

# JURISDICTION OF ADMINISTRATIVE TRIBUNALS IN SETTLEMENT OF DISPUTES OVER SERVICE MATTERS: A FACTUAL ANALYSIS

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## *Abstract*

*The persons employed in government institutions are generally considered the most privileged and trouble free in the society. But as a matter of fact, government employees face diverse problems in their places of work just as others do. As individual employees, they may have certain grievances, complaints regarding their service matters against the government. All such problems, conflicts, grievances etc. need to be looked into expeditiously and with justice, objectivity and fair play in order to ensure smooth running of government services and/or promote socio-economic development of the State. The Government of India has thus set up appropriate institutional structures in the form of Administrative Tribunals not only to function as the final appellate authority in respect of government orders inflicting major penalties of dismissal, removal from service and reduction in rank of government servants, but also to save the courts from an avalanche of writ petitions and appeals in service matters. This paper explores a number of issues pertaining to the merits and demerits, status, jurisdiction and procedure of the Administrative Tribunals in settlement of disputes over service matters.*

## I. INTRODUCTION

The Administrative Tribunals [*hereinafter referred to as AT*]<sup>1</sup> in India play a key role in the speedy settlement of service matters unlike the ordinary courts that are overwhelmingly burdened by thousands of pending cases. They have ultimately helped to motivate civil servants, thereby leading to increased productivity in government services and expeditious dispensation of litigations relating to service matters<sup>2</sup>.

To emphasis on the values of the ATs, Sir Andrew Leggat had observed:

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<sup>1</sup> The Administrative Tribunals were established in pursuance of the provisions of Art.323-A of the Indian Constitution and the Administrative Tribunals Act, 1985.

<sup>2</sup> See *Vatchirikuru Village Panchayat v. Deekshithulu Nori Venkatarama*, (1991) Supp 2 SCC 228. See also, *Chopra J. B. v. Union of India*, AIR 1987 SC 357.

“[t]ribunals form the largest part of the civil justice system... hearing millions of cases each year... since more of us bring a case before a tribunal than to go to any other part of the justice system... their collective impact is immense”<sup>3</sup>.

It is with this view that in this paper, we shall explore a number of issues pertaining to the definition of the term AT; the merits and demerits of ATs; their composition, status and independence; the jurisdiction and the procedure ATs adopt in settlement of service matters.

## II. DEFINITION *VIS-À-VIS* CHARACTERISTICS OF ATs

There is no universally accepted definition of the term ‘AT’. However, jurists, academicians, and administrators have made several attempts to explain the same. According to Thakker, “ATs are bodies established to decide various *quasi-judicial* issues in place of ordinary Courts”<sup>4</sup>. E. W. Susan, on the other hand, embraces them to be judicial bodies with the authority to pronounce judgment on a matter based upon evidence<sup>5</sup>.

By and large, ATs are administrative agencies with the power to adjudicate on disputes arising out of administrative actions or inactions<sup>6</sup>. They are typically supplements or substitutes of ordinary courts in the administration of justice<sup>7</sup>. Besides, they are not only characterized as *quasi-judicial*<sup>8</sup>, but they are also adjudicative bodies constituted, manned and operated by the executive<sup>9</sup>.

The other characteristics of ATs include:

<sup>3</sup> See generally Andrew Leggatt, *The Tribunals For Users: One Service, One System*, Stationery Office Books (2003). See also Elliott Mark, *Administrative Law: Text and Materials* 689, Oxford University Press (2007).

<sup>4</sup> See C. K. Thakker, *Lectures on Administrative Law* 192, Eastern Book Company (1998).

<sup>5</sup> See E.W. Susan, *Law Dictionary* 261, (2006).

<sup>6</sup> *Administrative Tribunals*, available at: <http://www.scribd.com/doc/39458125/Administrative-Tribunal> (Last visited on March 22, 2013).

<sup>7</sup> See T.S. Doabia T. S. (Justice), *The Law of Services and Dismissals*, *infra* note 15 at 3056. See also, R. Rangarajan, *Service Law: A Case Law Overview* 159, S. P. Gogia (2008) 159; Soonavala J. K., *Supreme Court on Service Laws* 47, Wadhwa and Company Nagpur (2003); *Chopra J. B. v. Union of India*, *supra* note 2. See also the view expressed in *S. P. Sampath Kumar v. Union of India*, AIR 1987 SC 386; *Union of India v. Parma Nanda*, AIR 1989 SC 1185.

<sup>8</sup> Quasi-judicial indicates a process which is both judicial as well as administrative at one and the same time. In other words, administrative tribunals are judicial in the sense that they decide facts and apply them impartially without considering executive policy. On the other hand, they are also administrative simply because the reasons for preferring them to the ordinary Courts of law are administrative. See, Jain M. P., *Indian Constitutional Law* 256, LexisNexis Butterworths Wadhwa Nagpur (2010).

