CHAPTER IV

TRIBUNAL PROCEDURES

Tribunals are not courts of law and therefore court procedures do not apply to them as such. They are quasi-judicial bodies and have to follow the principles of natural justice which is itself a flexible concept. Further, the different circumstances in which tribunals function go against uniformity or standardisation of the procedures of tribunals. Thus diversity in procedures is one of the features of tribunals, though the minimum which they have to follow is to give a fair hearing to the parties before them. In this regard the Franks Committee had stated :

> We agree that procedure is of the greatest importance and it should be clearly laid down in a statute or statutory instrument. Because of the great variety of the purposes for which tribunals are established, however, we do not think it would be appropriate to rely upon either a single code or a small number of codes. We think that there is a case for greater procedural differentiation and prefer that the detailed procedure for each type of tribunal should be designed to meet its particular circumstances.[1]

The committee emphasized that three aspects to be kept in view in the matter of procedures are openness, fairness and informality. The basic problem is, however, to combine an orderly procedure with an informal atmosphere. The Franks Committee observed :

> ...we are convinced that the attempt which has been made to secure informality in the general run of tribunals has in some instances been at the expense of an orderly procedure. Informality without rules of procedure may be positively inimical to right adjudication, since the proceedings may well assume an unordered character which makes it difficult, if not impossible, for the tribunal to sift the facts and weigh the evidence.... The object to be aimed at in most tribunals is the combination of

1. *Report* at 15 (1957). See also Farmer, A Model Code of Procedure for Administrative Tribunals — An Illusory Concept, 4 *N.Z.U.L.R.* 105 (1970-71). He is opposed to the idea of a uniform single procedural code for all the tribunals.

> formal procedure with an informal atmosphere. We see no reason why this cannot be achieved. On the one hand it means a manifestly sympathetic attitude on the part of the tribunal and the absence of the trappings of a court, but on the other hand such prescription of procedure as makes the proceedings clear and orderly.[2]

It has been well observed that the conflict between the need for informality and the need for some procedural guidelines "is a tight rope which not all tribunals have managed to walk successfully."[3]

Wraith and Hutchesson mention the following procedural matters which seem to be of some importance (and they are mentioned here because of their excellent articulation) :

Procedure before the hearing

- Knowledge of the right to apply
- Method of lodging application or appeal
- 'Pleadings'
- Knowlege of the case to be met
- Notice of hearing

Procedure at the hearing

- The right to a hearing
- Non-attendance by parties
- Locus standi
- Power to regulate own proceedings
- Order of events
- Adjournment, postponement, removal

Procedure in regard to evidence

- The rules of evidence
- The oath, cross-examination, written representations
- Discretionary power

Decisions[4]

A few broad conclusions with regard to tribunal procedures may be mentioned here. It may not be desirable to have a standard code for all tribunals as "the uniformity of a standard code would create more problems than it would solve."[5] The proceedings should be open to public unless

2. *Ibid.* at 15.
3. Wraith and Hutchesson, *Administrative Tribunals* at 131 (1973).
4. *Ibid.* at 129.
5. *Ibid.* at 155.

special circumstances warrant a different approach. The proceedings are to be informal but informality is not a substitute for complete lack of rules of procedure; there is a necessity to have broad guidelines of procedure embodied in the rules of each tribunal. It may be better to leave the procedural rules to be prepared by each tribunal itself for it would know its problems and circumstances better than others. However, an extraneous body (like the proposed Council on Tribunals) may be given the power to evaluate these rules with a view to guard against extreme judicialisation or extreme informality of the rules depending upon the viewpoint of varying qualities of personnel of a tribunal. Such is the position in England where one of the tasks assigned to the council is that of giving its views on procedural rules.[6] It has been pointed out that the following are the typical matters which the council normally ensures are covered in any set of procedural rules :[7]

(*a*) notice of the time and place of the hearing, of the issues to be considered and of the method of procedure to be adopted, should be given to all parties a reasonable time in advance;

(*b*) the method by which the appellant or applicant will be allowed to present his case (*i.e.*, by himself or by legal or other representative) should be stated;

(*c*) opportunity should be given for the appellant and all parties concerned to state their case properly, for the attendance of witnesses (if necessary) and for adequate cross-examination of those witnesses;

(*d*) in any case where it is contemplated that it will be necessary to arrange for a visit by the tribunal to the premises concerned, the rules should require the parties to the hearing to be given an opportunity of being present at any such visit;

(*e*) provision should be made for the means by which the decision of the tribunal is to be notified to the parties, and the tribunal should be required to give reasons (normally in writing) for its decision, whether or not expressly requested to do so by the parties;

(*f*) it should be stated whether the tribunal is to sit in public or in private; sittings should be in public unless there are good reasons for the contrary;

(*g*) express provision should be made for members of the Council to attend sittings of the tribunal.

