S.P. Sampath Kumar And Ors. vs Union Of India (Uoi) And Ors. on 9 December, 1986

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Bench: P.N. Bhagwati, Ranganath Misra, V. Khalid, G.L. Oza, M.M. Dutt

JUDGMENT

P. N. Bhagwati, CJ.

1. I am in entire agreement with the judgment prepared by my learned brother Ranganath Misra, but since the questions involved in these writ petitions are of seminal importance affecting as they do, the structure of the judicial system and the principle of independence of the Judiciary, I think I would be failing in my duty if I did not add a few words of my own.

2. There are two questions which arise for consideration in these writ petitions and they have been succinctly set out in the judgment of Ranganath Misra, J. The first question is whether the exclusion of the jurisdiction of the High Court under Articles 226 and 227 of the Constitution in service matters specified in Section 218 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the impugned Act) and the vesting of exclusive jurisdiction in such service matters in the Administrative Tribunal to be constituted under the impugned Act, subject to an exception in favour of the jurisdiction of this Court under Articles 32 and 136, is unconstitutional and void and in any event, even if the first question be answered against the petitioners and in favour of the Government, the second question required to be considered is, whether the composition of the Administrative Tribunal and the mode of appointment of Chairman, Vice-Chairmen and members have the effect of introducing a constitutional infirmity invalidating the provisions of the impugned Act. I agreed with the answers given to these questions in the judgment of Ranganath Misra, J. I would articulate my reasons as follows:

3. It is now well-settled as a result of the decision of this Court in Minerva Mills Ltd. and Ors. v. Union of India and Ors. that judicial review is a basic and essential feature of the Constitution and no law passed by Parliament in exercise of its constituent power can abrogate it or take it away. If the power of judicial review is abrogated or taken away the Constitution will cease to be what it is. It is a fundamental principle of our constitutional scheme that every organ of the State, every authority under the Constitution, derives its power from the Constitution and has to act within the limits of

such power. It is a limited Government which we have under the Constitution and both the executive and the legislature have to act within the limits of the power conferred upon them under the Constitution. Now a question may arise as to what are the powers of the executive and whether the executive has acted within the scope of its power. Such a question obviously cannot be left to the executive to decide and for two very good reasons. First, the decision of the question would depend upon the interpretation of the Constitution and the laws and this would pre-eminently be a matter fit to be decided by the judiciary, because it is the judiciary which alone would be possessed of expertise in this field and secondly, the constitutional and legal protection afforded to the citizen would become illusory, if it were left to the executive to determine the legality of its own action. So also if the legislature makes a law and a dispute arises whether in making the law, the legislature has acted outside the area of its legislative competence or the law is violative of the fundamental rights or of any other provisions of the Constitution, its resolution cannot, for the same reasons, be left to the determination of the legislature. The Constitution has, therefore created an independent machinery for resolving these disputes and this independent machinery is the judiciary which is vested with the power of judicial review to determine the legality of executive action and the validity of legislation passed by the legislature. The judiciary is constituted the ultimate interpreter of the Constitution and to it is assigned the delicate task of determining what is the extent and scope of the power conferred on each branch of Government, what are the limits on the exercise of such power under the Constitution and whether any action of any branch transgresses such limits. It is also a basic principle of the rule of law which permeates every provision of the Constitution and which forms its very core and essence that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but also be in accordance with law and it is the judiciary which has to ensure that the law is observed and there is compliance with the requirements of law on the part of the executive and other authorities. This function is discharged by the judiciary by exercise of the power of judicial review which is a most potent weapon in the hands of the judiciary for maintenance of the rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality. That is why I observed in my judgment in Minerva Mills Ltd. case (supra) at pages 287 and 288:

> I am of the view that if there is one feature of our Constitution which, more than any other, is basic and' fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution. Of course, when I say this I should not be taken to suggest that however effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament. But what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. If by a Constitutional amendment, the power of judicial review is taken away and it is provided that the validity of any law made by the legislature shall not be liable to be called in question on any ground, even if it is outside the legislative competence of the legislature or is violative of any fundamental rights, it would be nothing short of subversion of the Constitution, for it would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaningless

and futile. So also if a constitutional amendment is made which has the effect of taking away the power of judicial review and providing that no amendment made in the Constitution shall be liable to be questioned on any ground, even if such amendment is violative of the basic structure and, therefore, outside the amendatory power of Parliament, it would be making Parliament sole judge of the constitutional validity of what it has done and that would, in effect and substance, nullify the limitation on the amending power of Parliament and affect the basic structure of the Constitution. The conclusion must therefore inevitably follow that Clause (4) of the Article 368 is unconstitutional and void as damaging the basic structure of the Constitution.

