

Keynote address at the inaugural session of the

'All India Conference of the Central Administrative Tribunal'

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It is indeed my privilege to be delivering this keynote address for the 'All India Conference of the Central Administrative Tribunal'. The present conference is extremely significant since it provides an opportunity for the functionaries of the various benches of the Central Administrative Tribunal (CAT) to converge and deliberate upon the challenges faced by them and in the process learn from each others' experiences. The functioning of the Central Administrative Tribunals in the last two decades has indeed been a unique experiment that has contributed to the evolution of the distinct legal discipline of 'Service Jurisprudence'. In an increasingly diversified labour market, the decisions of the administrative tribunals not only safeguard the interests of public employees but also reflect the standards that should be followed in the other sectors of the economy with respect to service conditions. It goes without saying that it is in the interests of

the State to address the grievances of its employees so that they in turn can effectively serve the general populace.

We are all aware of the story behind the establishment of the Central Administrative Tribunal, but I would like to take this opportunity to recount it in a nutshell. Suggestions for the creation of special tribunals to look into the grievances of government employees were made by the Justice Shah Committee in 1969 as well as the First Administrative Reforms Commission. The Supreme Court also opined on the desirability of separate tribunals to resolve service-related disputes in *K.K. Dutta v. Union of India*.¹ Subsequently the Administrative Tribunals Act, 1985 was enacted in pursuance of the scheme envisaged under Article 323A of the Constitution, which itself had been inserted by the 42nd amendment in 1976. Even before the actual establishment of the Central Administrative Tribunal, the vires of the Administrative Tribunals Act were questioned before the Supreme Court.

¹ (1980) 4 SCC 38

In the separate but concurring opinions reported in *S.P. Sampath Kumar v. Union of India*,² Chief Justice P.N. Bhagwati and Justice Ranganath Misra propounded the theory of '*alternative institutional mechanisms*' to defend the establishment of Administrative Tribunals which were conferred jurisdiction over service-related matters. In respect of the grave concern with the increasing pendency of litigation before the High Courts, the learned judges in the said decision agreed with the policy choice of the creation of separate administrative tribunals which were characterized as 'substitutes'. They in fact went a step ahead and approved of the statutory scheme which excluded the exercise of 'judicial review' by the High Courts in respect of service-matters. This position was of course reconsidered and changed some years later by a constitutional bench in *L. Chandra Kumar v. Union of India*³ wherein it was held that the orders of tribunals constituted under Articles 323A and 323B were subject to the scrutiny of High Courts under their writ jurisdiction by way of Article 226 as well as on account of their power of superintendence over subordinate courts and tribunals, as provided under Article 227. As a consequence of

² (1985) 4 SCC 458

³ (1997) 3 SCC 261

this decision, the role of the CATs was characterized as 'supplemental' rather than that of a substitute to the High Courts.

In the course of this speech, however, I would like to briefly comment on the key concerns in relation to the working of the Central Administrative Tribunals – namely those of their independence from the executive and those pertaining to their efficiency in aspects such as the quality of their personnel, adjudication as well as enforcement of orders.

Even though the administration of the Central Administrative Tribunal comes under the supervision of the Ministry of Personnel, Public Grievances and Pensions, it can be said with utmost confidence that the methods of appointment of the Chairman, Vice-Chairman and the members of the CAT meet the objective of ensuring the tribunals' independence from the executive. Even though the administrative tribunals have often been described as 'quasi-judicial' bodies, it is their 'judicial' character which needs to be emphasized in order to ensure impartiality and efficiency in adjudication of service-related matters. Even in foreign jurisdictions

such as the United Kingdom, where several special tribunals have been created, the primary concern is that of ensuring their independence from the executive. In this regard, it will be useful for everyone present here to refer to Sir Andrew Leggatt's Report submitted in 2001, titled '*Tribunals for Users: One System, One Service*'.

Presently, the appointment of judicial as well as administrative members to the Central Administrative Tribunals is overseen by a 'Selection Committee' headed by a sitting judge of the Supreme Court, acting under the authority of the Chief Justice of India. While this mechanism has so far ensured transparency in the matter of appointments, Chief Justice A.M. Ahmadi had observed in *L. Chandra Kumar*,⁴ that for the purpose of administrative supervision it would be desirable to create a new independent nodal agency to administer the tribunals set up in pursuance of Article 323A and 323B of the Constitution. Such administrative supervision over the tribunals is not intended to affect their adjudicatory functions, but is instead

⁴ Paragraph 97 in (1997) 3 SCC 261

meant to ensure support by way of research, staff and infrastructure among other requirements.

