

Administrative law

Nature and Significance of

Administrative Law

- Administrative law, as the name indicates, is a *law relating to administration.*
- Administrative law is the *body of law that governs the activities of administrative* agencies of the government.
- The government wields enormous power and we know that any power is liable to be abused. Administrative law is the *law relating to the prevention of the abuse of such power.*

Functions of Modern State and the Role of Administrative law

The functions of a modern State may broadly be described as follows:-

- the State as protector,
- the State as provider,
- the State as entrepreneur,
- the State as economic controller and
- the State as arbiter.

When administrators perform the above-mentioned functions, on behalf of the State, then administrative law prevents them from taking any arbitrary decision.

Meaning of Administrative Law

Administrative law is that branch of Constitutional law which deals with

- 1. powers and duties** of administrative authorities
- 2. procedures followed** by them in exercising the powers and discharging the duties
- 3. remedies available** to an aggrieved person when her/his rights are affected by an action of such authorities

ADMINISTRATIVE ACTION

- Simply speaking, it means “act of an administrative authority”. It is, however, a term of wider connotation. It is said that the administration is the meeting point of three kinds of governmental functions ,namely legislative, judicial and executive.

Classification of Administrative Action:-

- I. Quasi-legislative
- II. Quasi-Judicial
- III. (Purely) administrative (an action which is neither Quasi-legislative nor Quasi-Judicial).

Purely Administrative function/action

- Power to issue license or permit.
- An order of preventive detention
- An order of acquisition or requisition of property
- An order setting up a commission of inquiry.
- Withdrawal from Prosecution
- **Appointments/Promotions/Transfers**
- Most of your actions are not quasi-legislative/ quasi judicial actions, but they are **purely administrative actions**. With respect to purely administrative actions, **you act on the basis of your knowledge, experience and wisdom.**

Quasi-judicial function/action

- Cancellation, suspension, revocation or refusal to renew licence or permit by licensing authority
- **Imposition of fine**
- Dismissal of an employee on the ground of misconduct.
- Disciplinary proceedings against students.
- Determination of citizenship

Quasi-legislative function/action

- Imposition of tax
- Imposition of fee
- All India Services (Conduct) Rules, 1968
- All India Services (Discipline & Appeal) Rules, 1969.
- **Prescribing dress code from time to time**
- **Fixing Physical Training type, venue & timings**

Quasi-Judicial

- **Consider submissions & arguments**
- **Collate Evidence**
- **DECISION ON EVIDENCE**

Administrative

- **Need not** Consider submissions & arguments
- **Need not** Collate Evidence
- **MAY or MAY NOT BE**
- Decision on the basis of his **knowledge, experience and wisdom. (DISCRETION)**

Quasi-Legislative

- **NEED NOT BE**
- **GENERAL**
- **RELATES TO FUTURE**
- **PNJ = Not Applicable**

- Quasi-Judicial
- **DECISION ON EVIDENCE**
- **SPECIFIC**
- **RELATES TO A PAST INCIDENT**
- **PNJ= Applicable**

Quasi-Legislative

- GENERAL
- FUTURE

- **PUBLISHED
(Communicated)**

- PNJ = Not Applicable

Administrative

- GENERAL /SPECIFIC
- PAST /PRESENT/FUTURE

- **MAY or MAY NOT BE
PUBLISHED**

- PNJ= Applicable

Quasi-Legislative functions - Ingredients

- Order is Legislative in character, it has to be **published.**
- Order is Legislative in character, **the court will not issue a writ of certiorari (or prohibition) to quash it**
- There is **no right to a notice or hearing.**
- **Rules of Natural Justice do not apply in case of quasi-legislative function.**

Judicial Action distinguished from Quasi-Judicial Action

1. A court cannot be a judge in its own cause , while an *administrative authority vested with quasi judicial powers may be party to the controversy but it can still decide*
2. A court is bound to follow the *rules of Indian Evidence Act,1872 and Civil Procedure Code,1908* while a quasi-judicial authority is free from such requirements
3. A quasi-judicial authority has *some of the trappings of a Court*, but not all of them; nevertheless there is an obligation to act judicially.
4. A court is bound by *precedents*, quasi-judicial authority is not.
5. A *lis inter (dispute between)* parties is an essential characteristic of a judicial function, but this may not be true of a quasi-judicial function (Enquiry into lost laptop).

DISTINCTION BETWEEN QUASI-LEGISLATIVE AND QUASI-JUDICIAL FUNCTIONS

- A legislative function (framing rules/regulations) **prescribes future pattern of conduct and creates new rights and liabilities**, whereas a decision (judicial function) **determines rights and liabilities on the basis of present or past facts and declares the pre-existing rights and liabilities**.
- Legislative function **is general** and relates to the future whereas the Judicial Function is **specific and ordinarily relates to the past**.