It is undoubtedly true that my judgment in Minerva Mills Ltd. case (supra) was a minority judgment but so far as this aspect is concerned, the majority Judges also took the same view and held that judicial review is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution and it is equally clear from the same decision that though judicial review cannot be altogether abrogated by Parliament by amending the Constitution in exercise of its constituent power, Parliament can certainly, without in any way violating the basic structure doctrine, set up effective alternative institutional mechanisms or arrangements for judicial review. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court. Then, instead of the High Court, it would be another institutional mechanism or authority which would be exercising the power of judicial review with a view to enforcing the constitutional limitations and maintaining the rule of law. Therefore, if any constitutional amendment made by Parliament takes away from the High, Court the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely that the alternative institutional mechanism or authority set up by the parliamentary amendment is no less effective than the High Court.

4. Here, in the present case, the impugned Act has been enacted by Parliament in exercise of the power conferred by Clause (1) of Article 323A which was introduced in the Constitution by Constitution (42nd Amendemnt) Act, 1976. Clause (2) (d) of this Article provides that a law made by Parliament under Clause (1) may exclude the jurisdiction of courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in Clause (1). The exclusion of the jurisdiction of the High Court under Articles 226 and 227 by any law made by Parliament under Clause (1) of Article 323A is, therefore, specifically authorised by the constitutional amendment enacted in Clause (2) (d) of that Article. It is clear from the discussion in the preceding paragraph that this constitutional amendment authorising exclusion of the jurisdiction of the High Court under Articles 226 and 227 postulates for its validity that the law

made under Clause (1) of Article 323 A excluding the jurisdiction of the High Court under Articles 226 and 227 must provide for an effective alternative institutional mechanism or authority for judicial review. If this constitutional amendment were to permit a law made under Clause (1) of Article 323 A to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would be violative of the basic structure doctrine and hence outside the constituent power of Parliament. It must, therefore, be read as implicit in this constitutional amendment that the law excluding the jurisdiction of the High Court under Articles 226 and 227 permissible under it must not leave a void but it must set up another effective institutional mechanism or authority and vest the power of judicial review in it. Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of Clause (2) (d) of Article 323 A, only if it can be shown that the Administrative Tribunal set up under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matter is concerned. We must, therefore, address ourselves to the question whether the Administrative Tribunal established under the impugned Act can be regarded as equally effective and efficacious in exercising the power or judicial review as the High Court acting under Articles 226 and 227 of the Constitution.

5. It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have same modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every bench of the Administrative Tribunal should consist of one judicial member and one administrative member and there should be no preponderance of administrative members on any bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court. Now Section 6 provides that the Chairman of the Administrative Tribunal should be or should have been a Judge of the High Court or he should have for at least two years held office of Vice-Chairman or he should have for at least two years held the post of Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India. I entirely agree with Ranganath Misra, J. that the Chairman of the Administrative Tribunal should be or should have been a Judge of a High Court or he should have for at least two years held office as Vice-Chairman. If he has held office as Vice-Chairman for a period of at least two years he would have gathered sufficient experience and also within such period of two years, acquired reasonable familiarity with the constitutional and

legal questions involved in service matters, But substituting the Chief Justice of a High Court by a Chairman of the Administrative Tribunal who has merely held the post of a Secretary to the Government and who has no legal or judicial experience would not only fail to inspire confidence in the public mind but would also render the Administrative Tribunal a much less effective and efficacious mechanism than the High Court. We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. Of course, I must make it clear that when I say this, I do not wish to cast any reflection on the members of the Civil Services because fortunately we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome administrative problems of great complexity. But what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience. I am, therefore, of the view, in agreement with Ranganath Misra, J. that Clause (c) of Section 6 (1) must be struck down as invalid.