<sup>9</sup> *Durga Shankar Mehta v. Raghuraj Singh*, AIR 1954 SC 520.

- ATs are created by specific enactments to adjudicate upon disputes that may arise in the course of implementation of the provisions of the relevant enactments;
- They are neither Courts nor executive bodies. They are rather a mixture of both;
- As ATs are the creation of a statute, no appeal, revision or reference lies against the decision rendered by them unless such a right has been conferred by the relevant statute. In other words, the decisions rendered by ATs are treated as final. This statutory finality however, is not capable of affecting the power of the judicial review of the Supreme Court of India [*hereinafter referred to as SCI*]<sup>10</sup>;
- The proceedings before the ATs are deemed to be judicial proceedings;
- They are independent from any administrative interference in discharge of their judicial and quasi-judicial functions<sup>11</sup>;
- They have powers of a civil court<sup>12</sup> and performs quasi-judicial functions<sup>13</sup>;
- They are independent bodies and are primarily required to observe the Principles of Natural Justice [*hereinafter referred to as PNJ*]<sup>14</sup> and follow the procedure prescribed by the relevant law;
- They are not bound by the elaborate rules of evidence nor do they follow the technicalities of rules of procedure prescribed by the Code of Civil Procedure and the Evidence Act governing ordinary courts, etc<sup>15</sup>.

### III. MERITS AND DEMERITS OF ADMINISTRATIVE TRIBUNALS

Resolution of civil service disputes through ATs has in the modern democratic society proved to be constructive, beneficial, effective and efficient. The certain, definite and distinct advantages of ATs include:

- *Simple and cost effective*: Justice by ATs is inexpensive in terms of involved costs. This is in contrast to the lengthy and cumbersome procedures involved in ordinary judicial courts as well as high costs incurred in engaging lawyers, court fees and other incidental

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<sup>10</sup> See Art.323A(2)(d), the *Constitution of India*, 1950.

<sup>11</sup> See *Administrative Tribunals: A General View*, available at: <http://pr.hec.gov.pk/chapters/2158-4.pdf> (Last visited on March 25, 2013).

<sup>12</sup> *Infra* note 47.

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *For e.g.*, no man shall be condemned unheard and that no man shall be a judge in his own case.

<sup>15</sup> See T.S. Doabia (Justice), *The Law of Services and Dismissals* 3060, Lexis Nexis Butterworths Wadhwa Nagpur, (2011).

expenses. Hence, civil servants are now able to simply seek justice an economical way<sup>16</sup>;

- *Less time consuming*: Since time is critical in all areas of life, the ATs, being specialized institutions<sup>17</sup>, have immensely helped in quick disposal of service matters;
- *Flexibility*: There is considerable amount of flexibility and adaptability in the functioning of ATs. The PNJ plays a significant role in the operation of tribunals. Unlike ordinary judicial courts, ATs are not bound by complex/rigid/technical rules of procedure or previous decisions or rule of law<sup>18</sup>;
- *Apt and adequate justice*: The ATs are not only the most appropriate means of administrative justice but also effective means of providing fair justice to individual employees. Civil servants are now less assured of just conclusion of service matters;
- *Relieve for Courts*: The existence of ATs has provided great relief to the judicial Courts which have, for decades, been preoccupied with pending petitions relating to civil, criminal and constitutional matters.
- *Informal style*: The language and text generally used in all paper works submitted to Courts is a scary factor for most people. The beauty of ATs is that discussions and writings are kept relatively informal and do not therefore single out people with lesser education.

In spite of the above cited advantages there are certain limitations in the functioning of tribunals. They include:

- The ATs often hold summary trials and they do not rely on uniform precedents hence, this might lead to arbitrary and inconsistent future decisions<sup>19</sup>.
- There is no hierarchy of ATs and this has completely excluded the scope of judicial review on service matters.

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<sup>16</sup> See *Advantages and Disadvantages of Administrative Tribunals*, available at: <http://terryandco.hubpages.com/hub/Advantages-and-Disadvantages-of-Administration-Tribunals> (Last visited on March 12, 2013); See also, *Administrative Tribunals*, available at: <http://www.hr diap.gov.in/Group12012/administrative%20tribunals.pdf> (Last visited on March 12, 2013).

<sup>17</sup> Specialization helps the judges not only to keep abreast of new specialized issues and laws but also it helps in improving the service delivery as the judges are more familiar with the dairy issues being dealt with leading to faster and concrete decisions. In other words, the weight of expert opinion endows the administrative tribunals with a higher level of professional expertise and transparency in settlement of service matters.

<sup>18</sup> See *Administrative Adjudication in India*, available at: <http://www.lawisgreek.com/administrative-adjudication-in-india> (Last visited on March 26, 2013).

