

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE
SEVENTEENTH REPORT**

ON

THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) BILL, 2006

(PRESENTED TO THE RAJYA SABHA ON 5TH DECEMBER, 2006)

(LAID ON THE TABLE OF THE LOK SABHA ON 5TH DECEMBER, 2006)

RAJYA SABHA SECRETARIAT

NEW DELHI

DECEMBER, 2006/ AGRAHAYANA, 1928 (SAKA)

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COMPOSITION OF THE COMMITTEE (2005-06)

1. Shri E.M. Sudarsana Natchiappan — *Chairman*

RAJYA SABHA

Dr. Radhakant Nayak

Shri Tariq Anwar

Dr. P.C. Alexander

5. Dr. Abhishek Manu Singhvi
6. Shri Balavant *alias* Bal Apte
7. Shri Krishan Lal Balmiki
8. Shri Ram Jethmalani

Vacant

Vacant

LOK SABHA

Dr. Shafiqur Rahman Barq

Kumari Mamata Banerjee

Shri Chhattar Singh Darbar

Shri N.Y. Hanumanthappa

Shri S.K. Kharventhan

Shri Shailendra Kumar

Prof. Vijay Kumar Malhotra

Shri A.K. Moorthy

Shri Ram Chandra Paswan

Shri Dahyabhai Vallabhbhai Patel

Shri Brajesh Pathak

Shri Shriniwas Patil

Shri Harin Pathak

Shri Varkala Radhakrishnan

Smt. M.S.K. Bhavani Rajenthiran

Shri Vishvendra Singh

Shri Bhupendrasinh Solanki

Vacant

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Shri Bhupendrasinh Solanki

Shri Raj Babbar

Vacant

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Vacant

Vacant

SECRETARIAT

Shri Sham Sher Singh, Joint Secretary

Shri Ram Behari Gupta, Deputy Secretary

Smt. Sasilekha Nair, Under Secretary

Shri Vinoy Kumar Pathak, Committee Officer

INTRODUCTION

I, the Chairman of the Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee, present its Seventeenth Report on the Administrative Tribunals (Amendment) Bill, 2006*. The Bill seeks to amend the Administrative Tribunals Act, 1985 by incorporating an enabling provision for abolition of Central Administrative Tribunal and State Administrative Tribunals and for transfer of pending cases to some other authority after the Tribunal is abolished. It also seeks to take away contempt powers from Administrative Tribunals and to provide for appeal against the orders of Administrative Tribunals to the respective High Courts.

2. In pursuance of the rules relating to Department Related Parliamentary Standing Committee, Hon'ble Chairman, Rajya Sabha referred* the Bill, as introduced in the Rajya Sabha on the 18th March, 2006 and pending therein, to the Committee on the 27th March, 2006, for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue Press Communique to solicit views/suggestions from interested individuals/organisations/institutions on various provisions of the Bill. Accordingly, a Press Communique was issued in response to which memoranda containing suggestions were received by the Committee.

4. The Committee considered the Bill and heard a presentation by the Secretary, Ministry of Personnel, Public Grievances and Pensions in its meeting held on the 5th June, 2006.

5. The Committee heard oral evidence of nine individuals /organisations/ institutions/ experts.

6. While considering the Bill, the Committee took note of the following documents/information placed before it: —

Background note on the Bill;

Reply received from the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) to the Questionnaire on the Bill; and

The comments of the Department of Personnel, Public Grievances and Pensions on the views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill.

(iii)

7. The Committee held clause- by- clause consideration of the Bill on the 3rd October, 2006.

8. The Committee adopted the Report in its meeting held on the 9th November, 2006.

9. The Committee held six sittings to deliberate upon the various provisions of the Bill.

10. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI;
November 9, 2006

E. M. SUDARSANA NATCHIAPPAN
Chairman
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

1. The Administrative Tribunals (Amendment) Bill, 2006 (Annexure-A) seeks to amend the Administrative Tribunals Act, 1985 in order to provide for an enabling provision for abolition of the Tribunal and also for transfer of pending cases to some other authority after the Tribunal is abolished since the parent Act does not contain any specific provision for abolition of a Tribunal. The Bill also seeks to provide for appeal against the orders of an Administrative Tribunal to the respective High Courts to bring the Act in line with the judgment of Supreme Court in the case of *L. Chandra Kumar* delivered in March, 1997. The withdrawal of the power to punish for contempt from the Administrative Tribunals has also been sought through the Bill since they have become subject to the jurisdiction of the High Courts.

2. In the light of the above, the Administrative Tribunals (Amendment) Bill, 2006 was introduced* in the Rajya Sabha on 18th March, 2006. It was referred⁺ to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on 27th March, 2006 for examination and report.

3. The Committee decided to invite views/suggestions from desirous individuals/organisations on the Bill. It, accordingly, authorised the Secretariat to issue a press release inviting views/suggestions. In response to the press release published in major English and Hindi dailies and vernacular newspapers all over India on 25th April, 2006, a number of representations/memoranda were received. The list of individuals and organisations from whom memoranda were received is provided at Annexure B.

The major points raised in the memoranda are summarised as follows:-

(i) The administrative authorities and persons adversely affected by orders of Administrative Tribunals will not take seriously the orders of the Tribunal if power to punish for contempt is withdrawn. To ensure speedy justice, Section 17 of the Administrative Tribunals Act, 1985 should not be deleted.

(ii) The Hon'ble Supreme Court has not given any direction that the powers of Administrative Tribunals be withdrawn. The Supreme Court had merely upheld the writ jurisdiction of the High Courts under the Constitution and had made it clear that Administrative Tribunals are to be subject to such jurisdiction of the High Courts.

