CHAPTER II

WHAT IS A TRIBUNAL ?

Simple though its import may seem, the word "tribunal" lacks precision and its meaning is not very articulate. As Wraith and Hutchesson say that "tribunal is an unusually fluid expression. There are, for instance, 'tribunals' which draw their jurisdiction from statute but which are none the less not statutorily defined as tribunals".[1] They further say : "To the student of institutions they are pragmatic, illogical and exasperating; for they challenge his instinct to classify them, but leave him chastened in the knowledge that they can only be described...."[2] The word "tribunal" is a name given to various types of administrative bodies. The only common element running through these bodies is that they are quasi-judicial and are required to observe principles of natural justice or fair hearing while determining issues before them.

Tribunals in England differ functionally, operationally and constitutionally. There are no general rules governing tribunals. It has been stated that "the search for the generic leads always to the fading of the concept into obscurity and ambiguity."[3] Tribunals in England vary from bodies independent of the government departments to bodies manned by civil servants and working within the departmental premises. In some cases even appeal lies to the Minister from decisions of the tribunals. In some cases they are even subject to directions of the Minister.[4] It is because of this hotchpotch nature of tribunals that it has been remarked that administrative tribunals inhabit a twilight world where law and politics intermingle and are in a sense the orphaned child of both. "To the politician they are part of the judicial system in that they enable the ordinary man to obtain a cheap, fair and impartial hearing when he is affected by administrative action, to the lawyer they are not fully within the legal fold since they are, in certain aspects, an appendage of bureaucracy."[5] The Franks Committee, however, had emphasised the independence of tribunals. It stated :

1. *Administrative Tribunals* 15(1973).
2. *Ibid.* at 14.
3. Farmer, *Tribunals and Government* 184 (1974).
4. See Farmer, *ibid.* at 186. See generally Farmer, *ibid.*; and Wraith and Hutchesson, *Administrative Tribunals* (1973).
5. Wraith and Hutchesson, *ibid.* at 17.

> We consider that tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of administration. The essential point is that in all these cases Parliament has deliberately provided for a decision outside and independent of the Department concerned, either at first instance (for example in the case of Rent Tribunals and the Licensing Authorities for Public Service and Goods Vehicles) or on appeal from decision of a Minister or of an official in a special statutory position (for example a valuation officer or an insurance officer). Although the relevant statutes do not in all cases expressly enact that tribunals are to consist entirely of persons outside the Government service, the use of the term 'tribunal' in legislation undoubtedly bears this connotation, and the intention of Parliament to provide for the independence is clear and unmistakable.[6]

In the Indian context the word "tribunal" has at least three meanings. Firstly, all quasi-judicial bodies, whether part and parcel of a department or otherwise, are regarded as tribunals. Innumerable quasi-judicial bodies within the government departments exist and no systematic study has so far been made in India as to their number and functioning. The only distinguishing feature of these departmental bodies, as against purely "administrative" bodies, in most cases would be that in the process of arriving at their decisions they may have to observe some or all the norms of fair hearing or principles of natural justice. Since the departmental bodies would generally be closely associated with the departmental policies, it will be too much to regard them as tribunals for the emphasis on tribunals is their somewhat independence of the department concerned or objectivity of approach in the matter of application of policies.

Secondly, a narrow approach could be to take the view that only such bodies are tribunals as are outside the control of the department involved in the dispute, either because they are under the control of some other department (*e.g.*, the Income Tax Appellate Tribunal which is under the Ministry of Law and not the Ministry of Finance) or because of the nature of their composition (*e.g.*, the Railway Rates Tribunal whose chairman shall be, or has been, a judge of the Supreme Court or of the High Court); or because they adjudicate on disputes between private parties (*e.g.*, an industrial tribunal or the Commissioner for Workmen's Compensation). The most important aspect of the judicial mind is the independent mental process of the judge — the psychological process which arises out of his non-identification in the matters in issue before him. The type of bodies as these are endowed to a great extent with the kind of impartiality which the judge has because they are not part and parcel of the government

6. *Report of the Committee on Administrative Tribunals and Inquiries* 9 (1957)

departments which prevents them from being biased towards departmental policies or from necessarily following those policies. Perhaps even within this narrow approach, those quasi-judicial bodies which are departmental but which decide disputes between private parties may be regarded as tribunals because of their impartiality in relation to the contesting parties before them.

Thirdly, the word "tribunal" has also been used in article 136 of the Constitution. The Supreme Court has defined the term rather broadly in the context of its special leave jurisdiction under the article. In *Jaswant Sugar Mills* v. *Lakshmi Chand*,[7] the Supreme Court laid down the test of "judicial power of the state" or "trappings of a court" for determining whether a body was a tribunal or not. In a subsequent case, *Associated Cement Company* v. *P.N. Sharma*,[8] the test evolved was that the body should exercise the "inherent judicial powers" of the state. The court would not hear appeal merely from an administrative body which in its decision-making process is required "to act fairly and objectively" and "to follow the principles of natural justice", if it is not discharging the judicial powers of the state. Thus all quasi-judicial bodies are not tribunals for purposes of article 136 but only those which fulfil the test of inherent judicial powers of the state being exercised by them. The phrase "inherent judicial powers" of the state is vague and indeterminate as it is not an easy matter to identify the "inherent judicial" powers of the state.[9] The test laid down by the Supreme Court is narrower than the first meaning explained above but is broader than the second meaning (also explained above). The court has included those bodies within the term which fall within the second meaning, such as, the Income Tax Appellate Tribunal, labour tribunals, election tribunals, the Railway Rates Tribunal, etc. It has gone beyond and also included departmental bodies within the term, whether deciding a dispute between the department itself and the individuals *inter se*. Thus, Custodian-General of Evacuee Property, the Central Government exercising powers under section 111(3) of the Companies Act, 1956, the Central Board of Revenue exercising appellate powers under section 190 of the Sea Customs Act, 1878, and also the Central Government exercising powers under section 191 of the Sea Customs Act, have been regarded as tribunals.[10]

As the Forty-second Amendment to the Constitution does not define the term "tribunal" or mentions any of their attributes or inherent qualities, it is left to the legislature to prescribe the composition and constitution of the tribunals and this may have to vary from situation to

7. A.I.R. 1963 S.C. 677.
8. A.I.R. 1965 S.C. 1595.
9. See M.P. Jain and S.N. Jain, *Principles of Administrative Law* 425-27 (1973); *infra* Chapter V.
10. See *ibid.*; *infra* Appendix II.

situation. However, one thing appears to be clear. The Amendment provides that when these tribunals have been established, the legislature may abolish the jurisdiction of all courts (including 226 jurisdiction of the High Courts) except 136 jurisdiction of the Supreme Court. Thus, these tribunals are to be substituted for courts; in other words, they would be what is known as the court-substitute tribunals (as against the policy-oriented tribunals).[11] It follows that these tribunals ought to be independent of the departmental influence if they are to command respect and trust of the people. "Independence from the executive" is the magic wand which will transform these bodies from merely appendages to the bureaucracy to truly adjudicatory bodies bringing them within the judicial machinery of the state. The two key questions which arise in this regard are the method of appointment of members of the tribunals and the terms of service of the members including termination of service. It is absolutely essential to evolve appropriate mechanisms to deal with these structural aspects of tribunals so as to inspire confidence of the people in these bodies.

11. For the use of these two expressions, see Wraith and Hutchesson, *supra* note 1 at 234; Farmer, *supra* note 4, Chapter 8.