

CHAPTER III

COMPOSITION OF TRIBUNALS

As stated in the previous chapter, it is necessary to ensure independence of tribunals from the executive control so that the people may have faith in their judgments. In this regard the method of appointments to tribunals, conditions of service of their members and the tenure of members (including termination of membership) become matters of great importance.

Before moving to the Indian scene, a brief reference may be made to the position as it broadly obtains in England. The Franks Committee had recommended that the chairmen of tribunals should be appointed by the Lord Chancellor¹ and members should be appointed by the Council on Tribunals.² Even where the Crown is the appointing authority, recommendations for appointments should be made by the Lord Chancellor. As regards removal, the committee recommended that responsibility for the removal of chairmen and members should rest with the Lord Chancellor. The statute enacted in pursuance to these recommendations, the Tribunals and Inquiries Act, 1958 (now Act of 1971) falls short of these recommendations. The members of tribunals continue to be appointed by

1. The Lord Chancellor is a peculiar British institution. He combines in himself executive, legislative and judicial functions. Wade and Phillips observe: "The Lord Chancellor is normally a member of the Cabinet, though in the Second World War he did not sit in the War Cabinet. He is also Speaker of the House of Lords and has custody of the Great Seal. As the senior member of the judiciary he is entitled to preside over the two highest courts in the realm, the House of Lords and the Judicial Committee of the Privy Council, but the occasions on which two recent holders of the office have taken part in the hearing of appeals have been relatively few." *Constitutional Law* 324 (1970).

Lord Chancellor is the chief legal personage in the Cabinet. One of the important functions of the Lord Chancellor concerns the appointment of judges. Though appointment of judges to such courts as the House of Lords, the Court of Appeal and the High Court are made by the Crown, yet the appointment of the most senior of these judges is made on the advice of the Prime Minister, who normally in turn seeks the advice of the Lord Chancellor. Other judges of these courts are appointed by the Crown on the advice of the Lord Chancellor. For the multifarious functions of the Lord Chancellor, see Schuster, *The Office of the Lord Chancellor*, 10 *Camb. L. J.* 175 (1950).

2. See *infra* Chapter VI for Council on Tribunals.

Ministers However, the Act provides that the chairmen of specified tribunals are to be appointed by Ministers from a panel of persons appointed by the Lord Chancellor. Further, the Council on Tribunals may make general recommendations as to the making of appointments to membership of tribunals. In removing the members of tribunals mentioned in Schedule I to the Act concurrence of the Lord Chancellor is required.

Apart from the provisions of the Tribunals and Inquiries Act, the actual position with regard to the appointment of chairmen is as follows : "Approximately two-thirds of all statutory tribunals now have chairmen who are either appointed directly by the Lord Chancellor or whose appointment, in accordance with section 7 of the Tribunals and Inquiries Act, 1971, is indirect, i.e. the actual selection for a particular area or session is made by a Minister or President but from a Lord Chancellor's panel."³

In some cases the membership of the tribunals is full-time but in many cases it is part-time. "There are some fifty or sixty permanent, salaried and pensionable appointments whose terms can be likened to those of the judiciary or the civil service. . . . Next, there is a large category of chairmen and members who either serve on panels, in the case of tribunals which meet regularly, or may be appointed *ad hoc* when they meet rarely, who are paid a fee for each day or sitting."⁴ In some cases the tribunal-service is entirely unpaid or paid only subsistence allowance. The length of appointment of non-official members (part-time or full-time) varies. Part-time appointment is most commonly for three years with the possibility of renewal. The age of retirement for members belonging to the civil service varies from 65 to 72. The Franks Committee had recommended that in general tribunal service should not be whole-time or salaried. Some appointments should be paid and the remuneration should be reviewed by the Council on Tribunals.

A survey of the Indian Statute Book (Central) reveals that the autonomous (independent of the departmental influence) court-substitute tribunals do not fall into many areas. Some of the important areas where these tribunals function are : industrial relations and labour welfare, income tax, transport (railway and motor), regulation of business and rent, etc. The statutory provisions relating to these bodies provide for their appointment by the government and the power of the government in this regard is unfettered in so far as there is no requirement of consultation by the government with anybody. The term of members of the tribunals is again a matter entirely in the hand of the government, except in case of

3. Wraith and Hutchesson, *Administrative Tribunals* 97 (1973).

4. *Ibid.* at 106.

the Railway Rates Tribunal. It has been provided by the statute that the maximum period of appointment of the members of the Railway Rates Tribunal is five years and they cannot be reappointed.

