



**GOVERNMENT OF INDIA**

**LAW  
COMMISSION  
OF  
INDIA**

***L. Chandra Kumar* be revisited by  
Larger Bench of Supreme Court**

**Report No. 215**

**December 2008**

**LAW COMMISSION OF INDIA  
(REPORT NO. 215)**

***L. Chandra Kumar* be revisited by  
Larger Bench of Supreme Court**

**Presented to Dr H. R. Bhardwaj, Union  
Minister for Law and Justice, Ministry of Law  
and Justice, Government of India by Dr  
Justice AR. Lakshmanan, Chairman, Law  
Commission of India, on 17th day of  
December, 2008.**

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Dear Dr Bhardwaj ji,

Subject: ***L. Chandra Kumar*** be revisited by  
**Larger Bench of Supreme Court**

I am forwarding herewith the 215<sup>th</sup> Report of the Law Commission of India on the above subject.

A radical change was brought about in the constitutional law through section 46 of the Constitution (Forty-second Amendment) Act, 1976, which inserted new Part XIVA on 'Tribunals' in the Constitution. Article 323A empowers Parliament to provide, by law, 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. The law may provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States. The law may take out adjudication of disputes relating to service matters from the hands of the civil courts and the High Courts.

Pursuant to the provisions of article 323A, Parliament enacted the Administrative Tribunals Act, 1985 (Act) to establish an Administrative Tribunal for the Union, viz., the Central

Administrative Tribunal and a separate Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States. The establishment of Administrative Tribunals became necessary since a large number of cases relating to service matters were pending before various courts. It was expected that the setting up of the Administrative Tribunals would not only reduce the burden of courts, but would also provide speedy relief to the aggrieved public servants.

In *S. P. Sampath Kumar* [(1985) 4 SCC 458], the Supreme Court directed the carrying out of certain measures with a view to ensuring the functioning of the Administrative Tribunals along constitutionally sound principles. The changes were brought about in the Act by an amending Act (Act 19 of 1986). Jurisdiction of the Supreme Court under article 32 was restored. Constitutional validity of the Act was finally upheld in *S. P. Sampath Kumar* [(1987) 1 SCC 124] subject, of course, to certain amendments relating to the form and content of the Administrative Tribunals. The suggested amendments were carried out by another amending Act (Act 51 of 1987).

Thus became the Administrative Tribunals an effective and real substitute for the High Courts.

In 1997, a seven-Judge Bench of the Supreme Court in *L. Chandra Kumar* [JT 1997 (3) SC 589] held that clause 2 (d) of article 323A and clause 3(d) of article 323B, to the extent they empower Parliament to exclude the jurisdiction of the High Courts and the Supreme Court under articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of articles 323A and 323B would, to the same extent, be unconstitutional. The Court 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 part of the inviolable basic structure of our Constitution. All decisions of the Administrative Tribunals are subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls.

As a result, orders of the Administrative Tribunals are being routinely appealed against in High Courts, whereas this was not the position prior to the *L. Chandra Kumar's* case.

On 18<sup>th</sup> March 2006, the Administrative Tribunals (Amendment) Bill, 2006 (Bill No. XXVIII of 2006) was introduced in Rajya Sabha to amend the Act by incorporating therein, *inter alia*, provisions empowering the Central Government to abolish Administrative Tribunals, and for appeal to High Court to bring the Act in line with *L. Chandra Kumar*. The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 17<sup>th</sup> Report on the said Bill did not subscribe to the same and as for the provision for appeal to High Court expressed the view that the original conception of the Administrative Tribunals be restored and appeal to High Court is unnecessary, and that if a statutory appeal is to be provided it should lie to the Supreme Court only.

In the above backdrop, the Law Commission took up the study on the subject *suo motu*. The Administrative Tribunals were conceived as and constitute an effective and real substitute for the High Courts as regards service matters. Moreover, the power of judicial review of the High Courts cannot be called as inviolable as that of the Supreme Court. The very objective behind the establishment of the Administrative Tribunals is defeated if all the cases adjudicated by them have to go before the concerned High Courts. If one appeal is considered to be a must, an intra-tribunal appeal would be the best option, and then the matter can be taken to the Supreme Court by way of special leave petition under article 136. The Law Commission is of the view that *L. Chandra Kumar's* case needs to be revisited by a Larger Bench of the Supreme Court or necessary and appropriate amendments may be effected in the Act in accordance with law and we have recommended accordingly.

With warm regards,

sincerely,

Yours



(AR. Lakshmanan)

Dr H.R. Bhardwaj,  
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# LAW COMMISSION OF INDIA

## ***L. CHANDRA KUMAR* BE REVISITED BY LARGER BENCH OF SUPREME COURT**

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## **1. INTRODUCTION**

1.1 With a view to easing the congestion of pending cases in various High Courts and other courts in the country, Parliament had enacted the Administrative Tribunals Act 1985 which, insofar as its provisions relate to the Central Administrative Tribunal, came into force on 1<sup>st</sup> July 1985. The Central Administrative Tribunal was established with effect from 2<sup>nd</sup> October 1985. Benches of the Central Administrative Tribunal are located at 17 places throughout the country. State Administrative Tribunals have also been established in certain States.

1.2 The Administrative Tribunals were established for adjudication of disputes with respect to recruitment, matters concerning recruitment and conditions of service of persons appointed to civil services and posts in connection with the affairs of the Union or of any State or of any local or other authority under the control of the Government or of any corporation or society owned or controlled by the Government. This was done in pursuance of the provisions of article 323A inserted in the Constitution by section 46 of the Constitution (Forty-second Amendment) Act 1976. In the Statement of Objects and Reasons for introducing the Bill for the Administrative Tribunals Act 1985, it was mentioned that the setting up of such Administrative Tribunals to deal exclusively with service matters 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 to the persons covered by the Administrative Tribunals speedy relief in respect of their grievance. The provisions of the Administrative Tribunals Act 1985 do not apply to members of the military or any paramilitary force, officers or employees of the Supreme Court or any High Court or courts subordinate thereto, persons appointed to the secretarial staff of either House of Parliament or any State Legislature. A person who is, or has been, a Judge of a High Court heads an Administrative Tribunal as its Chairman.

1.3 After the constitution of the Central Administrative Tribunal in 1985, in the beginning, under section 29 of the Administrative Tribunals Act 1985, the Tribunal received on transfer from the High Courts and subordinate courts 13,350 cases, which were pending there. Thereafter, till November 2001, 3,71,448 cases were instituted in the Tribunal. Out of these, 3,33,598 cases have already been disposed of. The total number of cases received on transfer as well as those instituted directly at various Benches of the Tribunal till 30.06.2006 is 4,76,336 of which the Tribunal has disposed of 4,51,751 cases leaving a balance of 24,585 cases, which constitutes disposal of 94%. The institution of cases in the Tribunal has increased tremendously but the rate of disposal of the cases has also quantitatively increased and in the Principal Bench of the Tribunal at New Delhi, the disposal is 94%. During the year 2000, over 91% of cases of the Principal Bench of the Tribunal have been upheld in writ petition by the Delhi High Court and so qualitatively also the Tribunal has performed well.<sup>1</sup>

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<sup>1</sup> <http://cgat.gov.in/intro.htm>, visited 08.12.2008

1.4 The enactment of the Administrative Tribunals Act 1985 opened a new chapter in the sphere of administering justice to the aggrieved Government servants in service matters. The setting up of the Administrative Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialized knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-root experience would best serve this purpose.<sup>2</sup>

1.5 The Administrative Tribunals are distinguishable from the ordinary courts with regard to their jurisdiction and procedure. They exercise jurisdiction only in relation to the service matters of the litigants covered by the Act. They are also free from the shackles of many of the technicalities of the ordinary courts. The procedural simplicity of the Act can be appreciated from the fact that the aggrieved person can also appear before it personally. The Government can also present its case through its Departmental officers or legal practitioners. Further, only a nominal fee of Rs.50/- is to be paid by the litigant for filing an application before the Tribunal [Rule 7 of the Central Administrative Tribunal (Procedure) Rules 1987]. Thus, the objective of the Tribunal is to provide speedy and inexpensive justice to the litigants.<sup>3</sup>

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<sup>2</sup> Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Seventeenth Report on the Administrative Tribunals (Amendment) Bill, 2006, December 2006, paragraph 6

<sup>3</sup> Ibid., paragraph 6.1

1.6 Administrative adjudication, which is quasi-judicial in nature, is the main function of the Administrative Tribunals. The basic objective of enacting the Administrative Tribunals Act 1985 was:

- i) to relieve congestion in the ordinary courts; and
- ii) to provide for speedy disposal of disputes relating to service matters.<sup>4</sup>

1.7 The establishment of the Administrative Tribunals was a right step in the direction of providing an effective alternative authority to Government employees who feel aggrieved by the decisions of the Government, in spite of the elaborate system of rules and regulations which govern personnel management, for judicial review over service matters to the exclusion of all courts including High Courts other than the Supreme Court, with the end in view of reducing the burden of such Courts and of securing expeditious disposal of such matters.<sup>5</sup>

1.8 The Supreme Court has on many occasions examined the constitutional validity of the various provisions of the Administrative Tribunals Act 1985. In *S. P. Sampath Kumar v. UOI*<sup>6</sup>, the Supreme Court directed the carrying out of certain measures with a view to ensuring the functioning of the Administrative Tribunals along constitutionally sound principles. The changes were brought about

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<sup>4</sup> Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, First Report on Demands for Grants (2004-2005) of the Ministry of Personnel, Public Grievances and Pensions, August 2004, paragraph 28.1

<sup>5</sup> *Supra* note 2, paragraph 6.2

<sup>6</sup> (1985) 4 SCC 458

in the Administrative Tribunals Act 1985 by an amending Act (Act 19 of 1986). Jurisdiction of the Supreme Court under article 32 of the Constitution was restored. Constitutional validity of the Act was finally upheld in the said case<sup>7</sup>, subject, of course, to certain amendments relating to the form and content of the Administrative Tribunals. The suggested amendments were carried out by another amending Act (Act 51 of 1987). Thus became the Administrative Tribunals an effective and real substitute for the High Courts.

1.9 But, in 1997, a seven-Judge Constitution Bench in *L. Chandra Kumar v. UOI*<sup>8</sup> held as under:

‘In view of the reasoning adopted by us, we hold that clause 2 (d) of Article 323A and clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The

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<sup>7</sup> (1987) 1 SCC 124

<sup>8</sup> JT 1997 (3) S.C. 589

Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the *vires* of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5 (6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.’

1.10 The Constitution Bench also addressed the issue of the competence of those who man the Tribunals and the question as to who is to exercise administrative supervision over them etc. and made suggestions to improve the function of the Administrative Tribunals.

1.11 As a result, orders of the Administrative Tribunals are being routinely appealed against in High Courts, whereas this was not the position prior to the *L. Chandra Kumar*'s case.



1.12 On 18<sup>th</sup> March 2006, the Administrative Tribunals (Amendment) Bill, 2006 (Bill No. XXVIII of 2006) was introduced in Rajya Sabha to amend the Act by incorporating therein, *inter alia*, provisions contained in the proposed new Chapters IVA and IVB, empowering the Central Government to abolish Administrative Tribunals, and for appeal to High Court to bring the Act in line with *L. Chandra Kumar*. The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its Seventeenth Report on the said Bill did not subscribe to the same and as for the provision for appeal to High Court expressed the view that the original conception of the Administrative Tribunals be restored and appeal to High Court is unnecessary, and that if a statutory appeal is to be provided it should lie to the Supreme Court only. In regard to the provision proposing omission of section 17 of the Administrative Tribunals Act 1985 conferring power on the Administrative Tribunals to punish for contempt, the Committee was of the view that in order to ensure implementation of the orders of the Tribunals, their “civil contempt” powers should be retained.

1.13 It may be noted that the Administrative Tribunals were conceived as and constitute an effective and real substitute for the High Courts as regards service matters.

1.14 The Law Commission of India in its 58<sup>th</sup> Report on ‘*Structure and Jurisdiction of the Higher Judiciary*’ (1974) observed:

“8.29. The creation of Special Service Courts in India may ... provide to the honest and efficient government servant greater and more effective protection against discrimination or victimization, than at present. ... Furthermore, the creation of service Courts may reduce the growing volume of arrears in the High Courts and the Supreme Court, *provided they are not made subject to the jurisdiction of the High Court under Article 226 and of the Supreme Court under Articles 133 and 136 of the Constitution.*

...

“8.31. But, if the supervisory jurisdiction of the High Court and the Supreme Court remains intact, and the decision of the service Court is subject to review by these higher Courts, we do not see how the creation of Service Courts will reduce the growing volume of arrears in these Courts.

...

“8.32. ... In our opinion, the existing legal and constitutional position affords sufficient protection. We do not, therefore, recommend the creation of a separate Service Tribunal.”

1.15 The Law Commission of India in its 124<sup>th</sup> Report on ‘*The High Court Arrears – A Fresh Look*’ (1988) took note of the recommendation of “The High Courts Arrears Committee”, constituted in 1969 under the chairmanship of the then Chief Justice of India, Hon’ble Mr. Justice J. C. Shah, favouring setting up of Service Tribunals (*vide* paragraph 1.14 of the Report). The Law Commission, after taking note of its 58<sup>th</sup> Report, also observed:

“1.15. ... It is here a germ for the first time of creating specialist Tribunals as alternatives to the High Court with a view to curtailing the jurisdiction of the High Court to control the inflow of work which may indirectly help in tackling the problem of arrears and backlog of cases.

...

“1.21. ... The Law Commission is of the firm view that, wherever possible, proliferating appellate and wide original jurisdiction should be controlled or curtailed without impairing the quality of justice.

...

“1.27. To sum up, the approach of the commission is to reduce number of appeals, to set up specialist courts/tribunals, simultaneously eliminating the jurisdiction of the High Court which, when translated into action by implementing the reports submitted by the present Law Commission, would, on a very superficial assessment, reduce the inflow of work into the High Court by nearly 45% of its present inflow.”

1.16 In its 162<sup>nd</sup> Report on '*Review of Functioning of Central Administrative Tribunal; Customs, Excise and Gold (Control) Appellate Tribunal and Income-tax Appellate Tribunal*' (1998), the Law Commission of India recommended that an appeal should be provided to the High Court, to be necessarily heard by a Division Bench against the orders of the Administrative Tribunals, keeping in

view the criticism against *L. Chandra Kumar* that there cannot be a judicial review of an order passed by an authority in exercise of its power of judicial review (*vide* paragraph 4.5).

1.17 Nevertheless, the fact remains that the very objective behind the establishment of the Administrative Tribunals is defeated if all the cases adjudicated by them have to go before the concerned High Courts. Moreover, the power of judicial review of the High Courts cannot be called as inviolable as that of the Supreme Court.

1.18 In the light of the above, the Law Commission of India *suo motu* took up the study of the subject to find out if there is any option to end the impasse.

## **2. BACKGROUND OF THE ADMINISTRATIVE TRIBUNALS ACT 1985**

2.1 The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its Seventeenth Report on the Administrative Tribunals (Amendment) Bill 2006 (as introduced in the Rajya Sabha on 18.03.2006), submitted to the Parliament on 5<sup>th</sup> December 2006, described the background, objective and significance of the Administrative Tribunals Act 1985 in the following words:

‘5. The framers of the Constitution of India in their wisdom invested the Supreme Court and the various High Courts with the power of judicial review by specifically enacting Articles

32, 136, 226 and 227 of the Constitution. With the enactment of Articles 12, 14, 15, 16, 309 and 311 in the Constitution, a large number of service matters calling for the adjudication of disputes relating to the recruitment and conditions of service of Government servants and also of employees in other fields of public employment started coming up before the various High Courts whose power of judicial review was invoked for the said purpose by the aggrieved employees.

5.1. The High Courts played a definite and significant role in evolving the service jurisprudence in the exercise of their power of judicial review. The positive contribution by the High Courts made as aforesaid, coupled with the growth in the number of employees in the public field and the manifold problems arising in the context of their recruitment and conditions of service and their implicit faith and confidence in the High Courts as the unfailing protector of their rights and honour, led to a gradual increase in the institution and pendency of service matters in the High Courts. This, in turn, focused the attention of the Union Government on the problem of finding an effective alternative institutional mechanism for the disposal of such specialized matters.

5.2. A Committee set up by the Union Government in 1969 under the Chairmanship of Mr. Justice J.C. Shah recommended for setting up of an independent Tribunal to handle service matters pending before the High

Courts and the Supreme Court. In the 124<sup>th</sup> Report of the Law Commission of India, it was cited that in Australia, Tribunals outside the established courts have been created – Administrative Appeal Tribunals, Arbitration Tribunals, Workers' Compensation Tribunals, Pension Tribunals, Planning Appeal Tribunal, Equal Opportunity Tribunals, to name a few. This activity of creating Tribunals is founded on a belief that the established Courts are too remote, too legalistic, too expensive and, above all too slow.