6. I also fail to see why a District Judge or an advocate who is qualified to be a Judge of a High Court should not be eligible to be considered for appointment as Vice-Chairman of the Administrative Tribunal. It may be noted that since the Administrative Tribunal has been created in substitution of the High Court, the Vice-Chairman of the Administrative Tribunal would be in the position of a High Court Judge and if a District Judge or an advocate qualified to be a Judge of the High Court, is eligible to be a High Court Judge, there is no reason why he should not equally be eligible to be a Vice-Chairman of the Administrative Tribunal. Can the position of a Vice-Chairman of the Administrative Tribunal be considered higher than that of a High Court Judge so that a person who is eligible to be a High Court Judge may yet be regarded as ineligible for becoming a Vice-Chairman of the Administrative Tribunal? It does appear that the provisions of the impugned Act in regard to the composition of the Administrative Tribunal ??? a little weighted in favour of members of the Services. This weightage in favour of the members of the Services and value-discounting of the judicial members does have the effect of making the Administrative Tribunal less effective and efficacious than the High Court. I would therefore suggest that a District Judge or an Advocate who is qualified to be a Judge of the High Court should be regarded as eligible for being Vice-Chairman of the Administrative Tribunal and unless an amendment to that effect is carried out on or before 31st March, 1987, the impugned Act would have to be declared to be invalid, because the provision in regard to composition of the Administrative Tribunal cannot be severed from the other provisions contained in the impugned Act.

7. That takes me to another serious infirmity in the provisions of the impugned Act in regard to the mode of appointment of the Chairman, Vice-Chairman and members of the Administrative Tribunal. So far as the appointment of judicial members of the Administrative Tribunal is concerned, there is a provision introduced in the impugned Act by way of amendment that the judicial members shall be appointed by the Government concerned in consultation with the Chief Justice of India. Obviously no exception can be taken to this provision, because even so far as Judges of the High Court are concerned, their appointment is required to be made by the President inter alia in consultation with the Chief Justice of India. But so far as the appointment of Chairman, Vice-Chairmen and, administrative members is concerned, the sole and exclusive power to make

such appointment is conferred on the Government under the impugned Act. There is no obligation cast on the Government to consult the Chief Justice of India or to follow any particular selection procedure in this behalf. The result is that it is left to the absolute unfettered discretion of the Government to appoint such person or persons as it likes as Chairman, Vice-Chairman and administrative members of the Administrative Tribunal. Now it may be noted that almost all cases in regard to service matters which come before the Administrative Tribunal would be against the Government or any of its officers and it would not at all be conducive to judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice-Chairmen and administrative members; if a judicial member or an administrative member is looking forward to promotion as Vice-Chairman or Chairman, he would have to depend on the goodwill and favourable stance of the executive and that would be likely to affect the independence and impartiality of the members of the Tribunal. The same would be the position vis-a-vis promotion to the office of Chairman of the Administrative Tribunal. The administrative members would also be likely to carry a sense of obligation to the executive for having been appointed members of the Administrative Tribunal and that would have a tendency to impair the independence and objectivity of the members of the Tribunal. There can be no doubt that the power of appointment and promotion vested in the executive can have prejudicial effect on the independence of the Chairman, Vice-Chairmen and members of the Administrative Tribunal, if such power is absolute and unfettered. If the members have to look to the executive for advancement, it may tend, directly or indirectly, to influence their decision-making process particularly since the Government would be a litigant in most of the cases coming before the Administrative Tribunal and it is the action of the Government which would be challenged in such cases. That is the reason why in case of appointment of High Court Judges, the power of appointment vested in the executive is not an absolute unfettered power but it is hedged in by a wholesome check and safeguard and the President cannot make an appointment of a High Court Judge without consultation with the Chief Justice of the High Court and the Chief Justice of India and a healthy convention has grown up that no appointment would be made by the Government which is not approved by the Chief Justice of India. This check or safeguard is totally absent in the case of appointment of the Chairman, Vice-Chairmen and administrative members of the Administrative Tribunal and the possibility cannot be ruled out- indeed the litigating public would certainly carry a feeling-that the decision-making process of the Chairman, Vice-Chairmen and members of the Administrative Tribunal might be likely to be affected by reason of dependence on the executive for appointment and promotion. It can no longer be disputed that total insulation of the judiciary from all forms of interference from the coordinate branches of Government is a basic essential feature of the Constitution. The Constitution makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence. Obviously, therefore if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairmen and members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, therefore, of the view that the appointment of Chairman, Vice-Chairmen and administrative members should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation

must be meaningful and effective and ordinarily the recommendation of the Chief Justice of India must be accepted unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons. There is also another alternative which may be adopted by the Government for making appointments of Chairman, Vice-Chairmen and members and that may be by setting up a High Powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of India. Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impartiality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323-A. I would, however hasten to add that this judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal. But if any appointments of Vice-Chairmen or administrative members are to be made hereafter, the same shall be made by the Government in accordance with either of the aforesaid two modes of appointment.

8. I may also add that if the Administrative Tribunal is to be an equally effective and efficacious substitution for the High Court on the basis of which alone the impugned Act can be sustained, there must be a permanent or if there is not sufficient work, then a Circuit Bench of the Administrative Tribunal at every place where there is a seat of the High Court. I would, therefore, direct the Government to set up a permanent bench and if that is not feasible having regard to the volume of work, then at least a Circuit Bench of the Administrative Tribunal wherever there is a seat of the High Court, on or before 31st March, 1987. That would be necessary if the provisions of the impugned Act are to be sustained. So far as rest of the points dealt with in the judgment of Ranganath Misra, J. are concerned, I express my entire agreement with the view taken by him.

Ranganath Misra J

9. The challenge raised to the vires of the Administrative Tribunals Act, 1985, (hereinafter referred to as 'the Act') in an application under Article 32 of the Constitution and the other connected matters has been referred to the Constitution Bench for adjudication. Indisputably the Act has been framed within the ambit of Article 323 A which was brought into the Constitution by the Forty-Second Amendment Act in 1976. In exercise of power vested under Section 1(3) of the Act, the Central Government appointed 1.11.1985 as the date from which the Act would come into force. Thereupon Sampat Kumar and others (W.P. 12460 of 1985) moved this Court and the connected matters were brought before this Court or different High Courts which have since been transferred to this Court to be analogously heard. On 31.10.1985 a Division Bench of this Court gave certain interim directions including stay of transfer of the pending applications under Article 32 which were liable to be transferred to the Tribunal and also for continuance of exercise of jurisdiction under Article 32 in regard to disputes covered under the Act notwithstanding the bar provided in Section 28.

10. In the writ applications as presented the main challenge was to the abolition of the Jurisdiction of this Court under Article 32 in respect of specified service disputes. Challenge was also raised against the taking away of the jurisdiction of the High Court under Articles 226 and 227. It was further canvassed that establishment of benches of the Tribunal at Allahabad, Bangalore, Bombay, Calcutta, Gauhati, Madras. and Nagpur with the principal seat at Delhi would still prejudice the parties whose cases were already pending before the respective High Courts located at places other than these places and unless at the seat of every High Court facilities for presentation of applications and for hearing thereof were provided the parties and their lawyers would be adversely affected. The interim order made on October 31, 1985, made provisions to meet the working difficulties. Learned Attorney General on behalf of the Central Government assured the Court that early steps would be taken to amend the law so as to save the jurisdiction under Article 32, remove other minor anomalies and set up a bench of the Tribunal at the seat of every High Court. By the Administrative Tribunals (Amendment) Ordinance, 1986, these amendments were brought about and by now an appropriate Act of Parliament has replaced the Ordinance. Most of the original grounds of attack thus do not survive and the contentions that were canvassed at the hearing by the counsel appearing for different parties are these:

> (1) Judicial review is a fundamental aspect of the basic structure of our Constitution and bar of the jurisdiction of the High Court under Articles 226 and 227 as contained in Section 28 of the Act cannot be sustained;
>
> (2) Even if the bar of jurisdiction is upheld, the Tribunal being a substitute of the High Court, its Constitution and set up should be such that it would in fact function as such substitute and become an institution in which the parties could repose faith and trust;
>
> (3) Benches of the Tribunal should not only be established at the seat of every High Court but should be available at every place where the High Courts have permanent benches;
>
> (4) So far as Tribunals set up or to be set up by the Central or the State Governments are concerned, they should have no jurisdiction in respect of employees of the Supreme Court or members of the subordinate judiciary and employees working in such establishments inasmuch as exercise of jurisdiction of the Tribunal would interfere with the control absolutely vested in the respective High Courts in regard to the judicial and other subordinate officers under Article 235 of the Constitution.