The Indian Law Institute had conducted sometime ago a study⁵ into the functioning of what is known as the court-substitute tribunals, and also autonomous adjudicatory bodies even though strictly they may not be court-substitute tribunals (in the sense that they are policy-oriented or enjoy wide discretion to make policy decisions, in deciding cases before them). On the basis of this study and also statutory provisions, the position as regards qualifications and methods of appointment in case of a few of the tribunals may be stated.

(i) The Income Tax Appellate Tribunal

The tribunal functions under the Income Tax Act, 1961. It is composed of "as many judicial and accountant members" as the Central Government thinks necessary to appoint. The qualification for a judicial member is that he should be a person who has held a civil judicial post for at least ten years, or who has been a member of the Central Legal Service for at least three years, or been in practice as an advocate for at least ten years. The qualification for an accountant member is ten years' practice as a chartered accountant or service as assistant commissioner of income tax for at least three years. Prior to 1950, the members were appointed on a term basis, the contract being for a period of five years. Now the status of the members is that of ordinary full-time civil servants, and they retire at the age of 60 years. However, the tribunal is not regarded as an income tax authority and is, thus, not subject to the control and supervision of the Board of Direct Taxes. The tribunal functions under the control of the Ministry of Law and not Ministry of Finance which is the administrative department concerned with collection of income tax. The judicial members are ordinarily selected from outside the department but accountant members are normally selected from senior members of the department since persons of requisite qualifications have not been forthcoming to be appointed as accountant members from outside. Selection is made through advertisement by a selection committee consisting of a judge of the Supreme Court, the Law Secretary of the Government of India and the President of the Tribunal.

(ii) The Railway Rates Tribunal

The tribunal has been constituted under the Railways Act, 1890. It consists of a chairman who is, or has been, a judge of the Supreme Court or of a High Court, and two other persons who have, in the opinion of

5. Unpublished.

the Central Government, "special knowledge of commercial, industrial or economic conditions of the country or of the commercial working of the railways". It is believed that the Ministry of Railways maintains standing panels for the potential appointees on the basis of merit but beyond this it is not known what process is followed in preparing these panels. The chairman and members are normally appointed for three years although the statute permits appointment up to five years. As stated before, there is an ineligibility clause in the Act which bars reappointment of the chairman and members after the expiry of their term.

(iii) Motor Accident Claims Tribunals

A state government may constitute one or more Motor Accident Claims Tribunals under the Motor Vehicles Act, 1939. The strength of the tribunal is to be determined by the state government. Persons to be appointed as members of the tribunals should be sitting or retired High Court judges or qualified to be so, or sitting or retired district judges.⁴⁷ As a matter of practice, these tribunals are generally one-man tribunals and generally district and sessions judges or additional district judges are designated as tribunals by notification. This practice is being followed in Delhi, Gujarat, Andhra Pradesh, Madhya Pradesh, Mysore, Punjab and most of the other states.

(iv) Motor Licensing Authorities

For licensing of motor transport vehicles, the Motor Vehicles Act, 1939 provides for the constitution of Regional Transport Authorities and the State Transport Authority. Each of these authorities is to consist of a chairman who has had judicial experience, and in the case of S.T.A. such other officials and non-officials, not being less than two, and in case of R.T.A. not less than two other persons (whether officials or non-officials), as the state government may think fit to appoint. No person having a financial interest in the transport undertaking can be appointed a member of a transport authority. It is permissible for the state government to constitute a R.T.A. with only one member who shall be an official with judicial experience. The Act provides for establishment of a State Transport Appellate Tribunal for hearing appeals from the orders of the S.T.A. and R.T.A. The appellate tribunal is to consist of a whole-time judicial officer not below the rank of a district judge.

The Motor Vehicles Act also provides for an Interstate Transport Commission consisting of a chairman and not less than two other members, for discharging of functions in connection with the licensing of interstate vehicles. The commission is to be appointed by the Central Government.

(v) Tribunals under the Merchant Shipping Act, 1958

The Act provides for two types of tribunals. One, *ad hoc* tribunals constituted by the Central Government to settle disputes between seamen and their employers. The tribunal may consist of one or more persons. No qualifications have been laid down for appointment of members of the tribunal. The second tribunal is the Court of Survey to hear appeals from the surveyors under the Act. The court is to consist of a judge and two assessors. The judge is to be a person who is a district judge, a judge of a Court of Small Causes, a first class magistrate, a presidency magistrate, or any other fit person appointed by the Central Government either generally or for any specified case.