- 5.3. The Law Commission of India had recommended for the establishment at the Centre and the State of an appellate Tribunal or Tribunals presided over by a legally qualified Chairman and with experienced civil servants as Members to hear appeals from Government servants in respect of disciplinary and other action against them. The First Administrative Reforms Commission had also recommended for the setting up of Civil Services Tribunals to deal with the appeals of Government servants against disciplinary actions. Some of the State Legislatures thereupon enacted laws setting up Tribunals to decide such cases. Part XIV A comprising Articles 323-A and 323-B was also inserted in the Constitution of India by the 42<sup>nd</sup> Constitutional Amendment Bill, 1976 with effect from 3<sup>rd</sup> January 1977. Article 323-A *inter alia* authorized Parliament to provide

by law for setting up of Administrative Tribunals for the adjudication of disputes and complaints with respect to recruitment and conditions of service of certain categories of employees in the field of public employment including Government servants and also to provide for the exclusion of the jurisdiction of all courts, except that of the Supreme Court under Article 136, with respect to disputes or complaints of such nature. No immediate step was, however, taken in the direction of enacting a law for the setting up of Administrative Tribunals as contemplated by the said Article.

- 5.4. Ultimately, Parliament enacted the Administrative Tribunals Act, 1985 which received the assent of the President on the 27<sup>th</sup> February 1985. In pursuance of the provisions contained in the Act, the Administrative Tribunals set up under it exercise original jurisdiction in respect of service matters of employees covered under the Act.

### **Objective of the Act**

- 5.5. The Statement of Objects and Reasons accompanying the Constitutional Amendment Bill by which Article 323-A was sought to be inserted in the Constitution states the following words:

“To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters....it is considered expedient to provide for administrative tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution.”

5.6. The Statement of Objects and Reasons appended to the introduced version of the Administrative Tribunals Bill, which on being passed and approved became the Act of 1985, also contained similar recitals: “.....The establishment of Administrative Tribunals under the aforesaid provision of the Constitution has become necessary since a large number of cases relating to service matters are pending before the various Courts. It is expected that the setting up of such Administrative Tribunals to deal exclusively with service matters 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 to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances.”

5.7. In pursuance of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal was set up on 1.11.1985. At present, it has 17 regular Benches, 15 of which operate at the principal seats of High Courts and the remaining two at Jaipur and Lucknow. These Benches also hold circuit sittings



at other seats of High Courts. The Tribunal consists of a Chairman, a Vice Chairman and Members. The Vice Chairman and Members are drawn both from judicial and administrative spheres. State Administrative Tribunals were set up by the Governments of the States of Andhra Pradesh, Himachal Pradesh, Orissa, Karnataka, Maharashtra, Tamil Nadu, Madhya Pradesh and West Bengal under the Administrative Tribunals Act, 1985.

5.8. The appointment of the Chairman, Central Administrative Tribunal, as per practice, is initiated by the Chief Justice of India on a reference made to this effect by the Union Government. The appointment of Vice Chairman and Members in Central Administrative Tribunal are made on the basis of recommendations of a Selection Committee chaired by a nominee of the Chief Justice of India, who is a sitting judge of the Supreme Court. The appointments are made with the approval of Appointments Committee of the Cabinet after obtaining the concurrence of the Chief Justice of India.

5.9. The appointments to the vacancies in State Administrative Tribunals are made on the basis of proposals sent by the State Governments, with the approval of the Governors. Thereafter, their appointments undergo the same process as the one in respect of Central Administrative Tribunal.

### **Significance of the Administrative Tribunals Act, 1985**

6. The enactment of the Administrative Tribunals Act, 1985 opened a new chapter in the sphere of administering justice to the aggrieved Government servants in service matters. The Act provides for establishment of Central Administrative Tribunal and the State Administrative Tribunals. The setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialized knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-root experience would best serve this purpose.

6.1. The Administrative Tribunals are distinguishable from the ordinary courts with regard to their jurisdiction and procedure. They exercise jurisdiction only in relation to the service matters of the litigants covered by the Act. They are also free from the shackles of many of the technicalities of the ordinary Courts. The procedural simplicity of the Act can be appreciated from the fact that the aggrieved person can also appear before it personally. The Government can also present its case through its Departmental officers or legal practitioners. Further, only a nominal fee of Rs.50/- is to be paid by the litigant for filing an application before the Tribunal

[Section 7 of the Central Administrative Tribunal (Procedure) Rules, 1987]. Thus, the objective of the Tribunal is to provide speedy and inexpensive justice to the litigants.

6.2. The establishment of Administrative Tribunals was a right step in the direction of providing an effective alternative authority to Government employees who feel aggrieved by the decisions of the Government, in spite of the elaborate system of rules and regulations which govern personnel management, for judicial review over service matters to the exclusion of all courts including High Courts other than the Supreme Court, with the end in view of reducing the burden of such Courts and of securing expeditious disposal of such matters.’

2.2 In *Kamal Kanti Dutta v. UOI*<sup>9</sup>, the then Chief Justice of India, Hon’ble Mr. Justice Y. V. Chandrachud, speaking for the majority, observed:

“The constitution of Service Tribunals by State Governments with an apex Tribunal at the Centre, which, in the generality of cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matters. The proceedings of such tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many and displease only a few.”

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<sup>9</sup> (1980) 4 SCC 38

2.3 The Statement of Objects and Reasons of the Bill which led to the enactment of the Administrative Tribunals Act 1985 reads as follows:

“Article 323A of the Constitution stipulates that Parliament may, by law, provide for the adjudication or trial by Administrative Tribunal 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 owned or controlled by the Government.

2. The Bill seeks to give effect to the aforesaid constitutional provision by providing for the establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States. The Bill also provides for-

- (a) the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each Tribunal;
- (b) the procedure (including provision as to limitation and rules of evidence) to be followed by the State Tribunals;
- (c) exclusion of the jurisdiction of all courts, except that of the Supreme Court under article 136 of the Constitution relating to service matters;
- (d) the transfer to each Administrative Tribunal of any suit or other proceedings pending before any court or other authority immediately before the establishment of such Tribunal as would have been within the jurisdiction of such Tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment.

3. The establishment of Administrative Tribunal under the aforesaid provision of the Constitution has become necessary since a large number of cases relating to service matters are pending before the various courts. It is expected that the setting up of such Administrative Tribunals to deal exclusively with service matters 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 to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances.”

2.4 Section 22(1) of the Administrative Tribunals Act 1985 provides that the 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 the 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.

2.5 Section 28 of the Administrative Tribunals Act excludes jurisdiction of all courts except the jurisdiction of the Supreme Court, as envisaged under sub-clause (d) of clause (2) of the Article 323A of the Constitution. Accordingly, the jurisdiction of High Courts under articles 226/227 as regards service matters is excluded by the Act.

### **3. LAW COMMISSION'S 162<sup>nd</sup> REPORT**

3.1 The Law Commission in its 162<sup>nd</sup> Report<sup>10</sup> made an alternative recommendation for constitution of National Appellate Administrative Tribunal in the following words:

“The Supreme Court has laid down in L. Chandra Kumar’s case (supra) that an aggrieved party can have recourse to the jurisdiction of the respective High Court under Article 226/227 of the Constitution of India, against the decision of the Central Administrative Tribunal. The repercussions of this development of law have already been felt. The Karnataka Government has sought to abolish the Karnataka State Administrative Tribunal. In the news items in the recent past, it has appeared that even the Central Government is proposing to abolish CAT. The remedy of judicial review by the High Court provided against the decision of the Administrative Tribunal and a possible further appeal to the Supreme Court under Article 136 is not only time-consuming but also expensive. Besides this, the various High Courts may interpret differently any statutory provision concerning the

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<sup>10</sup> *Supra* paragraph 1.16

service conditions governing the employees. Thus the lack of uniformity in the High Court decisions and consequently in CAT benches will create confusion in the mind of the litigant. It will further make the public loose faith in seeking justice through the judiciary, and thus undermine the democratic norms.

The Commission is of the considered view that a National Appellate Administrative Tribunal be constituted on the lines of the National Consumer Disputes Redressal Commission under section 20 of the Consumer Protection Act, 1986. It shall be manned by a retired Chief Justice of a High Court or a retired Judge of the Supreme Court of India. An appeal, on substantial questions of law and fact may lie to the proposed Appellate forum, against the decision of the Central Administrative Tribunal.