<sup>19</sup> The decisions of ATs are mostly not documented, preserved or known to the general public at large. See, *Administrative Adjudication in India, ibid.*

- ATs have separate laws and procedures that circumvent the remarkable judicial principles followed by regular Courts in the country.
- A uniform code of procedure in administrative adjudication is not present. In other words, there are no set procedures and sometimes they violate even the PNJ.
- There is poor quality of investigation of facts since the rules of evidence are not strictly observed.
- There is a possibility of political interference by the Government preventing the tribunal from giving an impartial decision.

#### IV. COMPOSITION OF ADMINISTRATIVE TRIBUNALS

Under Chapter II of the *Administrative Tribunals Act, 1985* [hereinafter referred to as *ATA*], every AT may consist of a chairman and such number of vice-chairmen and judicial/administrative members as the appropriate government deems fit to appoint<sup>20</sup>. The jurisdiction, power, and authority of a tribunal is generally exercised by a Bench consisting of at least two members *i.e.*, one judicial member and one administrative member<sup>21</sup>. However, the chairman or any other member authorized by him may sit as a single Bench and exercise the powers, jurisdiction and authority of the tribunal in respect of such classes of cases as the chairman may by general or special order specify provided that, if at any stage of the hearing of any such case it appears to the chairman or such member that the case is of such a nature that it ought to be heard by a Bench consisting of two members, he may transfer the case to such Bench as the he may deem fit<sup>22</sup>.

Similarly, the chairman has power to transfer cases where questions of law and interpretation of the constitutional provisions are involved to a Bench consisting of two members<sup>23</sup> but one of whom must be a judicial member<sup>24</sup>.

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<sup>20</sup> S.5, the Administrative Tribunals Act, 1985. The members of a tribunal cannot be considered to be judges and their decisions cannot be treated to be a decree but rather an order; *see, State of T. N v. S. Thangaval*, AIR 1997 SC 2283. *See also, P. Lal v. Union of India*, AIR 2003 SC 1499 where the Apex Court observed that the procedure for composition of tribunals and Benches thereof is provided under S.5 of the Act. Chapter II of the Act further lays down candid provisions specifying qualifications for the appointment of chairman, vice-chairman and other members of the Central and State administrative tribunals.

<sup>21</sup> In *Amulya Chandra Kalita v. Union of India*, *infra* note 23, it was held that the administrative member alone cannot hear and decide a matter without the presence of the judicial member. *See also, State of M. P. v. B. R. Thakare*, AIR 2002 SC 2431.

<sup>22</sup> *Supra* note 20.

<sup>23</sup> *Mahabal Ram (Dr.) v. Indian Council of Agricultural Research*, (1994) 2 SCC 401. The view expressed in *Amulya Chandra Kalita v. Union of India*, (1991) 1 SCC 181 was held as *per incuriam*.

Apart from discharging the functions of a judicial/administrative member of the Bench to which he is appointed, the Act also empowers the chairman to:

- discharge the functions of the judicial/administrative member of any other Bench<sup>25</sup>;
- transfer the vice-chairman or any other member from one Bench to another Bench<sup>26</sup>;
- authorize the vice-chairman or the judicial/administrative member appointed to one Bench to discharge also the functions of the vice-chairman, or, as the case may be, the judicial/administrative member of another Bench<sup>27</sup>; and
- constitute a Bench of more than two members if the nature of the question involved requires him to do so<sup>28</sup>.

The Apex Court has, however, observed that if the chairman is a person who is an administrative member in one Bench, then under S.5(4)(a) of the ATA, if he goes to another Bench, he can sit on that Bench only as an administrative member but not as a judicial member<sup>29</sup>.

Under the express provisions of Chapter II of the Act, the Benches of the Central Administrative Tribunal [*hereinafter referred to as CAT*] may either sit in New Delhi (which is generally referred as the Principal Bench), Allahabad, Calcutta, Madras, New Bombay or such other places as the Central Government may, by notification, specify<sup>30</sup>. Similarly, the place at which the Principal Bench and other Benches of a State Administrative Tribunal [*hereinafter referred to as SAT*] ordinarily sits may be specified by the State Government<sup>31</sup>.

## V. JURISDICTION, SCOPE AND PROCEDURE OF ADMINISTRATIVE TRIBUNALS

Chapters III and IV of the ATA deal with the jurisdiction, powers, authority and procedure of the ATs. The CAT, an independent entity created under the Act<sup>32</sup>, is vested with all the jurisdiction, powers and authority

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<sup>24</sup> See *L. Chandra Kumar v. The Union of India*, AIR 1997 SC 1125. See also, the view expressed in *State of M. P. v. B. R. Thakare*, *supra* note 21; *Prem Kumari v. U. T. Admni., Chandigarh*, (1994) 2 SCC 401; *Dr. Mahabal Ram v. Indian Council of Agricultural Research*, (1991) 1 SCC 181; *Amulya Chandra Kalita v. Union of India*, *supra*.

