BOOK REVIEWS

INDUSTRIAL TRIBUNAL : WORKING, PROCEDURE AND JUDICIAL TRENDS (1985). By N. Sanajaoba. Deep and Deep Publications, New Delhi. Pp. 412. Price Rs. 225.

THIS BOOK[1] deals with an important part of industrial law—the industrial tribunals. It deals with their working and procedure, including the appellate process and makes certain suggestions on these matters. The study is both empirical and analytical. The author has investigated, through fieldwork, the actual working of the tribunal in Assam.

There are seven chapters in the book. The first chapter, entitled "A Concern for Justice: Theoretical Developments and Trends," tries to depict the tribunal as a part of the system of justice. The second chapter is concerned with the structure of the tribunal. The third and fourth chapters devote themselves to an examination of the process of hearing. The fifth chapter is concerned with the making of decision, while the sixth chapter addresses itself to a consideration of appeal and review. The seventh and last chapter records the findings of the study and proposals for reform.

The author has collected valuable material about the working of the industrial tribunal in Assam. The material reveals hard work and the presentation is systematic and readable. It is not possible to mention in this book review all the points made by the author, but a few may be mentioned by way of sample. Thus, the author has drawn attention to the paucity of research[2] in labour law, taxation law, property law and even jurisprudence. He has dealt with patterns of research[3] and given some examples of methodology.[4] He has discussed at length the mode of appointment of judges to the industrial tribunal[5] and drawn attention to the need for making the appointing mechanism independent of the executive.[6] He has drawn attention to the corrupting influences.[7] While dealing with prehearing procedure, he has given useful figures[8] as to legal literacy.

An interesting topic raised by the author[9] relates to the labour appellate tribunal, which was abolished in 1956. Many persons are of the view

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1. N. Sanajaoba, *Industrial Tribunal : Working Procedure and Judicial Trends* (1985).
2. *Id.* at 102.
3. *Id.* at 105-30.
4. *Id.* at 108-12.
5. *Id.* at 136-42.
6. *Id.* at 148-51.
7. *Id.* at 151-2. Table 17 gives in the form of a chart these "extraneous pressures".
8. *Id.* at 164, Table 18.
9. *Id.* at 283-304, 311.

that the abolition was done in a hurry. The author's preference is for revival of the appellate tribunal, with suitable safeguards. He has expressed the opinion that the "colossal backlog of arrears in the dockets of the High Court and the Supreme Court could be reduced if the industrial appeals are handed over to a labour appellate tribunal."[10] There is useful material about delay in the tribunal at Gauhati.[11] His conclusion, after recording conflicting views on the subject,[12] is:

> It could be inferred without much doubt, taking into account both the qualitative and the quantitative studies, that the *Trimurti* of P.O., managements and advocates, either jointly or severally, create the delay in tribunal proceedings. The 'know-how' of delay is with them only, the power and skill to put the know-how in use too remain with them.[13]

At another place the author says: "Delay is caused by adjournments sought by both parties...."[14] This is an aspect which definitely deserves study on all India level. As is revealed by studies made by the author,[15] even in the Gauhati Tribunal, (100 cases of which were studied by the author), the mean longevity of a case was 8 years, 1 month and 1 day. The duration is taken to commence from the date of reference and to end with the date of publication of the award. Before that (according to the author), two years would have been spent in the office of the labour commissioner. Thus, the average life span of an industrial dispute would be about 10 years. The author says:[16]

> The causes of inordinate delay have been identified as taking up cases unmethodically, non-employment of adequate hands for disposal of cases and the slackness, lack of determination, absence of proper training and experience among the P.Os.

It is not known whether the author agrees with this. Probably he does. If so, there should be some machinery for imparting training to presiding officers of industrial tribunals. This may not necessarily be a classroom training. Apart from anything else, the number may not be large enough to constitute a viable classroom. Other methods can be thought of. Probably, a one-week condensed discussion on industrial adjudication for

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10. *Id.* at 304.
11. *Id.* at 253-61.
12. *Id.* at 258-9.
13. *Id.* at 259-61.
14. *Id.* at 251.
15. *Id.* at 249-50.
16. *Id.* at 250-1, quoting from Vishnu Prasad, *Administrative Tribunals in Action* 169 (1974)

prospective entrants to the industrial bench may work. It can include a moot court.