The proposed forum may have branches all over the country to reduce the cost of litigation to the litigant.

The decision of the proposed Appellate court will be binding on all benches of CAT. The proposed forum will be of status higher than a High Court but below the Supreme Court.

An appeal may lie against the decision of the proposed appellate forum to the Supreme Court. Under section 130-E of the Customs Act, 1962, an appeal lies from the decision of

the CEGAT to the Supreme Court. Similarly, under section 23 of the Consumer Protection Act, 1986, an appeal lies against the National Commission's decision to the Supreme Court. It will not be advisable to convert the Supreme Court to a first appellate court, because flooding of appeals against the Tribunals' orders may dilute the importance of the Supreme Court and consequently our democratic polity will suffer (1994 (2) Journal Section SCALE J1 by Justice A.M. Ahmadi). In this manner, an aggrieved party will not have a right of recourse to the writ jurisdiction under Article 226/227 of the High Court against the decision of CAT inasmuch as it is settled law that where adequate remedy of appeal is there, one cannot have recourse to the writ jurisdiction (see AIR 1996 SC 1209; AIR 1997 SC 2189). Though it is undisputed that where the vires of the statute under which the Tribunal is constituted, is challenged, one can have recourse to the writ jurisdiction under Article 226/227 of the Constitution of India but such cases will be insignificant in number. Similarly when a right to appeal is contemplated to the Supreme Court against the decision of the proposed Appellate Administrative Tribunal, one cannot have recourse to the writ jurisdiction of the High Court under Article 226/227 of the Constitution.

This procedure will take care of the ensuing problems cropping up after the decision in L. Chandra Kumar's case (*supra*).



The proposed President of the Appellate forum will continue to draw the same salaries and perks as are admissible to a sitting Judge.

All pending writ petitions against the decision of CAT/SAT in pursuance of L. Chandra Kumar's case (except those in which the vires under which the Tribunal is constituted, is challenged), may be transferred to the proposed Appellate Forum.

This proposal can be effective and beneficial, only if Benches of the Appellate Forum are established at all important centres, at least in the capital of every State, on the pattern of the High Court.

... It is the need of the hour that for expeditious disposal of cases, all cases which raise one or more common questions of law and on the basis of which, the cases can be disposed of by a common judgment, should be grouped together and heard together. Thus in the 79<sup>th</sup> Report of the Law Commission of India on delay and arrears in High Courts and other appellate courts, this recommendation has been echoed....”

(*vide* paragraphs 4.8 and 4.9)

3.2 The Law Commission in the aforesaid Report, as regards the position of the Administrative Tribunal after *L. Chandra Kumar*, also observed:

“It is no longer an alternative mechanism to the High Court, but a tribunal whose decisions are subject to scrutiny by the High Court, albeit by a Division Bench. (As a matter of fact, Shri Justice Shiva Shankar Bhat, a retired Judge of the Karnataka High Court, who was appointed as Chairman of the Karnataka State Administrative Tribunal, tendered his resignation soon after the decision in L. Chandra Kumar was rendered, complaining that inasmuch as the position and status of the Tribunal has been downgraded by the said decision, he cannot continue as the Chairman of the State Administrative Tribunal). While striking down certain clauses of Articles 323-A and 323-B of the Constitution ..., the Supreme Court has at the same time affirmed the soundness of the principle on which these administrative tribunals are created. It did not agree with the contention that these tribunals should be abolished inasmuch as they have not proved effective in discharge of their duties and have failed to achieve the object with which they were created. The Supreme Court has also held that though these tribunals are subject to the writ jurisdiction of the High Courts, they are yet competent to decide questions relating to the constitutional validity of the statutory provisions and rules except, of course, the provisions of the Administrative Tribunals Act 1985 under

which they have been constituted. The Supreme Court has also rejected that there ought to be no technical/administrative members in these tribunals. They said that these non-judicial members provide an input which may not be available with the judicial members.

In the light of the above dicta of the Supreme Court, not much room is left for the Law Commission of India to suggest any substantial measures or recommendations with respect to the functioning of these tribunals.”

(*vide* paragraph 4.5)

#### **4. THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) ACT 2006 (1 of 2007) AND THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) BILL 2006**

4.1 The Administrative Tribunals (Amendment) Act 2006 (1 of 2007) has brought about many changes in the Administrative Tribunals Act 1985. A new section 6 has been substituted pertaining to the qualification for appointment of Chairman, Vice-Chairman and other members. Sub-section (1) of new section 6 provides that a person shall not be qualified for appointment as the chairman

unless he is, or has been, a judge of a High Court. Sub-section (2) of the said section lays down the qualifications for appointment of Administrative Members and Judicial Members. A Secretary to the Government of India with two years of service and Additional Secretary to the Government of India with five years of service are eligible for appointment as an Administrative Member. A person who is or qualified to be a Judge of a High Court and Secretary, Department of Legal Affairs or Legislative Department including Member-Secretary, Law Commission of India, Government of India, with two years of service and Additional Secretary, Department of Legal Affairs or Legislative Department with five years of service are eligible for appointment as a Judicial Member. Further, sub-section (3) of the said section provides that the Chairman and every other Member of the Central Administrative Tribunal shall be appointed after consultation with the Chief Justice of India by the President.

4.2 The Act 1 of 2007 has abolished the post of “Vice-Chairman” which existed before as an independent class. However, new clause (u) of section 3 defines “Vice-Chairman” as a Member who has been authorized by the appropriate Government to perform administrative functions at each of the places where Benches of the Tribunal have been set up.

4.3 The Parliamentary Standing Committee<sup>11</sup> has recommended as follows:

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<sup>11</sup> *Supra* note 2, paragraph 11.10

‘As a remedial step, the Committee expressed the following view:

“....Maybe, a retired judge of the Supreme Court can preside over. And, maybe, the other member could be from the judiciary; not from the district judges, but from the level of High Courts, we can keep one. And, then, the third and fourth members can be from the administration so that the dignity and strength of the tribunal is enhanced to that extent.”

4.4 The background note on the Administrative Tribunals (Amendment) Bill 2006, furnished to the Parliamentary Standing Committee<sup>12</sup> by the Ministry of Personnel, Public Grievances and Pensions states as follows:

“.....Initially it was envisaged that litigation relating to service matters should be adjudicated upon by Administrative Tribunals and should not increase the burden of the High Courts. Thus, the appellate jurisdiction was only with the Supreme Court of India. However, the Supreme Court in *L. Chandra Kumar Vs UOI* (AIR 1997 SC 1125) has held that the writ jurisdiction of the High Court under Article 226/227 of the Constitution cannot be extinguished by any Act since it is a part of the basic structure of the Constitution. Thus, appeals from judgments of the Administrative Tribunals now lie to the Division Bench of the corresponding High Court.

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<sup>12</sup> Ibid., paragraph 7

A number of State Governments have proposed for the abolishing of SATs essentially on the ground that since the orders of the SAT have been made appealable before the Division Bench of the High Court, it has merely added one more tier in the judicial hierarchy. The State Governments have also stated that the SATs have become very expensive to administer. At the Central level too, it has been found that some Benches of the CAT have now become unnecessary (or will become unnecessary in the near future) since the cases pending before them have diminished in number.

...

Currently, the Administrative Tribunals Act, 1985 does not provide for either the abolishing of an Administrative Tribunal or for the transfer of cases to any Court outside the Tribunal.

...

As a result of the Supreme Court judgment in *L. Chandra Kumar*, orders of the Central Administrative Tribunal have now routinely been appealed against in High Courts whereas this was not the position earlier. Across the board, the interpretation given by High Courts to the *L. Chandra Kumar/T. Sudhakar Prasad* judgment is that High Courts function as Courts of Appeal to the Central Administrative Tribunal. It should be observed that though the *Chandra Kumar/Sudhakar Prasad* judgments only reaffirmed the existing legal and constitutional provisions, the interpretation has been such as to place the Tribunal in a position

subordinate to the High Courts in the matter of appellate jurisdiction.”

4.5 A provision was made in the aforesaid Bill for an appeal to the High Court. Section 27D(1), as proposed in the Bill, provides as follows:

“Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court.”

4.6 The aforesaid Bill also seeks to amend the Administrative Tribunals Act 1985 to provide for an enabling provision for abolition of Tribunals as well as for transfer of pending cases to some other authority after a Tribunal has been abolished since the parent Act does not contain any specific provision for abolition of Tribunals.