11. After oral arguments were over, learned Attorney General, after obtaining instructions from the Central Government filed a memorandum to the effect that Section 2(q) of the Act would be suitably amended so as to exclude officers and servants in the employment of the Supreme Court and members and staff of the subordinate judiciary from the purview of the Act. In the same memorandum it has also been said that Government would arrange for sittings of the benches of the Tribunal at the seat or seats of each High Court on the basis that 'sittings' will include 'circuit sittings' and the details thereof would be worked out by the Chairman or the Vice-Chairman

concerned.

12. With these concessions made by the learned Attorney General, only two aspects remain to be dealt with by us, namely, those covered by the first and the second contentions.

13. Strong reliance was placed on the judgment of Bhagwati, J (one of us presently the learned Chief Justice) in Minerva Mills Ltd. and Ors. v. Union of India and Ors. where it was said:

> The power of judicial review is an integral part of our constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution. Of course, when I say this I should not be taken to suggest that, however effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament. But what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. If by a constitutional amendment, the power of judicial review is taken away and it is provided that the validity of any law made by the Legislature shall not be liable to be called in question on any ground, even if it is outside the legislative competence of the Legislature or is violative of any fundamental rights, it would be nothing short of subversion of the Constitution, for it would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaningless and futile. So also if a constitutional amendment is made which has the effect of taking away the power of judicial review.

14. Article 32 was described by Dr. Ambedkar in course of the debate in the Constituent Assembly as the 'soul' and 'heart' of the Constitution and it is in recognition of this position that though Article 323A(2)(d) authorised exclusion of jurisdiction under Article 32 and the original Act had in Section 28 provided for it, by amendment jurisdiction under Article 32 has been left untouched. The Act thus saves jurisdiction of this Court both under Article 32 in respect of original proceedings as also under Article 136 for entertaining appeals against decisions of the Tribunal on grant of Special Leave. Judicial review by the apex court has thus been left in tact.

15. The question that arises, however, for consideration is whether bar of jurisdiction under Articles 226 and 227 affects the provision for judicial review. The right to move the High Court in its writ jurisdictionunlike the one under Article 32, is not a fundamental right. Yet, the High Courts, as the working experience of three and a half decades shows have in exercise of the power of judicial review played a definite and positive role in the matter of preservation of fundamental and other rights and in keeping administrative action under reasonable control. In these thirty-six years following the enforcement of the Constitution, not only has India's population been more than doubled but also the number of litigations before the courts including the High Courts has greatly

increased. As the pendency in the High Courts increased and soon became the pressing problem of backlog, the nation's attention came to be bestowed on this aspect. Ways and means to relieve the High Courts of the load began to engage the attention of the Government at the center as also in the various States. As early as 1969, a Committee was set'up by the Central Government under the chairmanship of Mr. Justice Shah of this Court to make recommendations suggesting ways and means for effective, expeditious and satisfactory disposal of matters relating to service disputes of Government servants as it was found that a sizable portion of pending litigations related to this category. The Committee recommended the setting up of an independent Tribunal to handle the pending cases before this Court and the High Courts. While this report was still engaging the attention of Government, the Administrative Reforms Commission also took note of the situation and recommended the setting up of Civil Services Tribunals to deal with appeals of Government servants against disciplinary action. In certain States, Tribunals of this type came into existence and started functioning. But the Central Government looked into the matter further as it transpired that the major chunk of service litigation related to matters other than disciplinary action. In May 1976, a Conference of Chief Secretaries of the States discussed this problem. Then came the Forty-Second Amendment of the Constitution bringing in Article 323 A which authorised 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 connexion with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government." As already stated this Article envisaged exclusion of the jurisdiction of all courts, except the jurisdiction of. the Supreme Court under Article 136, with respect to the disputes or complaints referred to in Clause (1). Though the Constitution now contained the enabling power, no immediate steps were taken to set up any Tribunal as contemplated by Article 323A. A Constitution Bench of this Court in K.K. Dutta v. Union of India observed:

> There are few other litigative areas than disputes between members of various services inter se, where the principle that public policy requires that all litigation must have an end can apply with greater force. Public servants ought not to be driven or required to dissipate their time and energy in court-room battles. Thereby their attention is diverted from public to private affairs and their inter se disputes affect their sense of -oneness without which no institution can function effectively. The Constitution of Service Tribunals by State Governments with an apex Tribunal at the center which in the generality of the cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matters. The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many....

16. In the meantime the problem of the backlog of cases in the High Courts becomes more acute and pressing and came to be further discussed in Parliament and in conferences and seminars. Ultimately in January 1985, both Houses of Parliament passed the Bill and with the Presidential assent on 27th February, 1985, the law enabling the long awaited Tribunal to be constituted came

into existence. As already noticed, the Central Government notified the Act to come into force with effect from 1.11.1985.

17. Exclusion of the jurisdiction of the High Courts in service matters and its propriety as also validity have thus to be examined in the background indicated above. We have already seen that judicial review by this Court is left wholly unaffected and thus there is a forum where matters of importance and grave injustice can be brought for determination or rectification. Thus exclusion of the jurisdiction of the High Court does not totally bar judicial review. This Court in Minerva Mills' case did point out that "effective alternative institutional mechanisms or arrangements for judicial review" can be made by Parliament. Thus it is possible to set up an alternative institution in place of the High Court for providing judicial review. The debates and deliberations spread over almost two decades for exploring ways and means for relieving the High Courts of the load of backlog of cases and for assuring quick settlement of service disputes in the interest of the public servants as also the country cannot be lost sight of while considering this aspect. It has 'not been disputed before usand perhaps could not have beenthat the Tribunal under the scheme of the Act would take over a part of the existing backlog and a share of the normal load of the High Courts. The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice. To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation and circumstances to meet which the innovation has been brought about. Thus barring of the jurisdiction of the High Court can indeed not be a valid ground of attack.

18. What, however, has to be kept in view is that the Tribunal should be a real substitute of the High Courtnot only in form and demure but in content and de facto. As was pointed out in Minerva's Mills, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15 bars discrimination on grounds of religion, race, caste, sex or place of birth. The touch-stone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centring around these articles in the Constitution a service jurisprudence has already grown in this country. Under Sections 14 and 15 of the Act all the powers of the Courts except those of this Court in regard to matters specified therein vest in the Tribunaleither Central or State. Thus the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof.

19. The High Courts have been functioning over a century and a quarter and until the Federal Court was established under the Government of India Act, 1935, used to be the highest courts within their respective jurisdiction subject to an appeal to the Privy Council in a limited category of cases. In this long period of about six scores of years, the High Courts have played their role effectively, efficiently as also satisfactorily. The litigant in this country has seasoned himself to look upto the High Court as the unfailing protector of his person, property and honour. The institution has served its purpose very well and the common man has thus come to repose great confidence therein. Disciplined, independent and trained Judges well-versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the Court the social mechanism to act as the arbiternot under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement

the decision of the Court. It is, therefore, of paramount importance that the substitute institutionthe Tribunalmust be a worthy successor of the High Court in all respects. That is exactly what this Court intended to convey when it spoke of an alternative mechanism in Minerva Mills' case.

20. Chapter II of the Act deals with establishment of Tribunals and Benches thereof. Section 4 provides for establishment while Section 5 deals with composition of the Tribunal and Benches thereof. Section 6 lays down the qualifications of Chairman, Vice-Chairman and members. So far as the Chairman is concerned, Sub-section (1) requires that he should be or have been

(a) Judge of a High Court; or

(b) has for at least two years, held office as Vice-Chairman; or

(c) has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India.

