CHAPTER - 7

ROLE OF JUDICIARY AND ADMINISTRATIVE TRIBUNALS IN SAFEGUARDING THE RIGHTS OF CIVIL
CHAPTER VII

ROLE OF JUDICIARY AND ADMINISTRATIVE TRIBUNALS IN SAFEGUARDING THE RIGHTS OF CIVIL SERVANTS

In developing country like India wherein the peoples of the society, faced with innumerable problems, the judiciary as a guardian of the peoples and uphold the constitution occupies highest position in India. The judicial power is also trusted the peoples of India. The Supreme Judiciary, in India, playing an important role to win the soul of the citizens of our country, because of its impartiality in delivering justice and independent from all kinds of influences.

In an emerging Democratic Society faced with the wide range of far reaching Constitutional, a Political and Social problem, the Judiciary as the interpreter and upholder of the Constitution occupies the prominent position. For a Country a large majority of the people being economically poor, educationally backward and politically not yet conscious of their rights or even collectively they cannot be pitted against the State organizations and institutions, the Judiciary eminently suited to play a role of custodian of the cherished rights of the Citizens. In the present context due to instability of the political parties in India are failed to protect the rights of the individual citizens of the society, therefore the supreme Judiciary in India time and again proved to act as the guardian of the people of the country by delivering the innumerable judgments directed the Government to perform the duties for the people of the country.
7.1-JUDICIARY UNDER THE INDIAN CONSTITUTION:

The position of Supreme Court under the Constitution was come up for consideration before the Constituent Assembly, a special Committee was constituted to consider and report on the constitution and powers of the Supreme Court. The Committee consisted of Sri S. Varadachari, Sri Alladi Krishna Swami Ayyar, Sri B.L.Mitra, Sri K.M.Munshi and Sri B.N.Rao has submitted the report with the following recommendations;

(i) The Supreme Court should be regarded as a necessary implication of any federal scheme.
(ii) The Supreme Court should have a final and Appellate Jurisdiction on question relating to the Constitutional validity of the laws.
(iii) The Supreme Court should be the best available forum for the adjudication of all disputes between the Union and a unit and between one unit and another and it must have exclusive original jurisdiction in such disputes.
(iv) The Supreme Court should have an advisory jurisdiction.

Accordingly, the framers of the Constitution provided for the Supreme Court, the position of which can be discussed with reference to its powers as an appellate court, as Federal Court and as a guardian of the Constitution.\footnote{Dr G.B.Reddy ‘Judicial Activism in India’ Georgia Law Agency Hyderabad 1st Edition 2001 , p 68-69.}

(a) POWERS AND FUNCTIONS OF APEX COURT

The Supreme Court of India is the highest judicial forum and final court of appeal as established by Part V, Chapter IV of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is the guardian of the Constitution. The Supreme Court of India has a
Constitutional obligation to protect the Constitution by upholding the Constitutionalism. The Supreme Court has a power to declare any law made by the parliament is un-constitution in the event; law made by the parliament of India violates the Fundamental Rights of the Constitution of India.

The Supreme Court of India has more powers than any Supreme Court in any part of the world. It is the interpreter and guardian of the Constitution. It can be moved for the enforcement of the Fundamental Rights. For this purpose, it can issue writs like Habeas Corpus, Mandamus, Quo Warranto, Certiorari and writ of prohibition. The orders of the Supreme Court are binding on the executive. In an emergency, however, the President has the power to suspend the right to move the Supreme Court. Thus, it is the highest court of justice in India and the citizens of India look to it for justice.

Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. The Supreme Court is meant to be the last resort and highest appellate court which takes up appeals against judgments of the High Courts of the states and territories. Also, disputes between states or petitions involving a serious infringement of fundamental and human rights are directly brought directly to the Supreme Court.

(b) CONSTITUTION AND SUPREME COURT: The Supreme Court is the highest judicial tribunal of India and as such it is armed with extensive powers. It exercises original, appellate and advisory jurisdiction under the Constitution of India.
(c). ORIGINAL JURISDICTION:

Article 32\(^{446}\) of the Indian Constitution guarantee to the Citizens of India right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights guaranteed under part III of the Constitution. It also extends to all disputes between the Union Government and one or more States as also disputes arising between the States of the Indian Union.

(d). APPELLATE JURISDICTION:

(a) In civil cases, an appeal from the judgment of the High Court can be taken for appeal to the Supreme Court. (b) In criminal cases, appeal from the judgment of the High Court can be taken to the Supreme Court, if the High Court, has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or if the High Court has withdrawn from a lower court a case for trial before itself and has on such trial convicted the accused person and sentenced him to death. Appeals can also be taken to the Supreme Court if the High Court certifies that the case is a fit one for appeal to the Supreme Court.

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\(^{446}\)Article 32: Remedies for enforcement of rights conferred by this part:-
(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution
(e). ADVISORY JURISDICTION:

The President has the power to refer a question of law or fact of public importance for the opinion and report of the Supreme Court.

7.2. ROLE OF SUPREME COURT AND HIGH COURTS:

The Supreme Court and High Courts are playing an important role in protecting and promoting the rights of the civil servants who are the backbone of the Indian Administration from the political heads who are having the power to take action against the civil servants. Upon expansion of the horizons of right to life and person liberty, the protection of rights of civil servants under Article 21 has been sought to be enforced to the servants serving under the Union and the State.

Therefore the researcher has made an attempt to explain the role Indian judiciary in protecting the rights of civil servants with the help of some important judgments of Supreme Court of India and various High Courts.

The Supreme Court in O.P.Gupta V. Union of India\textsuperscript{447} held that the suspension of the civil servant which continues for a long years and keeping the Departmental Enquiry pending for 20 years would be violative of Article 21 of the Constitution of India as the same is unreasonable and arbitrary and not in accordance with just, fair reasonable procedure contemplated under Article 21 of the constitution of India.

\textsuperscript{447}AIR 1987 SC 2257
In P.L. Dhingra Vs Union of India\textsuperscript{448}. The Supreme court of India held that power to remove or dismiss a civil servant can be exercised only by the appointing authority or an officer of equal rank and if for any reason no such officer is available then the order will have to be passed by an officer of superior rank and in no circumstances an order can be passed by an officer of lesser rank.

In P C Wadhwa Vs Union of India\textsuperscript{449}. The appellant a member of Indian civil service and holding the post of Assistant Superintendent of police in the state of Punjab and was promoted to higher post carrying higher salary in the senior time scale and posted as Additional Superintendent of police. After he had earned one increment in that post he was served with charge sheet and before the actual starting of enquiry, the official was reverted from the officiating higher post to the lower post. The ground suggested for reversion being unsatisfactory conduct. The details of unsatisfactory conduct were not specified and the appellant was not asked for any exploitation. The order of reversion entailed loss of pay, loss of seniority postponement of opportunity of proposed chance of promotion. The Honorable Supreme Court held that order of reversion made against the appellant was in effect REDUCTION IN RANK and appellant was not given opportunity of showing cause against the said action of reversion. Therefore there was violation of Article 311 of the constitution of India. Similarly in Malhar Rao K Gudgoli Vs State of Mysore\textsuperscript{450} held that reversion from officiating higher post to

\textsuperscript{448} AIR 1958 SC 36
\textsuperscript{449} AIR 1964 SC 423
\textsuperscript{450} 1967(2) Mys L J 140
lower post is that work of civil servant concerned was not satisfactory and that his record was not good, and that he was not given good account of himself in the higher post and thereby an order of reversion was passed by the competent authority without complying the mandatory provision of Article 311(2) of the Constitution of India. Therefore High Court held that the order of reversion without complying Article 311(2) would be invalid.

