All India Conference of the Central Administrative Tribunal (CAT)

(November 1, 2009 – New Delhi)

Keynote Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India

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Sh M. Veerappa Moily (Union Minister for Law and Justice)
Sh. Prithviraj Chavan (MoS for Personnel, Public Grievances and Pensions)
Justice Mukundakam Sharma, Justice V.K. Bali (Chairman, CAT),
Justice M. Ramachandran, Sh. L.K. Joshi (Vice-Chairmen, CAT)
And Ladies and Gentlemen,

I am grateful for the invitation to attend this programme. This annual conference of the Central Administrative Tribunal (CAT) provides an opportunity for the members serving in the different benches to converge and learn from each others' practical experience. The decisions rendered by the various CAT benches have contributed to the emergence of 'Service Jurisprudence' as an important area of legal practice and scholarly study. In an increasingly diversified economy, a fair and independent system for resolving service disputes is essential for enabling the State to act as a model employer. The service conditions that are applicable to public sector employees are expected to serve as benchmarks for comparable employment in the private sector. Furthermore, the prompt redressal of the grievances of public employees is needed so that they can effectively serve the interests of the general public.

The Administrative Tribunals Act, 1985 was enacted in pursuance of 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 had been questioned in the Supreme Court. In the separate but concurring opinions reported in *S.P. Sampath Kumar* v. *Union of India*,[1] P.N. Bhagwati, C.J. and Ranganath Misra, J. invoked the idea of '*alternative institutional mechanisms*' to defend the establishment of the Central Administrative Tribunal as well as the State Administrative Tribunal which had been conferred with jurisdiction over service-related matters. Citing the alarming pendency-levels before the respective High Courts, the learned judges had endorsed the creation of separate administrative tribunals. They also approved of the statutory scheme which had excluded the exercise of 'judicial review' by the High Courts in respect of service-matters. This position was of course reconsidered by a constitution bench in *L. Chandra Kumar* v. *Union of India*[2] wherein it was held that the orders of tribunals constituted under Articles 323A and 323B were subject to the scrutiny of High Courts under Article 226 as well as Article 227 which prescribes their power of superintendence over subordinate courts and tribunals.

The language of the Administrative Tribunals Act had accounted for the objective of ensuring easy access to dispute-resolution. The same is evident from the fact that the proceedings before the CAT benches are not bound by the Code of Civil Procedure (CPC) or the Evidence Act, even though the principles of natural justice must be adhered to. Since the rules of procedure created for the Administrative Tribunals permit the acceptance of

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[1] (1985) 4 SCC 458
[2] (1997) 3 SCC 261

Ordinary Applications (O.A.'s) by post to initiate proceedings, it has been suggested that perhaps the substantive written submissions can also be accepted through post. Even though this suggestion holds the promise of lesser inconvenience to aggrieved parties, there is a need for examining the practical implications of such a move. I must also highlight here that the CAT is among the few quasi-judicial bodies which has adopted the practice of collecting court fees through Demand Drafts (DD) instead of revenue stamps. Recently the Law Commission has also suggested that the Courts should adopt this method for collecting court-fees since it will reduce the man-hours spent in verifying the proper payment of court-fees.

With regard to concerns about efficiency, statistics indicate that most benches of the CAT have progressively improved their rate of disposal in recent years. What is particularly noteworthy is that some regional benches have disposed off a higher number of cases than the number instituted before them. However, critics have argued that since all orders of the CAT benches 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 specialist 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 efficacy of the tribunals and instead suggested an expansion of the High Courts with benches specializing in different areas of substantive law.

At an academic level several arguments can be made against the increasing 'tribunalisation' of justice, however keeping practical considerations in mind there are also some compelling reasons for continuing with them. With regard to Administrative Tribunals, the presence of administrative members considerably improves the quality of adjudication since these members are well-versed with the everyday functioning of governmental departments, authorities and PSUs thereby enabling them to better appreciate the grievances brought to light. The presence of judicial members acts as a bulwark against apprehensions of bias since they ensure that requirements of natural justice such as a fair hearing, reasoned orders and 'conflict-of-interest' on part of the members themselves are accounted for. 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 piling up of service-disputes 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 against the decisions of 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. Therefore, if the quality of decisions given by the tribunals is of a high standard, then the additional layer of scrutiny by the High Courts is not an adequate ground for doing away with the tribunals altogether.

However, it is also clear that a significantly large proportion of the orders of the CAT benches are being 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. It recommended that at the time of giving a judgment, a record should be kept of the time spent by the parties in addressing frivolous grounds as well as the related costs and that the parties should be held liable for these costs, irrespective of the result of the litigation.[3] 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.[4] However, the viability of the same is also open to debate as long as the decision in L. Chandra Kumar holds good.

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

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

In recent years, the decision in *T. Sudhakar Prasad* v. *Govt. of A.P and Others*,[5] had recognised that a CAT bench had the power to punish for its own contempt, in a manner akin to that of a High Court. This power of contempt is significant since it is designed to ensure that parties comply with the tribunal's orders. While the intent is to tackle instances of unresponsive government departments, the possibility of the unrestrained use of such contempt power has also been addressed by the Supreme Court. In *Suresh Chandra Poddar* v. *Dhani Ram*,[6] 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 CAT, it is my sincere hope that all of you will use this conference to reflect on your respective experiences. The utmost importance should be given to the improvement of effective grievance redressal mechanisms and remedies within the various government agencies and departments. The overarching strategy has to be that of preventing litigation. With these words I would like to thank all of you for being a patient audience.

Thank You!

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[5] [2000] Supp 5 SCR 610
[6] (2002) 1 SCC 766