



REVIEW DOCUMENT

THE ADMINISTRATIVE TRIBUNAL ACT, 1985

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ADMINISTRATIVE TRIBUNAL ACT, 1985¹

Short Title: The Administrative Tribunals Act, 1985

Long Title: An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution and for matters connected therewith or incidental thereto.

Ministry: Ministry of Personnel, Public Grievances and Pensions

Enforcement Date: 01-07-1985

OBJECTIVE –

The 24th Constitution Amendment Act, 1976 has added the two new articles in the Indian Constitution i.e. Article 323-A & 323-B. Article 323-A was inserted in the Constitution to confer the Parliament with the power to enact Administrative Tribunal Act, 1985. This Act empowers the Central Government to establish Administrative Tribunals for solving the disputes related to recruitment and conditions of government service under the Union and State governments.

Such a law provides for the establishment of a tribunal for the Union and one for each state or for two or more states. It also makes provision for-

- (1) The jurisdiction, power and authority including power to punish for contempt to be exercised by the tribunals.
- (2) The exclusion of jurisdiction of all Courts except the jurisdiction of Supreme Court under Article 136
- (3) The transfer of all pending cases before any Court or authority to be transferred to the tribunal.
- (4) Repeal or amend any order made by the President under Article 371-D (3).

Article 323-B deals with the creations of Tribunals for solving the disputes, offences & complaints related to tax and service matters, exports-imports, industrial conflicts, supply of essential commodities, Parliaments & State Legislatures election disputes, land reforms law

¹http://legislative.gov.in/sites/default/files/A1985-13_0.pdf

enacted under Article 31-A, offences against laws w.r.t. matters specified in sub-clauses (a) – (h) and fees related matters and rent, its control, tendency and regulation issues including the rights, title and interest of landlords & tenants.

These tribunals are constituted specifically deals with the service matters of civil servants. Administrative Tribunals are substitutes of the High Courts. These tribunals are established with the aim to stop or avoid the regular approach of civil servants. The functions of Tribunals are different from the courts but they tend the same objective as that of courts to deliver justice.

Provisions- The Act is divided into 5 parts-

1) PRELIMINARY –

This part contains Section 1- Section 3. **Section 1**¹ states that the act may extend to the whole of India, including the State of Jammu and Kashmir and the Union Territory of Ladakh. **Section 2** enlists certain persons on which the Act is not applicable, they are-

- (a) any member of the naval, military or air forces or of any other armed forces of the Union (b) any officer or servant of the Supreme Court or of any of the High Court 2[or courts subordinate thereto;
- (c) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union territory having a Legislature, of that Legislature.

Section 3 provides for certain important definitions in order to understand this act. The most important being, Administrative Tribunal- in relation to a State, means the Administrative Tribunal for the State or, as the case may be, the Joint Administrative Tribunal for that State and any other State or States and "Administrative Member" means a Member of a Tribunal who is not a Judicial Member. Another important definition is of service matters, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects--

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever

¹ by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10- 2019)

2) ESTABLISHMENT OF TRIBUNALS AND BENCHES THEREOF-

This part contains Section 4 to Section 13. **Section 4** empowers the central government to establish an Administrative Tribunal. Two or more states may also have a joint Administrative Tribunal. **Section 5** talks about the composition of the Tribunal. Every tribunal shall have a Chairman and the number of Vice-Chairman and Administrative members will be appointed by the Central government as per the need. The Chairman has the power to transfer any member from one bench to another. Every bench shall have one Judicial Member and one Administrative Member. The Chairman can constitute a single bench for certain cases. Qualification, term and removal of members is contained in **Sections 6-9**.

- A person to be appointed as Chairman must fulfil the certain conditions (a) or has for two years held the office of Vice-President or has held the post of Secretary to the Government of India for two years or holding some other post with similar scale of pay of Secretary.
- A person to be appointed as Vice-Chairman must fulfil the certain measures: (a) he is or has been a Judge of a High Court; (b) has held the post of Secretary to the Government of India for two years or holding some other post with similar scale of pay of Secretary under the Central or State government; (c) has held the post of Additional Secretary to the Government of India for 5 years or any other post carrying the same pay scale of Additional-Secretary.
- A person to be appointed as Judicial Member must (a) be or have been a Judge of High Court, or (b) have been a member of Indian Legal Service and has held a post in Grade I of the Service for at least 3 years.
- A person to be appointed as an Administrative Member must (a) have held the post of an Additional Secretary to the Government of India or other equivalent post for 2 years or (b) have held the post of a Joint Secretary to the Government of India or other equivalent post, (c) have sufficient administrative experience as mentioned under Section 6 of the Act.
- The Chairman, Vice-Chairman and other members are appointed by the President whereas the Judicial Members are appointed by the President but in consultation with the Chief Justice of India. The Chairman and other members for a State Tribunal is appointed by the President but with consultation with the Governor of the State concerned.
- The tenure of a Chairman and Vice-Chairman or other members is of 5 years or until the Chairman and Vice-Chairman attains the age of 65 years and other members attain the age of 62 years as defined under Section 8 of the Act.
- The Chairman and other members can resign from his posting by writing to the President and they can also be removed by the President on the grounds of proved misbehaviour and incapacity. The members have right to get the information about the charges on them and a reasonable opportunity of hearing is provided.

3) JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS-

This Part contains Section 14 to Section 18. This part talks about the jurisdiction of the Administrative Tribunals. **Section 14** talks about jurisdiction of the Central Administrative Tribunal. The Central Tribunal can exercise all the powers, jurisdiction and authority exercisable immediately before that day by all courts except the Supreme Court in relation to the following matters:

- Recruitment to any All India Service or civil service of the Union or a civil post under the Union or civilian employees of defence services;
- All services of any local or other authority within the territory of India or under the control of the Indian Government or any corporation or society owned or controlled by the government;
- All matters of services of such persons whose service have been placed by the State Government or any local or other authority or any corporation at the disposal of the Central Government.

Section 15 gives details about the jurisdiction of State Administrative Tribunal. the Administrative Tribunal for a State shall exercise jurisdiction in relation to –

- (a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;
- (b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or society] owned or controlled by the State Government;
- (c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation [or society] or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

Under **Section 17** the tribunal also has Power to punish for contempt. A Tribunal shall have same powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971).

4) PROCEDURE-

This part contains Section 19 to Section 27. **Section 22** lays down the power and procedure of the tribunals. it is mentioned that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times

of its inquiry and deciding whether to sit in public or in private. A Tribunal has the power to decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and 1[after hearing such oral arguments as may be advanced]. A Tribunal shall have, for the purposes of 2[discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witness or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

Section 23 of the Act empowers the applicant making an application to a Tribunal under this Act to either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal. **Section 26** of the Act mentions that, If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority. On the other hand, if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.

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5) MISCELLANEOUS-

This part contains Section 28- Section 36. **Section 28** excludes the jurisdiction of any other tribunal after the coming into force of the administrative tribunal, except by --

- (a) the Supreme Court; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

Section 29A was inserted in the year 1986 and talks about the provision of appeal, in case a person is dissatisfied with the award of an administrative tribunal, the appeal shall lie to-

(a) the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or (b) any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later. **Section 32** is another important provision which mentions.

Section 32 gives protections to members of the tribunal for any decision taken in good faith. No suit, prosecution or other legal proceeding shall lie against the Central or State Government or against the Chairman, or other Member of any Central or Joint or State Administrative Tribunal, or any other person authorized by such Chairman, or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Lastly, another important section is **Section 36**. The appropriate Government has the power to make rules to provide for all or any of the following matters, namely:--

- (a) the financial and administrative powers which the Chairman of a Tribunal may exercise over the Benches of the Tribunal under section 12
- (b) the salaries and allowances and conditions of service of the officers and other employees of a Tribunal under sub-section (2) of section 13 and
- (c) any other matter not being a matter specified in section 35 in respect of which rules are required to be made by the appropriate Government.

IMPORTANT AMENDMENTS-

With the Administrative Tribunal (Amendment) Act, 2006 certain amendments were done in the principal act, which are-

- Omission of the word Vice-Chairman shall be omitted from various sections namely, Section 3, Section 4, Section 5, Section 6, Section 9, Section 10, Section 11, Section 31, Section 32, Section 35.
- Substitution of **Section 8** –
 - (1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office. Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.
 - (2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years: Provided that no Member shall hold office as such after he has attained the age of sixty-five years.

(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court.

- Insertion of **section 10-A-**

The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 (1 of 2007) shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006 (1 of 2007), may on completion of their term or attainment of the age of sixty-five or sixty-two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years.

- Substitution of **Section 12-**

Financial and administrative powers of the chairman- (1) The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the appropriate Government.

(2) The appropriate Government may designate one or more Members to be the Vice-Chairman or, as the case may be, Vice-Chairman thereof and the Members so designated shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

CONCLUSION-

Establishment of Tribunals for the civil servants is a welcoming change by the government of India. The number of pending cases in different High Courts is expected to be reduced by having the tribunals in each state or one for two or more States. The system of having a tribunal is not going in a direction but it is a step towards better administration and quick justice. In the present scenario, the tribunals are left free to interpret the principles of natural justice as there are no definite or uniform norms for them.

But there are some suggestions for the efficient & good working of the Tribunals:

- A committee should be constituted to administer the working of these Administrative Tribunals. Committee must be independent and permanent in nature which consists of people who have deep knowledge about administration.
- Existing jurisdiction of the High Courts and the Supreme Court should be maintained unharmed.

- There must be creation of an administrative bench of the Supreme Court in each High Court to deal with the appeals under Article 136.
- The salaries of each member of the Tribunal must be revised.
- There should not be any interference and bias behaviour during the appointment of the members of the Tribunals. Their working should be made more independent.



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ABOUT THE AUTHOR



I'm Shivika Goyal from University Institute of Legal Studies Panjab University Chandigarh. I'm a keen observer, a quick learner and an ardent reader. I am glad to have worked under legaleagle law forum. The Bare Act Review Internship program helped me in doing a lot of research, I studied the bare acts carefully, observed its drafting, learnt the merits and launces in each bare act. The experience was quite an enriching and the journey learning experience with this will be cherished forever.