remain unimpaired with the High Courts. The Commission further recommended that:

(i) ....

(ii) judicial, quasi-judicial and administrative decisions should be clearly demarcated;

(iii) in the case of judicial and quasi-judicial decisions, appeal or revision should lie on a question of Law;

(iv) an administrative division of the High Court may be established, if necessary;

(v) administrative decisions should be accompanied by reasons in writing;

(vi) a tribunal delivering administrative judgement should conform to the principles of natural justice and act with openness, fairness and impartiality;

(vii) legislation providing for simple procedure embodying the principles of natural justice for the functioning of all tribunals may be passed.

The First Law Commission did not suggest the setting up of Administrative Tribunals as it thought that the time was not ripe for disturbing the then existing position. Since a sizable portion of cases pending litigation pertained to the civil services, the government felt the need for effective, expeditious, and satisfactory disposal of such cases. A committee under the Chairmanship of Justice Shah,
appointed in 1969 addressed itself to the issue of pending service cases. It came up with a recommendation, advising the Government to set up an independent Tribunal to handle service cases, pending before the Supreme Court. At this point of time, the Administrative Reforms Commission under the Chairmanship of Morarji Desai also addressed itself to the issue. The Administrative Reforms Commission too recommended the setting of Civil Services Tribunals to deal with appeals of government servants, against disciplinary action.

In spite of the above recommendation, the Central Government addressed the matter further, as a major chunk of service litigations related to matters other than disciplinary action. A few years later, the matter came to be considered by the Swaran Singh Committee in the year, 1976. This committee too came up with the recommendation for setting up of separate administrative tribunals for certain matters. The very same year the matter also came to be considered by a conference of chief secretaries of the States.

The Government finally introduced the constitution forty second amendment in Parliament in the year 1976. Clause 46 of the aforesaid amendment came to be introduced.
providing for Articles 323A and 323B by way of an innovation under Part XIV A to the Constitution. The constitutional amendment thus provided for a new chapter relating to tribunals. In view of the importance of Article 323A, providing for the setting up of administrative tribunals, the same is quoted in extensio:11

a) To enable parliament to make an enactment for the constitution of Administrative Tribunals for adjudication of disputes in regard to service matters,

b) To make the enactment in conformity with the guideline set out in clauses (a) to (g) of sub-section (2) of the Article,

c) to exclude the jurisdiction of all courts except the Supreme Court especially the High Courts to entertain writ petitions as well as appeals from the decisions of Administrative Tribunal and lower courts as the Administrative Tribunals are now being given the sole authority to decide the fact in all matters concerning his service conditions12.

Article 323A of the Constitution being an enabling provision, provided for the setting up of Administrative
Tribunals by parliamentary law for determining disputes pertaining to conditions of service of Government servants. It also brought within its ambit, employees of any local or other authorities within the territory of India, or under the control of the Government of India or a corporation owned or controlled by the Government. Besides, it also provided for setting up of separate Administrative Tribunal for each State or a Joint Administrative Tribunal for two or more states.

In bringing forth the amendment, Parliament has given express recognition of the growing need for separate service tribunals as a necessary concomitant of a welfare state. It has displayed due appreciation of the need for imparting speedy and substantive justice to public servants, who are the cornerstone of the administration of this vast country.

The amendment provides for exclusion of jurisdiction, powers and authority of all courts, except the Supreme Court under Article 136, in matters falling within the jurisdiction of the Tribunals. This has been provided for in order to reduce the mounting arrear of cases in the High Courts and Supreme Court numbering about 63,800 and to secure speedy disposal of service matters. In fact, justification for Article 323A lies in the massive case law generated in
service matters, which the ordinary law courts were finding it difficult to cope with.

The need for setting up of service tribunal for rendering efficacious relief to the public servants has also been stressed by the Supreme Court in *K.K. Dutta Vs Union of India* in the following words:

Public servants ought not to be driven or required to dissipate their time and energy in court room battles.... The constitution of service Tribunals by the State Governments with an apex Tribunal at the Centre which in the generality of cases should be the final arbiter of controversies relating to condition of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeal in service matters. The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many.