What has been stated above will show that the book is a highly useful work. Of course, the conclusions arrived at by the author, largely based as they are on field studies in Assam, may not necessarily be valid for the whole of India. One cannot criticise the author for this limitation, because such studies cannot be expected to cover the vast geographical expanse of India. But the reviewer would like to draw attention to some problems of style. There are examples of certain defects in this regard. Consider, for example, the following sentence:[17]

> The perspectives of the Indian Public law in gestation become clearer with the incorporation of prerogative orders or, writs in articles 32, 226 and 227 of the Constitution of India and more visibly after the 42nd constitutional amendment which has incorporated Part XIVA....

A few pages later there occurs this sentence:[18]

> India's 14th Law Commission undermined tribunals as administrative bodies in 1958, so that in the seventies, the tribunals could occupy as Part XIVA of the Constitution of India. In the same way, public law mechanisms broke open the fences of constitutional jingoism and come to stay, basking the glory of public confidence.

In the same chapter the book states:[19]

> The litigations in industrial law *is* the largest sphere of litigation, only next to the litigations relating to agrarian reforms.

Further it contains these sentences:[20]

> All India Radio, Doordarshan are not Public Corporations. They remain mostly as the mouthpiece of the government. Recently, in July, 1983 Chief Minister of a Southern State was denied to address his people when his government was threatened by statewide employees' strike.

The description of the Law Commissions concerned, as "the 77th Law Commission",[21] "14th Law Commission",[22] "58th Law Commission"[23]

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17. *Id.* at 31.
18. *Id.* at 40.
19. *Id.* at 86.
20. *Id.* at 189.
21. *Id.* at 308-9.
22. *Id.* at 40.
23. *Id.* at 275.

or "79th Law Commission"[24] is not quite accurate. There have not, so far been more than 12 Law Commissions. The numbers given are really numbers of *the Reports* of the Law Commission concerned. This can be corrected in the next edition. Nevertheless, the author must be warmly complimented on his assiduous study of the Law Commission of India reports. And his explorations are not confined to reports dealing with labour tribunals.[25] He has also taken note of the Law Commission of India 77th and 79th Reports, dealing with arrears in general.[26]

There is one question of considerable academic importance on which the author's more detailed views would be appreciated. Which is the law applicable to proceedings before industrial tribunals? The author does touch the subject[27] but the point requires more detailed discussion. This may add to the length of the book, but, then, the general discussion of administrative law and administrative tribunals in the first chapter[28] can well be compressed.

Finally, there are some other statements of the legal position which, in the reviewer's opinion, can be usefully amplified. Here are two examples.

(*i*) "Industrial laws recognise certain offences, considered to be wrongs of absolute liability and in cases involving elements of ***mens rea*** in any act carrying criminal liability. The onus of proving the absence of ***mens rea*** is laid on the accused."[29]

(*ii*) "The rule against self-incrimination, which is primarily a rule in criminal jurisprudence, may not be extended to proceedings involving industrial relations."[30]

The first statement quoted above (regarding absolute criminal liability) is sought to be supported by a reference to Chandra.[31] A reference to specific cases of statutory provisions would have been welcome.

The second statement extracted above (self-incrimination) is sought to be supported by Jain Kagzi.[31a] But it is not clear whether the author has examined the principles underlying provisions relating to privilege in civil proceedings. Assuming that the Evidence Act may not, in terms, apply to industrial tribunals, the point still remains whether, on *general principles*, some privilege against being compelled to

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24. *Id.* at 281.
25. Such as the 58th *Report*.
26. *E.g.*, at *supra* note 1 at 293, 303.
27. *Id.* at 85.
28. *Id.* at 17-64.
29. *Id.* at 210.
30. *Id.* at 211.
31. Mahesh Chandra, *Industrial Jurisprudence* 119 (1976).
31*a*. M.C. Jain Kagzi, *Administrative Law* (1982).

answer incriminating questions would not be available. It should be remembered that even in countries where the law of evidence is not codified, various privileges are recognised, including the privilege against self-incrimination.

These points of detail can be taken care of, in subsequent editions. However, there is no doubt that solid research has gone into the book. Editorial assistance, if utilised by the editor or the publisher, can be of considerable utility, in enhancing the worth of the book.[32]

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32. *Cf.*, discussion in *Rank Films* v. *Video Information*, [1980] 2 A11 E.R. 273 (C.A.).

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