(iii) The abolition of Administrative Tribunals in the States will defeat the very purpose for which the Administrative Tribunals Act was enacted. A large number of citizens will be deprived of the right of speedy justice wherever Administrative Tribunal is abolished.

(iv) The record of disposal of cases of Administrative Tribunals has been excellent as compared to that of the subordinate Courts and High Courts. The abolition of the Administrative Tribunals will increase the pending cases in the High Courts whereby speedy justice will be denied to the citizens by putting additional burden on the High Courts.

3.2. The Committee forwarded the memoranda so received from the individuals and organisations to the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) for their comments thereon. The comments (Annexure-E) of the Ministry were received in batches.

3.3. A Questionnaire on the Bill was also forwarded to the Ministry of Personnel, Public Grievances and Pensions, the reply (Annexure-D) to which was received on 14th July, 2006.

3.4. The Ministry in their written reply/comments on the memoranda mainly focused on the following points:-

Since all State Governments do not favour abolition of Administrative Tribunals, there is no need for repeal of the Administrative Tribunals Act. However, the necessary provisions are incorporated in the proposal for transfer of pending cases etc., and service conditions of Chairman, Vice-Chairman and Members and other employees of Administrative Tribunals proposed for abolition;

(b) Deletion of Section 17 does not in any way take away the power of an Administrative Tribunal to punish for contempt of itself. On the other hand it does away with the duplication between the Contempt of Courts Act, 1971 and Section 17 of the Administrative Tribunals Act, 1985. By deletion of Section 17, the Administrative Tribunals Act would come within the ambit of Contempt of Courts Act, 1971 and the Tribunals can exercise their prerogative to punish for contempt within the provisions of Contempt of Courts Act, 1971. This is also in accordance with the recommendations of the National Commission to Review the Working of the Constitution (NCRWC);

(c) It is not intended to do away with the institution of Administrative Tribunals altogether. Only an enabling provision is being inserted to take care of the exigencies where such considerations could become necessary. There have been proposals from State Governments seeking abolition of Administrative Tribunals. This provision is inserted to facilitate such consideration. Therefore, it is deemed necessary; and

(d) Since High Courts have been deemed as part of the basic structure of the Constitution and their appellate jurisdiction cannot be done away with, creation of an appellate Tribunal may only further clog the judicial process.

3.5. The highlights of the replies/comments of the Ministry on the Questionnaire are as follows:-

(a) The Madhya Pradesh Government had indicated that the Tribunal had not performed upto the expectations and proved to be expensive and their effectiveness had been reduced as a perceived specialized agency and a substitute of High Court. Government of Tamil Nadu proposed abolition of Tamil Nadu Administrative Tribunal as they felt that it had merely become an additional tier in the judicial process and as such needed to be abolished. Karnataka Government felt that Karnataka Administrative Tribunal, after Supreme Court's orders in the case of *L. Chandrakumar* had become an additional tier in the judicial system and as such proposed for abolition of the Karnataka Administrative Tribunal;

(b) The issue regarding making the Ministry of Law and Justice as the nodal Ministry for all Tribunals was recommended by the Supreme Court in *L. Chandrakumar's case*. This issue was considered by a Committee of Secretaries in 1997 which decided that for all Administrative Tribunals i.e. Administrative Tribunals under Article 323-A of the Constitution of India, the Ministry of Personnel, Public Grievances and Pensions shall continue to be the nodal Ministry. For other Tribunals, the Ministry of Law and Justice was to take a well considered decision. These views were conveyed to the Ministry of Law and Justice who are already processing further action on the recommendations of the Hon'ble Supreme Court. The Ministry of Personnel, Public Grievances and Pensions as well as the Ministry of Law and Justice do not interfere with the judicial functioning of such bodies, and such an insinuation about their independence is unfounded;

(c) The proposal to give powers to abolish Tribunals emanate from the General Clauses Act, 1897 which permits that an authority competent to create an institution is competent to abolish it also. Under the provisions of the Administrative Tribunals Act, 1985, the Central Government is competent to set up the Tribunals. As such the Central Government should be competent to abolish them under the provisions of the Act. The proposed Bill is to make an enabling provision in the Act for the purpose;

(d) The Government does not interfere with the judicial functioning of the Tribunals, therefore the presumption that the Members of the Tribunals are hesitant to deliver orders against the executive, is not correct.

4. The Committee took up the consideration of the Bill in its meeting held on 5th June, 2006. The Secretary, Ministry of Personnel, Public Grievances and Pensions made a presentation on the Bill during the meeting. He briefly traced the background of the proposed Bill and narrated the reasons for the proposed amendments in the principal Act.

4.1. The Committee further heard the views of Shri A.K. Behera, President, CAT Bar Association (Principal Bench) and Shri D.N. Sahoo, Convenor, Central Secretariat Services Officers Association in its meeting held on 12th July, 2006. It also heard the views of the Secretary, Ministry of Personnel, Public Grievances and Pensions along with the Secretary, Department of Personnel and Administrative Reforms, Government of Tamil Nadu on the abolition of the Tamil Nadu State Administrative Tribunal in its meeting held on 2nd August, 2006.

4.2. The Committee heard Mr. Justice V.S. Malimath (Bangalore), Mr. Justice Ashok Agarwal (Mumbai), Advocate Dilip Sharma (Shimla) and Shri M.P. Singh (New Delhi) on the various provisions of the Bill in its meeting held on the 21st September, 2006.

4.3. Mr. Justice V.S. Malimath deposed before the Committee as under:

“.....Because Supreme Court can always interfere with any decision of the Tribunal and High Court can also do it, therefore, High Court jurisdiction will continue to be operative. But, if you provide an appeal against an order of the Tribunal, technically, you may say that Article 226 and 227 can still be exercised, but no judge will exercise jurisdiction. If you say that an appeal to the High Court, I mean, you are burdening the High Court with another set of cases and thereby delaying the disposal of the service matters.....”