**Administrative Tribunal Act, 1985**

After almost a decade of the constitutional amendment which incorporated Article 323A in the Constitution, the Government piloted the Administrative Tribunals Bill before Parliament. The statement of objects and reasons while stressing the need for speedy disposal of cases, clearly admits of the pendency of a large number of cases relating to
service matters before the various courts\textsuperscript{18}.

Pursuant to the passing of the Administrative Tribunals Act, 1985 the vires of the legislation came to be challenged before the Supreme Court in the case of \textit{S.P. Sampat Kumar vs. Union of India}\textsuperscript{19}. Various provisions of the Act, along with the constitutional validity of Article 323A came up for adjudication before the Supreme Court. It was also the contention of the petitioner, that the writ jurisdiction of the High Court could not be taken away by any constitutional amendment.

After an interim order by a division bench of the apex court, the matter came up before a Constitution Bench of the Supreme Court. In the meantime, certain amendments were effected in respect of the Administrative Tribunals Act, 1985 in compliance with the interim order of the apex court.

While upholding the constitutional validity of Article 323A as well as the impugned Act, (as amended) the Supreme Court observed that, the Constitution permits Parliament to abrogate the jurisdiction of the High Courts under Article 226 and 227, provided the same happens to be exercised effectively and efficiently by a closely comparable institution or body. In so holding, the apex court made the...
following observation, "(W)hat, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court not only in form and *de jure* but in content and *de facto*". It has to be ensured "That the substitute institution—the Tribunal must be a worthy successor in all respects.").

On the constitutional validity of providing for an alternative mechanism of judicial review Justice Bhagwati (as he then was) in his minority judgement in *Minerva Mills Ltd. Vs Union of India* observed as follows:

The power of judicial review is an integral part of our constitutional system, and without it, there will be no Government of laws and the rules of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, in my mind, part of the basic structure of the Constitution.. Of course when I say this I should not be taken to suggest that the effective alternative institutional mechanisms or arrangement for judicial review cannot be made by Parliament.

The Supreme Court in *S.P. Sampath Kumar and Vs. Union of India* has struck down section 6 of the Administrative Tribunals Act, 1985 pertaining to the appointment of an administrative member as Chairman under the Act.. This apart,
it has provided suggestions for making amendment in respect of section 6(2) of the Administrative Tribunal Act, 1985 to insulate the appointment process of the Chairman and Judicial members of the tribunals. It has also advised further amendments to ensure independence, impartiality and objectivity by providing for effective consultation in the appointment process\textsuperscript{24}. The court has further observed that the administrative tribunals would be constitutional, if they approximate structurally and functionally and even locationally to the High Courts\textsuperscript{25}. It therefore, follows that a tribunal constituted by the Administration Tribunal Act, has necessary powers and authority to adjudicate upon all disputes relating to service matters. As the tribunals are intended to replace the High Courts, the standard of adjudication is also expected to be as high as the High Courts. The scope of judicial review of the orders of the disciplinary authority should be at par with that of the High Court. But it is very much uncertain whether the tribunal can adjudicate upon the constitutional validity of laws affecting Articles 14 and 16(1) of the Constitution. It is all the more so because tribunals are not empowered to issue prerogative writs.

A tribunal under the Administrative Tribunals Act means
a Central Administrative Tribunal or a State Administrative Tribunal or a Joint Administrative Tribunal, as defined in section 3(e) of the Act. In accordance with sub-section (1) of section 4 of the Act, the Central Administrative Tribunal has been established by the Central Government with effect from November, 1985. In terms of a notification one principal bench was constituted along with six additional benches with effect from January, 1986 which in 1996 has increased to sixteen benches in all.

The Administrative Tribunal Act by virtue of sections 14(1), 15(1) and 16, vests in the Administrative Tribunals all powers of the ordinary civil courts, as well as the High Courts, pertaining to service matters. Section 14(1) provides for the adjudication of all the condition of service of Central Government servants. Such powers extend from the holding of a post from appointment to retirement and even beyond, in matters like pension.

