THE A.P. ADMINISTRATIVE TRIBUNAL SHOULD BE ABOLISHED — WHY ?

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The Back Ground:-

Article 371-D was inserted in the Constitution of India by the 32nd Amendment with effect from 1-7-1974. It is not necessary to mention or deal with the events that led to this Amendment. The events that took place do no credit to the three organs of the State.

The President of India in exercise of the powers conferred on him Under Article 371-D, Clauses (3) and (4) made an order called "The A.P. Administrative Tribunal Order of 1975", which came into force on 6-7-1976. Clause (2) of the order states that the Chairman shall be a person who at the time of the appointment to the Tribunal is a judge of the High Court and other members shall be persons having knowledge of public Administration. The judge and the members appointed to the Tribunal were all persons drawn from outside the State of Andhra Pradesh. Under Clause (5) Article 371-D, the Government had jurisdiction to annul, modify any order of the Administrative Tribunal after recording reasons for doing so. The Order of the Tribunal became effective only on its confirmation by the Government. A three months period was specified for confirming the order. An Appeal by special leave lay to the Supreme Court from the orders of the A.P. Administrative Tribunal.

The High Court of Andhra Pradesh had no power of superintendence.

The Supreme Court in *Samba Murthy's* Case 1987(1), SCC 362 = AIR 1987 SC 663 held that clause (5) of Article 371 -D violated the basic structure of the Constitution of India and struck down the said Clause. The effect was that the Government lost the power of scrutiny of the order of the A.P. Administrative Tribunal.

By the 42nd Amendment Act of 1976 part XIV-A was inserted in the Constitution of India consisting of Articles 323-A and 323-B. Parliament was empowered to establish Administrative Tribunals for the adjudications of or trial by the said Tribunal, 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 any State or of any local or authority *etc.*

Parliament passed an Act called the Administrative Tribunals Act, 1985. Clause (4) of the said Act gave power to the Central Government to establish a Central Administrative Tribunal to deal with the matters connected with the Central Services. On a request from a State Government, it can establish an Administrative Tribunal for that State.

This Act was challenged on the ground that it took away the jurisdiction of High Court under Articles 226 and 227 of the Constitution. The basic question raised and considered was whether " 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". The case was heard by a Constitution Bench of 5 Judges. The Judgment was reported in 1987 (1) SCC 124, *Sampath Kumar v. Union*

of India, Justice Sri *Ranganath Misra* (as his lordship then was) said, I quote "it has not been disputed before us _____ and perhaps could not have been _____ that the Tribunal under the scheme of the Act would take over a part of the existing backlog a share of the normal load of the High Court. The Tribunal has been contemplated as a substitute and not as supplemental to the High Court on the scheme of Administrative 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 innovation has been brought about. Thus barring of the jurisdictions of the High Court can indeed be not a valid ground of attack. It was further held " What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court - not only in form and dejure but in content and defacto". "It is therefore, of paramount importance that the substitutive institution - the Tribunal - must be a Worthy Successor of the High Court in all Respects" (Underlining is mine)

The Learned Chief Justice *Bhagavati* J., Concurred with the judgment delivered by Justice Sri *Ranganath Misra* (as the Learned Judge then was). The Learned Chief Justice added that" we cannot afford to forget that it is the High Court which is being supplemented by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is highly competent and expert mechanism with Judicial approach and objectivity". Having said that he glorified the members of the Civil Services.

The suggested Amendments in the Administrative Tribunal Act were carried out.

A Committee was appointed called "Arrears Committee," popularly known as Malimath Committee. It submitted its report in (1989-90). The Committee dealt with Administrative Tribunals established under Article 323-A. The report criticised the method of appointment of the members and the quality of the members appointed. It pointed out that:

"to draw an inference that their unsatisfactory performance points to their being founded on a fundamentally unsound principle would not be correct". "Malimath Committee specifically recommended that the theory of alternative institutional mechanisms be abandoned. Instead, it recommended institutional changes to be carried out within the High Courts, dividing them into separate divisions for different branches of law, as it is being done in England" (Para 87, page 307 of 1997 (3) SCC, Sri. *L Chandra Kumar v. UoL*). But *Chandra Kumar* did not agree with this.