(vi) Rent Controllers and the Rent Control Tribunal

The Delhi Rent Control Act, 1958 creates rent controllers and the Rent Control Tribunal to decide disputes between landlords and tenants. The latter hears appeals from the former. These authorities are appointed by the Central Government. A person can be appointed a controller if he has held for at least five years a judicial office or for at least seven years has been practising as an advocate in India. The Rent Control Tribunal is to consist of one person who is, or has been a district judge, or has for at least ten years, held judicial office. Though, under the Act, power to appoint various authorities is vested in the Central Government, yet in practice the procedure is for the government to write to the High Court to suggest names for appointment. Persons suggested by the High Court are invariably accepted by the government. If, in the opinion of the government, any of the authorities is not satisfactorily discharging its duties, the High Court is again approached for suggesting new persons. Thus, in practice appointments and transfers of the various rent control authorities are in the hands of the High Court.

(vii) The Foreign Exchange Regulation Appellate Board

It is a tribunal constituted by the Central Government under the Foreign Exchange Regulation Act, 1973 to hear appeals from the orders of the Director of Enforcement under the Act. The board is to consist of a chairman and a maximum number of four other members. No qualifications have been prescribed in the Act for members of the board. For chairman, the qualifications prescribed are : holding of a civil judicial post for at least ten years, or membership of the Central Legal Service (not below Grade I) for at least three years or practice as an advocate for at least ten years. Actually the board consists of Additional Secretary, Ministry of Law, as chairman (full-time), and two Joint Secretaries Ministry of Finance, as members (part-time). The board thus consists entirely of civil servants.

(viii) Monopolies and Restrictive Trade Practices Commission

The commission is appointed by the Central Government under the Monopolies and Restrictive Trade Practices Act, 1969. It consists of a chairman and not less than two and not more than eight members. The chairman of the commission is to be a person who is, or has been or is qualified to be, a judge of the Supreme Court or of the High Court and other members are to be persons having experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Every member is to hold office for a period not exceeding five years as may be specified by the government, but is eligible for re-appointment. However, no member is to hold office for more than a total period of ten years, or after he has attained the age of 65 years. The statute places a restriction on the removal of members by the government. Amongst others the two grounds on which a member could be removed are that he has acquired such financial or other interests as is likely to affect prejudicially his function as a member or has so abused his position as to render his continuance in office prejudicial to the public interest. Before a member could be removed on these grounds the matter has to be referred to the Supreme Court which has to hold enquiry into the matter and report to the government. After a member has ceased to hold office he is debarred for a period of five years to hold any appointment in an undertaking which is subject to the provisions of the Act.

(ix) Labour Tribunals

There are a number of labour tribunals constituted under the various enactments. The Industrial Disputes Act, 1947 provides for three types of tribunals—Labour Courts, Industrial Tribunals and National Industrial Tribunals. Without going into the details of the qualifications, it may be sufficient to state that the statute provides for legal qualifications, more particularly, holding of a judicial post for a certain period, that is, a person, who is or has been a High Court judge or district judge. Each of these bodies is to consist of one person, known as the presiding officer, only. The national tribunal is to be appointed by the Central Government and the other two bodies by the appropriate governments. So far as the actual practice in their appointments goes, the Labour Department of each government maintains the names of suitable candidates for appointment and these names are generally recommended by the respective High Courts. The Act mentions two disqualifications for appointment to the posts of presiding officers—that the person is not an independent person or he has attained the age of 65 years. Nothing is mentioned in the statute as regards the tenure of appointment of the presiding officers. As far as the Union Territory of Delhi is concerned, it appears that the practice is to appoint person for fixed periods, subject to renewal of the appointment.

The Workmen's Compensation Act, 1923 provides for appointment of an authority called the Commissioner for Workmen's Compensation to decide any question regarding the liability of any person to pay compensation to an injured workman who suffers injury in the course of and arising out of employment. The statute does not prescribe any definite qualifications for appointment of commissioners. The power to appoint them is with the state government. Actually, for instance, in Delhi a judicial officer, a sub-judge, is given the functions of the commissioner. It is believed that in Madras and Bombay it is the labour commissioner who acts as the commissioner.