4.7 The Parliamentary Standing Committee<sup>13</sup> also invited views/suggestions from various organizations on the aforesaid Bill. A number of representations/memoranda were received. One of the major points raised in the memoranda were:

“The record of disposal of cases of Administrative Tribunals has been excellent as compared to the subordinate Courts and High Courts. The abolition of the Administrative Tribunals will increase the pending cases in the High Courts whereby speedy justice will be denied to the citizens by putting additional burden on the High Courts.”

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<sup>13</sup> Ibid., paragraph 3

4.8 Mr. Justice V. S. Malimath deposed before the Parliamentary Standing Committee<sup>14</sup> as under:

“.....Because Supreme Court can always interfere with any decision of the Tribunal and High Court can also do it, therefore, High Court jurisdiction will continue to be operative. But, if you provide an appeal against an order of the Tribunal, technically, you may say that Article 226 and 227 can still be exercised, but no judge will exercise jurisdiction. If you say that an appeal to the High Court, I mean, you are burdening the High Court with another set of cases and thereby delaying the disposal of the service matters.....

...

He also stated that the aggrieved persons would like to use appeal if it is available and that the High Court will then be flooded with a number of cases. If there are more cases, there will be more delay and it will defeat the entire purpose of the enactment under the Constitutional provisions.

Another pertinent point raised by him was that the way the Act is being implemented now, it is weakening the Tribunal. Firstly, it is making the Tribunal subordinate to the High Court and its stature is lowered. Secondly, earlier, the retired Chief Justice used to be the Chairman of the Tribunal and now, this practice seems to have been given up. Now a retired Judge of the High Court can be appointed as Chairman since the

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<sup>14</sup> Ibid., paragraph 4.3



statute does not provide that the Chairman of the Tribunal should be former Chief Justice. Thus the stature of the Tribunal is lowered.”

4.9 Speaking before the Parliamentary Standing Committee<sup>15</sup> on the issue of abolition of Administrative Tribunals, Mr. Justice Ashok Agarwal deposed that the proposal for abolition was not legal and that what the Government could do by legislation should be done by that method only. He opined that the legislature should not delegate that power to the executive. He deposed as under:

“.....If a particular Tribunal is not working satisfactorily, steps can be taken against that particular Tribunal. But, on that account we cannot abolish all the Tribunals across the country in one stroke because different States are governed by different conditions of service.....”

4.10 The amendment of the Administrative Tribunals Act 1985 by Act 1 of 2007 has brought in changes which are seminal in nature. The Administrative Members can be appointed only from among persons who have had a minimum incumbency in the highest post of executive machinery. The status of members appointed, both judicial and administrative, has been equated with that of Judges of the High Court. The statistics would show that only a small percentage of the decisions is unsettled, ultimately, but the pendency of service cases in the High Courts is a reality. The remedial measures appear to be two-fold. One is to come with a

<sup>15</sup> Ibid., paragraph 4.4

provision for an in-house appeal, the modalities of which could be discussed and finalized, and the Act could be amended accordingly. By constituting such an appellate body, the parameters presently followed naturally would get supplanted, and the period of pendency always limited.

## 5. FROM S. P. SAMPATH KUMAR TO L. CHANDRA KUMAR AND THE IMPLICATIONS

5.1 In *S. P. Sampath Kumar v. UOI*<sup>16</sup>, the constitutional validity of the Administrative Tribunals Act 1985 was challenged on the ground of exclusion of power of judicial review both of the Supreme Court under article 32 and of the High Courts under articles 226 and 227 of the Constitution. During the hearing of the case, the Act was amended and the jurisdiction of the apex Court under article 32 was restored. The Supreme Court in final decision held that section 28 of the Administrative Tribunals Act 1985 which excludes jurisdiction of the High Courts under articles 226/227 is not unconstitutional. The Court ruled that this section does not totally bar judicial review. It also said that Administrative Tribunals under the 1985 Act are substitute of High Courts and will deal with all service matters even involving articles 14, 15 and 16. It also advised for changing the qualifications of Chairman of the Tribunal. As a result, the Act was further amended in 1987.<sup>17</sup>

5.2 In *Union of India v. Parma Nanda*<sup>18</sup>, a three-Judge Bench of the Supreme Court upheld the authority of the Administrative Tribunals to decide the constitutionality of service rules.

5.3 In *Sampath Kumar's* case, the issue of constitutionality of article 323A (2) (d) was neither challenged nor upheld and it could not be said to be an authority on that aspect. Subsequently, a Full

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<sup>16</sup> *Supra* note 7

<sup>17</sup> K. C. Joshi, *Constitutional Status of Tribunals*, 41 JILI 116 (1999)

<sup>18</sup> AIR 1989 SC 1185

Bench of the Andhra Pradesh High Court in *Sakinala Harinath v. State of AP*<sup>19</sup> declared sub-clause (d) of clause (2) of Article 323A unconstitutional. It held that this provision is repugnant to the ruling of the Supreme Court in *Kesavananda Bharati v. State of Kerala*<sup>20</sup>. Meanwhile, the two three-Judge Benches of the apex Court in *R.K. Jain v. UOI*<sup>21</sup> and *L. Chandra Kumar v. UOI*<sup>22</sup> also recommended that the *Sampath Kumar* ruling be reconsidered. Therefore, a Bench of seven Judges of the Supreme Court examined the issues in a wider perspective including the constitutionality of article 323A (2) (d). It also considered the power of the Administrative Tribunals to exercise the powers and jurisdiction of the High Courts under articles 226 and 227 of the Constitution.<sup>23</sup>

5.4 In *L. Chandra Kumar's* case, the Supreme Court, contrary to *Sampath Kumar*, held that these tribunals are not equal to the High Courts. It further declared that the decisions of such tribunals shall be appealable before a Bench of two Judges in the High Court under whose jurisdiction the tribunal falls. However, most importantly, these tribunals have been given the quasi-equal status of High Courts in restricted areas. Thus, the tribunals established under article 323A can still examine the constitutionality of an enactment or rule concerning matters on the anvil of articles 14, 15 and 16 of the Constitution. A similar power will vest in the tribunals created under the authority of article 323B.<sup>24</sup>

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<sup>19</sup> (1994) 1 APLJ (HC) 1

<sup>20</sup> (1973) 4 SCC 225

<sup>21</sup> (1993) 4 SCC 119

<sup>22</sup> (1995) 1 SCC 400

<sup>23</sup> *Supra* note 17

<sup>24</sup> *Ibid.*

5.5 The justification for inserting articles 323A and 323B in the Constitution remains valid today. The pendency of cases in the High Courts and the Supreme Court has posed an imminent danger to the administration of justice. Therefore, there is ample scope for the administrative tribunals. The short experience of working of these tribunals has not been bad although there is need for further improvement. In view of the common law prejudice, the constitutionality of these tribunals created under articles 323A and 323B has been frequently impugned. Fortunately, the Supreme Court has upheld the objective for which these tribunals have come into existence. Their journey from *Sampath Kumar* to *L. Chandra Kumar* has not been sterile. *L. Chandra Kumar* has not overruled *Sampath Kumar*. It has firmly accepted the role of the administrative tribunals in the administration of justice system.<sup>25</sup>

5.6 The Supreme Court in *Sampath Kumar* further elaborated this point:

“The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is not less efficacious than the High Court.”<sup>26</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> *Supra* note 7, page 130

5.7 Hon'ble Mr. justice Ranganath Misra, who wrote the majority judgment in *Sampath Kumar*, after mentioning that judicial review by the Supreme Court is left wholly unaffected held:

'Thus exclusion of the jurisdiction of the High Court does not totally bar judicial review. This court in *Minerva Mills'* (case) (AIR 1980 SC 1789) did point out that "effective alternative institutional mechanisms or arrangements for judicial review" can be made by Parliament. Thus it is possible to set up an alternative institution in place of the High Court for providing judicial review. ... The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice. ... Thus barring of the jurisdiction of the High Court can indeed not be a valid ground of attack.'<sup>27</sup>

5.8 In *L. Chandra Kumar*, the seven-Judge Constitution Bench of the Supreme Court considered the following broad issues:

(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323A or by sub-clause (d) of clause (3) of Article 323B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323A or with regard to all or any of the matters specified in clause (2) of Article 323B, runs counter to

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<sup>27</sup> Ibid., pages 138-139

the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323A or under Article 323B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?