In *Debesh Chandra Das Vs Union of India*\(^{451}\) the petitioner Debesh Chandra Das, the chief secretary of Assam and a member of Indian civil service attached to the state cadre was appointed as secretary under the government of India, a tenure post, the tenure period was to expire in July 1969. On 20/9/1966 the cabinet secretary wrote a letter to the petitioner to opt either reverting to the state service or going on leave preparatory to retirement or serving under the government of India in the post lower than that of a secretary. The petitioner challenged the impugned order of reversion. The Honorable Supreme Court of India held that the order of reversion of the petitioner amounts to reduction in rank without following the provision of Article 311(2) of the constitution of India and hence order is not sustainable.

*State of Uttar Pradesh Vs Sughar Singh*\(^{452}\) the respondent was appointed as head constable in the U P Police force. In 1960 the respondent was deputed for training as a cadet sub- Inspector. On 16/3/1961 he was appointed as an officiating platoon commander and was worked in that post

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\(^{451}\) AIR 1970 SC 77

\(^{452}\) AIR1974 SC423
till 1968. While working as platoon commander the DIG of police passed an order reverting the respondent from the post of officiating sub-Inspector to the post of head constable on the basis of adverse entry made in the confidential report. The Supreme Court of India held that, the order of reversion was passed by way of punishment. The order was also held to be violative of Article 14 and 16 of the constitution of India, being discriminatory in nature as only respondent was reverted while large number of his juniors are continued in the higher post. Further the order of reversion is made without holding enquiry and without complying with Article 311(2) of the constitution.

In *Divisional personnel officer Vs T R Challappan*[^453] The respondent who was working in southern railway was arrested on 12/8/1972 for disorderly drunken and indecent behavior. Criminal case was registered against him under section 51A of Kerala police Act. After finding the respondent guilty, the magistrate instead of sentencing him, released on probation under section 3 of probation of offenders Act 1958. After the respondent was released, the disciplinary authority of the department passed an order on 3/1/1973 removing him from service, in view of misconduct which led to his conviction. The order of removal from service on the basis of conviction in criminal case and there was nothing to show that the respondent was heard before passing the order. The respondent challenged the order by filing the writ petition before the Honorable High Court of Kerala. The Honorable High Court of Kerala allowed the writ petition and quashed the order of removal.

[^453]: AIR1975 SC 2216
passed by the disciplinary authority. On appeal, the Honorable Supreme Court of India upheld the judgment of The Honorable High Court.

*In Union of India Vs Tulasiram Patel*\(^{454}\) is a case in which the decision rendered by Honorable Supreme Court of India has far reaching importance.

In this case tulasiram patel had challenged the service rules under which he was removed from service without holding enquiry and without giving opportunity of being heard. The respondent was convicted under section 332 of IPC for causing head injury with an iron road to his superior.

The Honorable Supreme Court of India held that dismissal, removal and reduction in rank of a government servant under the second proviso of Article 311(2) without holding enquiry was in public interest and therefore not violative of Article 311(2) and Article 14 of the constitution. Further held that, the punishment imposed by the disciplinary authority was proper and the order was justified. On this point the Honorable Supreme Court overruled its earlier judgment in *Challappan’s* case where it had held that the imposition of penalty of dismissal, removal and reduction in rank without holding enquiry was illegal.

*In U P Gnana Beej Evam Vikas Nigam Ltd and Others Vs Premchandra Gupta and Others*\(^{455}\) In the instant case charge sheet was issued against an employee and an enquiry officer was appointed to conduct the enquiry into the charges. Since the employee did not appear before the enquiry officer and ex- parte report was given by the enquiry officer against an employee.

\(^{454}\) AIR 1985 SC 84
\(^{455}\) 2000 (1) LL J 1052 SC
Without serving notice employee was dismissed from service and order of dismissal was published in newspaper.

The dismissed employee was challenged the order of dismissal. The Division Bench of the Honorable High Court held that the report of the enquiry officer was not furnished to the employee and therefore order of dismissal was set-aside. On filing special leave petition the Honorable Supreme Court observed that there was no dispute that enquiry officers report was not supplied to the employee before he was dismissed from service. The direction was issued that after reinstatement the appellant shall at liberty to proceed with the enquiry after furnishing the employee with a copy of enquiry report if so consider proper.

Further in *Tulasiram Patel case*, the Supreme Court has held that a Government Servant can be dismissed or removed from service without holding an enquiry under Art. 311 (2) (b) of the Constitution provided it was in the interest of the public.

The Court observed, “Government Servants who are inefficient, dishonest, corrupt or have become a security risk should not continue in service and should be summarily dismissed or removed from service and instead of being allowed to continue in it at public expense and at public detriment.”

The above ruling was given by a Constitution Bench with a 4-1 majority. The judgment was written by Justice D.P. Madon Pathok, Mr. Justice Thakkar, dissented. The Judges overruled the ruling of a three Judge Bench of the

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456AIR 1985 SC 1416
Supreme Court in Chaliapin’s Case which held that a delinquent Government Servant could be dismissed or removed from service only after he was given an opportunity to be heard. Conditions Laid Down Under Article 311 (2): Stipulates three conditions where an enquiry need not be held before the dismissal or removal of a Government Servant.

(i) Where a person is dismissed, removed or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge.

(ii) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an enquiry.

(iii) Where the President or the Governor as the case may be is satisfied that in the interest of the Security of the State, it is not expedient to hold such enquiry.

Referring to Article 311 (2) (b), the judges have pointed out that sometimes by not taking prompt action might result in the situation worsening and at times becoming uncontrollable. This could also be construed by the trouble makers and agitators as a sign of weakness on the part of the authorities. It would not be reasonably practicable to hold an inquiry where the Government Servant terrorises, threatens or intimidates disciplinary authority or the witnesses to the effect that they are prevented from taking action or giving evidence against him. It would not be reasonably practicable to hold the enquiry where an atmosphere of violence or general indiscipline and insubordination prevails.
Referring to Article 311 (2) (b) the judges said it would be better for the disciplinary authority to communicate to the Government Servant its reason for dispensing with the inquiry. The Court also observed that the stipulated clause regarding no inquiry in certain case was Mandatory and not Directory.

In *Narendra Kumar Chandla V. State of Haryana*,\(^{457}\) the Supreme Court was considering what protection could be given to an unfortunate servant who was working as Sub-station Attendant in the pay scale of 1400-2300 but whose right arm had to be amputated due to an incurable disease and the medical Board declared that he is unfit for the post of Sub-Station Attendant. The Supreme Court observed that;

> “Article 21 of the Indian Constitution protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with an unfortunate disease due to which, he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post to which the employee would be suitable to discharge the duties.”

In *Board of Trustees v Nadkarni*\(^{458}\) the question arose before the Supreme Court as to whether an Advocate be Permitted in all Domestic Enquiries?

The Supreme Court held that in the past there was informal atmosphere before a domestic enquiry forum and that strict rules of procedural law did not hamstring the enquiry. We have moved far away from this stage. The situation is where the employer has on his pay rolls Labour Officers. Legal Advisors, Lawyers in the garb of

\(^{457}\)1994 SCC (L&S) 882
\(^{458}\) 1983 I LLJ 1 (SC)
employees and they are appointed as Presenting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer. It applies with equal vigour to all those who must be responsible for fairplay. When the Bombay Port Trust Advisor and Junior Assistant Legal Advisor would act as the Presenting cum Prosecuting Officer in the enquiry, the employee was asked to be represented by a person not trained in law, was held utterly unfair and unjust. The employee should have been allowed to appear through legal practitioner and failure vitiated the enquiry.