21. Sub-section (2) prescribing the qualification for Vice-Chairman provides that he should be or have been-

(a) a Judge of a High Court; or

(b) for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or (bb) for at least five years, held the post of an Additional Secretary to Government of India or any other post carrying equivalent pay; or

(c) for a period of not less than three years held office as a judicial member of an Administrative Tribunal.

22. Sub-section (3) prescribes the qualification of a judicial member and requires that: (a) he should be or should have been or qualified to be a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years.

23. Sub-section (3-A) provides the qualification for appointment as administrative member and lays down that such person should have, for at least two years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay not less than that of an Additional Secretary to Government of India; or (b) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or the State Government carrying a scale of pay which is not less than that of a Joint Secretary to Government of India. So far as the Chairman is concerned, we are of the view that ordinarily a retiring or retired Chief Justice of a High Court or when such a person is not available, a Senior Judge of proved ability either in office or retired should be appointed. That office should for all practical purposes be equated with the office of Chief Justice of a High Court. We must

immediately point out that we have no bias, in any manner, against members of the Service. Some of them do exhibit great candour, wisdom, capacity to deal with intricate problems with understanding, detachment and objectiveness but judicial discipline generated by experience and training in an adequate dose is, in our opinion, a necessary qualification for the post of Chairman. We agree that a Vice-Chairman with these qualifications and experience of two years may be considered for appointment as Chairman but in order that the Tribunal may be acceptable to the litigants who are themselves members of the various services, Section 6(1)(c) should be omitted. We do not want to say anything about Vice-Chairman and members dealt with in Sub-sections (2), (3) or (3A) because so far as their selection is concerned, we are of the view that such selection when it is not of a sitting Judge or retired Judge of a High Court should be done by a high-powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability. Once the qualifications indicated for appointment of Chairman are adopted and the manner of selection of Vice-Chairman and members is followed, we are inclined to think that the manning of the Tribunal would be proper and conducive to appropriate functioning. We do not propose to strike down the prescriptions containing different requirements but would commend to the Central Government to take prompt steps to bring the provisions in accord with what we have indicated. We must state that unless the same be done, the Constitution of the Tribunal as a substitute of the High Court would be open to challenge. We hasten to add that our judgment shall operate prospectively and would not affect appointments already made to the offices of Vice-Chairman and Memberboth administrative and judicial.

24. Section 8 of the Act prescribes the term of office and provides that the term for Chairman, Vice-Chairman or members shall be of five years from the date on which he enters upon his office or until he attains the age of 65 in the case of Chairman or Vice-Chairman and 62 in the case of member, whichever is earlier. The retiring age of 62 or 65 for the different categories is in accord with the pattern and fits into the scheme in comparable situations. We would, however, like to indicate that appointment for a term of five years may occasionally operate as a dis-incentive for well-qualified people to accept the offer to join the Tribunal. There may be competent people belonging to younger age groups who would have more than five years to reach the prevailing age of retirement. The fact that such people would be required to go out on completing the five year period but long before the superannuation age is reached is bound to operate as a deterrent. Those who come to be Chairman, Vice-Chairman or members resign appointments, if any, held by them before joining the Tribunal and, as such, there would be no scope for their return to the place or places from where they come. A five year period is not a long one. Ordinarily some time would be taken for most of the members to get used to the service-jurisprudence and when the period is only five years, many would have to go out by the time they are fully acquainted with the law and have good grip over the job. To require retirement at the end of five years is thus neither convenient to the person selected for the job nor expedient to the scheme. At the hearing, learned Attorney-General referred to the case of a member of the Public Service Commission who is appointed for a term and even suffers the disqualification in the matter of further employment. We do not think that is a comparable situation. On the other hand, membership in other high-powered Tribunals like the Income-tax Appellate Tribunal or the Tribunal under the Customs Act can be referred to. When

amendments to the Act are undertaken, this aspect of the matter deserves to be considered, particularly because the choice in that event would be wide leaving scope for proper selection to be made.

25. We hope and trust that within a reasonable period not beyond 31st March, 1987, the amendments indicated shall be brought about so as to remove the defects found in the Act.

Khalid, Oza and Dutt J.J.

26. We have read both the Judgments just deliveredthe main judgment of learned Brother Ranganath Misra and the other of Hon'ble the Chief Justice. We agree with both.