

IN THE modern welfare state administrative adjudication through tribunals has become an indispensable device of conflict-resolution. Administrative adjudication, compared to court litigation, is speedy, cheap, free from too elaborate legal technicalities and rigid rules of procedure and evidence. These advantages of administrative adjudication coupled with the prevalent dogma of welfare state and its consequential diverse state activities, have influenced the legislature in India to create innumerable tribunals (either as an integral part of the administration itself or as an autonomous administrative adjudicatory body). Structure, functions and procedure to be followed by such authorities, which is ostensibly guided by the situations to be tackled and problems to be solved, is far from uniform.<sup>1</sup>

The Constitution of India also recognises the existence of tribunals.<sup>2</sup> The Constitution (Forty-Second Amendment) Act 1976, which, *inter alia*, inserted Part XIVA captioned 'Tribunals' (comprising articles 323A and 323B) in the Constitution, gives further constitutional recognition to tribunals as adjudicatory institutions outside the ordinary hierarchy of regular courts of law. Article 323A empowers Parliament to establish administrative tribunals to adjudicate upon 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 any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government". Article 323B empowers Parliament or a state legislature, as the case may be, to set up tribunals to adjudicate upon 'disputes, complaints and offences' pertaining to tax, foreign exchange, import, export, industrial and labour disputes, land reforms, ceiling on urban property, elections to Parliament or state legislatures (except the matters dealt under articles 329 and 329A), production, procurement, supply and distribution of foodstuffs and offences relating thereto.

A law made under article 323A (1) and article 323B (1) establishing tribunals may, *inter alia*, specify the jurisdiction, powers and authority of the tribunal created thereunder<sup>3</sup> and while doing so it may exclude jurisdiction of all courts (except that of the Supreme Court under article 136) with respect to disputes or complaints<sup>4</sup> or to all or any of the matters falling within the jurisdiction of these tribunals.<sup>5</sup>

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1. Generally see, Jain and Jain, *Principles of Administrative Law* 179-216 (1986); S.N. Jain, *Administrative Tribunals in India : Existing and Proposed* (1973).

2. See, arts. 136 and 227.

3. Arts. 323A (2)(b) and 323B (3)(b).

4. Arts. 323A (2)(d).

5. Art. 323B (3)(d).

Parliament gave effect to article 323A (1) by enacting the Administrative Tribunals Act 1985 (ATA)<sup>6</sup> for speedy adjudication by administrative tribunals of disputes and complaints regarding service matters of Central and state government employees.<sup>7</sup> It provides for the establishment of administrative tribunals, namely, Central Administrative Tribunals (CAT); State Administrative Tribunals (SAT) and Joint Administrative Tribunals (JAT) (for two or more states, if they so desire). It deals with their composition, jurisdiction, powers, authority and procedure to be followed by them.

The book under review<sup>8</sup> offers an exhaustive, lucid and comprehensive section-wise commentary of ATA. It, accordingly, follows the scheme of ATA and is accordingly divided into five chapters, namely, Preliminary; Establishment of Tribunals and Benches thereof; Jurisdiction, Powers and Authority of Tribunals; Procedure and Miscellaneous. Contents of all these chapters do not only demonstrate immense scholarship of the author but also his detailed and searching analysis of ATA. The author delves deep into a variety of issues, emerged as well as emerging, relating to implementation of ATA and functioning of the administrative tribunals constituted thereunder. It is very significant to note that these tribunals, unlike other tribunals in vogue, exhibit three important features. *First*, they are vested with all the jurisdiction, powers and authority hitherto exercised by all courts, except the Supreme Court, in relation to service matters mentioned in article 323A (a).<sup>9</sup> *Second*, they are empowered to punish for their contempt.<sup>10</sup> *Third*, an order passed by an administrative tribunal is 'final' and therefore, cannot be challenged in any court including a High Court either under article 226 or article 227 of the Constitution.<sup>11</sup>

Thus, the ATA excludes judicial review of a High Court (including its writ jurisdiction conferred by article 226 and supervisory jurisdiction over tribunals bestowed by article 227) and makes the administrative tribunals equally effective, efficacious and alternative to a High Court in service matters falling within the purview of these tribunals.

The author, justifying such an exclusion of judicial review of the High Courts, observes :

It cannot thus be said that civil servants are being denied the right of judicial review through the establishment of the new exclusive adjudicatory machinery. Only the forum of judicial review has been changed. Instead of the matter going first to the civil court or to the High Court and thereafter to the Supreme Court, what has been provided is that the matter shall first go to these new Tribunals and thereafter to the Supreme Court.<sup>12</sup>

6. For statement of objects and reasons, see, *Gazette of India*, pt.II, s.2 (25 Jan. 1985).

7. The Act is not applicable to members of the armed forces, officers and servants of the Supreme Court, High Courts and subordinate courts; and secretarial staff members of either House of Parliament, state legislature and Legislature of Union Territory (*vide s. 2*).