4.3.1. He opined that since there is no express provision to enforce the order of the Tribunal, the need is either to make a provision for executing the order of the Tribunal or to provide a machinery for executing it and that if that cannot be done, the contempt jurisdiction should be allowed to continue.

4.3.2. He also stated that the aggrieved persons would like to use appeal if it is available and that the High Court will then be flooded with a number of cases. If there are more cases, there will be more delay and it will defeat the entire purpose of the enactment under the Constitutional provisions.

4.3.3. Another pertinent point raised by him was that the way the Act is being implemented now, it is weakening the Tribunal. Firstly, it is making the Tribunal subordinate to the High Court and its stature is lowered. Secondly, earlier, the retired Chief Justice used to be the Chairman of the Tribunal and now, this practice seems to have been given up. Now a retired Judge of the High Court can be appointed as Chairman since the statute does not provide that the Chairman of the Tribunal should be former Chief Justice. Thus the stature of the Tribunal is lowered.

4.4. Speaking on the issue of abolition of Administrative Tribunals, Mr. Justice Ashok Agarwal deposed that the proposal for abolition was not legal and that what the Government could do by legislation should be done by that method only. He opined that the legislature should not delegate that power to the executive.

4.4.1. He deposed as under :

“.....If a particular Tribunal is not working satisfactorily, steps can be taken against that particular Tribunal. But, on that account we cannot abolish all the Tribunals across the country in one stroke because different States are governed by different conditions of service.....”

4.5. The Committee took up in-house discussion and clause-by-clause consideration of the Bill in its meeting held on the 3rd October, 2006. The Committee adopted the draft Report on the Bill in its meeting held on the 9th November, 2006.

Background of the Administrative Tribunals Act, 1985

5. The framers of the Constitution of India in their wisdom invested the Supreme Court and the various High Courts with the power of judicial review by specifically enacting Articles 32, 136, 226 and 227 of the Constitution. With the enactment of Articles 12, 14, 15, 16, 309 and 311 in the Constitution, a large number of service matters calling for the adjudication of disputes relating to the recruitment and conditions of service of Government servants and also of employees in other fields of public employment started coming up before the various High Courts whose power of judicial review was invoked for the said purpose by the aggrieved employees.

5.1. The High Courts played a definite and significant role in evolving the service jurisprudence in the exercise of their power of judicial review. The positive contribution by the High Courts made as aforesaid, coupled with the growth in the number of employees in the public field and the manifold problems arising in the context of their recruitment and conditions of service and their implicit faith and confidence in the High Courts as the unfailing protector of their rights and honour, led to a gradual increase in the institution and pendency of service matters in the High Courts. This, in its turn, focused the attention of the Union Government on the problem of finding an effective alternative institutional mechanism for the disposal of such specialised matters.

5.2. A Committee set up by the Union Government in 1969 under the Chairmanship of Mr. Justice J.C. Shah recommended for setting up of an independent Tribunal to handle service matters pending before the High Courts and the Supreme Court. In the 124th Report of the Law Commission of India, it was cited that in Australia, Tribunals outside the established courts have been created- Administrative Appeal Tribunals, Arbitration Tribunals, Workers' Compensation Tribunals, Pension Tribunals, Planning Appeal Tribunal, Equal Opportunity Tribunals, to name a few. This activity of creating Tribunals is founded on a belief that the established Courts are too remote, too legalistic, too expensive and, above all too slow.

5.3. The Law Commission of India had recommended for the establishment at the Centre and the State of an appellate Tribunal or Tribunals presided over by a legally qualified Chairman and with experienced civil servants as Members to hear appeals from Government servants in respect of disciplinary and other action against them. The First Administrative Reforms Commission had also recommended for the setting up of Civil Services Tribunals to deal with the appeals of Government servants against disciplinary actions. Some of the State Legislatures thereupon enacted laws setting up Tribunals to decide such cases. Part XIVA comprising Articles 323-A and 323-B was also inserted in the Constitution of India by the 42nd Constitutional Amendment Bill, 1976 with effect from 3rd January, 1977. Article 323-A *inter alia* authorized Parliament to provide by law for setting up of Administrative Tribunals for the adjudication of disputes and complaints with respect to recruitment and conditions of service of certain categories of employees in the field of public employment including Government servants and also to provide for the exclusion of the jurisdiction of all courts, except that of the Supreme Court under Article 136, with respect to disputes or complaints of such nature. No immediate step was, however, taken in the direction of enacting a law for the setting up of Administrative Tribunals as contemplated by the said Article.

5.4. Ultimately, Parliament enacted the Administrative Tribunals Act, 1985 which received the assent of the President on the 27th February, 1985. In pursuance of the provisions contained in the Act, the Administrative Tribunals set up under it exercise original jurisdiction in respect of service matters of employees covered under the Act.

Objective of the Act

5.5. The Statement of Objects and Reasons accompanying the Constitutional Amendment Bill by which Article 323-A was sought to be inserted

in the Constitution states the following words:

“To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters it is considered expedient to provide for administrative tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution.”

5.6. The Statement of Objects and Reasons appended to the introduced version of the Administrative Tribunals Bill, which on being passed and approved became the Act of 1985, also contained similar recitals:

“.....The establishment of Administrative Tribunals under the aforesaid provision of the Constitution has become necessary since a large number of cases relating to service matters are pending before the various Courts. It is expected that the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various Courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances.”

