



GOVERNMENT OF INDIA

**LAW
COMMISSION
OF
INDIA**

**Amendment of Sections 7, 7A and 7B of
Industrial Disputes Act 1947 Making Advocates
Eligible to man Labour Courts and Industrial
Tribunals**

Report No. 225

June 2009



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(REPORT NO. 225)**

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Industrial Disputes Act 1947 Making Advocates
Eligible to man Labour Courts and Industrial
Tribunals**

**Submitted to the Union Minister of Law and Justice,
Ministry of Law and Justice, Government of India by
Dr. Justice AR. Lakshmanan, Chairman, Law
Commission of India, on the 25th day of June, 2009.**

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(Former Judge, Supreme Court of India),
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D.O. No. 6(3)/162/2009-LC (LS)

25 June, 2009

Dear Dr Veerappa Moily ji,

Subject: Amendment of Sections 7, 7A and 7B of Industrial
Disputes Act 1947 Making Advocates Eligible to man
Labour Courts and Industrial Tribunals

I am forwarding herewith the 225th Report of the Law
Commission of India on the above subject.

One Advocate filed a petition in public interest (PIL) in the
Punjab and Haryana High Court [Civil Writ Petition No. 2798/2006
titled *H. C. Arora v. Union of India*] praying for quashing Sections 7
and 7A of the Industrial Disputes Act 1947 inasmuch as the said
provisions do not make advocates with any length of experience at
the Bar eligible to be appointed as presiding officers of the Labour
Courts and/or Tribunals constituted by the Central Government. The
petitioner argued that members of the Bar with 7-10 years'
experience in the legal profession should be made eligible for such
appointment by suitable amendment in the said provisions. The High
Court disposed of the writ petition by its Order dated 23.10.2008
declining the above prayer but advising the petitioner to make a
representation to the Law Commission and the latter to examine the
feasibility of making a recommendation for a suitable amendment in
the said provisions.

The petitioner, thereafter, addressed a letter dated 03.03.2009
to the undersigned requesting the Law Commission to consider the

matter for submitting appropriate report to the Government for amending Sections 7 and 7A of the Industrial Disputes Act 1947 for making advocates with 10 years' practice at the Bar eligible for appointment as presiding officers of the Labour Courts/Tribunals constituted by the Central Government.

In view of the above, the Law Commission decided to take up the subject for consideration.

The observations of the Supreme Court in *Sampath Kumar's* case [AIR 1987 SC 386 and 1987 (1) SCALE 1317] and qualifications for appointments in many tribunals and other quasi-judicial bodies make it very clear that advocates with requisite number of years' practice at the Bar, of course, in the concerned legal field, are competent to man any tribunal.

It seems to be an oversight that Sections 7, 7A and 7B of the Industrial Disputes Act 1947 do not include advocates as persons eligible for appointment as presiding officers of Labour Courts and Industrial Tribunals.

We, therefore, are of the view that Sections 7, 7A and 7B of the Industrial Disputes Act 1947 should be suitably amended to make advocates with the requisite number of years' practice at the Bar, in the relevant legal field, eligible for appointment as presiding officers of Labour Court and Industrial Tribunals.

With warm regards,

Yours sincerely,

(Dr AR. Lakshmanan)

Dr M. Veerappa Moily,
Union Minister of Law and Justice,
Government of India,
Shastri Bhawan,
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**Amendment of Sections 7, 7A and 7B of Industrial
Disputes Act 1947 Making Advocates Eligible to
man Labour Courts and Industrial Tribunals**

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I. INTRODUCTION

1.1 One Advocate filed a petition in public interest (PIL) in the Punjab and Haryana High Court [Civil Writ Petition No. 2798/2006 titled *H. C. Arora v. Union of India*] praying for quashing Sections 7 and 7A of the Industrial Disputes Act 1947 inasmuch as the said provisions do not make advocates with any length of experience at the Bar eligible to be appointed as presiding officers of the Labour Courts and/or Tribunals constituted by the Central Government. The petitioner argued that members of the Bar with 7-10 years' experience in the legal profession should be made eligible for such appointment by suitable amendment in the said provisions. The High Court disposed of the writ petition by its Order dated 23.10.2008 declining the above prayer along with the following observation:

“A Writ Court is not competent to issue a mandamus either to the Parliament or to any other Legislature to amend the provisions of a statute to any particular effect. The proper course for any such change to be brought about is to approach the Law Commission of India who could examine the issue in the light of the observations made in *S. P. Sampath Kumar's case* ... and make suitable recommendations to the Parliament.