In Public Service Commission v. Madhu Rana\textsuperscript{459} The question arose before the Supreme Court as to whether a Scheduled Caste/Other Backward Caste (OBC) candidate, who has migrated from State 'A' to State 'B', after the marriage, is legally entitled to claim benefit of the reservation in the latter State. The High Court, in the impugned judgments and orders, answered the aforesaid issue in favour of the respondents who are claiming the benefits of reservation in B State. Learned counsel appearing for the U.P. Public Service Commission has brought to our notice the judgment and order passed by this Court in the case of U.P. Public Service Commission Vs. Sanjay Kumar Singh, reported in (2003) 7 SCC 657. In our opinion, the judgments and orders passed by the High Court in the aforesaid Writ Petitions are contrary to the judgment and order passed by this Court in Sanjay Kumar Singh's case. In that view of the matter, we cannot sustain the judgments and orders passed by the High Court.

\textsuperscript{459} Civil Appeal No. 6451 of 2012 S.L.P (C.) No.20896 of 2010 with C.A. No.6453 of 2012 @ SLP(C) No.26616/2010 Dated September 11,2012 2012 STPL(Web) 512 SC
*Vinod Kumar Koul V. State of Jammu and Kashmir*, in the instant case the appellant, in response to an advertisement issued by the Jammu and Kashmir Services Selection Board, Jammu which was published in the newspaper dated 29.3.1996, the appellant applied for the post of Laboratory Assistant, which is a District cadre post. He appeared before the Selection Committee consisting of respondents but was not interviewed on the ground that he was not a permanent resident of District Udhampur.

The appellant challenged the decision of the Selection Committee in SSWP No.1656 of 1996 not to consider his candidature on the ground of violation of Articles 14 and 16 of the Constitution. The appellant pleaded that he was qualified for the post and fulfilled other conditions. In support of his assertion that he was a permanent resident of District Udhampur, the appellant annexed certificate dated 15.2.1994 issued by Additional Deputy Commissioner, Udhampur

After considering the arguments of the counsel for the parties, the learned Single Judge dismissed the writ petition on the premise that the selection was to be made only from the candidates belonging to District Udhampur and being a permanent resident of District Anantnag, the appellant was not entitled to be considered for appointment in District Udhampur. The Division Bench of the High Court agreed with the learned Single Judge. The Supreme Court held that In our view, the administrative decision of the Board, which

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460Civil Appeal No.5217 of 2012 (Arising out of S.L.P.(C) No. 30744 of 2010) Dated July 16,2012 2012 STPL(Web) 368 SC
is ex-facie inconsistent with the plain language of Rule 13(i), could not have been relied upon for determining eligibility of the appellant for appointment as Laboratory Assistant in District Udhhampur and the learned Single Judge and the Division Bench of the High Court committed serious error by negating the appellant's challenge to the decision of the Selection Committee not to consider his candidature and that too by overlooking the fact that at the time of submission of application, the appellant was residing in District Udhhampur, which is an integral part of the State of Jammu and Kashmir.

**In Ram Naresh Singh V. State of Bihar and others**\(^{461}\) the Supreme Court held that, the appellant was appointed as a Basic Health officer, on representation made by the appellant his post converted to that of a clerk carrying higher pay. Subsequently the Government passed the order canceling the conversion and passed an order for recovery of excess pay paid to the appellant.

The Court held that excess pay paid after the order of cancellation can only be recovered. The excess salary paid prior to the order of cancellation cannot be recovered as appointment of a clerk was not obtained by playing fraud on the Government. The Supreme Court of India protected the interest of honest, impartial and unbiased civil servants against the arbitrary act of the government but not the corrupt civil servants. As the Supreme Court of India in **Omkar Dhankar V. State of Haryana and another**\(^{462}\) held that the

\(^{461}\) AIR 2012 SC 1772

\(^{462}\) 2012 STPL(Web) 157 SC
protection of prior sanction to initiate prosecution against government servants in relation to corrupt civil servants is not necessary. In the instant case the appellant filed a criminal complaint against the respondent No. 2 in the court of duty Magistrate, Gurgaon. In his complaint, the complainant stated that he was a transporter and operating buses on the contract basis in the name of M/s Chaudhary Bus Service. On May 1, 2000, his two buses bearing registration Nos. DL-1P-7077 and DL-1PA-3927 were impounded. On that date, the third bus bearing registration No. DL-1PA- 4007 belonging to the complainant was also impounded. The respondent No. 2 at the relevant time was working as Deputy Excise and Taxation Commissioner, Gurgaon. The complainant visited his office and enquired about the impounding of his three buses. He was told that he (complainant) had not paid the passenger taxes in respect of these three buses. The respondent No. 2 told the complainant that Rs. 2 Lakhs were due towards the passenger taxes in relation to these three buses and asked the complainant to deposit that amount at his residence if he wanted the buses to be released. The complainant arranged Rs. 1, 50,000/- and paid this amount to respondent No. 2 at his residence at about 1.45 p.m. on May 1, 2000. The respondent No. 2, according to the complainant, promised him to issue receipts from the office. The complainant visited the office of the accused at about 4 p.m., but there was no one in the office except one office clerk who told him that two buses have been released and the third bus would be released on payment of Rs. 50,000/- at the residence of the respondent No. 2. The complainant paid Rs. 50,000/- at about 9.30 p.m. at the residence of the respondent No. 2
and the third bus was also released. In the complaint, the complainant alleged that the respondent No. 2 had cheated him and the public money has been embezzled and the accused also received illegal gratification; the intention of the respondent No. 2 was malafide while issuing directions to Inspector posted at different tax collection points not to accept passenger's tax at tax collection points. It was thus alleged that the accused had committed offences under Sections 420, 409 and 427 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988.

The Judicial Magistrate, First Class, Gurgaon, issued summons to the respondent No 2 to face trial under Sections 420, 406 and 161 of the Indian Penal Code (IPC). The second respondent filed revision petition against the order of Judicial Magistrate of First Class. The Additional Sessions Judge by his order allowed the Criminal Revision filed by the present respondent No. 2 and quashed the order dated June 2, 2001 passed by the Judicial Magistrate, First Class, Gurgaon, summoning him to face trial under Sections 420, 406 and 161 of the Indian Penal Code (IPC). The high Court has been pleased to dismiss the case of the complainant and upheld the decision of the Additional Session Judge. In the present Appeal two questions have been raised, namely,

(i) whether Criminal Revision Petition against the order of summoning is maintainable, and

(ii) Whether in the facts and circumstances of the present case, the sanction under Section 197 of the Code of Criminal Procedure is required.
In so-far as the first question is concerned, it is concluded by a later decision of this Court in the case of Rajendra Kumar Sitaram Pande and Others Vs. Uttam and Another\textsuperscript{463}, in the cases of Madhu Limaye Vs. State of Maharashtra\textsuperscript{464}, V.C.Shukla Vs. State\textsuperscript{465}, Amar Nath Vs. State of Haryana\textsuperscript{466}, and K.M. Mathew Vs. State of Kerala\textsuperscript{467}, and it was held as under:-

"6... This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under subsection (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same...."

In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 Cr.P.C. was available to the respondent No. 2 in challenging the order of the Magistrate directing issuance of summons.