5.7. In pursuance of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal was set up on 1.11.1985. At present, it has 17 regular Benches, 15 of which operate at the principal seats of High Courts and the remaining two at Jaipur and Lucknow. These Benches also hold circuit sittings at other seats of High Courts. The Tribunal consists of a Chairman, a Vice Chairman and Members. The Vice Chairman and Members are drawn both from judicial and administrative spheres. State Administrative Tribunals were set up by the Governments of the States of Andhra Pradesh, Himachal Pradesh, Orissa, Karnataka, Maharashtra, Tamil Nadu, Madhya Pradesh and West Bengal under the Administrative Tribunals Act, 1985.

5.8. The appointment of the Chairman, Central Administrative Tribunal, as per practice, is initiated by the Chief Justice of India on a reference made to this effect by the Union Government. The appointment of Vice Chairman and Members in Central Administrative Tribunal are made on the basis of recommendations of a Selection Committee chaired by a nominee of the Chief Justice of India, who is a sitting judge of the Supreme Court. The appointments are made with the approval of Appointments Committee of the Cabinet after obtaining the concurrence of the Chief Justice of India.

5.9. The appointments to the vacancies in State Administrative Tribunals are made on the basis of proposals sent by the State Governments, with the approval of the Governors. Thereafter, their appointments undergo the same process as the one in respect of Central Administrative Tribunal.

Significance of the Administrative Tribunals Act, 1985

6. The enactment of the Administrative Tribunals Act, 1985 opened a new chapter in the sphere of administering justice to the aggrieved Government servants in service matters. The Act provides for establishment of Central Administrative Tribunal and the State Administrative Tribunals. The setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialized knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-root experience would best serve this purpose.

6.1. The Administrative Tribunals are distinguishable from the ordinary courts with regard to their jurisdiction and procedure. They exercise jurisdiction only in relation to the service matters of the litigants covered by the Act. They are also free from the shackles of many of the technicalities of the ordinary Courts. The procedural simplicity of the Act can be appreciated from the fact that the aggrieved person can also appear before it personally. The Government can also present its case through its Departmental officers or legal practitioners. Further, only a nominal fee of Rs. 50/- is to be paid by the litigant for filing an application before the Tribunal [Section 7 of the Central Administrative Tribunal

(Procedure) Rules, 1987]. Thus, the objective of the Tribunal is to provide speedy and inexpensive justice to the litigants.

6.2. The establishment of Administrative Tribunals was a right step in the direction of providing an effective alternative authority to Government employees who feel aggrieved by the decisions of the Government, in spite of the elaborate system of rules and regulations which govern personnel management, for judicial review over service matters to the exclusion of all courts including High Courts other than the Supreme Court, with the end in view of reducing the burden of such Courts and of securing expeditious disposal of such matters.

The Administrative Tribunals (Amendment) Bill, 2006

7. The background note on the Administrative Tribunals (Amendment) Bill, 2006 furnished by the Ministry of Personnel, Public Grievances and Pensions states as follows:

“.....Initially it was envisaged that litigation relating to service matters should be adjudicated upon by Administrative Tribunals and should not increase the burden of the High Courts. Thus, the appellate jurisdiction was only with the Supreme Court of India. However, the Supreme Court in *L. Chandra Kumar Vs UOI* (AIR 1997 SC 1125) has held that the writ jurisdiction of the High Court under Article 226/227 of the Constitution cannot be extinguished by any Act since it is a part of the basic structure of the Constitution. Thus, appeals from judgments of the Administrative Tribunals now lie to the Division Bench of the corresponding High Court.

A number of State Governments have proposed for the abolishing of SATs essentially on the ground that since the orders of the SAT have been made appealable before the Division Bench of the High Court, it has merely added one more tier in the judicial hierarchy. The State Governments have also stated that the SATs have become very expensive to administer. At the Central level too, it has been found that some Benches of the CAT have now become unnecessary (or will become unnecessary in the near future) since the cases pending before them have diminished in number.

The State of Madhya Pradesh after consulting the State of Chhattisgarh has even issued orders winding up the MP Administrative Tribunal using the provisions of Section 74 of the Madhya Pradesh Reorganisation Act, 2000. The Supreme Court of India has upheld this action of the State Government.

Currently, the Administrative Tribunals Act, 1985 does not provide for either the abolishing of an Administrative Tribunal or for the transfer of cases to any Court outside the Tribunal.

According to the opinion received from the Attorney General, although an Administrative Tribunal can be abolished by invoking powers conferred by Section 21 of the General Clauses Act, amendment to the Administrative Tribunals Act is essential to provide for transfer of pending cases. The Attorney General has also opined that by way of abundant caution, the amending Act may also expressly confer the power to abolish the CAT/SAT upon the Central Government.

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In *L. Chandra Kumar Vs. Union of India* {JT 1997 (3) S.C. 589}, the Supreme Court has also held that no individual may directly approach the Supreme Court in any matter decided by the Administrative Tribunal. He must first approach the High Court (Division Bench) and only thereafter he may approach the Supreme Court under Article 136 of the Constitution.

In the case of *Shri T. Sudhakar Prasad vs Government of Andhra Pradesh*, the Hon'ble Supreme Court had observed that 'while holding the

proceedings under Section 17 of the Act the tribunal remains a tribunal and so would be amenable to the jurisdiction of the High Court under Article 226/227 of the Constitution subject to the well-established rules of self-restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the tribunals'. They, however, also clarified that any other order or decision of the tribunal punishing for contempt shall be appealable only to the Supreme Court in view of the specific provision contained in Section 19 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act.

As a result of the Supreme Court judgment in *L. Chandra Kumar*, orders of the Central Administrative Tribunal have now routinely been appealed against in High Courts whereas this was not the position earlier. Across the board, the interpretation given by High Courts to the *L. Chandra Kumar/ T. Sudhakar Prasad* judgement is that High Courts function as Courts of Appeal to the Central Administrative Tribunal. It should be observed that though the *Chandra Kumar/ Sudhakar Prasad* judgments only reaffirmed the existing legal and constitutional provisions, the interpretation has been such as to place the Tribunal in a position subordinate to the High Courts in the matter of appellate jurisdiction.