5.9 The Supreme Court, on 18.03.1997, held as under:

‘... clause 2(d) of Article 323A and clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts

and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution.’<sup>28</sup>

5.10 It was further held:

“The Tribunals are competent to hear matters where the *vires* of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the *vires* of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the *vires* of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of

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<sup>28</sup> *Supra* note 8, paragraph 101



the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the *vires* of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”<sup>29</sup>

5.11 It was also held:

“So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323B of the Constitution. It is to be remembered that apart from the authorisation that flows from Articles 323A and 323B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Court. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.”<sup>30</sup>

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<sup>29</sup> Ibid., paragraph 95

<sup>30</sup> Ibid., paragraph 82

The Supreme Court has also held that no individual may directly approach the Supreme Court in any matter decided by the Administrative Tribunal. He must first approach the High Court (Division Bench) and only thereafter he may approach the Supreme Court under Article 136 of the Constitution.

5.12 The Supreme Court recommended that the Union Government may initiate action in respect of appointments/issue of the competence of those who man the tribunals, funds and the question as to who is to exercise administrative supervision over them and place all the tribunals under one single nodal department, preferably, the Legal Department (Ministry of Law).

5.13 As a result of this judgment, orders of the Central Administrative Tribunal have now routinely been appealed against in High Courts whereas this was not the position earlier.

### **Implications of *L. Chandra Kumar*:**

5.14 Professor K. C. Joshi, formerly Head of Law Department and Dean, Faculty of Law, Kumaon University, has in his article '*Constitutional Status of Tribunals*<sup>31</sup> stated:

“Administrative Tribunals provide simple, cheap and speedy justice. Dicey apprehended danger from such tribunals to the liberty of subjects, but they have become a regular part of the system of judicial administration. The British Parliament

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<sup>31</sup> *Supra* note 17

enacted the Tribunals and the Inquiries Act in 1958 which has not been consolidated in the 1971 Act. Prior to the Constitution of India 1950, administrative adjudication was in vogue. The Constitution prior to 1973 used the word tribunal in articles 136 and 227. In 1973, provision for the administrative tribunals was specifically made by the Constitution (Thirty-second Amendment) Act.

With the acceptance of welfare ideology, there was mushroom growth of public services and public servants. The courts, particularly, the High Courts were inundated with cases concerning service matters. The Swaran Singh Committee, therefore, *inter alia*, recommended the establishment of administrative tribunals as a part of constitutional adjudicative system. Resultantly, the Constitution (Forty-second Amendment) Act, 1976 inserted Part XIVA in the Constitution consisting of articles 323A and 323B. Article 323A provides for the establishment of administrative tribunals for adjudication or trial of disputes and complaints with respect to recruitment and condition of service of persons appointed to public services. Article 323B makes provision for the creation of tribunals for adjudication or trial of disputes, complaints or offences connected with tax, foreign exchange, industrial and labour disputes, land reforms, ceiling on urban property, elections to Parliament and State Legislatures, etc. None of these two articles is self-executory. Parliament has exclusive power to enact a law under article 323A, while both

Parliament and State Legislatures can make laws on matters of article 323B subject to their legislative competence.'

5.15 The opinion expressed by the Supreme Court about the retired Judges presiding the tribunals is not quite correct. These retired Judges are experienced people, having spent a major part of their life in adjudication work. They have decided causes and controversies coming before them. They have collected a rich experience and decision-making process. They are well versed in the art of adjudication. They are fully conversant with court processes. They have acquired a certain expertise in dealing with matters, civil, criminal, tax, labour and constitutional coming before them. In short, they represent a rich pool of talent.

5.16 As stated earlier, in order to annihilate the monster of backlog, a multi-pronged attack is indispensable. Constitution-makers had the vision to foresee that a situation may develop where the talent of retired Judges will have to be enlisted and, therefore, they had made ample provision in this behalf. Article 224A of the Constitution provides that notwithstanding anything in Chapter IV in Part V of the Constitution, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of any High Court, to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but

shall not otherwise be deemed to be, a Judge of that High Court. There is a proviso which says that this power could only be exercised with the consent of the person concerned. Rarely, if ever, this power is invoked.

5.17 Now, in every High Court, there are numerous cases more than five years old. Some of them may have become obsolete; some of them may have become irrelevant; some may have as well abated and there may be some in which the parties have lost litigating interest sheerly on account of delay in disposal of cases. Undoubtedly, there may be many in which the matter had to be adjudicated upon and judgment delivered.

5.18 It is also pertinent to notice that some State Governments have abolished the State Administrative Tribunals. For example, the Government of Tamil Nadu has abolished the State Administrative Tribunal functioning at Chennai as, according to them, disposals were minimal and not satisfactory and expensive. Therefore, the state government servants of Tamil Nadu have to approach the High Court under Article 226 of the Constitution for redressal of their grievances, since the Tribunal has already been abolished. So, the High Court is the court of first instance so far as the state government servants are concerned, whereas the central government servants who live within the jurisdiction of the Central Administrative Tribunal at Chennai have two forums to agitate their grievances in regard to their service matters. The central government servants, if aggrieved by the decision of the Tribunal,

can make an air dash to the High Court and invoke its jurisdiction under Article 226 of the Constitution for redressal. There is an anomaly. The result is that central government staff at Chennai can avail the jurisdiction of the Tribunal and also of the High Court and then come to the Supreme Court, whereas the state government servants after the abolition of the State Administrative Tribunal, should only approach the High Court under Article 226 of the Constitution, which case may be heard by a single Judge or sometimes by a Division Bench. If it is heard by a single Judge, then the aggrieved party will have a right of appeal in the High Court itself before a Division Bench. Thus, the service matters will be pending before the single Judge and thereafter before Division Bench for years before coming to the Supreme Court. Thus, the state government servants of Tamil Nadu are deprived of the rule of speedy justice. It is a matter of record that lots of cases are pending before the High Court on service matters and that the same cannot be disposed of within a short period because of the various other factors such as non-filling of the vacancies in the High Court and also non-availability of infrastructure, etc. etc.

5.19 The judgment of the Supreme Court in *L. Chandra Kumar* is also likely to lead to consequences, which are undesirable. The Supreme Court is not correct in its assumption that the reach and range of the power of judicial review of the Supreme Court and that of the High Courts are identical. It has already been pointed out above that the power of judicial review in India, after *Kesavananda's*

case, covers the following three cases. The courts have the power to strike down the following:

- i) subordinate legislation which is *ultra vires* the parent Act;
- ii) legislations of Parliament and the State Legislatures if they contravene the provisions of the Constitution; and
- iii) the constitutional amendments which violate the basic structure of the Constitution.<sup>32</sup>

5.20 The Supreme Court in *Kesavananda* for the first time in the history of democratic Constitutions of the world, assumed to itself the third power mentioned above, i.e., the power to declare constitutional amendments as unconstitutional if they violate the basic structure of the Constitution. Some might feel that the assumption of this power by the Supreme Court is bad enough in the context of representative democracy. But what is worse would be to extend the exercise of this enormous power to the High Courts also and after *Chandra Kumar* to all manner of tribunals. One bizarre consequence would be that different High Courts are likely to strike down different provisions of constitutional amendments in different States and the Constitution of India which is the fundamental law of the country would be in operation in a fractured and fragmented manner. In fact, a Division Bench of the Andhra Pradesh High Court in *Sakinala Harinath v. Andhra Pradesh* has struck down Article 323A (2) (d) which ousted the jurisdiction of the High Courts in service matters. Given the vagaries of unstable

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<sup>32</sup> V. Nageswara Rao and G. B. Reddy, *Doctrine of Judicial Review and Tribunals: Speed Breakers Ahead*, 39 JILI 411 (1997)

coalition governments which depend on survival politics at any cost, the possibility cannot be ruled out of collusive writ petitions in the High Courts seeking the striking down of inconvenient provisions of constitutional amendments, past, present or future, without any party seeking a further appeal to the Supreme Court conveniently. Now, thanks to the *Chandra Kumar* judgment, these disastrous results can be extended to different tribunals within the same State striking down different provisions of the constitutional amendments on the ground of violation of the so-called basic structure of the Constitution.<sup>33</sup>

5.21 Thus, as stated above, the Supreme Court ought not to assimilate the judicial review of the High Courts to that of the Supreme Court of India with regard to the basic structure doctrine as propounded in *Kesavananda*. The Supreme Court should exclusively reserve to itself the power to strike down constitutional amendments for violating the basic structure of the Constitution. Bestowing this power on the High Courts would create terrible constitutional confusion and this confusion would be worse confounded if it is further extended to all manner of tribunals. While the Supreme Court on one hand expressed its serious reservations about the quality of justice dispensed by these service tribunals, the court on the other hand was willing to distribute the power of judicial review under the *Kesavananda* doctrine to all sorts of tribunals throughout the country.<sup>34</sup>

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.