But armed forces of the Union, excluding civilian employees like the C.I.S.F. are outside the jurisdiction of the Tribunal. Civilian employees such as lower division clerks in the ITBP have been held not to be members of an armed force, and consequently are within the jurisdiction of
the Administrative Tribunal. Similarly, the jurisdiction of the tribunal has been held to be applicable to the Delhi police Force. The Karnataka High Court has held in 1987 that such a tribunal has jurisdiction to issue appropriate direction or to make appropriate orders, and consequently, a writ petition is not maintainable before a High Court. No power, however, has been given to the tribunal to issue any prerogative writs.

Since expeditious disposal of cases is the core of the tribunal's jurisdiction, it is not unencumbered with the technicalities of the Civil Procedure Code, 1908 or the Evidence Act, 1872. Therefore, like cases in civil courts, proceeding before tribunals are to weed out delays during adjudication. At the same time, the tribunal has to follow certain procedures, which cannot be set aside for the sake of expediency. For instance, wherever malafide orders of the departmental authority is alleged, the tribunal has to Act only after affording the respondents to file counter affidavits. In the absence of rebuttal, the tribunal cannot determine whether allegations by the applicant constitutes the plea of malafide.

Before analysing the recent decisions of the apex court,
it is essential to allude to a couple of decision of the Central Administrative Tribunal to ascertain the manner of its functioning.

In *V.K.S. Segaran Vs. Union of India*\(^3^2\), the Jabalpur bench of Central Administrative Tribunal while quashing the order of removal of the petitioner, directed his reinstatement, by holding that the tribunal can certainly interfere with any punishment proposed by the disciplinary authority. In the instant case, the tribunal besides considering the punishment to be excessive, also observed that the disciplinary authority too failed to discharge his responsibilities. In other words, it held that the tribunal could interfere if the finding of the enquiry officer is perverse, *malafide* and arbitrary, or quantum of penalty is grossly disproportionate to the gravity of misconduct. Again in *Shankar Kr. Dalmi Vs. Collector of Central Excise*\(^3^3\), the Central Administrative Tribunal has held that if the tribunal chooses not to remand the matter to the appellate authority, it would be obliged to review the evidence.

In *Union of India Vs. Parma Nanda*\(^3^4\), having agreed with the adverse findings of the enquiry officer, the tribunal started examining the evidence of the enquiry officer. While
doing so, it modified the punishment of dismissal to that of stoppage of increments for five years under Rule II(IV) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

This decision came to be challenged before a three judge bench of the Supreme Court, on the ground that in the normal course a the tribunal could not reappreciate the evidence of an enquiry officer. The apex court after reviewing the case law, observed that the courts are not to act as appellate bodies reviewing findings of facts and substituting their own views for that of the disciplinary authorities. In doing so it made the following observation:

"If the penalty can lawfully be imposed, and is imposed on the proved misconduct, the Tribunal has no power to substitute its over discretion for that of the authorities."

In other words, the tribunal should not interfere with the order of the disciplinary authority if the conduct of the employee warrants the penalty inflicted upon him. Recently in Government of Tamil Nadu, Vs. Raja Pandian the Supreme Court has reiterated the view regarding reappreciation of evidence and considered its sufficiency in the following words:
It has been authoritatively settled by string of authorities of this court that the administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiry authority in disciplinary proceedings.

The apex court has held in *R.C. Chaturvedi Vs. Union of India and ors* 38 that the High Court or the tribunal cannot normally substitute the penalty imposed by the disciplinary authority. But if such penalty by the disciplinary or the appellate authority shocks its conscience, it could appropriately mould the relief either by directing the authority to reconsider the penalty, or to shorten the litigation, in exceptional circumstances, impose appropriate punishment by furnishing cogent reasons.

Similarly, an Administrative Tribunal cannot sit in judgement over orders of transfer effected by the departmental authorities, substituting its own judgement for that of the competent authority 39. It has been held by the Supreme Court that the tribunal cannot order promotion of an applicant upon assessing the service records of a government servant. The tribunal can only issue a direction to the Departmental Promotion Committee to reconsider its evaluation in according with law 40.
Where a penalty is imposed under Clause (a) of the second proviso to Article 311(2), the tribunal may examine the adequacy of the penalty imposed. In such a case, the tribunal may step in to render justice, if the penalty imposed is unreasonable or uncalled for. It may remit the matter to the competent authority for reconsideration, or in exceptional cases, substitute one of the penalties provided under clause (a) of Article 311(2) of the constitution.