<sup>25</sup> *Supra* note 20.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *State of Maharashtra v. Chhaya*, AIR 1999 SC 2014.

<sup>30</sup> *Supra* note 25.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Unni Menon v. Union of India*, (2011) 2 SCC 378.

exercisable by all the Courts except the SCI under Art.136 of the *Constitution of India, 1950* [hereinafter referred to as COI] in respect of service matters<sup>33</sup>. This primarily relates to matters of recruitment, other service matters in respect of officers belonging to All-India Services<sup>34</sup>, or of members of civil services of the Union, or those holding civil posts under the Union or defense service<sup>35</sup>. In other words, tribunals established under Art.323A, deal with all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in such matters such as pension, *etc.*, and include matters of dismissal or termination of the service of Government servants. The same authority has been vested in the SAT and JATs<sup>36</sup>.

On an inclusive analysis of the ATA, it is clearly noticeable that no civil court or High Court has jurisdiction over service matters which are covered by the Act<sup>37</sup>. Moreover, unlike the system practiced in the ordinary courts whereby one can appeal against the decisions/orders of an inferior court to a superior court to enforce a legal or constitutional right as per the express provisions of the COI, there is no such hierarchy of ATs under the ATA. There can only be one AT for the Centre and one for each state or two or more states put together<sup>38</sup>. A person can therefore have a remedy only before one of the ATs. Thus, the CAT is not an appellate authority and cannot substitute the role of authorities to clear the efficiency bar of a public servant<sup>39</sup>.

Appeals generally lie to ATs within ninety days from the date of receipt of the copy of a decree/order:

- where a decree/order has been passed by any Court (other than a High Court) in any suit/proceeding before the establishment of a tribunal being a suit/proceeding the cause of action whereon it is

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<sup>33</sup> See, S.28, *supra* note 20. See also, *P. Lal v. Union of India*, *supra* note 20. It may be noted that even though SCI under Art.136 of the COI, has jurisdiction over the decisions of the Tribunals, as a matter of right, no person can appeal to such Court since the Court has discretionary power to either grant or not to grant a special leave to appeal. Appeals can be granted only if: a) the tribunal acts in excess of its jurisdiction conferred on it by the parent law, or b) the tribunal fails to exercise a patent jurisdiction, or c) a tribunal acts illegally, or d) a tribunal erroneously applies well accepted principles of jurisprudence, or e) the tribunal order is unjust, or f) tribunal acts against the principals of natural justice, *etc.*

<sup>34</sup> Like for *e.g.*, the IAS, IPS and IFS.

<sup>35</sup> S.14, *supra* note 20.

<sup>36</sup> See *Union of India v. Parma Nanda*, AIR 1989 SC 1185.

<sup>37</sup> See *Union of India v. Deep Chand Pandey*, AIR 1993 SC 382.

<sup>38</sup> *Supra* note 36.

<sup>39</sup> *Administrator of Dadra & Nagar Haveli v. H. P. Vora*, 1992 SC 2303. See also, *State of Tamil Nadu v. Thiru K. V. Perumal*, AIR 1996 SC 2474; *Rita Biwott v. The Council for Legal Education*, HCCC Misc. Application No. 1122 of 1994; *Government of Tamil Nadu v. A. Rajapandian*, AIR 1995 SC 561.



based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of a tribunal; and

- where no appeal has been preferred against such decree/order before such establishment and the time for preferring such appeal under any law has not expired<sup>40</sup>.

The ATs, like the superior ordinary Courts also wield the power of judicial review of administrative actions of the employers on complaints relating to service conditions of employees<sup>41</sup> and the authority to issue writs. Besides, they have power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Arts.14 and 16(1) of the COI<sup>42</sup>. But, the extent of jurisdiction exercised by the SCI cannot be equated with the jurisdiction of ATs<sup>43</sup>.

In disposing of the cases, ATs are mandated to observe the canons, principles and norms of natural justice<sup>44</sup>. Moreover, they are only required to decide relevant questions/dispute points raised by the parties to the dispute<sup>45</sup>. Furthermore, the Act provides 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 PNJ<sup>46</sup>. Besides, ATs also have powers of a civil court<sup>47</sup> and

<sup>40</sup> See S.29A, *supra* note 20. See also, *John Lucas v. Addl. C. M. E., ATR*, (1987) 1 CAT 612; *Union of India v. Deep Chand Pandey*, *supra* note 37.

<sup>41</sup> *Supra* note 15.

<sup>42</sup> See *Chopra J. B. v. Union of India*, *supra* note 2. The view expressed in *S. P. Sampath Kumar v. Union of India*, *supra* note 7 was noticed. See also, *Muralidharan A. v. Yusuf Mohammed, Dr.*, (1987) 4 SLR 438.

<sup>43</sup> See *Union Public Service Commission v. Hairnyalal Dev*, AIR 1988 SC 1069.

