CONSTITUTIONAL STATUS OF TRIBUNALS

I Introduction

ADMINISTRATIVE TRIBUNALS provide simple, cheap and speedy justice. Dicey apprehended danger from such tribunals to the liberty of subjects,[1] but they have become a regular part of the system of judicial administration. The British Parliament enacted the Tribunals and the Inquiries Act in 1958 which has now been consolidated in the 1971 Act. Prior to the Constitution of India 1950, administrative adjudication was in vogue. The Constitution prior to 1973 used the word tribunal in articles 136 and 227. In 1973, provision for the administrative tribunals was specifically made by the Constitution (Thirty Second Amendment) Act.

With the acceptance of welfare ideology, there was mushroom growth of public services and public servants. The courts, particularly the High Courts were inundated with cases concerning service matters. The Swaran Singh Committee, therefore, *inter alia*, recommended the establishment of administrative tribunals as a part of constitutional adjudicative system. Resultantly, the Constitution (Forty Second Amendment) Act 1976 inserted Part XIV *A* in the Constitution consisting of articles 323*A* and 323*B*. Article 323*A* provides for the establishment of administrative tribunals for adjudication or trial of disputes and complaints with respect to recruitment and condition of service of persons appointed to public services. Article 323*B* makes provision for the creation of tribunals for adjudication or trial of disputes, complaints or offences connected with tax, foreign exchange, industrial and labour disputes, land reforms, ceiling on urban property, elections to Parliament and State Legislatures, *etc*. Name of these two articles are self-executory. Parliament has exclusive power to enact a law under article 323*A* while both Parliament and State Legislatures can make laws on matters of article 323*B* subject to their legislative competence.

II Administrative tribunals

In pursuance of article 323*A*, Parliament enacted the Administrative Tribunals Act 1985 and the Central Administrative Tribunal was established on 1 November 1985 with five Benches.[2] Section 28 of this Act excluded jurisdiction of all courts except the jurisdiction of the Supreme Court under article 136 in accordance with sub-clause (*d*) of clause (2) of the article 323A of the Constitution.

In *S.P. Sampath Kumar* v. *Union of India*,[3] the constitutional validity of the 1985 Act was challenged on the ground of exclusion of power of judicial review,

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1. A.V. Dicey, *Law of the Constitution* XXXVII - XXXVIII (8th ed.).
2. See, K.C. Joshi, "Service Tribunals under the Administrative Tribunals Act", 28 *JILI* 207-12 (1986).
3. AIR 1987 SC 386.

both of the Supreme Court under article 32 and of the High Court under articles 226 and 227. During the hearing of the case, the Act was amended and the jurisdiction of the apex court under article 32 was restored. The court, in final decision held that section 28 which excludes jurisdiction of the High Courts under articles 226/227 is not unconstitutional. The court ruled that this section does not totally bar judicial review. It also said that administrative tribunals under the 1985 Act are substitute of High Courts and will deal with all service matters even involving articles 14, 15 and 16. It also advised for changing the qualifications of chairman of the tribunal. As a result, the Act was further amended in 1987. In *Union of India* v. *Parmanand,*[4] a two-judges Bench upheld the authority of the administrative tribunals to decide the constitutionality of service rules.

III Judicial review reigns

The *Sampath Kumar,*[5] ruling examined the constitutionality of the Administrative Tribunals Act 1985 and did not consider the constitutional validity of article 323*A* (2)((*d*). Subsequently, a Full Bench of the Andhra Pradesh High Court in *Sakinala Harinath* v. *State of AP,*[6] declared sub-clause (*d*) of clause (2) of article 323*A* unconstitutional. It held that this provision is repugnant to the ruling of the Supreme Court in *Kesavanand Bharati* v. *State of Kerala.*[7] Meanwhile the two Benches[8] of three judges of the apex court also recommended that the *Sampath Kumar*[9] ruling be reconsidered. Therefore, a Bench of seven judges examined the issues in a wider perspective including the constitutionality of articles 323*A* (2) (*d*) and 323*B* (3) (*d*). It also considered the power of the administrative tribunals to exercise the powers and jurisdiction of the High Courts under articles 226 and 227 of the Constitution.