Similarly, the tribunal should have flexibility in moulding appropriate relief in proceedings under clause (b) of the second proviso to Article 311(2) of the Constitution.

An enquiry dispensed with under proviso (b) of Article 311(2) of the Constitution resulting in an order of dismissal may be held valid, if the holding of an enquiry becomes reasonably impracticable. For example, where the civil servants does not respond to show cause notice served by the disciplinary authority while participating in trade union activities, it renders the holding of enquiry to be impracticable. The enquiry may be dispensed with, if such an enquiry may not be reasonably practicable on account of failure of witnesses to adduce evidence, or due to lack of security or danger to his life. However, such
impracticability has to be ascertained before dispensing with the enquiry. Such a situation has to exist on the date of decision to dispense with the enquiry and not the day of the incident. Such an administrative decision cannot claim finality under Article 311(3) of the Constitution, and therefore has been held to be subject to judicial review.

It is submitted that while a major penalty is imposed upon an aggrieved servant by the disciplinary authority after dispensing with an enquiry, the tribunal should consider whether the action of the departmental authorities justify such an action. The tribunal has to satisfy itself on the gravity of the offence in respect of any action under clause (a) and (b) of Article 311(2) of the Constitution to find out the justifiability or otherwise of such action. Where the tribunal finds the penalty imposed to be very stringent or uncalled for, it may direct the department concerned to reconsider its order on the quantum of punishment. However, in cases where the decision is arrived at on some unjustified grounds or arrived at malafide, such orders may be set aside by the tribunal. It has held in P.G. Nawani Vs. State of Gujrat, that the tribunal cannot review its decision in the absence of a proper review application as provided for under Rule 17 of the Central

The tribunal can review its decision mainly on the ground of discovery of new matter of evidence. Such evidence, even after due diligence, should not have been within the knowledge of the applicant at the time of passing of the original order. Where no new case emerges at the time of filing the review application and there is no error on the face of the record, such an application is not maintainable. It may, therefore, be said that a review application is maintainable only on account of some mistake or error apparent on the face of the record, or for any other sufficient reason like discovery of new evidence.

An appeal from a decision of the tribunal is provided for under section 27 of the Administrative Tribunals Act, 1985. Such an appeal has to be preferred before the Supreme Court under Article 136 of the Constitution. Since an appeal under Article 136 is in the nature of a Special Leave Application and lies at the discretion of the Supreme Court, an affected individual cannot claim it as a matter of right.

Section 28 of the Administrative Tribunals Act, 1985 (as amended) provides for exclusion of jurisdiction of all courts, except that of the Supreme Court. In fact, a conjoint reading
of sections 14(1), 15(1) and 16 of the Act, along with the ouster clause reveals the legislative intent to oust the jurisdiction of all courts except that of the Supreme Court. Hence, the High Court, as well as the civil court cannot exercise any jurisdiction, powers and authority to adjudicate upon disputes or entertain any complaints in specified service matters. It therefore follows, that an order of the tribunal is final and cannot be challenged in any court, except before the Supreme Court.

The Kerala High Court in *Subamaniam Vs Union of India* has taken the view that the combined effect of section 14(1), 28 and 29 of the Administrative Tribunal Act is to deprive the High Courts of its powers to entertain and decide service matters even in exercise of its powers under Article 226. But in taking away the jurisdiction of the High Court, the Administrative Tribunals Act, 1985 has not conferred such powers of issuing any writ on the tribunals.