8. K.N. Goyal, *Administrative Tribunals Act 1985* (2nd ed. 1990).

9. S. 28.

10. S. 17.

11. S. 27.

12. *Supra* note 8 at 423.

However, he rightly raises and examines a set of few significant questions arising out of the scheme of judicial review evolved under ATA. They are :

(i) Whether the Supreme Court is bound to entertain the petition of an employee governed by the Act under article 32 complaining of violation of article 14 or 16 in respect of an order of an authority or a statutory rule or an Act of Legislature?

(ii) Whether the Supreme Court can ask such a petitioner to avail the remedy of the tribunal first instead of approaching it direct ?

(iii) Whether the tribunal is an authority subject to the jurisdiction of the High Court under article 226 of the Constitution and as such amenable to writs of *quo warranto*, *mandamus*, *certiorari*, *prohibition* or similar order or direction? and

(iv) Whether the tribunal is an inferior tribunal subject to the judicial superintendence of the High Court under article 227?<sup>13</sup>

The author convincingly illustrates that though the right of an aggrieved government servant to approach the Supreme Court is guaranteed by article 32(1), the court may decline to entertain a writ petition and may direct the petitioner to pursue his remedy before the tribunal first, and only if its decision goes against him, he may approach the Supreme Court under article 136. However, the tribunal, according to the author, is not competent either to entertain a petition challenging the constitutional validity of ATA or of rules framed thereunder or of article 323A or to grant any relief. Such a petition, according to the author, can only be entertained by a High Court (under article 226) or the Supreme Court (under article 32).<sup>14</sup>

Delving into the question as to the extent of jurisdiction of the High Courts to entertain petitions against the administrative tribunals, the author, rightly opines that a High Court is still empowered to entertain a writ petition under its writ jurisdiction if that petition does not involve consideration of merits of the case in relation to recruitment to any civil service or post.<sup>15</sup>

In the absence of any indication, express or implicit, in either article 227 or 323A, exclusion of administrative tribunals from the purview of the High Courts' supervisory jurisdiction, the question as to the judicial superintendence over these administrative tribunals of the High Courts under article 227 becomes significant. The author, recalling the circumstances in which the Constitution (Forty - Second) Amendment Act 1976 (which inserted articles 323A and 323B in the Constitution and confined superintendence of the High Courts to only courts) and the Constitution (Forty - Fourth) Amendment Act 1978 (which restored the *status quo ante* the Forty-Second Amendment, including restoration of the power of superintendence of the High Courts in respect of tribunals), were enacted, rightly argues that omission of administrative tribunals either in article 323A or article 227 was inadvertent.<sup>16</sup> Assuming that this was not the case, provisions of articles 323A and

13. *Id.* at 425-6.

14. *Id.* at 426-31.

15. *Id.* at 431-7. Also see, K.I. Vibhute, "Administrative Tribunals and the High Courts : A Plea for Judicial Review", 29 *J.L.L.I.* 524 (1987).

16. *Id.* at 283.

323B of the Constitution and sections 14, 15 and 28 of ATA, he feels, unequivocally indicate that administrative tribunals substitute the High Courts and it, therefore, would be inconsistent to the legislative intention to hold that the High Courts still have judicial superintendence over these tribunals.<sup>17</sup>

Thus, administrative tribunals supplant High Courts in the service matters dealt with in ATA. And therefore, it leaves no scope to differ with the power to punish for their contempt and finality given to their orders. However, the author advises the tribunals to pass specific orders instead of orders in the form of 'decree' or 'writ' of *mandamus*, *certiorari*, *prohibition* to ensure their easy implementation and thereby to avoid unwarranted contempt petitions to the tribunals.<sup>18</sup> The author indeed deserves appreciation for elaborate and illustrative elucidation of these significant questions.

Commentary on the Central Tribunal (Procedure) Rules 1987 and extracts of different Rules framed by the Central Government under ATA and of Notifications, Rules and Regulations touching upon one or the other aspect of State Administrative Tribunals set up by the respective governments under ATA in Andhra Pradesh, Arunachal Pradesh, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa and Tamil Nadu, appended to the book, further enhance its utility.

The book under review will, undoubtedly, prove an indispensable tool not only for members of CAT, SAT and lawyers practicing in these tribunals but also to everyone who may be interested in administrative law in general and service matters and tribunalisation in particular. Eastern Book Company, Lucknow, also deserves appreciation for excellent printing.

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17. *Id.* at 284.

18. *Id.* at 416.

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## BOOKS RECEIVED FOR REVIEW

DANIEL JOHN MEADOR, *American Courts* (1991). [1st Indian Reprint 1992]. Universal Book Traders, 80 Gokhale Market, Opp. New Courts, New Delhi 110 001. Pp. vi + 113. Price Rs. 40.

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