

CENTRAL ADMINISTRATIVE TRIBUNAL A PULSATING VIBRANT DISPENSATION: AN INTROSPECTION¹

It is my proud privilege and pleasure to address this august gathering on the eve of silver jubilee celebrations of the Chandigarh Branch of the Central Administrative Tribunal. Undoubtedly, a jubilee is an event to rejoice, nevertheless, it is also an occasion to showcase the past of an institution as a measure to lend a credible assurance of its capacity to meet the challenges of the future. Therefore, I commend the organisers of this function for selecting this occasion to deliberate upon a few challenges and dilemmas voiced at different fora from time to time.

The Tribunals in India have a very engaging history, dating back to the year 1941, when the first Tribunal in the form of the Income-Tax Appellate Tribunal, was established. The post Independence era saw the insertion of Articles 323A and 323B by the Constitution (42nd Amendment) Act, 1976, giving constitutional recognition to the Tribunals with effect from 3rd January 1977. Article 323-A exclusively relates to the

¹ Address by Hon'ble Mr. Justice D.K. Jain, Judge, Supreme Court of India, delivered on November 19, 2011 at Chandigarh Judicial Academy on the eve of Silver Jubilee of the Chandigarh Bench of the Central Administrative Tribunal.

Administrative Tribunals. It empowers the Parliament to make laws, providing 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 Government or any of their Corporation etc. Obviously, the said Articles were inserted to enable the Parliament to establish Tribunals which could exclude the jurisdiction of all courts including the High Courts. However, it was only in the year 1985 that, in exercise of its powers under the aforesaid Article 323A, Parliament enacted the Administrative Tribunals Act. The Statement of Objects and Reasons appended to the Bill preceding its enactment is indicative of its purpose, viz. to deal exclusively with service matters, which would go a long way in not only reducing the burden of the various Courts and thereby giving them more time to deal with other cases expeditiously but would also provide the persons covered by the Administrative Tribunals speedy relief in respect of their grievances. The twin object of the Act was, thus, to reduce the burden of the courts from dealing with service matters and, to provide speedy and inexpensive justice to government employees and thus, stay

clear of the clutches of labyrinth litigation. In *S.P. Sampath Kumar v. Union of India and others*², the Supreme Court directed certain measures to be taken with a view to ensure that Administrative Tribunals function in tune with constitutionally sound principles. In furtherance thereof, certain amendments relating to the form and content of Administrative Tribunals were brought about in the said Act by the Amending Act (Act 19 of 1986).

However, in 1997, a seven-Judge Constitution Bench of the Supreme Court in *L. Chandra Kumar v. Union of India*³, held clause 2(d) of Article 323A and clause 3(d) of Article 323-B, to the extent they empowered the Parliament to exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution respectively as unconstitutional. Section 28 of the said Act and the exclusion of jurisdiction clauses in all other legislations enacted under the aegis of Articles 323A and 323B, to the same extent, were declared unconstitutional. It was held that the jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of the Constitution. All decisions of the Administrative Tribunals were

² (1987) 1 SCC 124

³ (1997) 3 SCC 261

subject to scrutiny before a Division Bench of the High Court. Ever since, the orders of the Tribunal are being invariably challenged before the respective High Courts.

There is no doubt that public servants have become more aware of their rights and privileges. No longer are they willing to submit to arbitrariness in any sphere, resulting in an increased recourse to law. I think, this development is a convincing manifestation of everyone's faith in the administration of justice. Nonetheless, this awareness has inundated the High Courts with cases concerning service matters, arising out of the orders passed by the Tribunal, defeating the very purpose for which the forum of Administrative Tribunal was created. Undoubtedly, there was re-thinking in the concerned quarters to the effect, whether the pre-1997 position should be restored. This led to the constitution of a Parliamentary Committee, which examined every aspect of the issue; took into consideration the views of all the stakeholders and ultimately expressed the opinion that the original conception of the Administrative Tribunal was required to be restored and the provision of appeal to the High Court was unnecessary. It was suggested that a statutory provision of appeal in addition to Article 136 of the Constitution of India should be made. In other

words, suggestions were made to strengthen the Administrative Tribunals and not to repeal the Act of 1985.

It is in the wake of recommendations made by the Parliamentary Committee that significant amendments were brought about in the Act of 1985 and, for the first time, service conditions available to the High Court Judges were made applicable to all the Members of the Tribunal and thus, enhancing the overall image of the Tribunal since its creation. I will be failing in my duty if, at this juncture, I do not refer to the laudable efforts and strides made by the Tribunal. I am happy to share with you the information that from November 1985 upto January 2011, a total of more than five lakhs cases have been transferred and disposed of by various benches of the Tribunal, thus, giving a disposal rate of 95.88%. I have been given to understand that, of all the orders appealed against, almost 91% of them have received the approval of the higher forum. Therefore, there is hardly any doubt that the Central Administrative Tribunal has come a long way in the past 25 years and is rightly being characterised by the uniqueness in its jurisdiction and procedure. The freedom from the long drawn mandatory procedural technicalities has enabled it to achieve an unmatched disposal rate.