The controversy with regard to the second question is concluded by the decision of this Court in \textit{Prakash Singh Badal and Another Vs. State of Punjab and Others}\textsuperscript{468}. This Court thus held that the offence of cheating under Section 420 or for that matter offences relates to Sections 467, 468, 471 and 120-B under Indian Penal Code, 1860 can by no stretch of imagination by their very nature be regarded as having been committed by

\textsuperscript{463} (1999) 3 SCC134
\textsuperscript{464} (1977) 4 SCC 551
\textsuperscript{465} (1980 Supp. SCC 92)
\textsuperscript{466} (1977) 4 SCC 137
\textsuperscript{467} (1992) 1 SCC 217
\textsuperscript{468} (2007) 1SCC 1
any public servant while acting or purporting to act in discharge of official duty. This Court stated in paragraph 50 of the report thus:

50. The offence of cheating under Section 420 or for that matter offences relates to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

In view of the above legal position, the Additional Sessions Judge and the High Court were not right in holding that for prosecuting the respondent No. 2 for the offences for which the summoning order has been issued, the sanction of the competent authority under Section 197 Cr.P.C. is required. The view of the Additional Sessions Judge and the High Court is bad in law.

In *Shiva Pujan Prasad (dead by LR’s) V. The State of Uttar Pradesh and another*, the Supreme Court held that, when the employee was dismissed when he is about to retire for having got appointed on forged caste certificate. The Supreme Court directed the District Collector to determine the validity of the Caste Certificate. The District Collector determined the validity of the caste certificate as genuine. The Supreme Court held that dismissal of employee on the eve of retirement is totally unjustified.

In *Sheela Joshi and Others V. Indian Airlines Limited*, when the Flight attendants gain weight against the imposed restrictions passed by the Airlines, were granted and treated on leave without pay. The Hon’ble High

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469(2010) 1 SCC 517  
470(2010) 1 SCC 376
Court held that Air Hostesses supposed to keep body weight within the minimum and maximum prescribed limit and the services of the employees can be terminated for not maintaining the body weight as per the weight chart. The Supreme Court has set-aside the order of termination without expressing any opinion and the matter was remanded for fresh enquiry.

7.3 - PROTECTIONS TO TEMPORARY CIVIL SERVANTS:

The State may legitimately employ the temporary savants to satisfy the needs of a particular contingency. The State may also regulate the conditions of services of the class of temporary servants. The persons who have been appointed as temporary servants are also entitled the protections conferred under the Constitution of India, though the temporary Government servants cannot claim all the advantages which a permanent Government servant has in the matter of security of tenure of service.

The Honorable Supreme Court of India in Champak Lal Vs Union of India\textsuperscript{471} Held that temporary civil servants are entitled to protection under Article 311(2) in the same manner as the permanent government servants. If the government takes, action against them by meeting out one of the punishment of dismissal, removal or reduction in rank. But this protection is available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment not otherwise.

\textsuperscript{471} AIR 1964 SC 1854
In *state of Bihar Vs Gopi Kishore Prasad*\(^{472}\) certain charges of corruption, bad reputation and perverse decisions were, leveled against, the probationer and were discharged without any reasonable opportunity to defend him. It was held that where termination of probationer is for alleged misconduct or in-efficiency or for some similar reasons, the termination by way of punishment because it puts a stigma on his competence and thus affects his future carrier. It was argued by the state that the respondent being a mere probationer should be discharged without enquiry into his conduct being made and his discharge should not mean any punishment to him, because he had no right to a post. The contention of the state was negatived by the Honorable Supreme Court and held that he had a right to insist upon the protection of Article 311(2) of the constitution.

Further in *S.Sail V. State of Uttar Pradesh*\(^{473}\) the Supreme Court held that, the temporary Government servants are also entitled to the protection of Article 311 of the Constitution as permanent Government servants if the Government intends to impose any of the major penalty or punishment of dismissal, removal or reduction in rank.

In *Sr. Superintendent R.M.S Cochin V. K.V.Gopinath*\(^{474}\) held that termination of service of the temporary employee without giving one month notice or one month salary, before termination as required by the rules, such an order of termination without fallowing the procedure which is required to

\( ^{472} \) AIR 1960 SC 689
\( ^{473} \) AIR 1974 SC1317
\( ^{474} \) AIR 1972 SC1487
be followed before termination is mandatory and order of termination was held illegal.

Therefore these series of the decisions of the Supreme Court of India shows that, not only the Supreme Court protected the rights of the permanent Government servants but also protected the rights of the temporary government servants and probationers by way of extending the application of Article 311 of the Constitution of India to temporary servants.

7.4 ADMINISTRATIVE TRIBUNAL

Tribunals have certain characteristics which often gives advantages over the courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject.

-THE FRANK COMMITTEE

ROLE OF ADMINISTRATIVE TRIBUNAL IN PROTECTING THE RIGHTS OF CIVIL SERVANTS:

For a long time a search was going on for a mechanism to relieve the courts, including High Courts and the Supreme Court, from the burden of service litigation which formed a substantial portion of pending litigation. This problem engaged the attention of the Law Commission which recommended for the establishment of tribunals consisting of judicial and administrative members to decide service matters.

The Parliament of India passed constitution (Forty-second Amendment) Act, 1976 which added part XIV-A in the Constitution. According to 42nd Amendment of the Constitution of India two Articles are added to the Indian Constitution namely Article 323-A and Article 323-B. Articles 323-A and
323-B enabled Parliament of India to constitute administrative tribunals for dealing with certain matters relating to service matters. Article 323-A provided that 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 local or other authority within the territory of India or under the control of Government of India or of any corporation owned or controlled by the government. Parliament was further empowered of such tribunals and also to exclude the jurisdiction of all courts except that of the Supreme Court under Article 136. In exercise of the power conferred under Article. 323-A of the Constitution, Parliament enacted the Administrative Tribunals Act, 1985, for the establishment of administrative service tribunals for deciding service disputes of civil servants of the Centre as well as of the States which was amended in 1986. The Act provided for the establishment of three types of Administrative Tribunals, namely Central Administrative Tribunal; State Administrative Tribunal and the Joint Administrative Tribunal.

With a view to easing the congestion of pending cases in various High Courts and other Courts in the country, Parliament had enacted the Administrative Tribunals Act, 1985 which came into force in July, 1985 and the Administrative Tribunals were established in November, 1985 at Delhi, Mumbai, Calcutta and Allahabad. Today, there are 17 Benches of the Tribunal located throughout the country wherever the seat of a High Court is located, with 33 Division Benches. In addition, circuit sittings are held at
Nagpur, Goa, Aurangabad, Jammu, Shimla, Indore, Gwalior, Bilaspur, Ranchi, Pondicherry, Gangtok, Port Blair, Shillong, Agartala, Kohima, Imphal, Itanagar, Aizwal and Nainital.

The Central Administrative Tribunal has been established for adjudication of disputes 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 other local authorities within the territory of India or under the control of Government of India and for matters connected therewith or incidental thereto. In the statement of objects and reasons on the introduction of the Administrative Tribunals Act, 1985, it was mentioned that the setting up of such Administrative Tribunals exclusively would go a long way in reducing the burden on the various courts and reduce pendency and would also provide to the persons covered by the Administrative Tribunals a speedy and relatively cheap and effective remedy. In addition to Central Government employees, the Government of India has notified 45 other organizations to bring them within the jurisdiction of the Central Administrative Tribunal. The provisions of the Administrative Tribunals Act, 1985 do not, however, apply to members of paramilitary forces, armed forces of the Union, officers or employees of the Supreme Court, or to persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State/Union Territory Legislatures.