6. See *infra*.
7. Garner, The Council on Tribunals, 1965 *Public Law* 321, 335.

A survey of the procedures of some of the tribunals in India reveals that they fail to satisfy some of the tests mentioned earlier. A few characteristics of tribunal procedures are as follows. Most of the statutory provisions in the Acts establishing tribunals are sketchy with regard to their procedures. The power to prescribe precedures varies from tribunal to tribunal. The variations are : the procedure to be prescribed by rules by the government;[8] the tribunal to prescribe its own procedure;[9] the power to make rules regarding its practice and procedure by the tribunal itself with the approval of the Central Government;[10] the tribunal to follow such procedure as it thinks fit subject to the rules made;[11] the statute silent as to the authority which will make rules with regard to the practice and procedure of the tribunal but in practice the rules on the subject being made by the state government under its general rule-making power;[12] the tribunal to follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence.[13]

Proceedings of the tribunals are generally open to public. A conspicuous example where this is not so is provided by the Income Tax Appellate Tribunal. In case of the Monopolies and Restrictive Trade Practices Commission, hearings are to be in public unless the commission decides otherwise on account of the confidential nature of the matter before it.

Legal representation is allowed though in some cases this is subject to the consent of the other party and permission by the tribunal.

In some cases the rules of procedure are quite elaborate and detailed, *e.g.*, the Railway Rates Tribunal (the Railway Rates Tribunal Rules, 1959) and the Income Tax Appellate Tribunal [the Income Tax (Appellate Tribunal) Rules, 1963] while it is not so in many other cases.

The study conducted by the Indian Law Institute discloses that the proceedings before the various tribunals are quite formal. This goes against one of the basic concepts of the tribunal-system, namely, informality. For instance, in case of the Railway Rates Tribunal, the study concludes :

8. As for example, the Employees' Insurance Court and the Foreign Exchange Appellate Board.
9. As for example, the Income Tax Appellate Tribunal and the Monopolies and Restrictive Trade Practices Commission.
10. As for example, the Railway Rates Tribunal.
11. As for example, Industrial Tribunals.
12. As for example, the Workmen's Compensation Commissioner ; the Authority under the Payment of Wages Act, 1936 ; and the Authority under the Minimum Wages Act, 1948.
13. Rent Controllers under the Delhi Rent Control Act. The effect of the provision is that the proceedings before the controller are governed by those provisions of the Civil Procedure Code which apply to a Court of Small Causes, though the Indian Evidence Act does not apply.

"This makes the tribunal somewhat similar to a judicial court in its actual functioning. The atmosphere of the tribunal's sittings is exactly like a High Court in its original jurisdiction." The study also states :

> In view of their training, background and loyalty most of the presiding officers of the tribunals tend to follow the court procedures and often do not avail of the wide discretionary powers given to them to disregard technical rules of evidence such as rule against hearsay evidence, and the various rules of procedure, to meet the demands of justice. The atmosphere of the proceedings before these tribunals except a few, such as labour courts, is not different from ordinary civil court proceedings .... Our tribunals do not exhibit expertise and informality in the procedure. The ideal of expeditious and cheap disposal is also not quite often achieved.

The reasons for the formality of atmosphere in the various tribunals seem to be twofold. Most of the tribunals are manned by persons from the judiciary who because of the habit of mind and predilections do not wish to deviate from the judicial procedures. The other reason is that the rules of procedure of the tribunals, which have been laid down, themselves are quite formal.

In England section 12 of the Tribunals and Inquiries Act provides for giving of reasons by tribunals if so requested by the parties, unless grounds of national security requires to the contrary. In India there is no such statutory requirement for tribunals to give reasons. However, the Supreme Court in several cases has held that quasi-judicial bodies are under an obligation to give reasons for their decisions.[14]

Already a number of tribunals are functioning at present and their number is increasing daily. We are also on the threshold of entering the era of tribunalization in a big way, if the new constitutional proposals are any indication and they are. Tribunals are to play (they are already playing) a major role in the judicial spectrum of the country. The time is now ripe for going into the question of the tribunal procedures in a systematic way and to find deficiencies and lacunae in them. Realising such a need in England, Wraith and Hutchesson state :

> The Franks Committee did not feel able to go very far in such matters, but conclusions that were valid in 1956 may well need to be re-examined in 1973 in view of the continuing increase in the number and range of tribunals. Consistency need not amount to a standard code, which would be no more practicable now than it was in 1956. It would, however, ensure

14. See M. P. Jain and S. N. Jain, *Principles of Administrative Law* 203-09 (1973).

> firstly that all potential procedural difficulties would be covered by the rules of all tribunals, not necessarily in the same form but in the form, so to speak, of a check-list; and secondly where the intention was the same it would be expressed in the same words. Uniformity to this extent would appear to be an advantage — even a necessity.[15]

The Indian Law Institute did make a modest attempt in that regard but the work had to be suspended because of the difficulties of personnel. In any case its resources are too modest both in terms of financial resources and personnel to undertake such a study. The Central Government may have to step in either by constituting a special committee for the purpose or entrusting the task to the proposed Council on Tribunals. In the view of the author there is an imminent necessity for undertaking this task and the task deserves some priority in view of the fact that the tribunals deal with a large segment of litigation and occupy a significant position in the machinery of justice in the country.

15. *Supra* note 3 at 156-57.