Distinction between Administrative and Quasi-Legislative Functions

1. **Duty to give reasons** applies to administrative orders but not to legislative orders.
2. Since a quasi-legislative function is legislative in character, there is **no right to a notice and hearing unless specifically so required by the statute.**
3. The **rules of Natural Justice do not apply in case of quasi-legislative function.**
4. If an order is legislative in character, it has to be **published in a certain manner**, but it is not necessary if it is of an administrative nature.

DISTINCTION BETWEEN ADMINISTRATIVE & Q- JUDICIAL ACTS

- In case of the administrative decision there is *no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh-submissions and arguments or to collate the evidence* .
However, with respect to a quasi-judicial decision, there is *a legal obligation upon the person charged with the duty of reaching the decision to consider and weigh-submissions and arguments or to collate the evidence* .

Primary Source of Administrative Law

- Administrative law is not a codified, documented or well-defined law like the Penal Code, Evidence Act, or the Constitution of India. It is essentially unwritten, uncodified, and judge-made law. It has developed gradually as a consequence of various situations.

Case study

The Indian Institute of Management, Dehradun (IIM-D) a Government of India organization, issued an advertisement for the recruitment of 6 stenographers. The skill test mandated by the Recruitment Rules (RR) and notified, stated that the candidate must have a *typing speed* of 50 words per minute (wpm) in English or 40 wpm in Hindi apart from other requirements as per the job profiles of the stenographers. Candidates who applied in response to the recruitment notice were called for written and skill test as per the RR.

On the basis of overall performance, a merit list was prepared by the selection committee. Offer of appointment was issued to six persons who joined the service accordingly.

Case Study...contd.

- A complaint was received from one of the unsuccessful candidates stating that the successful candidates did not meet the typing speed criterion as given in the RR.
- After 18 months after these six candidates joined and working ,an inquiry was instituted to inquire into the allegations. The allegations were proved in the inquiry submitted two months from then .It was held that, the merit list that was prepared, was based on the criteria of *computer proficiency test, language and interview* and **Not** on *typing speed*.

Based on the information available in the case study,

answer the following questions -

1. Can the selection committee adopt selection criteria other than and excluding those mentioned in RR?. Yes / No
2. Can selection criteria be changed after the commencement of the selection process? Yes / **No**
3. Is an inquiry after receipt of the complaint mandatory? Yes / No
4. If you are the head of IIM Dehradun, what decision would you take after receiving the inquiry report?
 - a) Cancel the selection process
 - b) Start a fresh selection process
 - c) Create a new post
 - d) Issue a show cause to the selected candidates asking why their services should not be terminated

Tribunals: an Introduction

- A tribunal is a body or authority, although not a Court, **having all the attributes of a Court**, which is **vested with judicial power to adjudicate on questions of law or fact**, affecting the rights of citizens, in a **judicial manner**.
- Tribunals are administrative bodies, set up solely with the idea of discharging *quasi-judicial* duties. Their determinations affect the rights of parties.
- **Here the discussion is limited to Administrative Tribunals**

Court	Administrative Tribunal
<p>1. In the traditional judicial system the <u>judicial powers are derived from the state (Constitution permits creation of judiciary)</u></p>	<p>The administrative tribunal is created by the statute and invested with judicial power</p>
<p>2. Court can try all suits of civil nature unless barred by law.</p>	<p>The administrative tribunal can try cases of special matter</p>
<p>3. Judges are expert in Law</p>	<p>Members of the administrative tribunal are experts in administrative matters</p>
<p>4. Judges are bound by all the rules of evidence and procedure codes</p>	<p>Members of the CAT/SAT are not bound by rules (Evidence Act/CPC) but bound by the principles of nature of Justice</p>
<p>5. Courts are expensive and time-consuming</p>	<p>The Administrative Tribunals are inexpensive, and faster way to resolve disputes</p>
<p>6. Courts can try civil and criminal matters</p>	<p>Tribunals can adjudicate only civil or administrative matters</p>

Rationale for Administrative Tribunals

- **Need for expertise** – Sometimes, disputes are technical. The traditional judicial system cannot be expected to appreciate and decide them. The reason is obvious because the **judge is a generalist**. On the other hand, Administrative Tribunals are usually manned by experts who can deal with and solve these problems.
- **Flexibility** - Administrative adjudication, **not restrained by rigid rules of procedure and canons of evidence**, can remain in tune with the varying phases of social and economic life.
- **Relief to Courts** - The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with ordinary suits.

Liability for the wrongs of civil Servant

- Civil Wrong= No liability and will be the liability of the State if done in the course of employment
- Crime = There is Liability but sanction to prosecution must be obtained before prosecution for a crime done while acting or purporting to act in the discharge of the duties
- Disciplinary Proceeding=Yes but it is purely discretionary
- Government does not buy 3rd party insurance