A Chairman who has been a sitting or retired Judge of a High Court heads the Central Administrative Tribunal. Besides the Chairman, the authorized
strength consists of 16 Vice-Chairmen and 49 Members. The conditions of service of Chairman, Vice-Chairmen and Members are governed by the provisions of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members), Rule, 1985, as amended from time to time. As per Rule 15-A, notwithstanding anything contained in Rule 4 to 15 of the said Rules, the conditions of service and other perquisites available to the Chairman and Vice-Chairmen of the Central Administrative Tribunal shall be same as admissible to a serving Judge of a High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 and High Court Judges (Traveling Allowances) Rules, 1956 as amended from time to time.

The Tribunal follows the principles of natural justice in deciding cases and the procedure, prescribed by Evidence Act or CPC does not apply. The Tribunal is also a specialized organization, which deals with only service matters in respect of the Central Government employees and other employees who have been notified.

The Central Administrative Tribunal is empowered to prescribe its own rules of practice for discharging its functions subject to the Administrative Tribunals Act, 1985 and Rules made there under. For this purpose, the Central Administrative Tribunal Rules of Practice, 1993 have been notified. Similarly, for the purpose of laying down a common procedure for all Benches of the Tribunal, the Central Administrative Tribunal (Procedure) Rules, 1987 have been notified.
The employees of the Central Administrative Tribunal are required to discharge their duties under the general superintendence of the Chairman. Salaries and allowances and conditions of service of the officers and other employees of the Tribunal are specified by the Central Government. Pursuant to these provisions the Central Government have notified the Central Administrative Tribunal Staff (Conditions of Service) Rules, 1985.

A. ESTABLISHMENT OF TRIBUNALS: Section 4(1) of the Act provides for the establishment of Central Administration Tribunals. It also empowers the Central Government to establish an administrative tribunal for any State on receipt of such a request to establish an administrative tribunal for any State by the State Government. Section 5 provides for the composition of tribunals and benches thereof. According to sub-section (i) of section 5 each tribunal shall consist of a Chairman and such number of Vice-Chairman and other members as the appropriate government may deem fit. Section 5(2) further provides that bench shall consist of one judicial member and an administrative member.

B. JURISDICTION OF ADMINISTRATIVE TRIBUNALS: Section 14, 15 and 16 of the Administrative Tribunals Act provide for jurisdiction, powers and authority of the Central, state and the Joint Administrative Tribunals respectively. Section 15 and 16 of the Act provides the jurisdiction of the State and Joint Tribunals similar to those contained under Section 14 of the Administrative Tribunals Act.
Section 14: Jurisdiction, powers and authority of the Central Administrative Tribunal. (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a Post connected with defence or in the defence services, being, in either case, a post filed by a civilian;

(b) All service matters concerning –

(i) A member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause-(c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, 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 or society owned or controlled by the Government;
(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment. Explanation: For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or society owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of local or other authorities or corporations.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with
effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to -

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

Section 15: Jurisdiction, powers and authority of the State

Administrative Tribunal: (1) Save as otherwise expressly provided in this Act, Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to -

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section appointed to any
civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section(3) to local or other authorities and corporations or societies controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to
any local or other authority or corporation, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to -
(a) recruitment, and matters to recruitment, to any concerning service or post in connection with the affairs of such local or other authority or corporation or society; and
(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14 appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.

Section 16: Jurisdiction, powers and authority of the Joint Administrative Tribunal: A Joint Administrative Tribunal for two or more States shall exercise all the jurisdiction, powers and authority, exercisable by the Administrative Tribunals for such States.

Therefore the Administrative Tribunals Act has provided for the forum in respect of adjudication of service disputes and covers only in respect of civil
services and civil posts. The Tribunal constituted under Administrative Tribunals Act has limited jurisdiction and does not cover all disputes of persons appointed to the public service and posts. The civil posts in judiciary and the various officers of the Parliament and State Legislature are outside the scope of the Act.

Further the Administrative Tribunals Act makes it clear that, though the employees of the instrumentality of the State are public servants, their service disputes as such do not come under the jurisdiction of the Tribunal constituted under the Act. Therefore the large number of service disputes of persons employed in Public Sector Undertakings, Statutory Bodies or Registered Societies etc., are outside the jurisdiction of the Administrative Tribunals.

Further the Supreme Court in *P.U. Joshi V. Accountant General, Ahmedabad*\(^{475}\), held that question relating to the Constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions, envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State;

\(^{475}\)AIR 2003 SC 2156.
C. CIVIL SERVICE AND CIVIL POSTS: The term ‘civil service’ or ‘civil post’ is not clear because these terms are not defined. The Administrative Tribunals Act does not provide for any definition of ‘Civil Service’ and ‘Civil Posts’, though the term are more significant under the Act. The Supreme Court in State of Assam V. kanakachandra Dutta⁴⁷⁶ laid down the test relating to recognition of ‘civil post’

‘A civil post’ means a post not connected with the defence and outside the regular civil services. It is an office or a position to which duties in connection with the affairs of the State are attached. It is under the administrative control of the State but need not necessarily carry “a definite rate of pay” and may involve only part-time employment. A person holding the post is a person serving or employed under the State. The existence of the relationship of master and servant between the State and a person holding a post under it, is indicated by the State’s right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. Such a relationship may be established by -the presence of all or some of these indicia in conjunction with other circumstances, and its existence is a question of fact in each case.

Under the Mauzadari system of collecting revenue, prevailing in the Assam Valley, the revenue charge of a Mauza and the responsibility for the whole revenue of it, in the first instance, rest with the Mauzadar. Originally he may have been a revenue farmer and an independent contractor but under the existing system, he is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He is a Revenue Officer and ex-officio Assistant Settlement Officer exercising delegated powers of Government

⁴⁷⁶ AIR 1967 SC 884
and the State has the power and the right to select and appoint him and
the power to suspend and dismiss him. Though he may not be a whole-
time employee and receives by way of remuneration a commission
on his collections and sometimes a salary he holds an office on the
revenue side of the administration to which specific and onerous duties
in connection with the affairs of the State are attached.

Therefore the definition of ‘civil post’ is understood to those posts, which are
not the posts in Defence Service.

**D - SERVICE MATTERS:** The object of establishment of Administrative
Tribunals, are to try the disputes and complaints with respect to recruitment
and conditions of services of the servants of the civil servants are called
‘service matters.’ ‘Service matter’ means all matters relating to conditions of
service, such as, remuneration, pension, tenure, leave, disciplinary matters
and any other matters whatsoever,\(^{477}\) may form the subject of service matter
and are form the subject matter of dispute for adjudication by the
Administrative Tribunal. The term ‘any matter whatsoever’ was explained *in
Milan Das V. Post Master General, NE Circle, Shillong*\(^{478}\) observed that
the amplitude of this term was very wide and the rule of ejusdem generis
cannot control its scope. But in *Indian National NGO’s V. Secretary
Ministry of Defence*\(^{479}\) the full bench of the Tribunal re-examined the earlier
decision and overruled the earlier decision in Milan Das case and held that
the expression ‘service matter’ takes colour from the expression ‘all matters
relating to the conditions of services’ and therefore, the matter must have a
proximate nexus to the conditions of service and has to be read ‘ejusdem

\(^{477}\) Section 3(q) of the Administrative Tribunals Act 1985
\(^{478}\) (1987)3 ATC 965
\(^{479}\) (1992)21 ATC 261
generis.’ The effect of the Tribunal decision is that ‘any other matter whatsoever’ must have the nexus with the conditions of service, and are within the jurisdiction of Tribunal.

