

CHAPTER VI

SUPERVISION OVER TRIBUNALS

The Franks Committee had recommended the establishment of a standing Council on Tribunals, not with a view to reviewing their decisions but to consider the constitution, organisation and procedures of tribunals, in order to strengthen their independence and to make them an effective instrument to impart justice to the people. The Tribunals and Inquiries Act, 1958 gave effect to these proposals. The proposal to establish such a council is receiving support in other common law countries as well. Thus the Commonwealth Administrative Committee of Australia recommended in 1971 the establishment of an Administrative Review Council to "supervise procedures of specified Commonwealth administrative tribunals and to examine administrative discretions under Commonwealth statutes and regulations for the purpose of recommending those in respect of which a review on the merits should be provided".¹

Under the English statute the council is to consist of not more than 15 and not less than 10 members appointed by the Lord Chancellor and the Secretary of State. In practice the chairman and members are part-time. In addition, the Parliamentary Commissioner for Administration is the ex-officio member of the council. The chairman is paid a salary on a part-time basis and other members are entitled to claim fees and expenses. The secretary is a full-time person. The principal functions of the council are to keep under review the constitution and working of tribunals and to consider and report on such particular matters as may be referred to the council under the Act with respect to tribunals. The council must be consulted under the Act before procedural rules are made for any tribunal specified in the Act. It has also to be consulted before any of the specified tribunals could be exempted from the requirement to give reasons. It may make general recommendations to Ministers about appointment to membership of the specified tribunals. Though there is no statutory obligation for the council to be consulted, in practice the council is frequently consulted when a new legislation contains a proposal to constitute a new tribunal or to enlarge the jurisdiction of an existing tribunal.

1. (1972) 46 *A. L. J.* at 3.

The council usually meets once a month. Members also make visits, though infrequently, to the tribunals.

The functions of the council are advisory and it makes its annual report to the Lord Chancellor and the Secretary of State. The reports are laid by them before Parliament with such comments, if any, as they think fit.²

In the opinion of the author there is a need, in principle, in India for such a body as the Council on Tribunals, and its need for specific purposes has been highlighted earlier. The council may be known as the Council on Tribunals as in England, or Administrative Review Council as proposed in Australia, or we may coin a new title—the Administrative Tribunals Board or Committee.

The council should be a small body consisting of generally part-time members representing legal profession (including academic lawyers), industry and civil service, etc. Members of the council may be appointed by the Law Minister in consultation with the Chief Justice of India and the Attorney-General. From the point of view of independence of the body it would have been better if the power of appointment of members would have been given to the Chief Justice but this would make the system unworkable owing to the pressure of other work on the Chief Justice and lack of adequate personnel assistance. Therefore, this compromise.

The council may be entrusted, *inter alia*, with the following tasks :

(i) Composition of Tribunals

An important role of the council will be in the matter of appointment, tenure, termination of services and conditions of service of the members of tribunals. The council should be consulted with regard to methods to be followed in appointment and termination of members of tribunals. It should look into the conditions of service of members including their salaries.

The study conducted by the Indian Law Institute into the working of the tribunals reveals that at times for long periods tribunals are without their presiding officers or members resulting in denial of justice to the people. It is well known that for long periods there had been vacancies in the Monopolies Commission. Even at present the commission has been working only with one member (and without a chairman) for a considerable period of time. This is an aspect which the council will also have to look into.

2. For literature on the subject, see Wade, *The Council on Tribunals*, 1960 *Public Law* 351; Garner, *The Council on Tribunals*, 1965 *Public Law* 321; Wraith and Hutchesson, *Administrative Tribunals*, Chapter 8 (1973); *Annual Reports of the Council on Tribunals*.

(ii) Rules of Procedure

As in England the council will have to be consulted in the formulation of rules of procedures of tribunals and will have to keep a constant watch on these procedures to ensure that these procedures are effective and keep pace with the changed circumstances.

(iii) Legislation

An important task of the council in England is to advise the government, when consulted by it, on a legislation proposing a new tribunal, etc. But this function of the council needs to be enlarged in India by consulting it on matters which may be brought within the tribunal procedure.³ In this respect the field of operation of the council may extend not only to new legislation but also existing enactments.

(iv) Bodies subject to Jurisdiction of the Council

The council's supervisory jurisdiction would of course cover the autonomous type of bodies regarded as tribunals but should also cover such other departmental adjudicatory bodies in which the element of "policy" is largely missing, *e.g.*, adjudicatory bodies concerned with cancellation of licences, proceedings against civil servants, bodies adjudicating on disputes between private parties, etc. The bodies in which procedural fairness is a dominating factor though the issues to be decided are of policy, like land acquisition proceedings, may also come within the purview of the council.

(v) Control of Statutory Discretion

At present there is a tendency on the part of the legislature to give wide discretionary powers to the administration and provide broad or vague standards (or not provide at all) for exercise of administrative powers. Sometimes this wide statutory discretion is attempted to be controlled by the executive rules but on occasions recourse is had only to administrative directions (which suit the administration because they are not legally binding on it) though it may have been possible to solve the problem through rules. An uncanalised discretion is a great threat to the rule of law and individual liberty. The council may be given the task to examine legislation and rules to find whether it is not possible to narrow down administrative discretion by incorporating the necessary standards or factors either in the statutes or rules. This of course may prove to be too big a task for the council. It may be noted that the Commonwealth Administrative Committee of Australia had contemplated one of the functions of the proposed council to be "to examine administrative discretions under

3. See Farmer, *Tribunals and Government* 178 (1974).

Commonwealth statutes and regulations for the purpose of recommending those in respect of which a review on the merits should be provided.”⁴

(vi) Ombudsman Functions

In England the Council on Tribunals often receives complaints against tribunals and statutory inquiries. The council, however, does not have ombudsman functions in relation to tribunals and statutory inquiries. Neither is it an appellate or a reviewing body to examine decisions or individual grievances. However, the council does examine the complaints received carefully and if it thinks that there is a *prima facie* case it may bring the matter to the attention of the authority concerned and it leaves the matter there. In some cases the role of the council may be more active. These will be cases of complaints, which raise a matter of general principle, or involving chairman or members personally, or delay in disposal of cases, or defects or denial of procedure. Here the corrective role of the council is much more apparent.

4. See (1972) 46 *A.L.J.* 3.