To decide claims arising out of illegal deductions from wages payable to employees or unjustified delay in paying wages to them, the Payment of Wages Act, 1936 authorises the state government to appoint an Authority for the purpose. Any person fulfilling any of the following qualifications could be appointed as the authority : a presiding officer of any labour court or industrial tribunal, any commissioner for workmen's compensation or other officer with experience as a judge of a civil court or as a stipendiary magistrate. In Delhi, the practice is to appoint as the authority the commissioner for workmen's compensation, in other words, a sub-judge.

Under the Minimum Wages Act, 1948, the appropriate government may appoint an Authority to decide disputes with regard to payment of wages less than the minimum wages. The person to be appointed as the authority may be the commissioner for workmen's compensation or any officer of the Central Government exercising functions as a labour commissioner for any region, or any officer of the state government not below the rank of a labour commissioner or any other officer with experience as a judge of a civil court or as a stipendiary magistrate. In Delhi, the commissioner for workmen's compensation is assigned the responsibility to act as the authority under the Act.

Under the Employees' State Insurance Act, 1948, the state government may constitute Employees' Insurance Court to decide disputes under the Act. The court is to consist of such number of judges as the state government may think fit. Any person who is or has been a judicial officer or is a legal practitioner of five years' standing is qualified to be appointed as a judge of the court. In Delhi, a senior sub-judge is appointed for purposes of the Act, and he performs both the functions of an Employees' Insurance Court and the Medical Appeal Tribunal.

Generalisations and Suggestions

From the foregoing inconclusive survey, some general observations may be made on the structural aspects of Indian tribunals. Mostly the tribunals are single-man tribunals and legal qualifications predominate.

In a few cases legal qualifications are also combined with other qualifications like accountancy, economics, commerce, etc. In quite a number of cases persons from the judiciary (largely from the existing subordinate judiciary) are members of the tribunals. The various statutes give an unfettered power to the government to appoint members of the tribunals from amongst persons fulfilling the prescribed statutory qualifications, though in one case (the Income Tax Appellate Tribunal) the rules provide for a selection committee consisting of persons specified therein. In actual practice, however, the method of appointment varies from case to case, and quite often the members are appointed in consultation with the High Court. Mostly the members are full-time.

As regards tenure, the statutory provisions vary. The statutes are often silent as to the tenure of members, this leaving it to the government to fix the period of appointment. In a few cases the age of retirement, or the maximum age up to which a person can be appointed, or a fixed period (3 to 5 years) with restrictions on reappointment, has been laid down.

The power to terminate the services of members of the tribunals is in the hands of the government under the statutes, except in one case where the matter has to be referred to the Supreme Court (Monopolies Commission). Since in many cases the judicial officers act as tribunals, the High Courts come into the picture, and the government does not have an unfettered power to take disciplinary action against them or terminating their services.

On the whole, it may be concluded that sufficient care has been taken as a matter of practice to ensure independence of the tribunals in their operation.

What is the course of action for the future? The actual practices are not a substitute for statutorily-controlled guarantees. Further, as in future we are likely to go in for tribunalisation in a big way, the present *ad hoc* approach may have to give way to some system.

How do we ensure independence of tribunals through their appointments? If the matters of their appointment and termination of membership are not to be left entirely in the hands of the executive (and there can be no two opinions that it should not be so left), what mechanism should be evolved in this regard? We have before us, as seen above, various models including the British model. One alternative could be to entrust both the tasks to the High Court concerned or at least to cast a duty on the executive to consult the court. The difficulty with this alternative is that the High Court may lack time and resources to do the job adequately. Two other alternatives come to view. One is to impose both the functions on the Council on Tribunals to be

constituted on the British model and the other is a slight modification of this alternative, namely, that the council may be consulted in each individual case as to the methodology to be followed in both appointment and termination of service. The last alternative appears to be the best as the council itself may not be fully equipped to make appointments of persons with varying qualifications required for various tribunals. It could, however, make suggestions as to the process which may be followed in making appointments keeping in view the various factors such as the nature of the tribunal, the functions to be discharged by it and the qualifications required for its membership.

Further, instead of fossilising such matters as tenure of members and qualifications for membership in the statute, they may be determined from time to time on the basis of the experience gained by the executive in consultation with the council. Similarly, the council may be consulted in the matter of salary scales of members of the various tribunals.

Details about the structure of the council and the various functions to be discharged by it are discussed in the subsequent pages.