The Ministry of Law, Justice and Company Affairs have opined that the question of giving powers to punish for contempt to the Tribunals was considered by the National Commission to Review the Working of the Constitution and that the Commission has not favoured the conferring of such powers on the Tribunals. There are certain tribunals like Income Tax Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunals etc. which have not been given power to punish for contempt and the power to punish for contempt of such tribunals are exercised by the High Court as also the Supreme Court.

As the Tribunals have become subject to jurisdiction of High Courts, it is no longer necessary to retain the power to punish for contempt with them. ”

Clause-by-clause consideration of the Bill

Clause 2

8.0. Clause 2 of the Bill was adopted without suggesting any change.

Clause 3

Clause 3 of the proposed Bill provides for omission of Section 17 of the principal Act pertaining to contempt powers.

9.1. Section 17 of the principal Act provides as follows:

“**Power to punish for contempt** —A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971(70 of 1971), shall have effect subject to the modifications that :-

the references therein to a High Court shall be construed as including a reference to such Tribunal;
the references to the Advocate-General in section 15 of the said Act, shall be construed,—

in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.”

9.2. It is noteworthy that Article 323-A of the Constitution of India provides as follows:

“(1) Parliament may, by law, provide 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 connection 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.

(2) A law made under clause (1) may—

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(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

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(3) *The provisions of this Article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.*”

9.3. While replying to the queries of the Members in the Lok Sabha on the Administrative Tribunals Bill on the 1st November, 1976, the then Minister of Law and Justice stated that :

“.....We have referred to many matters among the functions of the tribunal. One is to punish for contempt. It cannot be given by a statute unless the Constitution authorizes it. You know under the Constitution, subject to the supreme power of the Supreme Court in respect of contempt, power to punish for contempt is being exercised by courts, which is the normal hierarchy of courts and not tribunals. So, a specific provision to enable complaints of contempt of tribunals being tried is necessary.When the law is made, it will be subject to the restrictions laid down here and the tribunal will not be anything more or less than what is contemplated under article 323A and 323B.....”

9.4. In the Statement of Objects and Reasons of the proposed Bill, the Government has stated that as the Tribunals have become subject to the jurisdiction of the High Courts as per the decision of the Hon’ble Supreme Court in *L Chandrakumar case*, it is no longer necessary to retain the power to punish for contempt with them.

9.5. In this regard, the Committee notes that in *T. Sudhakar Prasad vs. Govt. of A.P.*, the Hon’ble Supreme Court observed as follows:

“.....However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity willful defiance with the mandate of the court is treated to be contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent effect on avoidance and that viewed from this angle, the validity of Section 17 of the Act is protected not only by sub-clause (b) of clause (2) of Article 323-A but also by sub-clause (g) thereof.”

9.6. It was further held that :

“..... The Supreme Court in the case of *L. Chandra Kumar* has nowhere said that orders of the Tribunal holding the contemner guilty and punishing for contempt shall also be subject to judicial scrutiny of the High Court under Articles 226/227 of the Constitution in spite of remedy of statutory appeal provided by Section 19 of the Contempt of Courts Act being available. The distinction between orders passed by the Administrative Tribunal on matters covered by Section 14(1) of the Administrative Tribunals Act and orders punishing for contempt under Section 19 of the Contempt of Courts Act read with Section 17 of the Administrative Tribunals Act, is this: as against the former, there is no remedy of appeal statutorily provided, but as against the latter statutory remedy of appeal is provided by Section 19 of the Contempt of Courts Act itself.”

9.7. The Apex Court also observed as under:

“.....Vide para 96 of *L. Chandra Kumar case* the Constitution Bench did not agree with the suggestion that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall, as our Constitutional scheme does not require that all adjudicatory bodies which fall within the territorial jurisdiction of any High Court should be subject to its supervisory jurisdiction. Obviously, the supervisory jurisdiction referred to by Constitution Bench in para 96 of the judgment is the supervision of the administrative functioning of the Tribunals as is spelt out by discussion made in paras 96 and 97 of the judgment.”

9.8. In the light of the further interpretation by the Hon'ble Supreme Court in *Sudhakar Prasad case*, the Committee is of the opinion that Section 27 of the Administrative Tribunals Act has to be read along with Section 20 of the Act.

9.9. Section 27 of the Act provides as follows:

“Execution of orders of a Tribunal – Subject to the other provisions of this Act and the rules the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed.”

9.10. The Committee notes that Section 27 has to be read along with Section 20 of the Act. Section 20 (2) (a) gives finality to the order made by the Government or other authority or officer or other person competent to pass such order. In view thereof the Committee opined that this Section is sufficient for implementing the order concurring with the authority/officer/Government. But if the Tribunal's order led to the reversal of such an order, there should be some force for the Tribunal's order so that it can be executed by the same authority within a definite timeframe failing which the authority/officer should be accountable for the delay, laches or indifference or non-implementation. Then only the authority of the Tribunal which is in all parity as additional/substitutional to the High Court will be ensured.

9.11. In this context, the Committee takes cognizance of Section (2)(b) of the Contempt of Courts Act, 1971 which defines “civil contempt” as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

Therefore, the Committee is of the opinion that in order to ensure implementation of the orders of the Tribunals, “civil contempt” powers of the Administrative Tribunals should be retained.