One Mr. *R.K. Jain*, Editor of Excise Law Times Journal wrote a letter to the then Chief Justice of India complaining that CEGAT Tribunal was without a President for over six months, the functions of the Tribunal was affected. The Tribunal works hardly two hours. The sitting commences at about 10.50 a.m. daily *etc.* "The work culture is not just there". He prayed for 3 directions to be issued, one of them was regarding the functions of the Tribunal. One of the allegations was that though High Court Judges were available no serious attempt was made to requisition the services of one of them for appointment as the President. The letter was taken on file and listed as a Writ Petition and was heard by three learned judges, Justice *Ahmedi* (as his lordship then was) said "Sufficient time is passed and experience gained in these last few years for taking stock of the situation with a view to finding out if they have served the purpose and objectives for which they were constituted", 1993 (4) SCC 119 at 134. *K. Rama Swamy,* J. Said "... It is necessary to express our

anguish over the ineffectivity of the alternative mechanism devised for Judicial review. The judicial review and remedy are fundamental rights of the citizens. The dispensation of justice by the tribunals is much desired. We are not doubting the ability of the members or Vice Chairman (nor Judges) who may be experts in their regular service. But judicial adjudication is special process and would efficiently administered by Advocates Judges".

The anguish expressed was not removed even by 1997. In *C. Chandra Kumar v. Uol., Chief Justice Ahmedi* referred to the anguish expressed in *R.K. Jain v. Uol.*, 1997 (3) SCC 260 at 280, 281 and noted that the Law Commissions performance analysis of the Tribunal was halted.

The Seven Judges Bench of *Chandra Kumar* held that "The Tribunals continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open to litigants to directly approach the High Court even in cases where they question the *vires* of statutory legislation...". The Court struck down Clause 2 (b) of Article 323-A and Clause 3 (d) of Article 323- B to the extent they excluded the jurisdiction of the High Court and Supreme Court under Articles 226/227 and 32 of the Constitution.

Chandra Kumar noted that the Tribunals performance was unsatisfactory (Para 89) but that would not mean abandoning the idea of alternative forum, a forum which would filter frivolous claims. The Court held that the decision or order could be questioned by way of Writ Petition and a Division Bench consisting to two learned Judges should hear such matters.

To "filter frivolous" claims, the State maintains a Tribunal presided by a High Court Judge, a Vice-Chairman and members at an enormous cost. Is it worth it. Eight States established such Tribunals for "filtering frivolous" claims.

It may be noted even interlocutory orders of the Tribunal can be challenged before the High Court under Article 226 of the Constitution. The Tribunal now is an additional forum from where parties could go to the High Court. This "SAMPATH KUMAR" said is a retrograde step "CHANDRA KUMAR" said this cannot be avoided.

If this is the situation the first thing the State should do is to abolish the Administrative Tribunal. To filter frivolous claims we can find any alternate method, which would be much cheaper and time saving.

GRIEVANCE REDRESSAL FORUM

A. Grievance Redressal Forum can be established for each department or group of departments depending on the number of cases. The forum can be presided by retired officers of the rank of a Secretary or Joint Secretary.

An employee who has a grievance in respect of any order passed by the department can file a petition before the forum supported by an affidavit questioning the orders. The modalities and the details of procedure can be worked out by framing rules under Article 309. There can be legislative enactment and rules framed under the enactment. The employees should be permitted to have legal assistance for drafting the pleadings and written submissions. The legal assistance ends here.

The officers, who are familiar with the departmental rules and procedures can decide on the basis of written submissions. The forum may even settle the grievances, suggest to the government to remedy the grievance expeditiously.