Further under Section 14 of the Act, the Tribunal has the jurisdiction in relation to recruitment and matter concerning recruitment, to All-India Services or to civil services and posts and to posts in connections with defence services filled in by civilian as well as the holders of such services or posts. The Full Bench of the Tribunal in *Rehmat Ullah Khan V. Union of India*\(^{480}\) held that the matters relating to remuneration, pension and other retirement benefits, tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation, leave and disciplinary matters are come within the purview of the jurisdiction of the Administrative Tribunals. Therefore the Tribunal declared that the Tribunals have a very wide subject jurisdiction.

There are certain matters in which the Supreme Court has denied the jurisdiction of the Administrative Tribunal. The Tribunal claimed jurisdiction over orders passed by Estate officer under the Public Premises (Eviction of Unauthorized Occupants) Act 1971. The Supreme Court in *Union of India V. Rashila Ram*\(^{481}\) held that the matter is not a ‘service matter’ and the Tribunal has no jurisdiction to try the case. The Supreme Court observed as follows;

\(^{480}\)(1989)10 ATC 656
\(^{481}\)2002 SCC (L&S) 1016
The Public Premises (Eviction of Unauthorized Occupants) Act 1971 was enacted for ejection of unauthorized occupants from public premises. To attract the said provisions, it must be held that the premise was a public premise, and the occupants must be held unauthorized occupant. Once the Government servant is held to be in occupation of a public premise as an unauthorized occupant within the meaning of the Act, and the appropriate order passed under the Act, the remedy to such occupants lies as provided under the Public Premises (Eviction of Unauthorized Occupants) Act 1971. By no stretch of imagination the expression ‘any other matter’ in Section 3(q) of the Administrative Tribunals Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority.

Therefore it is clear from the decision that the Tribunal cannot have the jurisdiction over orders that are made by the administration or the appropriate authority, created in the Public Premises (Eviction of Unauthorized Occupants) Act 1971 against the unauthorized occupation of quarters.

**E- POWER TO PUNISH FOR CONTEMPT:** Section 17 of the Administrative Tribunals Act provided that like High Courts, the Tribunal can also exercise power of to punish contemptor by invoking the Contempt of Courts Act 1971. Section 17 of the Act reads as follows;

A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Court Act, 1971 (70 of 1971), shall have effect subject to the modifications that -
(a) The references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) The references to the Advocate-General in section 15 of the said Act shall be construed, -

(i) In relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.

The power of Contempt is deliberately conferred upon the Tribunal in Section 17 of the Administrative Tribunals Act to do away with any possible confusion. Even after the decision of the Supreme Court in *L Chandrakumar* case the orders of the Tribunal in its Contempt Jurisdiction are not subject to appeal before the High Court. The Supreme Court of India in *T. Sudhakar Prasad V. Government of Andhra Pradesh*482 held that against the order of the Tribunal in contempt cases, the appeals lies only before the Supreme Court under Section 19 of the Contempt of Courts Act 1971.

The power of Contempt should be exercised with utmost care and restraints. Contempt can be issued only in case of ‘deliberate and willful’ disobedience of the orders of the Tribunals. The “deliberate and willful” disobedience is a matter of facts of each case. All cases of non- implementations of the orders

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4822001 SCC (L&S) 263
will not be termed as ‘willful disobedience’. The Supreme Court in *T.Dhananjay V. J. Vasudevan*\(^{483}\) held that the department sought time for the implementation of the order passed by the Tribunal in contempt proceedings and on that ground the time for implementation was extended for implementation of the order. But ultimately, the benefit as per the order of the Tribunal was denied stating that the rules do not permit the reliefs granted by the Tribunal. Court noticed that during the arguments of the original case the department did not taken that contention before the Tribunal. Therefor it was held that it is a clear case of willful violation of the order of the Court.

**F- APPLICATION BEFORE THE TRIBUNALS;**

Section 19 of the Administrative Tribunals Act provides that an application can be made by a ‘person aggrieved’ against any order which adversely affects the service rights of the civil servant. Section 19 of the Act reads as follows;

Section 19. Applications to tribunals:

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation: -- For the purposes of this sub- section," order" means an order made--

\(^{483}\)1995 SCC (L&S) 1265
(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India on by any corporation 3[ or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation 3[ or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee if any, not exceeding one hundred rupees in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.
Under Section 19 of the Act ‘person aggrieved’ has been given locus to approach the Tribunal. The affected person who makes the representation to the authority for amelioration of his grievance and in case the competent authority has not considered his grievance; the person meets the description of ‘person aggrieved’ and is entitled to approach the Tribunal by filing the application under section 19 of the Administrative Tribunals Act.

The scope of the term ‘aggrieved person’ has been enlarged by the Supreme Court in *Sudha Srivastava V. Comptroller & Auditor General of India*[^1] held that where an aggrieved employee filed the petition when he was alive, but the grievance could not be solved during his life time his legal heirs have a right to step in to the proceedings. In the instant case the sealed cover procedure was adopted during the pendency of the prosecution that resulted in posthumous acquittal. On opening of the sealed cover, the deceased employee was found to have been selected for promotion. The Supreme Court held under the circumstances the legal heirs are entitled to get the consequential benefits.

**G- ALTERNATIVE REMEDY:** A person aggrieved may approach the Tribunal for adjudication of his grievance only after exhausting the available alternative remedies before the executive authorities under the provisions of the service rules. Section 20 of the Administrative Tribunals Act provides an alternative remedy and before approaching the Tribunal it is the procedural requirement to exhaust the alternative remedies available before the authorities. Section 20 of the Act reads as follows;-

[^1]: [1996] 1 SCC 63
SECTION 20: APPLICATION NOT TO BE ADMITTED UNLESS OTHER REMEDIES EXHAUSTED:-

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.
H- LIMITATION: The Law prescribes certain conditions for approaching the judicial and quasi-judicial authorities within a specified time. Section 21 of the Administrative Tribunals Act 1985 provides the time limit within which the aggrieved civil servant can approach the Administrative Tribunals. Section reads as follows:-

Section 21: Limitation.

(1) A Tribunal shall not admit an application,--

(a) in a case where a final order such as is mentioned in clause (a) of sub- section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub- section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub- section (1), where- -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

Section 21 of the Act provides for the limitation of one year from the date of cause of action and where the representation or appeal was duly made to the competent authority and that was disposed of by an order, the limitation under section 21 starts from the date of the order. On the other hand, where a representation or appeal has been made duly but the same has not been disposed of, the limitation will starts from expiry of six months from the date of representation.

The Supreme Court in *S.S. Rathod V. State of Madhya Pradesh*\(^{485}\) the seven judge's bench of the Supreme Court held that where a statutory remedy of appeal or revision is provided, the limitation will starts after the

\(^{485}\)AIR 1990 SC 10
final disposal of the matter by the statutory authority and not from the date of original order. The Court observed that;

‘It is proper that position in such cases should be uniform. Therefore in every such case where the appeal or representation is provided by law, the cause of action first starts from the date of such order on appeal or representation and where such an order is not made, on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or a representation shall not be taken into consideration in the matter of fixing the limitation.’

I CONDONATION OF DELAY: The Administrative Tribunals have got discretionary power to condone the delay in filing the application with a prayer for such condonation of delay caused due to valid and sufficient cause or reasons. The power to condone the delay upon the Tribunal is conferred under Section 21(3) of the Act. The provision is pari materia with Section 5 of the Limitation Act 1963.

A litigant must be alert to his rights and his grievance is not brought to the notices of the court in time, he is not likely to get that grievance mitigated. Courts and the Tribunals does neither assist the persons who sits for no reasons without approaching the Courts within the prescribed period of limitation.