9.12. Article 323A(g) of the Constitution provides that the law made under Article 323A may contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

9.13. Retracing the essence of Article 323 A, the Committee notes that speedy redressal of grievances of Government employees should be ensured. In order to achieve this objective, the speedy execution of orders/judgements is mandatory. Since there are no separate execution rules for enforcing implementation of the judgments/orders of the Administrative Tribunals, exercising contempt jurisdiction is the sole method open to them to ensure execution of their orders/ judgements. The Committee is of the considered opinion that if the Tribunals are not armed with contempt powers, it would be a major stumbling block in the execution process and would make the Tribunal a toothless tiger. Since contempt power is a paramount need in the matter of enforcement of orders of the Administrative Tribunals, the Committee strongly feels that contempt powers in the modified form should be retained with the Administrative Tribunals.

9.14. The Committee notes that since Section 22 of the parent Act provides that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 if the contempt power is withdrawn from the Administrative Tribunals, in case of non-execution of its orders/

judgments, contempt petitions will have to be filed in the High Courts. This has to be viewed in reference to the present situation that extraordinary resort to writ jurisdiction of the High Court, investment of special jurisdiction in the High Court such as, trial of election petitions under the Representation of the People Act, 1951, with its concomitant that it should be disposed of within six months from the date of institution has led to clogging of the High Courts.

9.15. Thus the Committee feels that the filing of contempt petitions in High Courts in case of non-implementation of the orders/ judgments of Administrative Tribunals, would add further burden to the already overburdened High Courts. This would delay the process of redressing the grievances of Government employees. This would defeat the very purpose for which Constitutional provision under Article 323 A and the Administrative Tribunals Act, 1985 were enacted.

9.16. The Committee further notes that the withdrawal of contempt powers from the Administrative Tribunals would also lead to an anomalous situation i.e. High Court would become the execution Court for the implementation of the judgments of the Administrative Tribunals as there is no other provision for execution of the orders/judgements of the Administrative Tribunals. Then the Committee is constrained to note that it would be the only instance wherein a higher Court would become the execution Court for the judgments/orders of the subordinate Courts.

9.17. In *Advocate General, Bihar v. M.P. Khair Industries* A.I.R.1980 S.C. 946, the Hon'ble Supreme Court observed as follows :

“..... The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression “Contempt of Court” may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.”

9.18. The following view was expressed during the deliberations of the Committee:

“.....in 1976, every civil Court was given this power to put some kind of a compulsive process in their hands so that they should be able to carry out their duties and seek obedience of their own order. Therefore, civil contempt is all that is necessary. And “civil contempt” is defined in the Contempt of Courts Act, which serves the purpose.....This is more than enough, and this will put these administrative tribunals under the same footing as even the District Court is. We, therefore, agree that this limited contempt power must be given to them.....The tribunal has a constitutional status. It is good enough. But if the tribunal is not entrusted with the power of contempt, I find it anomalous and contradictory..... But, I believe that once you create a tribunal, you must give proper powers to it. At the minimum, it should have civil contempt power. Otherwise, it will not be able to work.....”

9.19. The Committee takes note of the fact that whenever the direction of a Court is not carried out to its logical conclusion, it is the rule of law that suffers. Carrying out the order of a Court is an enforcement of rule of law. In order to ensure execution of the orders of the tribunals, the powers to punish for civil contempt should be vested in them.

9.20. In view of the foregoing, the Committee feels that there is no necessity to retain Section 17 of the Administrative Tribunals Act as rightly proposed in the Bill. But for execution of the tribunal's order, the present procedure invariably followed by the tribunal is to resort to the powers under Section 17 of the Act. To ensure that the tribunal's orders are executed, the Committee is of the view that the tribunal should be vested with contempt of court powers as mandated in Article 323A(2)(b) of the Constitution. Moreover, in absence of any specific provision like Order 39 Rule 2-A of the Code of Civil Procedure in the Act, the tribunal should be vested with the authority to ensure that its order is properly implemented within a stipulated time frame.

9.21. Therefore, taking into account the various statutory provisions, the Committee is of the considered view that Section 17 of the Administrative

Tribunals Act should be suitably replaced by reflecting the “civil contempt” as defined in the Contempt of Courts Act, 1971.

9.22. Subject to the above observations/recommendations, the Clause was adopted.

Clause 4

10.0. Clause 4 was adopted without suggesting any change.

Clause 5

11.0. Clause 5 of the Bill proposes for conferment of power of abolition of Administrative Tribunals by inserting Chapter IVA in the principal Act. Section 27A of Chapter IVA provides as follows:

“(1) If the Central Government is of the opinion that the continued existence of the Central Administrative Tribunal or any of its Benches is not necessary, it may, by notification, abolish the Tribunal or any of its Benches.

(2) The Central Government may abolish, by notification,—

(a) an Administrative Tribunal established for a State under sub-section (2) of section 4 after the receipt of a proposal from the State in this behalf;

(b) a Joint Administrative Tribunal established under sub-section (3) of section 4 on receipt of an agreement entered into by the concerned States for the abolition of such Administrative Tribunal:

Provided that the abolition of the Tamil Nadu Administrative Tribunal and the transfer of the pending cases and records of the said Tribunal to the High Court of Judicature at Madras, by the notification of the Government of India in the Ministry of Personnel, Public Grievances and Pensions No. G..S.R. 71(E), dated the 17th February, 2006 issued under sub-section (2) of section 4, shall be deemed to have been done under this section as if the provisions of this section were in force on and from the 17th day of February, 2006.

(3) If a proposal or agreement under clause (a) or clause (b) of sub-section (2), is forwarded to the Central Government, the concerned State shall also forward along with it a proposal for the transfer and disposal of cases pending before any State Administrative Tribunal or any Joint Administrative Tribunal in consultation with the concerned High Court.

(4) The Central Government may provide in the notification under sub-section (1) or sub-section (2) for the transfer and disposal of the cases pending before the Tribunal or any of its Benches immediately before its abolition.”