<sup>44</sup> See *Baidyanath Mahapatra v. State of Orissa*, AIR 1989 SC 2218. See also *Director of Indian Medicine and Homoeopathy, Orissa v. Dayanidhi Dwivadi*, *infra*.

<sup>45</sup> See *Director of Indian Medicine and Homoeopathy, Orissa v. Dayanidhi Dwivadi*, (1995) Supp 4 SCC 401. In deciding the dispute, the applicant may either appear in person or through a legal practitioner who will present the case before the Tribunal. See also, Soonavala J. K., *Supreme Court on Service Laws 56*, Wadhwa and Company Nagpur (2003).

<sup>46</sup> S.22, *supra* note 20.

<sup>47</sup> For *e.g.*, power of: 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) requisitioning any public record or document or copy of such record or document from any office; e) issuing commissions for the examination of witnesses 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) perform any other matter which may be prescribed by the Central Government. See, *S. P. Sampath Kumar v. Union of India*, *supra* note 7; *Chopra J. B. v. Union of India*, *supra* note 2. See also, Warren H. Pillsbury, *Administrative Tribunals*, 36(5) *Harvard Law Review* 583 (1923); *Powers of Civil Court*, available at:



the power to regulate their own procedure including the fixing of the place and times of its enquiry and deciding whether to sit in public or private<sup>48</sup>. Nevertheless, they are mandated to decide every application<sup>49</sup> made to them as expeditiously as possible after meticulous perusal of documents, written representations and after hearing such oral arguments as may be advanced<sup>50</sup>.

An AT is, however, debarred from admitting an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules. This includes the making of any administrative appeal or representation.

A tribunal has the same jurisdiction, powers and authority, as those exercised by the High Court, in respect of punishing for contempt, and in that regard, the provisions of the Contempt of Courts Act, 1971 have been made applicable<sup>51</sup>. This helps the tribunals in ensuring that they are taken seriously and their orders are not ignored or overlooked<sup>52</sup>.

The provisions of Chapter III and IV of the ATA and Art.323A of the COI have been bewilderingly analyzed by the SCI over a period of time. In *S. P. Sampath Kumar*<sup>53</sup>, the SCI had observed that the idea underlying Art.323A was that the tribunals established there under will practically have the same status as the High Courts, since appeals from these tribunals could go to the SCI under Art.136. Hence, under clause 2(d) of Art.323A, the relevant law establishing the tribunals can exclude the jurisdiction of the High Courts in relation to the matters falling within the jurisdiction of tribunals<sup>54</sup>. In other words, the High Courts can be barred from exercising their writ jurisdiction under Art.226 or their power of superintendence under Art.227. However, after ten years, the SCI changed its position in *L. Chandra Kumar*<sup>55</sup> by holding that the jurisdiction conferred on the High Courts under Arts.226

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[http://delhi.gov.in/wps/wcm/connect/doi\\_rcs/RCS/Home/Coop.+Act+2003/Chapter+13/Powers+of+civil+Court](http://delhi.gov.in/wps/wcm/connect/doi_rcs/RCS/Home/Coop.+Act+2003/Chapter+13/Powers+of+civil+Court) (Last visited on March 26, 2013).

<sup>48</sup> S.22, *supra* note 20. See also, *Jagan Nath Sharma v. Union of India*, (1987) 1 SLR 744.

<sup>49</sup> All applications submitted to the ATs are *per se* not only required to be in the prescribed form but also to be accompanied by relevant documents and evidence and by such fee (not exceeding one hundred rupees) as may be prescribed by the Central Government.

<sup>50</sup> *Supra* note 48.

<sup>51</sup> S. 17, *ibid*.

<sup>52</sup> An order of the tribunal punishing for contempt is however, appealable under S.19 of the Contempt of Courts Act, 1971 read with S.17 of the Act to only the SCI.

<sup>53</sup> *S. P. Sampath Kumar v. Union of India*, *supra* note 7. See also, *Union of India v. Deep*, AIR 1993 SC 382.

<sup>54</sup> See *Patro H. N. v. Ministry of Information and Broadcasting*, (1992) Supp 1 SCC 550; *Chopra J. B. v. Union of India*, *supra* note 2. In these two instant cases, it was also held that a challenge to any decision of an Administrative Tribunal relating to a service matter cannot be made before the High Court.

<sup>55</sup> *L. Chandra Kumar v. Union of India*, *supra* note 24.

and 227 and upon the SCI under Art.32 of the Constitution cannot be ousted even by a provision in the Constitution given that judicial review is a fundamental/basic feature of the COI<sup>56</sup>.

