

**Draft Speech for the use of on
Hon'ble Union Minister for Law & Justice
All India Conference of the Central Administrative Tribunal
Vigyan Bhawan, New Delhi
1st November, 2009.**

Hon'ble Chief Justice, Shri K.G. Balakrishnan, other Judges of the Supreme Courts and High Courts, My dear, Chavahan, MoS for Personnel, PG and Pension, Chairman and members of Central Administrative Tribunal, legal luminaries, ladies and gentleman.

It is my privilege to be here at the occasion of inauguration of All India Conference of Central Administrative Tribunal.

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.

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."

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.

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. The Administrative Tribunals are distinguishable from the ordinary courts with regard to their jurisdiction and procedure. The exercise of jurisdiction is 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. Thus became the Administrative Tribunals an effective and real substitute for the High Courts.

The Central Administrative Tribunal has been established for adjudication of disputes 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 other local authorities within the territory of India or under the control of Government of India and for matters connected therewith or incidental thereto. In addition to Central Government employees, the Government of India has notified 45 other organizations to bring them within the jurisdiction of the Central Administrative Tribunal. The provisions of the Administrative Tribunals Act, 1985 do not, however, apply to members of paramilitary forces, armed forces of the Union, officers or employees of the Supreme Court, or to persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State/Union Territory Legislatures.

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.

As per the statistics furnished to the Parliamentary Standing Committee⁴¹ 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: 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.

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). 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.

However, 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. 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.

Law Commission of India in its 215th Report has recommended the Central Government for referring the matter before a larger bench of the Supreme Court for revisiting the decision of *L. Chandra Kumar*. It requires considerations.

I would like to emphasize that the success of a Tribunal can be judged on three general parameters. The primary concern is that of ensuring institutional as well as personal independence from the executive in decision-making. Secondly, the members must demonstrate efficiency by maintaining a healthy disposal rate. The third parameter is of course that of proper enforcement of the orders and decisions.

There is no doubt that Central Administrative Tribunal is providing effective justice to employees and also takes care of employers. However, there is always scope for improvement. As the Tribunal is dealing with service matters of Government employees, it is needed that their grievances are settled in time bound manner so that their career may not be jeopardized. There is another aspect. If the employee is concentrating on his case which is pending before the Tribunal, he may not deliver his services effectively. It would affect Government working. Therefore, efforts should be made so that cases of employees are disposed of as quickly as possible. I am not blaming the Tribunal for delay. Some time delay is due to inaction of the concerned Government department in replying and arguing the case.

You must be aware that we are progressing towards bringing judicial reforms. One of the agenda before the Government is that we want to remove the tag of 'biggest litigant'. We are formalizing the policy of the Government litigation. We are collecting data from all the

Departments of the Government regarding cases pending in the Courts and Tribunals. We will analyze those cases and take necessary corrective steps. Our efforts are that Government should go in litigation only where it is necessary. Unnecessary appeals should not be filed on behalf of the Government. Soon we will formalize our policy.

Service jurisprudence has become very complex now. Our idea is that grievances of an employee are to be effectively addressed by the grievance cell of the concerned department.

SPEEDY JUSTICE

- “JUSTICE, Social, Economic and Political” is the spirit and vision of the Constitution which WE, THE PEOPLE OF INDIA have solemnly given to ourselves on 26th November 1949. It is the duty of the State to secure a social order in which the legal system of the nation promotes justice, on a basis of equal opportunity and shall, in particular ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Access to Justice is the key for realizing this vision. Access to quick and quality justice must be the focal point.
- Adjourments should not be given, except in rare circumstances.
- Incentives to delay matters must be identified and eliminated. There shall endeavour to introduce measures to remove “benefits” of delay sought by unscrupulous litigants. Such measures must include heavy interest, actual, compensatory and even punitive costs.
- The Central Government is proposing the introduction of a litigation policy. The government is to be transformed from a compulsive litigant into a responsible and reluctant litigant. An action plan in this behalf will be launched separately. It has a two pronged approach – identifying and removing “useless” cases which are burdening the docket. This should be done at the earliest.
- The present system viz. “let the Tribunal decide every case” must be eliminated. Setting up of Empowered Government Committees to eliminate unnecessary litigation need to be considered.

- Tribunal members who perform their functions efficiently should be granted recognition for the same.
- Top quality executives may be recruited to ensure time management, effective utilization of infrastructure and management of personnel for courts.
- Senior law students, fresh graduates from National Law Schools, and MBA graduates may also be appointed as Court Managers. However, to attract such professionals as Court Managers, a structure of incentives must be mapped out, as the bulk of such professionals prefer to join the corporate sector due to the financial incentives offered.
- There should be a sustained effort to encourage efficient methods of case management to ensure that there is optimal utilization of the Tribunal's time and the infrastructure provided by the system.
- A shift system should be introduced in Tribunals to reduce delays by maximizing the utilization of the infrastructure provided to the tribunal system.

THE CASE FOR DIGITIZATION

- A paper based system has many problems.¹
 - It means cutting down more trees and is not eco friendly.
 - It requires more and more storage space which, in turn, translates, into the requirement of more buildings.
 - Paper necessarily involves care and maintenance for its preservation and places a heavy demand on human resources; a lot of time and energy is spent on the management of paper for filing, retrieval, transportation and preservation.
- To achieve this, we need to move towards having e-tribunals. An e-tribunal will require:-
 - Digitization of decided cases.

¹ Much of the section on digitization draws extensively from suggestion made by Justice Badar. D, Ahmed.

- Indexation of digitized record on key parameters for easy retrieval.
- Authentication of digitized records and simultaneous weeding out of papers and resultant freeing up of building space which could be utilized more efficiently.
- Digitization of current files and the introduction of e-filing.
- The Presiding Officers of Courts will be given laptops preinstalled with suitable software enabling them to type out quick and short judgments. Where necessary, personal executives will provide additional assistance.
- Digitization also needs to be introduced at several stages of Tribunal proceedings such as, payment of court fees, service of notice, hearing schedules etc.

I hope that Central Administrative Tribunal would continue to serve the nation by providing effective justice to litigants. My best wishes are always with Tribunal.

d respect of the public it serves.