In its 162nd Report, The Law Commission of India had proposed that the appointments of the members of the CATs could be based on a competitive examination among those who fulfil the requirements stipulated under Section 6 of the Administrative Tribunals Act, 1985. The report also made some observations concerning the profile of the individuals being appointed as Vice-Chairmen and Members of the Central Administrative Tribunals. It was perceived that most individuals being appointed to these positions were recently retired or soon-to-retire High Court Judges and District Judges respectively. It was felt that individuals of such a description would not be able to serve terms of more than 2-3 years and would also not have the inclination to become well-versed in the field of 'service jurisprudence' unless they were already familiar with the same. In this regard, the Law Commission made the suggestion that individuals from a relatively younger age-group, who are eligible to become High Court judges, could be considered for appointment as members of the Central Administrative Tribunals for terms longer than the presently

stipulated five years. In order to incentivise the said positions, It was also suggested that such individuals could then be subsequently considered eligible for elevation to the respective High Courts.⁵

The language of the Administrative Tribunals Act, 1985 had clearly factored in the objective of ensuring easy access to dispute-resolution for government employees. The same can be discerned from the fact that the proceedings before the benches of the Central Administrative Tribunal are not subject to the Code of Civil Procedure or the Evidence Act, but are bound by principles of natural justice. Since the rules of procedure created for the Central Administrative Tribunal permit the acceptance of Ordinary Applications (O.A.'s) by post, there have been suggestions from some quarters to allow the submission of substantive arguments purely in writing through post. Even though this suggestion holds the promise of lesser inconvenience to aggrieved parties, one cannot be certain about how the practitioners before the administrative tribunals will respond to the same.

⁵ Ref. in the 162nd Report of the Law Commission of India on '*Review of functioning of CAT, CEGAT and ITAT*' (1998) at p. 101-103

With regard to concerns about efficiency, statistics indicate that most benches of the Central Administrative Tribunal have consistently improved the rate of disposal in recent years with some benches disposing of a higher number of cases than the number instituted before them. However, critics have argued that since all orders of the CATs can be questioned before the High Courts following the *L. Chandra Kumar* decision, they have been rendered redundant and hence there is a case for their abolition. Apart from this critical viewpoint, there have also been arguments made against the policy-choice of creating special tribunals in the first place. For instance the *Report of the Arrears Committee* (headed by Justice V.S. Malimath) submitted in 1989-1990 expressed skepticism about the effectiveness of the various tribunals and instead suggested an expansion of the High Courts with benches specializing in different areas of substantive law. While it may be possible to offer cogent argumentation against 'tribunalisation', there are several compelling reasons for continuing with them. With regard to Administrative Tribunals, the presence of administrative members makes a considerable difference in the adjudication of service- matters since these members are well-versed with the everyday functioning of

government departments and agencies, thereby enabling them to understand the implications of the grievances brought to light. Furthermore, these tribunals are more accessible to litigants, both in terms of lower costs and absence of complex procedures.

In light of the *L. Chandra Kumar* decision, it is desirable to continue with the administrative tribunals, despite the power of the High Courts to scrutinize their decisions. For one, if their decisions were not questioned before the High Court, it would definitely contribute to the pendency of litigation before the Supreme Court. Furthermore, many litigants with limited means would find it difficult to approach the Supreme Court under Article 32 or Article 136 in the event of unfavourable decisions by the tribunals. For such litigants, the High Court is the next and most easily accessible forum for seeking a remedy after the CAT. It must be noted at this point that an overwhelming majority of the decisions given by the benches of the CAT are upheld by the respective High Courts. However, it is also clear that a significantly large proportion of the orders of the Tribunals are questioned before the High Courts, often on frivolous grounds and at the instance of advocates rather than the litigants. In this

regard, the 131st Report of the Law Commission of India on '*The role of the legal profession in the administration of justice*' did suggest an interesting measure, though its practicality is doubtful. It opined that at the time of giving a judgment, a record should be kept of the time spent in addressing frivolous grounds raised by the parties as well as the related costs and subsequently the parties be held liable for these costs, irrespective of the result of the litigation.⁶ Another suggestion offered specifically with regard to Administrative Tribunals was that of constituting a '*National Appellate Administrative Tribunal*' which would take away the burden of service-related litigation away from the High Courts and its decisions would be appealable before the Supreme Court.⁷ However, the viability of the same is also open to debate, since such an appellate tribunal would be effective only if it had multiple benches in different regions, the establishment of which in turn would involve considerable costs.

⁶ Ref. 162nd Report of the Law Commission of India on '*Review of functioning of CAT, CEGAT and ITAT*' (1998) at p. 121

⁷ Ref. 162nd Report of the Law Commission of India on '*Review of functioning of CAT, CEGAT and ITAT*' (1998) at p. 112-115

In recent years, the Supreme Court decision in *T. Sudhakar Prasad v. Govt. of A.P and Others*,⁸ established that a Central Administrative Tribunal had the power to punish for its contempt, in a manner akin to that of a High Court. This power of contempt is significant since it is a measure to ensure that parties comply with the tribunal's orders. While this rationale is clearly intended to tackle instances of unresponsive government departments, the possibility of the unrestrained use of such power of contempt has also been addressed by the Supreme Court. In *Suresh Chandra Poddar v. Dhani Ram*,⁹ the Court advised the CATs to exercise restraint in the use of the contempt powers, especially in circumstances where the parties have not been given sufficient notice or time to comply with the tribunals' orders or where the orders of the tribunal have been questioned before the High Court

While this is only a glance at some of the issues related to the working of the Central Administrative Tribunals, it is my sincere hope that all those in attendance at this conference will engage in substantive discussions based on their respective experiences. The

⁸ [2000] Supp 5 SCR 610

⁹ (2002) 1 SCC 766

utmost importance should be given to the development and improvement of effective grievance redressal mechanisms within the various government agencies and departments. The overarching strategy has to be that of prevention of grievances. With these words I would like to conclude this address.

Thank You!