

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

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.

- After some time, a complaint was received from one of the unsuccessful candidates stating that the successful candidates did not meet the speed criterion as given in the RR. The allegations were proved in an inquiry. 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
1.In the traditional judicial system the judicial powers are derived from the state	The administrative tribunal is created by the statute and invested with judicial power
2.Court can try all suits of civil nature unless barred by law.	The administrative tribunal can try cases of special matter
3.Judges are expert in Law	Members of the administrative tribunal are experts in administrative matters
4.Judges are bound by all the rules of evidence and procedure codes	Members of the CAT/SAT are not bound by rules (Evidence Act/CPC)but bound by the principles of nature of Justice
5.Courts are expensive and time-consuming	The Administrative Tribunals are inexpensive, and faster way to resolve disputes
6.Courts can try civil and criminal matters	Tribunals can adjudicate only civil or administrative matters

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.