The Court therefore ruled that:

- All decisions of tribunals created pursuant to Art.323A of the Constitution be subject to the High Court's writ jurisdiction under Art.226/227 before a Division Bench of the High Court within whose territorial jurisdiction the particular tribunal falls<sup>57</sup>. The Tribunals will nevertheless continue to act like courts of first instance in respect of areas of law for which they are constituted<sup>58</sup>; and
- Clause 2(d) of Art.323A and clause 3(d) of Art.323B and the 'exclusion of jurisdiction' clauses in all the legislations enacted in pursuance of these Articles, to be unconstitutional to the extent they exclude the jurisdiction of the High Court and SCI under Arts.226/227 and 32 respectively<sup>59</sup>.

As a result of the SCI's ruling, an aggrieved party is now entitled to move the High Court under Arts.226 and 227<sup>60</sup> and after the High Court's decision, a party can lodge an appeal before the SCI under Art.136 of the Constitution<sup>61</sup>. Accordingly, it is now quite clear that the major purpose of superintendence under Art.227 of the Constitution is to keep the ATs within their jurisdictions and to ensure that they carry on their duties as per the provisions of law. Hence, ATs are now bound by the observations of the High Court<sup>62</sup>.

Whether an AT can delegate its judicial authority is a question that has recently been decided by the SCI in *Subhas Kumar Chatterjee*<sup>63</sup>. The SCI *inter alia* observed that tribunals cannot delegate power to decide any dispute which in law is within its jurisdiction/which is required exclusively

<sup>56</sup> See *M. Nagaraj v. Union of India*, AIR 2007 SC 71. The jurisdiction, however, entitles the High Court to interfere only in cases of grave dereliction of duty or flagrant violation of law by the tribunal and is neither appellate nor revisional jurisdiction.

<sup>57</sup> *Supra* note 55. See also, *State of West Bengal v. Ashish Kumar Ray*, AIR 2005 SC 254; R. Rangarajan, Service Law: A Case Law Overview 32, S. P. Gogia (2008).

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.* See also, *Moti Merry v. Superintendent Lady Elgin Hospital, Jabalpur*, (1993) MPLJ; D.D. Basu, Introduction to the Constitution of India 376, Wadhwa and Company Law Publishers (2004).

<sup>60</sup> See R. Rangarajan, Service Law: A Case Law Overview, *supra* note 57 at 29.

<sup>61</sup> See *State of H. P., v. Pawan Kumar Rajput*, (2006) 9 SCC 161.

<sup>62</sup> See *State of Orissa v. Bhagaban Sarangi*, (1995) 1 SCC 399.

<sup>63</sup> *State of West Bengal v. Subhas Kumar Chatterjee*, AIR 2010 SC 2927s.

to be decided by them. Thus, where a tribunal remitted original application made to it to the Chief Engineer, the Court held it to be void *ab initio*<sup>64</sup>.

On the other hand, it is beyond the jurisdiction of an AT to direct an authority to lay down a policy<sup>65</sup>, or to create a post or to prescribe the minimum qualifications for such post<sup>66</sup> or, to give directions to the Government to frame rules in any particular manner<sup>67</sup>, or to give effect to such rules in part which were kept in abeyance<sup>68</sup>, and/or to grant relief to a party basing on grounds outside the pleadings of the parties<sup>69</sup>.

In *B. N. Sinha*<sup>70</sup>, a crucial question was raised before the SCI, viz. whether an AT can legislate on a subject which is not contemplated by the Legislature. In this case, recruitment rules were not in force at the time when the post of Chief Engineer (Civil) Level II was created. The Union Public Service Commission suggested the mode and manner of making appointments to the said post. The appointment of an officer made in such manner was challenged. The SCI held that the AT could not invalidate the appointment by holding that the appointment to the said post is to be governed by stretching Recruitment Rules of 1975 made for the post of Chief Engineer (Level I). The AT cannot therefore, legislate on subjects, which are not contemplated by the Legislature. The Government of India, being the employer, has not only the power to create posts but also power to make rules<sup>71</sup>.

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<sup>64</sup> *Ibid.*

<sup>65</sup> See *Jagdish Lal v. State of Haryana*, AIR 1997 SC 2366. See also, *Union of India v. Makhan Chandra Roy*, AIR 1997 SC 2391.

<sup>66</sup> See *Commissioner, Corporation of Madras v. Madras Corporation Teachers' Mandram*, AIR 1997 SC 2131. See also, *V. K. Sood v. Secretary Civil Aviation*, AIR 1993 SC 2285.

<sup>67</sup> See *Mallikarjuna Rao v. State of Andhra Pradesh*, AIR 1990 SC 1251. See also, R.K. Bag, *Service Law of Government Employees 12*, Eastern Law House Private Ltd. (2009).

<sup>68</sup> *I. C. A. R. v. Manmohan Batra*, (1999) SCC (L&S) 787.