Mr. Arora was, we must say, in fairness, agreeable to making a representation to the Law Commission seeking recommendations for an amendment in the provisions contained in Sections 7 and 7A of the Industrial Disputes Act, 1947. All that, we need say, is that if such representation is made by Mr. Arora, the Law Commission may examine the feasibility of making a recommendation for a suitable amendment in the provisions.”

1.2 The petitioner, Mr. H. C. Arora, Advocate, thereafter, addressed a letter dated 03.03.2009 to the Chairman, Law Commission of India, also enclosing therewith a copy of the aforesaid Order of the High Court of Punjab and Haryana, requesting the Law Commission to consider the matter for submitting appropriate report to the Government for amending Sections 7 and 7A of the Industrial Disputes Act 1947 for making advocates with 10 years' practice at the Bar eligible for appointment as presiding officers of the Labour Courts/Tribunals constituted by the Central Government.

1.3 In view of the above, the Law Commission decided to take up the subject for consideration.

II. **SECTIONS 7, 7A and 7B OF THE INDUSTRIAL DISPUTES ACT 1947**

2.1 The Industrial Disputes Act 1947 was enacted by Parliament, as its preamble and the long title show, to provide machinery and forum for the investigation and settlement of industrial disputes. V. R. Krishna Iyer, J. in *Life Insurance Corporation of India v. D. J. Bahadur*¹ observed:

“The ID Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. Industrial peace is a national need and, absent law, order in any field will be absent. Chaos is the enemy of creativity sans which production will suffer. Thus, the great goal to which the ID Act is geared is legal

¹ AIR 1980 SC 2181

mechanism for canalising conflicts along conciliatory or adjudicatory processes”.

2.2 The Industrial Disputes Act 1947 is intended to be self-contained one and enables the State to compel the parties to resort to dispute resolution mechanisms provided therein, namely, collective bargaining, conciliation, arbitration and failing that, compulsory adjudication.

2.3 Present Sections 7, 7A, 7B and 7C were substituted for the former Section 7 by the Industrial Disputes (Amendment and Miscellaneous) Provisions Act 1956 with effect from 10.03.1957.

2.4 Industrial Tribunals were created for the first time by Section 7 of the Industrial Disputes Act 1947 for the purpose of adjudicating upon industrial disputes referred to them by the appropriate Government, thus introducing compulsory adjudication where voluntary negotiations or mediation through the machinery of conciliation authorities fail. The Industrial Disputes Act 1947, as originally enacted, did not contain provisions regarding creation of Labour Courts.

2.5 The Industrial Disputes (Appellate Tribunal) Act 1950 was enacted as there had been felt a need for a Central Appellate Authority which, by its decisions, would coordinate the activities of the large number of Industrial Tribunals set up by the Central and Provincial Governments. Some Tribunals had been known to take divergent views on important issues. Thus was created a Labour

Appellate Tribunal for hearing appeals from the awards or decisions of Industrial Tribunals.

2.6 There was then a large volume of criticism that appeals filed before the Appellate Tribunal took a long time for disposal and involved a great deal of expenditure which the workers could not afford. It was proposed to repeal the Industrial Disputes (Appellate Tribunal) Act, 1950, and at the same time, to substitute the then system of tribunals by a three-tier system of original tribunals, manned by personnel of appropriate qualifications. Thus came into being the present Sections 7, 7A, 7B and 7C, as pointed out in paragraph 2.3 (*supra*). The Industrial Disputes (Appellate Tribunal) Act 1950 was also repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act 1956.

2.7 Section 7 provides for constitution of Labour Courts by the appropriate Government and reference for adjudication of certain specified industrial disputes. Section 7A provides for constitution of Industrial Tribunals by the appropriate Government for adjudication of wider category of industrial disputes. Section 7B enables the Central Government to constitute National Industrial Tribunals. References to National Industrial Tribunals are to be made by the Central Government and they are to cover disputes which involve questions of national importance or which are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, the disputes. Section 7C provides for disqualifications for the presiding officers of Labour Courts, Industrial Tribunals and National Industrial Tribunals.