5.22 It should be remembered that though Parliament has the power under Article 32(3) to confer the power of judicial review on “other courts” without prejudice to the power of the Supreme Court under Article 32(1), it has not done that so far even when it has established different tribunals under different enactments. But in an extraordinary gratuitous gesture the Supreme Court has done that in *Chandra Kumar’s* case while professing to uphold the supremacy of judicial review in the name of upholding the supremacy of the Constitution.<sup>35</sup>

5.23 The power of judicial review of the High Courts under article 226 is not as inviolable as that of the Supreme Court under article 32. While article 32(4) preserves the supremacy of judicial review of the Supreme Court there is no saving provision under Article 226. Establishment of tribunals as substitutes and not supplements to the High Courts as held by the Supreme Court in *Sampath Kumar’s* case is perfectly in tune with the letter and spirit of the Constitution.<sup>36</sup>

5.24 As the Supreme Court itself observed in *Chandra Kumar’s* case, the establishment of tribunals system was necessitated by certain compelling circumstances like the need for expert bodies to deal with specialized categories of dispute settlement, the need for cutting down delays in the justice delivery modalities, and docket explosion in the ordinary courts of the land. The very purpose and

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

rationale of those tribunals would be defeated if all those cases have to go before the concerned High Courts again.<sup>37</sup>

5.25 It is too late in the day to go back to Dicey's puritanical view of Rule of Law vis-à-vis *Droit Administratif*. Establishment of Alternative Dispute Resolution mechanism is now universally accepted in common law as well as continental legal systems and also in other jurisdictions. In *L. Chandra Kumar*, the Supreme Court was justifiably perturbed over the functioning and quality of justice dispensed by the tribunals. The composition of the tribunals also needs particular attention. There is no doubt, that many remedial measures have to be taken regarding the composition, qualifications and mode of appointment of members of the tribunals as well as the judges of different High Courts and of the Supreme Court.<sup>38</sup>

## **6. THE ARMED FORCES TRIBUNAL ACT 2007**

6.1 The Armed Forces Tribunal Act 2007 (No. 55 of 2007) has recently reached the Statute Book. In all essential features, it has copied its precursor viz. the Administrative Tribunals Act 1985. The Supreme Court in *Prithi Pal Singh v. UOI*<sup>39</sup> had emphasized the need of an independent appellate forum for the armed forces. The Law Commission of India in its 169th Report on '*Amendment of the Army, Navy and Air Force Acts*'

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> AIR 1982 SC 1413

(1999) also recommended establishment of an Armed Forces Appellate Tribunal.

6.2 The Armed Forces Tribunal Bill 2005 was introduced in Parliament to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act 1950, the Navy Act 1957 and the Air Force Act 1950 and also to provide for appeals arising out of orders, findings or sentences of court-martial held under the said Acts and for matters connected therewith or incidental thereto.

6.3 Chapter 5 of the Armed Forces Tribunal Act 2007 deals with appeal to the Supreme Court. Sub-section (1) of section 30 provides that an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19) within a period of 90 days. Section 30(1) is subject to the provisions of section 31. It also provides that there shall be no appeal against an interlocutory order of the Tribunal and that as provided in sub-section (2) of section 30, an appeal shall lie to the Supreme Court as of right against any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt which shall be filed within 60 days from the date of the order appealed against. Section 31 clearly says that an appeal to the Supreme Court shall lie with the leave of the Tribunal and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision,

or it appears to the Supreme Court that the point is one which ought to be considered by that Court. Section 33 excludes the jurisdiction of civil courts in relation to service matters under this Act.

6.4 Section 6(1) of the 2007 Act provides that a person shall not be qualified for appointment as the Chairman unless he is a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and as per section 6(2) a person shall not be qualified for appointment as a Judicial Member unless he is or has been a Judge of a High Court. An Administrative Member will be drawn from the Forces, holding the rank of Major General/above or equivalent who have served at least three years in that rank and in case of Judge Advocate General at least one year, according to section 6(3).

6.5 Section 7 provides that the Chairperson and Members shall be appointed by the President with the consultation of the Chief Justice of India.

6.6 On the exclusion of jurisdiction of civil courts, section 33 reads:

“On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters.”

6.7 It may be mentioned here that as per article 136(2) of the Constitution, the provisions of article 136(1) pertaining to special leave to appeal by the Supreme Court are not applicable to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. Similarly, article 227(4) of the Constitution provides that nothing in article 227 shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

6.8 We may also beneficially record the Statement of Objects and Reasons of the Armed Forces Tribunal Bill 2005, which reads thus:

#### “STATEMENT OF OBJECTS AND REASONS

The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-martial. In Navy, an aggrieved person has a right to submit a complaint relating to service matters and has a right of audience before the Judge Advocate General in the Navy in regard to the finding and sentence of a court-martial before the same are finally put up to the Chief of the Naval Staff.

2. Having regard to the fact that a large number of cases relating to service matters of the members of the above-mentioned three armed forces of Union have been pending in the courts for a long time, the question of constituting an independent adjudicatory forum for the Defence personnel has been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court in *Prithi Pal Singh v. Union of India and others* (AIR 1982 SC 1413) held that the absence of even one appeal

with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19<sup>th</sup> Report presented to the Lok Sabha on 20<sup>th</sup> August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.

3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.

4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.

5. The Bill seeks to provide a judicial appeal on points of law and facts against the verdicts of courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the above-mentioned three Armed Forces of the Union.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;  
The 15<sup>th</sup> December, 2005”

PRANAB MUKHERJEE

6.9 A careful perusal of the Statement of Objects and Reasons would clearly reveal that the Armed Forces Tribunal has been founded to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union and that the establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst the members of the three services in the system of dispensation of justice in relation to their service matters. Another important feature to be noted is that the Act seeks to provide for an appeal on points of law of general public importance against verdicts of the courts-martial, which is the crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. It is also specifically provided that the Tribunal will oust the jurisdiction of all courts except the Supreme Court, whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts and that it ultimately will result in speedy and less expensive dispensation of justice to the members of the three Armed Forces of the Union.

6.10 It may be mentioned that the decisions rendered/recorded by the Tribunal constituted under the Armed Forces Tribunal Act 2007 can only be challenged by way of Special Leave Petition in the Supreme Court. When finality is possible to be suggested in service matters relating to Armed Forces, a differential treatment

need not be continued to the Administrative Tribunal when it deals with issues of civil servants. It would be possible to suitably incorporate an amendment in article 227(4) of the Constitution by including the Central Administrative Tribunal side by side with the Armed Forces Tribunal. As long as it is ensured that the Supreme Court continues to enjoy the appellate jurisdiction in respect of the orders passed by the Administrative Tribunal in original and appellate jurisdiction by way of intra-tribunal appeal, for imaginary or historical reasons, the dockets of the High Court need not be exploded by a barrage of writ petitions from the Administrative Tribunals.

## **7. ADMINISTRATIVE TRIBUNALS - ESSENTIAL**

7.1 The reasons for which the Administrative Tribunals were constituted still persist; indeed, those reasons have become more pronounced in our times. We have already indicated that our Constitutional scheme permits setting up of such tribunals.<sup>40</sup>

7.2 In respect of the grave concern with the increasing pendency of litigation before the High Courts, the theory of 'alternative institutional mechanisms' has also been propounded to defend the establishment of Administrative Tribunals. These Administrative Tribunals are expected to function as a viable substitute for the High Courts.

