Administrative Tribunals

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Most Common Litigation faced by Government Institutions

- Contractual & Service related
- Service Disputes – Resolved at Departmental and Beyond-Departmental level
- Resolution beyond Department – Tribunals, High Courts and Supreme Court
Service Matters

- All matters relating to conditions of service in connection with Union or any State or any local authority or other authority etc.
- Including recruitment, remuneration, pension & retirement benefits
- Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation
- Leave, disciplinary matters etc
Law Governing Service Matters

- Constitution of India - Art. 309-311
- Service Rules framed by appropriate Government
- The Service Contracts (Standard Form)
- Judicial Precedents
Tribunals

- Quasi-judicial bodies created for specific purposes
- Purposes – Speedy, Informal and Inexpensive Justice
- Classification - Domestic, Service and Administrative
- Service Tribunals Created Under Art.323-A of Constitution & Administrative Tribunals Act, 1985
  * Classification - State, Joint or Central
Composition of Tribunals

- Chairman, Vice-Chairmen & Members
- Members – Administrative and Judicial
- Qualifications: Chairman - sitting/former judge of H.C. or experience as V.C. for 2 years
- Vice Chairman: is/was/qualified to be H.C. Judge or 2 yrs exp. as Secretary to Govt or 5 yrs exp. as Addl. Secretary or 3yrs exp. as jud / adm. Member of adm. tribunal
Composition of Tribunals (contd..)

- **Judicial member** - is/has been/qualified to be a High Court judge or member of Indian Legal Service holding post in Grade-I for minimum 3 years
- **Adm. Member** – 2yrs experience as Additional Secretary or 3 yrs experience as Joint secretary having adequate administrative experience
- **All-appointed by the President in consultation with concerned Governor**
Jurisdiction, Powers and Authority of Adm. Tribunals

- Governed by Sec.14 of ATA,1985
- All jurisdiction & powers over recruitment and related matters pertaining to All India Services/Civil service of Union/Civil Post under Union/Defence / Other authorities notified by Central Govt.
- All jurisdiction & Powers exercised hitherto by all courts except Supreme Court
- Adm . Tribunals = High Courts
Jurisdiction, Powers and Authority of Adm.Tribunals (contd..)

- Power to punish for contempt - Under Sec.17, ATA, 1985 & Contempt of Courts Act 1970
- Power to pass *interim* orders – Sec.24, ATA, 1985 including injunctions / stay
- To prevent any loss being caused to applicant which cannot be compensated in money.
  - Power to Transfer pending cases – S.28
  - Power to Review its decisions – S.22(3)(f)
Procedure for determination of service disputes

- Application to Tribunals - S.19
  - After exhausting alternative remedies under relevant service rules (after passing of final order by competent authority or after expiry of 6 months period from representation) - S.20
  - Within Limitation Period (within 1 yr from date of final order or within 1 yr from expiry of 6 months from appeal/representation if no final order is passed)
  - Subject to condonation of delay by showing sufficient cause
Procedure for determination of service disputes (contd..)

- Tribunal not bound by CPC, 1908 but guided by principles of natural justice (Sec. 22)
- Shall decide every application as expeditiously as possible – on perusal of documents, written representations and after hearing oral arguments advanced
- Shall have all powers of a civil court under CPC
Procedure for determination of service disputes (contd..)

- Applicant can take assistance of legal practitioner & Govt. can appoint presenting officers (S.23)
- Tribunal can pass interim orders (s.24)
- Orders of Tribunals- executable (by following procedure under O.21 r/w S.151,CPC)
Exclusion of Jurisdiction of Courts except Supreme Court

- No provision for appeal against decision of Adm.Tribunals except to S.C.of India - S.28,ATA & Art.323-A(2)(d) of Constitution
- To the Supreme Court - only under Art.136 of Constitution
- Impact of *L.Chandra Kumar vs.Union of India AIR 1997 SC 1125* - W.P. can be filed before a DB of concerned HC
- Power of Judicial Review - Basic Feature of Constitution
Remedies before the High Courts

- Through W.P.s under Art.227
- Only before a Division Bench and only after *Chandra Kumar*
- Remedies available - directions, orders or writs including writs in nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari
- Most relevant writs - Mandamus, Certiorari and Prohibition
Remedies before the High Courts (contd..)

- Nature of writ remedy - discretionary
- Discretion of court – depends on Laches, Alternative relief, Locus standi, Res Judicata and Questions of Fact etc.
- Grounds of Challenge-Violation of Art.14,15,16, and 311 etc.
Central Adm. Tribunal (Procedure) Rules, 1987

- Framed by Central Government U/S 35 and 36 of Ata, 1985 (w.e.f. 15 Jan 1987)
- Language of Tribunal - English (Hindi at discretion of Tribunal)
- Application - 1] presented by applicant in person/agent/legal practitioner; 2] in Triplicate; 3] in two compilations viz., 1-application along with impugned order and 2-all other documents and annexure; 4] filed at place of working of applicant or where cause of action arose - exception - in case of retirement/dismissal/termination of service, at the place of residence of applicant
Central Adm.Tribunal (Procedure) Rules, 1987 (contd..)

- Application Fee – Rs. 50/-
- Contents of Application - Distinct grounds, prayer for interim order/direction, separate application and affidavit for condonation of delay
- Annexure - attested true copy of impugned order, other documents relied on and index of documents
- Service of Notices/Processes - by party, hand delivery (dasti), RPAD, thr. concerned Head of office
- Filing of reply by Respondents - in triplicate along with documents
Ex parte hearing and disposal of application—at discretion of tribunal

Can be set aside within 30 days from date of order

Review Petition— to be filed within 30 days from date of receipt of copy of order.
The CAT (Contempt of Courts) Rules, 1992

- Contempt - Civil or Criminal
- Contempt petition - filed before a bench of min. 2 members or can be taken suo motu also
- Compelling attendance - if needed by issue of warrant (R shall appear unless ordered otherwise)
- Execution of sentence - Imprisonment till rising of Tribunal/Fine/Imprisonment
- Apology at any stage of proceedings
Other Tribunals

- Customs, Excise and Service Tax Appellate Tribunal (CEGAT)
- The Income-Tax Appellate Tribunal (ITAT)
- Intellectual Property Appellate Board (IPAB)
- The Securities Appellate Tribunal (SAT)
- Debts Recovery Tribunals etc
Advantages of Tribunals

- Inexpensive
- Accessibility
- Freedom from Technicalities
- Expedition; &
- Expert Knowledge in a particular subject
CONCLUSION

Thank You