After hearing the arguments both for and against, the court ruled that the power of judicial review conferred on the High Courts under article 226 and upon the Supreme Court under article 32 as well as the power of superintendence vested in the High Courts under article 227 form an integral and essential part of the Constitution constituting part of basic structure. Therefore articles 323*A* (2) (*d*) and 323 (3) (*d*) were declared unconstitutional to the extent they exclude the jurisdiction of the Supreme Court and the High Courts under articles 32 and 226/227 respectively. All provisions of a similar nature contained in the Administrative Tribunals Act 1985 or other enactments under article 323*B* both existing and to be made in future, to this extent were also declared unconstitutional.[10]

The court, contrary to *Sampath Kumar*[11] also held that these tribunals are not equal to the High Courts. It further declared that the decisions of such tribunals

4. AIR 1989 SC 1185.
5. *Supra* note 3.
6. (1994) 1 APLJ (HC) 1.
7. AIR 1973 SC 1461.
8. *R.K. Jain* v. *Union of India*, (1993) 4 SCC 120; *L. Chandra Kumar* v. *Union of India*, AIR 1995 SC 1151.
9. *Supra* note 3.
10. *L. Chandra Kumar* v. *Union of India*, AIR 1997 SC 1125 at 1150.
11. *Supra* note 3.

shall be appealable before a Bench of two judges in the High Court under whose jurisdiction the tribunal falls. However, most importantly these tribunals have been given the quasi-equal status of High Courts in restricted areas. Thus, the tribunals established under article 323*A* can still examine the constitutionality of an enactment or rule concerning matters on the anvil of articles 14, 15 and 16 of the Constitution. A similar power will vest in the tribunals created under the authority of article 323*B*.

IV Conclusion

The justification for inserting articles 323*A* and 323*B* remains valid today. The pendency of cases in the High Courts and the Supreme Court has posed an imminent danger to the administration of justice. Therefore, there is ample scope for the administrative tribunals. The short experience of working of these tribunals has not been bad although there is need for further improvement. In view of the common law prejudice, the constitutionality of these tribunals created under articles 323*A* and 323*B* has been frequently impugned. Fortunately, the Supreme Court has upheld the objective for which these tribunals have come into existence. Their journey from *S.P. Sampath Kumar*[12] to *L. Chandra Kumar*[13] has not been sterile. *Chandra Kumar*[14] has not overruled *Sampath Kumar.*[15] It has firmly accepted the role of the administrative tribunals in the administration of justice system. The principal propositions from this case are:

(i) Articles 323*A* and 323*B* are unconstitutional to the extent they exclude jurisdiction of the High Courts under articles 226/227 and of the Supreme Court under article 32 of the Constitution.

(*ii*) The tribunals constituted under part XIV *A* of the Constitution are possessed of the competence to examine the constitutional validity of statutory provisions and rules except statutes establishing these tribunals.

(*iii*) These tribunals will continue to work as courts of first instance in respect of the areas of law for which they have been constituted. The litigants cannot move the High Court directly.

(*iv*) These tribunals are not substitutes of the High Courts. Their decisions are subject to appeal before a Bench of two judges in the concerned High Court.

(*v*) No appeal will lie under article 136 to the Supreme Court directly from the decisions of these tribunals. Special leave petition will lie from the decision of the High Court.

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12. *Ibid.*
13. *Supra* note 10.
14. *Ibid.*
15. *Supra* note 3.

Thus, the Supreme Court has clearly demarcated the jurisdiction and status of these tribunals. These administrative tribunals are expected to function as a viable supplement to the higher judiciary. Nevertheless a thorough examination of the tribunal system remains a crying need of the day. It is hoped that the Union Government will look into this aspect.

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