11.1. During the deliberations of the Committee, it emerged that the Parliament was motivated to create new adjudicatory fora to provide new, cheap and fast-track adjudicatory systems and permitting them to function by tearing off the conventional shackles of the strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews which create hurdles in the fast flow of the stream of justice. The Administrative Tribunals as established under Article 323-A of the Constitution and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Courts, consistent with the amended Constitutional scheme but at the same time not to negate judicial review jurisdiction of Constitutional Courts.

11.2. While replying to the queries of the Members in the Lok Sabha on the Administrative Tribunals Bill on the 1st November, 1976, the then Minister of Law and Justice stated that :

“.....Now, one other thing which has been mentioned is that here for example in one part, that is 323A, there is a reference to only tribunal meaning thereby that there would be one tribunal and in the other part, that is 323 B, there is a reference to hierarchy of tribunals. Now it is not a drafting error and it is deliberate and the reason is this that when we are talking of the tribunals in respect of the grievances and complaints of employees of the States or the Union, there are rules framed under the existing provisions of the Constitution governing the conditions of service of these employees. These rules are provided for various forums for hearing the complaints and grievances of the employees, with regard to the service conditions and other matters and it was thought that when all these remedies are there, there should be one tribunal which will sit for hearing appeals or for hearing original complaints in respect of these matters and adjudicate or otherwise in the various other forums. In fact, there is a hierarchy; they are provided under the various rules and that hierarchy is enough, you go to one tribunal which is the highest tribunal which will be adjudicated on all matters.....”

11.3. The Ministry of Personnel, Public Grievances and Pensions has cited the decision of the Hon’ble Supreme Court in the *L. Chandrakumar case* as the core reason for their proposal to abolish Administrative Tribunals.

11.4. But in the *L. Chandrakumar case*, the Hon’ble Court had held as follows:

“.... The Tribunals are competent to hear matters where the *vires* of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the *vires* of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the *vires* of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will however, 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 for litigants to directly approach the High Courts even in cases where they question the *vires* of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”

11.5. The Committee takes note of the fact that the Hon’ble Supreme Court has thus made it amply clear that the Tribunals will continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted and that it will not be open for litigants to directly approach the High Courts even in cases where they question the *vires* of statutory legislations. The Committee is of the considered opinion that since the Apex Court has upheld the necessity of Administrative Tribunals in such clear terms, there is no iota of doubt as to the fact that Administrative Tribunals are absolutely essential for the speedy redressal of grievances of Government employees.

11.6. Further, in *L. Chandrakumar case* it was held:

“.....So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained there is no reason why the power to test the validity of legislation against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323B of the Constitution. It is to be remembered that apart from the authorisation that flows from Articles 323A and 323B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Court. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.”

11.7. Moreover, in the *Sudhakar Prasad case*, it was observed :

“.....We are therefore clearly of the opinion that there is no anathema to the Tribunal exercising jurisdiction of the High Court and in that sense being supplemental or additional to the High Court but at the same time not enjoying status equivalent to the High Court and also being subject to judicial review and judicial superintendence of the High Court.”

11.8. The following observation of the Apex Court in the abovementioned case is also pertinent:

“.....That the various Tribunals have not performed upto expectations is a self-evident and widely acknowledged truth. However, to draw an inference that their unsatisfactory performance points to their being founded on a fundamentally unsound principle would not be correct. The reasons for which the Tribunals were constituted still persist; indeed, those reasons have become even more pronounced in our times. We have already indicated that our Constitutional scheme permits the setting up of such Tribunals. However, drastic measures may have to be resorted to in order to elevate their standards to ensure that they stand up to Constitutional scrutiny in the discharge of the power of judicial review conferred upon them.”

11.9. The Committee fully subscribes to the observation of the Hon’ble Court and as such recommends that proactive steps should be taken to ensure better functioning of Administrative Tribunals.

11.10. As a remedial step, the Committee expressed the following view:

“.....Maybe, a retired judge of the Supreme Court can preside over. And, maybe, the other member could be from the judiciary; not from the district judges, but from the level of High Courts, we can keep one. And, then, the third and the fourth members can be from the administration so that the dignity and strength of the tribunal is enhanced to that extent.”

11.11. The Committee also takes into account the view expressed by Mr. Justice V.S. Malimath that as of now, since the statute does not provide that the Chairman of the Tribunal should be former Chief Justice, a retired Judge of the High Court is currently, being appointed as Chairman whereas earlier, the retired Chief Justice used to be the Chairman of the Tribunal. He had opined that this lowers the stature of the Tribunal.

11.12. In view of the discussion, even though the Committee is not considering the parent Act exhaustively, in order to enhance the status of Administrative Tribunals and to improve their functioning, the Committee finds that it is high time to recommend to incorporate in Section 6 of the principal Act which deals with the qualification for appointment of Chairman, Vice Chairman and other Members, the appropriate provisions to the effect that:-

(i) A person shall not be qualified for appointment as the Chairman unless he-
has been, a Judge of the Supreme Court; or
has been, the Chief Justice of a High Court.

The Committee feels that such an amendment shall ensure finality to the orders of Tribunals.

(ii) A person shall not be qualified for appointment as the Vice- Chairman unless he has been a Judge of a High Court.

(iii) A person shall not be qualified for appointment as a Administrative Member unless he-

(a) has 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

(b) has, 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 which is not less than that of an Additional Secretary to the Government of India.

11.13. The Committee, while deliberating upon the issue, took account of the fact that when the parent Act was enacted, the retirement age for a Secretary to the Government of India was 58 years whereas now, it is 60 or in some cases 60+2 years. Keeping this in view, the Committee felt that for appointment as Administrative Member, Secretaries should also be given an opportunity irrespective of their term in office as Secretary. This will also do away with the anomaly which exists now which is that an aggrieved Secretary/retired Secretary who approaches the Administrative Tribunal finds that an officer junior in rank is adjudicating upon his case. Moreover, the Committee feels that a premier institution like CAT/SAT should be benefited by the vast knowledge and experience which a Secretary to the Government has gained throughout his career.