2.8 It would not be inapposite to state here itself that one of the reasons for the huge backlog of cases is that the references are not being decided for long periods as the posts of presiding officers remain vacant too often.

2.9 We may now reproduce the relevant provisions:

Section 7 of the Industrial Disputes Act 1947, as it was originally enacted –

Industrial Tribunals.

“(1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A Tribunal shall consist of such number of members as the appropriate Government thinks fit. Where the Tribunal consists of two or more members, one of them shall be appointed as the chairman.

- (3) Every member of the Tribunal shall be an independent person,
- (a) who is or has been a Judge of a High Court or a District Judge, or
 - (b) is qualified for appointment as a Judge of a High Court:

Provided that the appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court of the Province in which the Tribunal has or is intended to have, its usual place of sitting.”

Sections 4 and 5 of the Industrial Disputes (Appellate Tribunal) Act 1950 –

Section 4 – Constitution of the Appellate Tribunal.

“The Central Government may, by notification in the Official Gazette and with effect from a date specified therein, constitute a Labour Appellate Tribunal for hearing appeals from the awards or decisions of industrial tribunals in accordance with the provisions of this Act.”

Section 5 – Composition of the Appellate Tribunal and term of office of its members.

“(1) The Appellate Tribunal shall consist of a Chairman and such number of other members as the Central Government may, from time to time, think fit to appoint.

- (2) Every member of the Appellate Tribunal shall be a person who -
- (a) is or has been a Judge of a High Court; or

- (b) is qualified for appointment as a Judge of a High Court; or
- (c) has been a member of an industrial tribunal for not less than two years:

Provided that the appointment to the Appellate Tribunal of any person not qualified under clause (a) or clause (c) shall be made in consultation with the Supreme Court.

(3) A member shall, unless otherwise specified in the order of appointment, hold office for a term of five years from the date on which he enters upon his office and shall, on the expiry of the term of his office, be eligible for re-appointment:

Provided that no member shall hold office after he has attained the age of sixty-five years.

(4) A member shall be entitled to such salary and allowances and to such rights in respect of leave and pensions as may be prescribed:

Provided that the salary of a member shall not be varied to his disadvantage after his appointment.

Sections 7, 7A and 7B of the Industrial Disputes Act 1947 –

Section 7 – Labour Courts.

“(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointment by the appropriate Government.

(3) A person shall not be qualified for appointment as a presiding officer of a Labour Court, unless -

- (a) he is, or has been, a Judge of a High Court; or
- (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(d) he has held any judicial office in India for not less than seven years; or

(e) he has been the presiding officer of Labour Court constituted under any Provincial Act or State Act for not less than five years.”

Section 7A – Tribunals.

“(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

(2)A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3)A person shall not be qualified for appointment as the presiding officer of a Tribunal, unless-

(a)he is, or has been, a Judge of a High Court or

(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge.

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceedings before it.”

Section 7B – National Tribunals.

“(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the presiding officer of a National Tribunal, unless he is, or has been, a Judge of a High Court.

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.”

2.10 It may be seen that original Section 7 of the Industrial Disputes Act 1947 as well as Section 5 of the Industrial Disputes (Appellate Tribunal) Act 1950, while laying down qualifications for appointment as a member of the Industrial Tribunal and as a member of the Labour Appellate Tribunal, respectively, included, *inter alia*, persons

“qualified for appointment as a Judge of a High Court”. According to article 217 of the Constitution, a person who has for at least ten years been an advocate of a High Court is eligible for appointment as a Judge of a High Court, amongst others. Thus, advocates with 10 years’ practice at the Bar were eligible for appointment as a member of the Industrial Tribunal or the Labour Appellate Tribunal under the then provisions.

2.11 It is not discernible as to why the present provisions of Sections 7, 7A and 7B of the Industrial Disputes Act 1947 omitted the above category of persons from the qualifications for appointment of presiding officers of Labour Courts, Industrial Tribunals and National Industrial Tribunals.