J- EXECUTION OF TRIBUNAL ORDERS: The implementation of the final order of the Tribunal could be enforced in two separate methods. The first method is through the process of contempt of court proceedings. The
contempt proceedings have to be initiated within the limitation\textsuperscript{486} prescribed under the Contempt of Courts Act 1971.

The other method of execution is by taking out an execution proceedings under Section 27\textsuperscript{487} of the Administrative Tribunals Act. The final order of the Tribunal has to be executed within the period of one year in terms of section 21 of the Administrative Tribunals Act. The Supreme Court has settled the law in \textit{Hukumraj Khinavasara V. Union of India}\textsuperscript{488} held that the final order of the Tribunal is executable under section 27 of the Administrative Tribunals Act within one year from the date of its becoming final. In the instant case admittedly, the final order was passed by the Tribunal on 3.3.1992, the application for execution under section 27 of the Act was filed on 13.12.1994, which is well beyond one year. Therefore under these circumstances the Tribunal was right in its conclusion that the application filed under section 27 of the Act was barred by limitation.

\textsuperscript{486} Section 20 of the Contempt of Courts Act: No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

\textsuperscript{487} Section 27: Execution of orders of a Tribunal: Subject to the other provisions of this Act and the rules, 2[ the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order] shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub- section (2) of section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed.

\textsuperscript{488} AIR 1997 SC 2100
7.5 CONSTITUTIONAL VALIDITY OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985:

Constitutional validity of the Administrative Tribunals Act, 1985 was challenged before the Supreme Court in *S.P. Sampath kumar V. union of India*,\(^489\) The Supreme Court while upholding the constitutional validity of the Act observed that, the Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice.

It was held that the Administrative Tribunals Act, 1985 which excluded the jurisdiction of the High Court under Article 226 and Article. 227 of the Constitution in respect of the service matters can pass the test of constitutionality as being within the ambit and coverage of sub clause (b) of Article 323-A of the Constitution.

Once again constitutional validity of the Administrative Service Tribunals Act, 1985 came under the scrutiny of the Supreme Court in the case of *L. Chandra Kumar v. Union of India*\(^490\). The court in this case held that Sampat Kumar was decided against the background that the litigation before the high courts had exploded in an unprecedented manner and therefore, alternative inquisitional mechanism was necessary to remedy the situation. But it is self-evident and widely acknowledged truth that tribunals have not performed well, hence drastic measures were necessary in order to elevate their standard by ensuring that they stand up to constitutional scrutiny.

\(^{489}\) AIR 1987 SC 386

\(^{490}\) AIR 1997 SC 1125
Court further held that because the constitutional safeguards which ensure the independence of the judge of the Supreme Court and the High Courts are not available to the members of the tribunals, hence, they cannot be considered full and effective substitute for the superior judiciary in discharging the function of constitutional interpretation. Against this backdrop the court came to the conclusion that Administrative Tribunals cannot perform a substitution to the High Court, it can only be supplemental. Therefore, clause 2(d) of Article 323-A and clause 3(d) of Article 323 –B of the constitution, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Article 226, 227 and 32 of the Constitution were held unconstitutional and for the same reason Section 28 of the Administrative Tribunals Act, 1985 which contains “exclusion of jurisdiction” clause was also held unconstitutional.

It was further observed by the court that the power of judicial review of the constitutional Courts is a part of the inviolable basic structure of the Constitution which cannot be ousted. However, service continue to be the courts of first instance in service matters and no writ can be directly filed in the writ courts on matters within the jurisdiction of tribunals. Though the two judge bench, one of whom must be a judicial member, of the tribunal can determine the constitutionality of any statutory provision yet it cannot determine the constitutionality of Administrative Tribunal Act, 1985. But the exercise of this power shall be subject to the scrutiny by the Division Bench of the High Court within whose jurisdiction the Tribunal is situated. By bringing back the Tribunal within the jurisdiction of the High Courts the
courts served two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication by the tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. In view of this decision the existing provision of direct appeals to the Supreme Court under Article 136 of the Constitution also stands modified. Now the aggrieved party will be entitled to move the High Court and from the decision of the Division Bench of the High Court he can move the Supreme Court under Article 136 of the Constitution. The court saved the constitutionality of Section 5(b) by providing that whenever a question involving the constitutionality of any provision arises it shall be referred to a two-member Bench, one of whom must be a judicial member.

(a) POST DEVELOPMENT AFTER L Chandra kumar V. Union of India

The Government of India Constituted the Law Commission under the Chairmanship of Justice A.R. Lakshmanan for revisit of the decision by Larger Bench of the Supreme Court. The Law Commission submitted the report after examining the true intention of the parliament to amend the Constitution by 42nd Amendment and is of the opinion that, the subject is definitely requires the attention of the Government of India and the State Governments and that the judgment of the Hon’ble Supreme Court in L. Chandra Kumar’s case requires reconsideration by a larger Bench of the Supreme Court in the interest of the government servants, both Central and

491 Supra note 490
the State, to achieve the object of the Act, namely, speedy and less expensive justice. If this proposal is taken up in the right perspective, it will not only reduce the heavy expenditure by way of fees etc. to the counsel and also the time.

The Law Commission, therefore, recommends to the Government of India to request the Hon’ble Supreme Court to reconsider *L. Chandra Kumar’s case*. In the alternative, necessary and appropriate amendments in the Administrative Tribunals Act 1985 may be effected in accordance with law. The intention of the 42nd Amendment and Article 323A, to provide for special Tribunals for the purpose of hearing specialized matters like service matters on two grounds. One is, High Court is so much burdened with other types of works and, therefore, it is not possible for it to expeditiously dispose of service matters. Second is, service matters need an amount of specialization and, therefore, an element of experience of service matters is necessary. Therefore, specialized tribunals were constituted excluding the jurisdiction of all courts of the country including the High Court. If these cases are pending for a long time, the Government servant, who is expected to assist in administration, will go on lingering before courts and his service will be affected. Expeditious disposal is necessary from the point of view of administration and that is the intention, and that is what has been debated when Article 323A was enacted.”

In spite of the Law Commission recommendation, recommending to the Government of India to request the Supreme Court to reconsider the decision in *L. Chandra Kumar’s case*. So far no steps are taken to implement
the recommendations of the Law Commission. Therefore the true intention of the 42nd Amendment after the decision of the Supreme Court in *L.Chandrakumar’s case* is partially defeated.

**7.6 JUDGEMENTS OF ADMINISTRATIVE TRIBUNALS:** After the establishment of Administrative tribunals under the Administrative Tribunals Act 1985 the Central as well as State and Joint Administrative Tribunals have been protecting the interest of Civil servants by providing early decisions with cheaper costs. Some important decisions of the tribunals discussed.

**TRANSFER:** Transfer orders can be challenged on the grounds of patent mala fides and want of public interest. The order of Transfer may also be challenged if based upon the extraneous considerations, for achieving the oblique motive.

**In N.K. Suparna V. Union of India,** the applicant has challenged the order of transfer on the ground that the transfer is mala fide. In the instant case the applicant to the notice certain irregularities in the office. Thereafter he was served with the transfer order and immediately relived. The applicant challenged the order of transfer on the ground of mala fide. After the examination of the record it was seen that the file had a D.O. letter for shifting of applicant in view of his various misdemeanors. It was then decided to transfer the applicant. In the order of transfer there was no recital that the transfer was made in “public interest.” The Tribunal held that the

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492(1991)15 ATC 1
transfer was not only on mala fide but also penal and was made for oblique purpose. Therefore the order of transfer was quashed in exercise of power under Section 19 of the Administrative Tribunals Act 1985.