<sup>69</sup> See *State of Orissa v. Mamta Mohanty*, (2011) 2 JT 164; *State of Maharashtra v. Hindustan Construction Co. Ltd.*, (2010) 4 SCC 518; *Ishwar Dutt v. Land Acquisition Collector*, AIR 2005 SC 3165; *M/s. Trojan & Co. v. R. M. N. N. Nagappa Chettiar*, AIR 1953 SC 235; *Sri Mahant Govind Rao v. Sita Ram Kesho*, (1898) 25 Ind. App. 195. See also, *Sumangala Naganath v. Union of India*, AIR 2000 SC 3393, where the Apex Court also held that it is beyond jurisdiction of the tribunal to go into the question whether an employee is suitable to be appointed or not especially where the appointment of such an employee is in terms of relevant service rules and has fulfilled all conditions of eligibility; *State of Orissa v. Bimal Kumar Mohanty*, (1994) 4 SCC 126, where the Apex Court also held that it is not proper for the tribunal to interfere with the exercise of power and pass interim orders especially in a pending inquiry.

<sup>70</sup> *B. N. Sinha v. Union of India*, AIR 1998 SC 2600.

<sup>71</sup> *Ibid.* See also, *Mallikarjuna Rao v. State of Andhra Pradesh*, AIR 1990 SC 1215.

Whether the ATs have the jurisdiction to review their orders is another remarkable question to ponder. The Apex Court has in *Ashwani Kumar*<sup>72</sup> extended its timely support through its inimitable interpretative abilities to uphold the basic tenets underlying correct legal stand on the issue. The Court observed that the power of review of an AT is akin or analogous to the power of a civil Court under S.114 read with Order 47 Rule 1 of the *Code of Civil Procedure, 1908*<sup>73</sup> but, such power is not absolute, since it is hedged in the restrictions indicated in the said Order<sup>74</sup> and as such a tribunal can only review its decision on the grounds enumerated in the Order and not otherwise<sup>75</sup>. Besides, if an appeal is preferred, the power of review cannot be exercised<sup>76</sup>. Therefore, whenever there is an apparent error in an order of a tribunal, the condition precedent for seeking relief from the SCI is that the error must first be brought to the notice of the CAT or the High Court through a review application<sup>77</sup>. However, an erroneous order/decision cannot be corrected in the guise of the exercise of the power of review nor will an order/decision be reviewed on the basis of a subsequent decision/judgment of a larger Bench of a tribunal or of a superior Court<sup>78</sup>. However, an illegal order or decision passed without notice to the aggrieved persons can be reviewed<sup>79</sup>.

Whether the doctrine of precedent is applicable to the ATs is another significant point to ponder. The SCI has in *K. Ajit Babu*<sup>80</sup> and *Surjit Singh*<sup>81</sup>

<sup>72</sup> *Union of India v. Ashwani Kumar*, (1993) 4 SCC 48.

<sup>73</sup> S.114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908, *inter alia*, provides that any person who considers himself aggrieved; a) by a decree/order from which an appeal is allowed, but from which no appeal has been preferred, or b) by a decree/order from which no appeal is allowed, or c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order. Besides a party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

<sup>74</sup> See *Ajit Kumar Rath v. State of Orissa*, 1999 (7) Scale 22.

<sup>75</sup> *Supra* note 72. See also, *K. Ajit Babu v. Union of India*, AIR 1997 SC 3277; *Gopabandhu Biswal v. Krishna Chandra Mohanty*, AIR 1998 SC 1872.

<sup>76</sup> *Gopabandhu Biswal v. Krishna Chandra Mohanty*, AIR 1998 SC 1872.

<sup>77</sup> *Supra* note 72.

<sup>78</sup> See, *State of West Bengal v. Kamal Sengupta*, (2008) 8 SCC 612; *K. T. Veerappa v. State of Karnataka*, (2006) 9 SCC 406; *Indian Charge Chrome Limited v. Union of India*, (2005) 4 SCC 67.

<sup>79</sup> *Rama Rao v. M. G. Maheshwara Rao*, (2007) 14 SCC 54.

<sup>80</sup> *K. Ajit Babu v. Union of India*, AIR 1997 SC 3277.

explicitly held that the doctrine of precedent is applicable to the ATs as is applicable to other areas of law. For that matter, the larger Bench has to consider the correctness of the earlier decision in disposing of applications. The larger Bench is not only empowered to overrule the view taken in the earlier judgment and declare the law that will be binding on all Benches but it can also correct its mistake of law by way of review of its order.

All in all, the SCI has also ruled that the ATs have the jurisdiction to deal with applications relating to:

- service matters relating to the employees of Kendriya Vidyalayas<sup>82</sup>;
- service matters of members of Indian Railway Conference Association<sup>83</sup>;
- service matters of lower division clerks of Indo-Tibetan Border Police Force. Such clerks cannot be regarded as members of the armed forces of the Union. They are treated as civilians and as such their service matters cannot be beyond the jurisdiction of the CAT<sup>84</sup>.
- adjudication of questions pertaining to the constitutional validity or otherwise of a rule framed by the President of India under the proviso to Art.309 of the COI<sup>85</sup>. Moreover, they can adjudicate on the *vires* of the Act of Parliament and/or State Legislature<sup>86</sup>.
- questions of law/fact<sup>87</sup>, including preliminary pleas dealing with bar of limitation<sup>88</sup>, non-joinder of parties<sup>89</sup>, territorial jurisdiction of the tribunal<sup>90</sup> and *res judicata*<sup>91</sup>, etc.