2.12 “Industrial and labour disputes” is a subject covered under the Concurrent List in the Seventh Schedule of the Constitution (*vide* Entry 22). Some State Legislatures have amended the provisions of Sections 7 and 7A of the Industrial Disputes Act 1947 in their application to the respective States Concerned. For example, the States of Goa, Gujarat and Maharashtra have amended Section 7 expressly making advocates with 7 years’ practice at the Bar eligible for appointment as a presiding officer of a Labour Court, amongst others; the State of Haryana has amended Section 7 stating that a person qualified for appointment as a District Judge will be eligible, which read with article 233 of the Constitution also means that an advocate with 7 years’ practice at the Bar will be eligible for appointment as a presiding officer of a Labour Court. The States of

Assam, Goa, Kerala, Madhya Pradesh and Maharashtra have amended Section 7A stating that a person qualified for appointment as a Judge of a High Court will be eligible for appointment as a presiding officer of an Industrial Tribunal, which read with article 217 of the Constitution means that an advocate with 10 years' practice at the Bar will be eligible for the said appointment, amongst others, while the State of Haryana has amended Section 7A making a person qualified for appointment as a District Judge eligible, that is, an advocate with only 7 years' practice at the Bar.

III. *S. P. SAMPATH KUMAR v. UNION OF INDIA*

3.1 In *S. P. Sampth Kumar v. Union of India*², a Constitution Bench of the Supreme Court observed that the then provisions in the Administrative Tribunals Act 1985 which did not consider advocates with 10 years' practice at the Bar as eligible for appointment as a Vice-Chairman of an Administrative Tribunal were liable to be struck down, as such advocates who are eligible for appointment as High Court Judges must be considered eligible for appointment as Vice-Chairmen of Administrative Tribunals.

² AIR 1987 SC 386

3.2 P. N. Bhagwati, J., the then CJI, observed in *Sampath Kumar's* case:

“I also fail to see why a District Judge or an advocate who is qualified to be a Judge of a High Court should not be eligible to be considered for appointment as Vice-Chairman of the Administrative Tribunal. It may be noted that since the Administrative Tribunal has been created in substitution of the High Court, the Vice-Chairman of the Administrative Tribunal would be in the position of a High Court Judge and if a District Judge or an advocate qualified to be a Judge of the High Court, is eligible to be a High Court Judge, there is no reason why he should not equally be eligible to be a vice-Chairman of the Administrative Tribunal. Can the position of a Vice-Chairman of the Administrative Tribunal be considered higher than that of a High Court Judge so that a person who is eligible to be a High Court Judge may yet be regarded as ineligible for becoming a Vice-Chairman of the Administrative Tribunal. It does appear that the provisions of the impugned Act in regard to the composition of the Administrative Tribunal are a little weighted in favour of members of the Services. This weightage in favour of the members of the Services and value-discounting of the judicial members does have the effect of making the Administrative Tribunal less effective and efficacious than the High Court. I would therefore suggest that a District Judge or an advocate who is qualified to be a Judge of the High Court should be regarded as eligible for being Vice-Chairman of the Administrative Tribunal and unless an amendment to that effect is carried out on or before 31st March, 1987, the impugned Act would have to be declared to be invalid, because the provision in regard to the composition of the Administrative Tribunal cannot be severed from the other provisions contained in the impugned Act.”

3.3 In its Order³ on the review petition filed in *Sampath Kumar's* case, the Supreme Court observed:

³ 1987 (1) SCALE 1317

“The second contention of the learned Attorney General is that the observations of Bhagwati, CJI that for the appointment to the post of Vice-Chairman of the Administrative Tribunal, besides a District Judge an Advocate who is qualified to be a Judge of the High Court should also be regarded as eligible, calls for reconsideration because an Advocate will not have the administrative experience which is required for a member of the Administrative Tribunal. We are unable to accept the contention. In the first place, an Advocate who is qualified to be a Judge of the High Court is an Advocate who by implication is qualified to perform not only the Judicial Duties but the Administrative functions which a High Court Judge is expected to discharge. Secondly, whether an Advocate applying for recruitment to the Administrative Tribunal has sufficient administrative potential can be examined and judged during the process of selection. We, therefore, do not propose to interfere with the observations made by Bhagwati, CJI in his Judgment.”