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<sup>40</sup> *Supra* note 8, paragraph 91



7.3 As per the statistics furnished to the Parliamentary Standing Committee<sup>41</sup> by the Ministry of Personnel, Public Grievances and Pensions, from the period 1.11.85 to 28.02.06, the total cases instituted in the Central Administrative Tribunal were 470365, those disposed of were 446369 and those pending were 23996. Taking into account the excellent rate of disposal of the cases, the Committee found no coherent reason to favour the abolition of Administrative Tribunals. The Committee noted that the record of disposal of cases of Administrative Tribunals has been excellent as compared to that of the subordinate courts and High Courts. The abolition of the Administrative Tribunals will increase the pending cases in the High Courts whereby speedy justice will be denied to the citizens by putting additional burden on the High Courts. After detailed discussion, the Committee unanimously opined as under:

“... if an appeal is to be provided, it should be provided to the Supreme Court only.”<sup>42</sup>

7.4 Further, the Committee noted with grave concern that the High Courts are already overburdened with huge number of pending cases..... there are approximately 34 lakh cases pending before High Courts.<sup>43</sup>

7.5 Hon'ble Mr. Justice V. S. Malimath stressed before the Committee as under:

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<sup>41</sup> *Supra* note 2, paragraph 11.17

<sup>42</sup> *Ibid.*, paragraph 13.5

<sup>43</sup> *Ibid.*, paragraph 13.8

“.....Parliament enacted Article 323A to provide for special Tribunals for the purpose of hearing specialized matters like service matters on two grounds. One is, High Court is so much burdened with other types of works and, therefore, it is not possible for it to expeditiously dispose of service matters. Second is, service matters need an amount of specialization and, therefore, an element of experience of service matters is necessary. Therefore, specialized tribunals were constituted excluding the jurisdiction of all courts of the country including the High Court. If these cases are pending for a long time, the Government servant, who is expected to assist in administration, will go on lingering before courts and his service will be affected. With this heart, will he be able to do work in the Government? So, expeditious disposal is necessary from the point of view of administration and that is the intention, and that is what has been debated when Article 323A was enacted.”<sup>44</sup>

7.6 The Committee took note of the fact that the Hon'ble Supreme Court has made it amply clear that the Tribunals will continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted and that it will not be open for litigants to directly approach the High Courts even in cases where they question the *vires* of statutory legislations. The Committee was of the considered opinion that since the apex Court has upheld the necessity of Administrative Tribunals in such clear terms, there is no iota of doubt as to the fact that Administrative Tribunals are

<sup>44</sup> Ibid., paragraph 13.13

absolutely essential for the speedy redressal of grievances of Government employees.

7.7 Hon'ble Mr. Justice K. G. Balakrishnan, the Chief Justice of India, has expressed the view that in the light of *L.Chandra Kumar* decision, it is desirable to continue with the administrative tribunals, despite the power of the High Courts to scrutinize their decisions.<sup>45</sup>

7.8 The High Court is at the apex of the State Judicial apparatus. Unless the base level, where litigation is initiated and vertically moves upward to the High Court by way of appeal or revision, is re-structured and this proliferating appellate jurisdiction is either controlled or curtailed, the inflow of work in the High Court would neither be regulated nor diminished. The Law Commission expressed the view that, wherever possible, proliferating appellate and wide original jurisdiction should be controlled or curtailed without impairing the quality of justice. The approach of the Commission is to reduce number of appeals, to set up specialist courts/tribunals, simultaneously eliminating the jurisdiction of the High Court.<sup>46</sup>

7.9 On the issue of delay which continues to affect the system in the matter of resolution of service disputes, it has been generally noted that the disposal of the applications before the Administrative Tribunal always has been expeditious and hardly there is pendency

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<sup>45</sup> Keynote address at the inaugural session of the '*All India Conference of the Central Administrative Tribunal*' held at Vigyan Bhawan, New Delhi, on 2<sup>nd</sup> August 2008

<sup>46</sup> *Supra* pages 17-18

of old cases in most of the Benches. But, because orders of the Administrative Tribunal are subjected to challenge before the High Courts and thereafter some matters are taken to the Supreme Court, ultimate remedy comes only at late stages, thus effectively defeating the very purpose of constituting the Administrative Tribunals.

7.10 When the Armed Forces Tribunal Act 2007 is a reality, members participating in the Conference<sup>47</sup> were of opinion that the Administrative Tribunals Act could be suitably amended in line with the prescriptions of the latest Act of the Parliament. Thus an amendment of the Administrative Tribunals Act and an amendment of the Constitution would result in tremendous changes for the good.

7.11 The Law Commission is of the view that Administrative Tribunals are a valuable and indeed an essential part of adjudicatory system of a democratic State. The tribunals have come to stay. Special tribunals are likely to grow rather than diminish.

7.12 In view of the enhanced minimum required qualifications of Chairman, Members – Judicial/Administrative, in particular, Administrative, and giving the status of Chief Justice of High Court to the Chairman, and that of Judges of High Court to Members – Judicial/Administrative, the best persons available in the judiciary and administration are now attracted and are being accordingly

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<sup>47</sup> *Supra* note 45

selected to occupy the respective posts, as mentioned above. The Tribunal is thus now manned by persons having vast experience in judiciary and administration, resulting not only into quick disposal of cases, but quality judgments as well. In the beginning when the Act of 1985 came into being and cases came to be disposed of by the Tribunal, there may have been an impression that Members of the Tribunal may not be having legal expertise to deal with intricate questions of law and fact. With the advent of time, the situation has improved vastly and speedy and quality justice dispensed by the Tribunal has come for appreciation by all.

## **8. CONCLUSION AND RECOMMENDATIONS**

8.1 The impression that the Tribunal constituted under the Act of 1985 may be dependent upon the Government is misconceived. The functioning of the Tribunal is not at all controlled by the Government, in any manner whatsoever. The Chairman, Vice-Chairmen and Members – Judicial/Administrative, are discharging their duties similarly as are being discharged by higher judiciary in the country. However, to allay the apprehension that the Tribunal may be controlled in certain matters by the Government, the Chairman of the Tribunal can be given powers akin to that of Chief Justice of a High Court. In that connection, a provision in the Act of

1985, similar to the one as article 229 of the Constitution, with regard to laying down conditions of service of employees of the Tribunal can be vested with the Chairman. More independence in financial matters, as enjoyed by the Chief Justice of a High Court can be vested with the Chairman of the Tribunal. Nodal Ministry for the Tribunal can be Ministry of Law and Justice, instead of Ministry of Personnel, Public Grievances and Pensions.

8.2 We feel that if there may be an impression that there has to be at least one appeal provided against the orders passed by the Tribunal before the matter may reach the Supreme Court, intra-tribunal appeal, similar to the one provided in every High Court either by way of letters patent appeal or a writ appeal, can be provided under the Act of 1985 itself. By way of suitable amendment thus brought about in the Act of 1985, a provision for intra-tribunal appeal can be made so that an order passed by a single Member Bench would be amenable to appeal before a Division Bench, and the decision of a Division Bench can be challenged before a Bench consisting of three or more Members. Four zones in the country, viz., North, East, West, and South, can be made where the appeals from various Benches may be filed. This may only involve creation of, at the most, eight to ten posts of Members in the Tribunal. After the decision recorded by an appellate Bench, the matter can be taken to the Supreme Court by way of special leave petition.

8.3 A Judge, sitting or retired, is eligible to be appointed as Chairman in view of the provisions contained in section 6 of the Act of 1985. However, by tradition and practice, considering the importance of functions entrusted to the Tribunal, a Chief Justice of High Court, sitting or retired, is appointed as Chairman. The first seven Chairmen appointed since 1985 were all sitting or former Chief Justices of High Courts. Only for a brief period, two Chairmen thereafter were not Chief Justices of High Courts. Presently, the Chairman is also former Chief Justice. It is, however, learnt that an order by the Hon'ble Chief Justice of India on the administrative side has been passed that the post of Chairman of the Tribunal would be always occupied by a sitting or former Chief Justice of High Court. A suitable amendment in section 6 of the Act of 1985 can be made to make only a sitting or former Chief Justice of High Court or Judge of the Supreme Court to be qualified for appointment as Chairman.

8.4 The Parliamentary Standing Committee<sup>48</sup> expressed the view:

“....Maybe, a retired judge of the Supreme Court can preside over. And, maybe, other member could be from the judiciary; not from the district judges, but from the level of High Courts, we can keep one. And, then, the third and fourth members can be from the administration so that the dignity and strength of the tribunal is enhanced to that extent.”

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<sup>48</sup> *Supra* note 2, paragraph 11.10

8.5 The Law Commission is of the opinion that in view of the circumstances stated in previous chapters, the subject definitely requires the attention of the Government of India and the State Governments and that the judgment of the Hon'ble Supreme Court in *L. Chandra Kumar's* case requires reconsideration by a larger Bench of the Supreme Court in the interest of the government servants, both Central and the State, to achieve the object of the Act, namely, speedy and less expensive justice. If this proposal is taken up in the right perspective, it will not only reduce the heavy expenditure by way of fees etc. to the counsel and also the time.

8.6 The Law Commission, therefore, recommends to the Government of India to request the Hon'ble Supreme Court to reconsider *L. Chandra Kumar's* case. In the alternative, necessary and appropriate amendments in the Administrative Tribunals Act 1985 may be effected in accordance with law.

(Dr Justice AR. Lakshmanan)  
Chairman

(Prof. Dr Tahir Mahmood)  
Agrawal)  
Member

(Dr Brahm A.  
Member-Secretary