The privitive clause gives effect to clause 2(d) of Article 323 A of the Constitution, thereby curtailing the power of judicial review of High Courts available to the civil servants. In the process, it has taken away the writ jurisdiction of the High Court, resulting in denial of relief.
to redress injury of any substantial nature before the High Courts. The Act thus vests wide jurisdiction on the tribunal by ousting the jurisdiction, power and authority of the ordinary civil courts as well as that of the High Courts. The only exception to the finality of decisions of the tribunal is in the form of appeal by way of special leave to the Supreme Court. The Act in effect envisages that judicial control over Administrative Tribunal should be performed by the Supreme Court only. But since appeal to the Supreme Court by way of special leave is at the discretion of the court, an aggrieved official cannot claim it as a matter of right. Since leave to appeal cannot be claimed as a matter of right, the mechanism of judicial review provided in the Act is ineffective and inadequate and might even result in denial of justice. This is all the more so, because a petitioner can approach the Supreme Court only when an order adjudicated upon by the tribunal is detrimental to him. Moreover, the petitioner can expect relief only upon the decision of his appeal on merits. On the other hand, an aggrieved public servant can avail of a wide scope to challenge such an order before the High Court and expect quick remedy by way of issue of appropriate orders or directions under clause (b) and (c) of Article 226.
Soon after the establishment of the Central Administrative Tribunal, the view gathered ground that the Chairman would be within his discretion to constitute a single member bench which may even comprise an administrative member, in view of section 5(6) the Act. This view finds support from the decision of the Supreme Court in J.B. Chopra vs. Union of India\textsuperscript{52} holding that a single administrative member can adjudicate on the vires of the Acts of Parliament and State legislatures. Such an interpretation has led to the feeling that a single bench of the tribunal cannot act as an equally effective alternative to a similar Bench of a High Court.

This aspect came to be considered by the Supreme Court on a number of occasions. In Amulya Chandra Kalita Vs. Union of India\textsuperscript{53} a two judge Bench of the Supreme Court has held that an administrative member of the tribunal alone is not competent to hear and decide cases. Similarly, in Mr. Maharaj Ram. Vs. India Council of Agriculture Research\textsuperscript{54} the apex Court has observed that any matter involving question of law or interpretation of constitutional provision should be assigned to a two member Bench.

Recently, in L. Chandra Kumar Vs. Union of India and
a three judge bench of the Supreme Court has observed that the challenge to the validity of section 5(6) has unmasked greater issues which needs reconsideration by a larger bench. It is excepted that the decision to be rendered by the Constitution bench in the above case would determine the issue by laying down the detailed principles.

Functioning of Central Administrative Tribunal

The tribunal initially set up with six additional benches has sixteen benches presently. Immediately after the setting up of the tribunal all cases pertaining to central government servants pending in the various High Courts and subordinate courts have been transferred under the jurisdiction of the tribunal. From inception to June, 1991 a total of 1,11,717 cases were filed before the tribunal, of which 74,069 cases were disposed of during the period, accounting for about sixty percent disposal. As on December 1991 the number of pending cases in the tribunal comprised about 21,000 in number, some of them pertaining to the year, 1972. But by the end of June 1994, the pendency of even fresh cases dates back to the year 1990. It has been observed that during a period of six months as available at the end of October, 1991, 10,397 cases came to be filed in various
Benches of Central Administrative Tribunal across the country. Whereas Delhi accounted for an average of about 300 new cases filed every month, the Gauhati Bench of the tribunal recorded only 262 cases during the year 1991.

The above figures reveal that the situation in 1994 compares much better to that of the year 1991. However, the avowed aim of providing speedy justice is much affected by the delay in the disposal of cases pending before the various benches. Unless effective remedial measures are initiated, there is a possibility of mounting of arrear cases, thus defeating the very purpose of establishment of the tribunal. This may be achieved by increasing the strength of the benches and cutting down the unnecessary adjournments on one ground or another. Unless such measures are initiated, arrears are likely to mount. Besides the possibility of inclusion of various public sector organisations under the jurisdiction of the Tribunal in the near future will further accentuate the problem.