In *Ved Bajaj V. Union of India*\(^\text{a}^9\) the tribunal held that, the order of transfer issued by the authority in its transfer order did not mentioned because of administrative exigencies the transfer has been made. It was also apparent from the order is that it was made to accommodate an another employee in place of the applicant, further the order of transfer was made within the academic year affecting the education of the children. The tribunal found that from the reply of the respondent the order of transfer has been made because of the complaints with regard to his integrity. The Tribunal held that the stigma of misconduct was attached to the applicant without any proper enquiry and there was no application of mind. Therefore the order of transfer was quashed by the Tribunal.

PROMOTION: Promotion is advancement in rank or a grade or both. A promotion is always the step forward towards the higher position and power. A mere discharge of duties of posts with higher pay does not mean promotion. Promotion entails duties of higher responsibilities.

There is no right to promotion, but an employee has a fundamental right to be considered for promotion if he satisfies the prescribed or required eligibility conditions. It creates a right to higher pay commensurate with the duties of the promotion post, as declared by the Government. The

\(^9\) (1997) 35 ATC 109
Administrative Tribunal in *Krishna Kumar V. Union of India*,\(^{494}\) the promotion to a higher Administrative Grade was denied on the ground that the applicant was left with less than three months service before the retirement. In view of the DOPT O.M dated 12\(^{th}\) April 1988 required that there should at least three months service before retirement for enjoying the promotion. The Tribunal held that since such restriction was absent in the recruitment rules, and hence the denial of promotion is not proper, further in case of *Kamala M.L. V. State and others*,\(^{495}\) the Karnataka Administrative Tribunal held that promotion/placement on independent charge under Rule 32 of the Karnataka Civil Service Rules pending departmental enquiry, even though the Joint Departmental Enquiry was initiated and directed to complete within six months in the earlier proceedings and the enquiry proceedings not completed even after 15 months the applicant is entitled to consider the case for promotion without reference to the pending enquiry.

**FIXATION OF PAY:** While fixing initial pay does not pose any difficulty, fixation of pay in various other stages of public service poses certain acute problems, which are necessary to be solved with reference to pay Rules which are issued by the Government from time to time. The mode and manner of fixation of pay has been statutorily provided in Rule 22 of the Fundamental Rules. Rule 22 of the Fundamental Rules provides that on first appointment a government servant shall draw initial pay on the minimum of time scale, showing rates of periodical increments. These rules provide that

\(^{494}\)2003 3 ATJ 629  
\(^{495}\)2012 K.S.L.J. 46
on promotion this pay will be first notionally increased by one increment in the lower scale and then fixed to the stage, which is immediately higher on the pay scale of the promotion post.

The Administrative Tribunal in *Namdeo Sitaramji Sinde V. Union of India*\(^{496}\) held that the feeder post and the promotion post were having identical pay scales and on that account promote was denied the benefit of fixation of pay on promotion. The Tribunal held that it was not proper. Since on promotion higher responsibility was shouldered and the promotee is entitled to an additional increment as fixation benefits.

**SUSPENSION:** The important question was came up for consideration before the Central Administrative Tribunal as to whether prolonged suspension pending disciplinary proceedings are justified in *M.Rathinasabapathi V. Sr. Divisional Manager Southern Railway and Others*\(^{497}\) the Administrative Tribunal observed as follows;

The Railway Servant’s (D and A) Rules 1968, provides for the railway servants being placed under suspension whether the disciplinary proceeding against the servant is contemplated or is pending and that no time limit is specified therein, it is necessary to go to the roots of the question of the suspension. It is common knowledge that public interest should be the guiding factor in deciding to place a Government servant under suspension and the disciplinary authority should exercise discretion to decide the

\(^{496}\) (1997)35 ATC 238 (Mum)

\(^{497}\) 1986 (3) SLR 350
question of placing an official under suspension having regard to the factors such as;

(i) Whether the continuance in office of the Government servant will prejudice the investigation, trial or any enquiry,
(ii) Whether such continuance in office will be against public interest.

The Tribunal in the instant case found that the applicant has been kept under suspension for long period with the payment of subsistence allowance pending departmental enquiry against the applicant. The Tribunal having regard to the facts and circumstance of the case ordered to revoke the order of suspension with immediate effect without prejudice to the departmental proceedings.

**FAMILY PENSION:** The question that was arose before the Administrative Tribunal as to the entitlement of pensionary benefits in the case of *Nagaratna V. The Commissioner of Exercise, Bangalore,*498 in the instant case the Husband of the applicant missing from 27.04 2000, the Endorsement issued by the police stated that the said person could not be traced. The disciplinary authority after holding the enquiry communicated the order of dismissal to the applicant retrospectively from the date of missing under Rule 14 of the Karnataka Civil Services (Classification Control and Appeal) Rules, 1957. The Civil Court passed an order declaring the missing Government Servant is treated as dead on the ground of his missing and not heard continuously for more than seven years. The Karnataka Administrative Tribunal set aside the order of dismissal and directed the

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498 2010 K.S.L.J. 299

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authority to grant pension treating the missing Government Servant as
presumed to have died.

**AGE OF RETIREMENT:** the question arose as to whether the employee is
entitled to the benefit of enhanced age of retirement from 58 years to 60
years, in the case of *Muniappa and others V. State and others*, the
*Tribunal held that* the regularization of an employee appointed on full time
basis against non-pensionable posts and paid out of contingency fund is
entitled the benefit of increase of retirement benefit given to the regular
Government Servant. Therefore it makes no difference between the regular
Government Servant and employees appointed on full time basis paid out of
contingency fund in relation to the increased age of retirement from 58 years
to 60 years.

**DEPARTMENTAL ENQUIRY:**
The Karnataka Administrative Tribunal in *Hanumanthachar V. State and
others* the Tribunal observed that; in the matter of disciplinary
proceedings, it is well settled that the Tribunal is not a court of appeal. The
power of judicial review of the High Court under Article 226 of the
Constitution of India was taken away by the power under Article 323-A and
invested in Administrative Tribunal by Administrative Tribunals Act, 1985. It
is settled law that the Tribunal has only power of judicial review of the
administrative action of the State on complaints relating to service
conditions of the employees. It is the exclusive domain of the disciplinary

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499 2010 K.S.I.J. 539
500 2012 K.S.I.J. 26
authority to consider the evidence on record and to record findings whether the charge has been proved or not. However imposing penalty on a retired Government Servant on the Ground of gross misconduct or negligence without recording the specific finding by the disciplinary authority that the official was guilty of gross misconduct or negligence is bad and set aside the order of the authority imposing the penalty upon the retired Government Servant.

Therefore the judiciary particularly the higher judiciary in India plays an important role in protecting the interest of honest and impartial civil servants against the arbitrary action of the government. Generally the government headed by the ministers, intervene in decision making process of administration, thereby every possibility of denial of justice to the honest civil servants. The only remedy against the wrong action of the decision making authority is to approach the judiciary to seek justice. The Supreme court of India is unique among the world’s judiciary because it is endowed not only with the ordinary legal authority that resides in other courts, but possesses, in addition, a vast power to protect the interest citizens of India against the arbitrary action of the Government in general and innocent and honest civil servants in particular, who are considered as the back bone of the Indian civil service. After the Establishment of Administrative Tribunals, the service Tribunals are providing justice to the civil servants at the earliest with less expense. Therefore the service Tribunals are considered as the best mechanism to protect the interest of civil servants against the arbitrary action of the government.