However, the question for deliberation is, how long will we be able to live in the present glory, as it is said that in order to get ahead, one should not rest on one's laurels as no one ever learns to spell merely by sitting on a dictionary. It is time for all of us to make an intense introspection in order to fortify our resolve of keeping pace with the fast growing awareness of rights, particularly when despite best efforts and hard work by the Tribunal, the public servants are already complaining of enormous delay in getting the desired relief, be it on account of the mindset of the concerned public undertaking of not accepting the orders of the Tribunal on specious objections or repeated remissions of cases by the higher appellate forums because of lack of proper adjudication of the issue by the Tribunal. Indeed, such a delay leads to frustration and dissatisfaction amongst the stakeholders, which ultimately affects the image of the Tribunal and erodes their faith in the justice delivery system as a whole. Their faith is our strength and it has to be maintained at any cost. Therefore, in order to bring the justice delivery system in tune with the hopes and aspirations of the stakeholders, it has become necessary and rather inevitable to identify the bottlenecks which are instrumental in causing delay in dispensation of justice.

Though I would refrain from commenting on the general perception in some quarters of the decision of the Supreme Court in *L. Chandra Kumar* case as being a stumbling block in the path to speedier justice, the fact remains that the Law Commission of India, in its 215th Report, submitted in the year 2008, for a variety of reasons, did recommend the Government either to seek a Presidential Reference for re-visiting the said judgment or alternatively to bring about amendments in the Constitution or the Statute as the very purpose of the said Act would be defeated if a writ petition lies as a matter of course, like first appeal, to the High Court under Article 226 of the Constitution. Hence, the concern voiced by the Law Commission and other bodies cannot be brushed aside lightly. I will say no more on this aspect and leave the issue for discussion in the sessions to follow, except to note that if *L. Chandra Kumar* is regarded to be one of the factors for delay in a claimant getting quick relief, the decision of the Supreme Court in *T. Sudhakar Prasad v. Government of Andhra Pradesh and others*⁴ has provided efficacy to the functioning of the Tribunal, insofar as enforcement of its orders is concerned.

⁴ (2001) 1 SCC 516

The efficacy, efficiency and utility of any institution depends upon the attitude and character of the men who man it. Similarly no institution and particularly a body constituted under a Statute can discharge its judicial functions independently and efficiently unless they are insulated from bureaucratic interference, be it in relation to sponsoring of candidates by the parent departments for selection or dependence of the institution on them for infrastructural and/or other facilities for the members of the Tribunal. At present, Central Administrative Tribunal faces a similar situation. It falls under the supervision and control of the Ministry of Personnel, Public Grievances and Pensions. The members of the Tribunal depend upon the Ministry for their funds and other administrative needs. In this regard the Constitution Bench in *L. Chandra Kumar* had suggested that the Central Administrative Tribunals must come under the Ministry of Law and Justice as the nodal Ministry for all the Tribunals. This recommendation did not find favour with the Committee of Secretaries in the year 1997. Nevertheless, I feel that it is high time that the said suggestion is reconsidered with the sincerity and seriousness that it deserves, particularly in light of the reiteration of the same recommendation in a recent decision of

the Constitution Bench in *Union of India v. R. Gandhi, President, Madras Bar Association*⁵.

Another area of grave concern, in my opinion is that with the existing framework for recruitment of the Judicial Members, it has not been possible to attract the talent in the Bar. It sounds incongruous that a practicing Advocate who can be given the position similar to the Judge of the High Court is brought to the crossroads of his career at the dawn of his midlife, at the expiry of the term of five years or an extended term of another five years, without any social security. Further, even the procedure for renewal of the term also suffers from the vice of administrative interference as the selection procedure again involves the recommendation by a Selection Committee and then the approval by the Appointments Committee of the Cabinet. Thus, the element of uncertainty of even getting another term would definitely deter the lawyers to take a plunge in untested waters and be in wilderness at a time when they would otherwise be in the pink of their professional career. I would, therefore, suggest that to attract the talent in the bar it would be appropriate to have a fixed tenure for the members on a similar

⁵ (2010) 11 SCC 1

pattern of as Income-Tax Appellate Tribunal and some other Tribunals.

With the advent of technology, there is no sphere of our lives that has been left untouched by digitisation. It has proved its hallmark of being enormously convenient, user friendly and a time saving measure. To tap the advantages of the electronic media, the Supreme Court registry has also adopted the e-filing procedure, where a petition can be filed online, alongwith the annexures and the court fee. This saves the advocate on record from being present at the filing counter at the time of filing of the petition. These rules have enabled the Advocates and the petitioners to file their petitions from any location in the world over the internet. Such a concept of e-filing would be of immense use to the public servants, who can fight for their rights without compromising with their public duties. I understand that the Rules of procedure adopted by the Tribunal, allow the initiation of proceedings by filing of applications by post and permit the collection of court fee through demand drafts instead of revenue stamps yet, I think, the Tribunal can examine if some critical features of the e-filing database of the Supreme Court could be included in their database.

On this note, I once again thank the organisers for inviting me to this function and giving time and opportunity to share my views with the intelligentsia present here. I congratulate the Chairman and all members of the Central Administrative Tribunal, both past and present, who have built a robust institution over the last 25 years of its working and set an example for others to follow. I finish with a quote from Justice Benjamin Cardozo:

“Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night is not the journey’s end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth.”

Thank you.