A matter of concern has been expressed in regard to the location of the Benches of the tribunal. Although Benches are to be located wherever High Court are functioning, it is a matter of common experience that the sixteen Benches are not
sufficient to meet the requirements of the government officials who reside in far flung areas. No doubt, the provision of sittings in circuit is there, but in actual effect it has not been very effective. By taking up a representative tribunal, we observed that the Bench of the Central Administrative Tribunal of Guwahati caters to North Eastern States, but unlike the Gauhati High Court which has permanent Benches in most of the States, the tribunal has no comparable network. As a result, the litigants have to traverse long distance, for the holding of circuit Court in the State Capitals are very infrequent. This has only resulted in much hardship besides resulting in exorbitant expenses incurred by the litigants. In fact, the few cases filed before the Gauhati Bench of the tribunal is a reflection on the possible handicaps as being faced in approaching the tribunal by the aggrieved officials. In such a situation, the problem being faced by the litigant officials who could hitherto approach the subordinate courts in far flung areas can very much be envisaged. In such cases recourse to tribunals have certainly become very taxing, both in terms of distance, time, energy, loss of manhours as well as costs.

Previously, a petitioner being aggrieved by a judgement
of a High Court could move a letters patent appeal before the same court, before approaching the Supreme Court. But now, an aggrieved official has to approach the Supreme Court directly, that too, under Article 136 of the Constitution. The expense incurred has in fact come in the way of many an aggrieved official to approach the Supreme Court. This may be gauged from fact that only 433 appeals came to be filed before the Supreme Court in the first six months of 1991. It is a different matter that 331 of these cases have been dismissed. In fact, the functioning of the tribunal has prompted a three judge Bench of the Supreme Court to stress the need for a sound, independent and impartial justice delivery system, so as to instill faith and confidence in the litigating public. The court has observed as follows:

complaints have been heard with regard to the functioning of other Tribunals as well and it is time that a body like the Law Commission of India has a comprehensive look in with a view to suggesting measures for their improved functioning.

While expressing his anguish over the ineffectivity of the alternative mechanism for judicial review, Justice K.Ramaswami has observed as follows:

The remedy of appeal by special leave under Article 136 of this court also proved to be costly and prohibitive, far flung distance too is working
as constant constraint to litigant public who could ill afford to reach this court. An appeal to a bench of two judge of the respective High Courts over the orders of the Tribunals within its territorial jurisdiction on question of law would assuage a growing feeling of injustice of those who can ill-afford to approach the Supreme Court. Equally the need for recruitment of members of the Bar to man Tribunals, as well as the working system by the Tribunals need fresh look and regular monitoring if necessary.

An Appraisal

From the preceding discussion the researcher concludes that section 14 of the Administrative Tribunals Act, 1985 provides almost exclusive jurisdiction to the tribunals in specified service matters. The Act precludes the jurisdiction of all courts except the Supreme Court. The provision of appeal is circumscribed by the discretion of the Supreme Court in the matter of granting of a special leave to appeal to it under Article 136 of the Constitution. Since many an aggrieved officials are precluded from invoking the jurisdiction of the apex court, because of the expenses involved, it virtually results in complete exclusion of judicial review in their case. In such cases, the career of an aggrieved official who has no financial resources to reach the doorstep of the Supreme Court, is considered to be over. It is felt that exclusion of the jurisdiction of the High
Courts without providing for an equally effective remedy against the decisions of the tribunals, causes injustice to aggrieved officials.67

The tribunal is now the whole and sole authority to deal with service matters, except for an appeal by way of special leave to the Supreme Court. It cannot therefore, decline its jurisdiction under the plea that it has no jurisdiction in the matter. On the contrary, it is incumbent upon the Tribunal to Act fairly and with utmost caution in conducting the proceedings. It has to ensure that its decisions are not biased or doesnot cause any prejudice to the aggrieved official.68 It therefore, calls for a complete judicial colour to fulfill the constitutional promise of an equally efficacious substitute for High Courts.69 The above proposition also gains support form the decision of a three judge Bench of the Supreme Court in M.B.Mazumder Vs. Union of India,70 which holds that members of administrative tribunals cannot be equated with the High Courts Judges.

Equating the tribunal with the High Courts in the matter of interpretation of legislative enactments and rules under Article 309 needs to be reconsidered. This is incumbent in view of the observation of the apex court in State of Orissa.
Vs. Bhagwan Saragi that a tribunal established under the Act is none the less a tribunal and it cannot side track a decision of the concerned High Court.