IV. TRIBUNALS WHICH ADVOCATES CAN MAN

4 The following tribunals and other quasi-judicial bodies can be manned by advocates under the respective enactments mentioned against each:

- [i] Income-tax Appellate Tribunal
(Income-tax Act 1961)
- [ii] Customs, Excise and Service Tax Appellate Tribunal
(Customs Act 1962)

- [iii] Appellate Tribunal for Foreign Exchange
(Foreign Exchange Management Act 1999)
- [iv] Railway Claims Tribunal
(Railway Claims Tribunal Act 1987)
- [v] Administrative Tribunals
(Administrative Tribunals Act 1985)
- [vi] National Environment Tribunal
(National Environment Tribunal Act 1995)
- [vii] Cyber Regulations Appellate Tribunal
(Information Technology Act 2000)
- [viii] Securities Appellate Tribunal
(Securities and Exchange Board of India Act 1992)
- [ix] National Company Law Tribunal
(Companies Act 1956)
- [x] National Company Law Appellate Tribunal
(Companies Act 1956)
- [xi] Company Law Board
{CLB (Qualifications etc.) Rules 1993}
- [xii] Competition Appellate Tribunal
(Competition Act 2002)
- [xiii] Debts Recovery Tribunal
(Recovery of Debts Due to Banks and Financial
Institutions Act 1993)
- [xiv] Debts Recovery Appellate Tribunal
(Recovery of Debts Due to Banks and Financial
Institutions Act 1993)
- [xv] Board for Industrial and Financial Reconstruction
{Sick Industrial Companies (Special Provisions) Act 1985}

[xvi] Appellate Authority for Industrial and Financial Reconstruction

{Sick Industrial Companies (Special Provisions) Act 1985}

[xvii] Consumer Disputes Redressal Agencies
(Consumer Protection Act 1986)

[xviii] Monopolies and Restrictive Trade Practices Commission
(Monopolies and Restrictive Trade Practices Act 1969)

[xix] Appellate Tribunal
(Prevention of Money-laundering Act 2002)

[xx] Adjudication Authority
(Prevention of Money-laundering Act 2002)

[xxi] Copyright Board
(Copyright Act 1957)

[xxii] Appellate Tribunal for Forfeited Property
{Smugglers and Foreign Exchange Manipulators
(Forfeiture of Property) Act 1976}

[xxiii] Advisory Boards
{Article 22(4) (a) of the Constitution; National Security Act 1980; Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974}

[xxiv] Appellate Tribunal for Electricity
(Electricity Act 2003)

[xxv] Airports Economic Regulatory Authority Appellate Tribunal
(Airports Economic Regulatory Authority of India Act 2008)

[xxvi] Information Commissions
(Right to Information Act 2005)

[xxvii] Electricity Regulatory Commissions
(Electricity Act 2003)

- [xxviii] Competition Commission of India
(Competition Act 2002)
- [xxix] Telecom Regulatory Authority of India
(Telecom Regulatory Authority of India Act 1997)
- [xxx] Petroleum and Natural Gas Regulatory Board
(Petroleum and Natural Gas Regulatory Board Act 2006)
- [xxxi] Insurance Regulatory and Development Authority
(Insurance Regulatory and Development Authority Act
1999)
- [xxxii] Airports Economic Regulatory Authority
(Airports Economic Regulatory Authority of India Act
2008)
- [xxxiii] Pension Fund Regulatory and Development Authority
(PFRDA Bill 2005)

V. CONCLUSION AND RECOMMENDATION

5.1 The observations of the Supreme Court in *Sampath Kumar's* case [paragraphs 3.2 and 3.3 *supra*] and qualifications for appointments in various tribunals and other quasi-judicial bodies [paragraph 4 *supra*] make it very clear that advocates with requisite

number of years' practice at the Bar, of course, in the concerned legal field, are competent to man any tribunal.

5.2 It seems to be an oversight that Sections 7, 7A and 7B of the Industrial Disputes Act 1947 do not include advocates as persons eligible for appointment as presiding officers of Labour Courts and Industrial Tribunals.

5.3 We, therefore, are of the view that Sections 7, 7A and 7B of the Industrial Disputes Act 1947 should be suitably amended to make advocates with the requisite number of years' practice at the Bar, in the relevant legal field, eligible for appointment as presiding officers of Labour Courts and Industrial Tribunals.

5.4 We recommend accordingly.

(Dr Justice AR. Lakshmanan)

Chairman

(Prof. Dr Tahir Mahmood)

Member

(Dr Brahm A. Agrawal)

Member-Secretary