On the other hand, the Apex Court has also ruled that the ATs have no jurisdiction to deal with applications relating to:

- service matters of employees in establishment of District Judges whose recruitment and control is covered by Art.235 of the COI<sup>92</sup>;
- service matters of *dhobis* appointed to wash clothes in Defense Academy who do not hold civil posts<sup>93</sup>;

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<sup>81</sup> *Surjit Singh v. Union of India*, AIR 1997 SC 2693.

<sup>82</sup> *Kendriya Vidyalaya Sangathan v. Subhash Sharma*, AIR 2002 SC 1295.

<sup>83</sup> *See Vikram Singh v. Union of India*, (1991) 4 SCC 32.

<sup>84</sup> *Narottam Dass Beshtoo v. Union of India*, AIR 1995 SC 1154.

<sup>85</sup> *See J.K. Soonavala*, Supreme Court on Service Laws 49, Wadhwa and Company Nagpur (2003). *See also, L. Chandra Kumar v. Union of India*, *infra*.

<sup>86</sup> *L. Chandra Kumar v. Union of India*, AIR 1995 SC 1151.

<sup>87</sup> *See Lucas John v. Additional Chief Mechanical Engineer, S. E. Railways*, (1987) 3 SLR 792 (CAT, Bang.).

<sup>88</sup> *See Raghavan v. Secretary to the Ministry of Defence*, (1987) 4 SLR 155.

<sup>89</sup> *See Jayaraman M. v. Heavy Vehicles Factory*, (1987) 4 SLR 208.

<sup>90</sup> *See Ram Adhar v. Union of India*, (1986) 4 SLR 110.

<sup>91</sup> *See Khasim Baig M. v. G. M.*, (1986) 4 SLR 753.

<sup>92</sup> *Laxmi Kant Dhal v. State of Orissa*, 1988 SCC (L&S) 884.

<sup>93</sup> *See Union of India v. Chotelal*, AIR 1999 SC 376.

- service matters of persons working in handcraft centers established under a scheme of Railway Department. The CAT has no jurisdiction to entertain their application for regulation of service given that they are not appointed under the railway recruitment rules and that they are given remuneration and commission on the basis of work done<sup>94</sup>;
- service matters of members of the Central Industrial Security Force. Such persons are members of the Armed Forces of the Union<sup>95</sup>;
- awarding of damages. It is beyond the jurisdiction of a tribunal to grant relief by way of damages<sup>96</sup>;
- service matters of employees of an unapproved school run by officers of Government (Ordinance Factory) by local arrangements<sup>97</sup>.
- service matters of teachers employed by local authorities. Such employees are not employed by the Central Government therefore, they cannot claim the pay scale admissible to the Government school teachers<sup>98</sup>;
- service matters of private school teachers<sup>99</sup>;
- the ATs cannot also pass orders directing authorities to clear efficiency bars of employees. That is entirely the role of an employer<sup>100</sup> etc.

## VI. CONCLUSIONS

An all-encompassing study carried out in this paper reveals key constitutional and legal provisions relating to a number of issues pertaining to the role, status, jurisdiction and procedure of the ATs in settlement of disputes over service matters. It can specifically be pointed out that the ATs have over the last decade immensely helped in expeditious dispensation of litigations relating to service matters despite of a few shortcomings in their functioning.

As regards the jurisdiction of the ATs, it is now evidently clear that the tribunals act like Courts of first instance and as such, all their

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<sup>94</sup> *Phool Badan Tiwari v. Union of India*, AIR 2003 SC 2353.

<sup>95</sup> *Narottam Dass Beshtoo v. Union of India and Others*, AIR 1995 SC 1154. *See also, Beda Nada Singh v. Director General, Central Industrial Security Force*, (1988) Supp SCC 790.

<sup>96</sup> *Maharashtra Public Service Commission v. Dr. Bhanumati Purushottam Rathod*, AIR 1997 SC 3719-3720.

<sup>97</sup> *Union of India v. Shri Tejram Parashramji Bombhate*, AIR 1992 SC 570.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *See Administrator of Dadra and Nagar Haveli Silvassa v. Vora, H. P.*, AIR 1992 SC 2303.



decisions/orders are subject to the SCI and High Court's writ jurisdiction under Arts.32 and 226/227 of the COI respectively. This is mainly intended to keep the ATs within their jurisdictions and to ensure that they carry on their duties as per the provisions of law.