In fact, it is considered most apposite to refer to the recent observation of the Supreme Court on the need to reconsider the decision of the court rendered in the landmark judgement in Sampat Kumar Vs. Union of India and ors. The Court has observed as follows:

The aforesaid post Sampat Kumar cases do require in our considered view, a fresh look by a larger bench over all the issues adjudicated by this court in Sampat Kumar’s case (AIR 1987 SC 386) including the question whether the Tribunal can at all have an administrative member on its Bench, if it were to have the power of even deciding constitutional validity of a statute or Article 309 Rule, as conceded in Chopra’s case (AIR 1987 SC 357).... Examination of this aspect would be necessary to instill confidence in the minds of people (and litigants) which is the greater prop of the judiciary.

It is further felt that rules framed under the Administrative Tribunals Act, 1985 should be amended for ensuring speedy disposal of cases by the tribunals, apart from enlarging the strength of the benches to cope with the increase in litigation. Such a step should be followed by holding of circuit courts at frequent intervals so as to ensure speedy disposal of cases.
Necessary amendments in the Act is also called for to provide equality of status to members of the tribunal in all aspects with that of High Court Judges, including extending the terms of office beyond two terms. Amendments in this direction will, besides attracting people with greater talent, would also increase efficiency of the bench as well.

The tribunals can adequately achieve the twin objectives of speedy disposal of cases and reduce the cost of litigation, if appropriate changes as suggested above are effected in the Act. Such measures will lead to their improved performance, resulting in increase in the public confidence. It will thus pave the way for the tribunal to act as effective instrument for efficacious and inexpensive judicial review.

Unless necessary changes are effected, the Administrative Tribunals besides contributing to the mounting arrears of cases, may as well result in a lack of confidence in the system as an appropriate substitute of the High Courts.
Notes

   New Delhi: Methodology Book Co. P. 30p

2. ibid p.310

   Bombay: N. M. Tripathi Pvt. Ltd p. 6

4. supra n. 1 p. 306.

   New Haven: Yale University Press p 116

6. K. P. Chakarvarty 1989 *Administrative Tribunal Law and Procedure*

7. Law Commission of India Fourteenth Report Vol 2
   pp. 694-695.

8. Ibid.

   Recommendation No 54

    Lucknow: Eastern Book Co. p6

11. S. P. Sampat Kumar Vs Union of India and ors, *AIR 1987, SC*
    386 (395)


13. H. N. Das 1983 A critical analysis of the Law relating to
    the civil service under the Constitution of India as interpreted
    by the honourable Supreme Court. University of Guwahati (Ph.D. Thesis)

14. Article 323 A (2) (d) of the Constitution of India.

15. Statement of Mr. K. P. Singh Deo. Minister while piloting
    the bill in the Lok Sabha on 29.1.1985
17. Op cit n.15.
18. Para 3 of statement of objects and reason, Gazette of India Extraordinary Part ii Section 2 dated 25.1.1985
19. (1987) 1 SCC 124
20. Ibid p.139.
21. Ibid pp139-140.
23. Supra n-11.
30. Putleswamuilah Vs State of Karnataka, (Karn)(1987) 1Ser L.R 54.
32. (1987) 3 SLR (CAT)873.
34. (1989) 2 SCC 177, Alice Jacob, 1989, Bar on tribunals discretion to examine the adequacy of punishment in disciplinary cases Journal of India law Institute Vol 31 (2) p 250.


38. AIR 1996, SC 484 (489).


41. Supra n.43.


44. Ibid.


50. Supra n-24 p 534.

51. Ibid p540.

52. AIR 1987, SC 357.


55. AIR 1995, SC 1151 (1152).


58. Op cit n.56.

59. Appendix.

60. Op cit n. 57; In December 1991 more than half of the 66 positions on the Tribunal and its Benches were vacant which came down to 3 in June 1994.


62. Supra n.56.


64. Ibid.

65. Ibid 1804.


67. Supra n.24 p 546.


70. AIR 1990, SC 2263.

71. SLP (c) No 2129/91.

72. Supra n.55.

73. Supra n.11.

74. Op cit n.35 p 1154.