11.14. Another pertinent point is that Section 5(6) of the Administrative Tribunals Act provides as follows:

“Notwithstanding anything contained in the foregoing provisions to this section, it shall be competent for the Chairman or any other Member authorized by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify:

Provided that if any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of [two Members], the case or matter may be transferred by the Chairman or, as the case may be, referred to him transfer to, such Bench as the Chairman may deem fit.”

11.15. In this context, the Committee takes note of the opinion raised in the memoranda received that the Tribunals should be presided over by a judicial member only. The Committee feels that this suggestion is justified because the judicial members will be able to appreciate legal aspects of a case better. Therefore, the Committee recommends that requisite amendment should be made in the Administrative Tribunals Act, 1985 to the effect that the presiding judge of Administrative Tribunals should be a judicial member and in case of a single Bench, the sole Member should be a judicial member.

11.16. Further, in the *Chandrakumar case*, the Hon’ble Supreme Court observed as follows:

“.....There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals. When the framers of our Constitution bestowed the powers of judicial review of legislative action upon the High Courts and the Supreme Court, they ensured that other Constitutional safeguards were created to assist them in effectively discharging this onerous burden. The expectation was that this power would be required to be used only occasionally. However in the five decades that have ensued since independence, the quantity of litigation before the High Courts has exploded in an unprecedented manner.....when a Constitution Bench of this Court in *Sampath Kumar’s case* adopted the theory of alternative institutional mechanisms, it was attempting to remedy an alarming practical situation and the approach selected by it appeared to be most appropriate to meet the exigencies of the time.”

11.17. As per the statistics furnished by the Ministry of Personnel, Public Grievances and Pensions, from the period 1.11.85 to 28.02.06, the total cases instituted in Central Administrative Tribunal were 470365, those disposed were 446369 and those pending are 23996. Taking into account the excellent rate of disposal of the cases, the Committee finds no coherent reason to favour the abolition of Administrative Tribunals. If it is felt that the functioning of Administrative Tribunals need to be improved, proactive steps should be taken in this regard rather than proposing to abolish them. However, if it is felt that a Tribunal is not still functioning upto its expected level and needs to be abolished, it should be abolished only after invoking the Legislative process. If the power of abolition is vested with the Executive, then the Tribunal is bound to lose its seat of importance.

11.18. The Committee notes that the State Government of Himachal Pradesh recommended the abolition of the Himachal Pradesh State Administrative Tribunal under the following circumstances:-

In the letter dated 20.8.2001, the Chief Minister, Himachal Pradesh had written as follows:

“After carefully looking at the working of the HPAT, the then Council of Ministers in its meeting held on 7.3.1990 decided to abolish the Tribunal and accordingly the matter was referred to Government of India requesting them to approve abolishing the H.P. Administrative Tribunal. A letter in this regard was also written by the then Chief Minister of H.P. to then Hon’ble Prime Minister of India. However, I find there is no outcome of this request and after sometime perhaps the matter was also not followed up regularly by our Government.

I have given a lot of thought to the matter and also wide ranging discussions were held with the employees, both of the Government and the public sector/ other Government bodies. The matter has also been agitating the employees associations who have been representing from time to time that constitution of the Tribunal has blocked the normally easier and more convenient judicial avenues for redressal of their grievances. Unfortunately I tend to agree with the perception that the Tribunal has not been able to effectively achieve the objectives for which it was constituted in the first place i.e. speedier and inexpensive justice to aggrieved Government employees. As per the data available with the Government as many as 20439 cases were reported to be pending with the Tribunal on 31.3.2001 despite the fact that there has not been even a single vacancy of members in the Tribunal.

In my view, this is the right time to abolish the Tribunal since its present Chairman Justice (Retd.) A.L. Vaidya is retiring in 10/2001 and 2 of the other 3 members will also be retiring within less than one year. The staff rendered surplus from the abolition of this Tribunal will be suitably adjusted in other courts/offices against available vacancies. Even otherwise, the present financial position of the State demands that the Government take a close look at all its administrative infrastructure so that only the essential ones are retained and strengthened. Ours being a very small State, financially dependent to a large extent on Government of India, can ill afford both the High Court and the Administrative Tribunal.

I would request you therefore, to please give the matter the urgent attention that it merits and to approve that the H.P. Administrative Tribunal is abolished at the earliest.”

Later on, the State Government *vide* letter dated 4.7.2003 stated as follows:-

The State Government has reviewed its decision and decided not to abolish the State Administrative Tribunal. Therefore, the above mentioned communication in the State Government may be treated as withdrawn.”

11.19. The Committee discussed the subject at length and expressed the following view:

“.....One is appropriating to the Executive the power to abolish the Tribunal. In my opinion, it goes against the very spirit which prompted the creation of a Tribunal through the Constitution itself. If this power is to be vested with the Executive wing of the Government, then the Tribunal will lose the seat of importance and people will consider the Tribunal as something easily dispensable. Therefore, I would strongly plead for giving the power of abolition only to Parliament. In other words, the legislative process should be invoked if a Tribunal is to be abolished; otherwise, you will find a spate of letters and proposals for abolition of Tribunals.”

11.20. In the case of Karnataka State Administrative Tribunal, the State Government had proposed to abolish it which was reconsidered by the new Government. The new Government later withdrew the proposal. In the opinion of the Committee, these instances unequivocally prove that the continued existence of State Administrative Tribunals will be left to the whims and fancies of the State Governments if the power of abolition is

granted to the Executive. This will hang like the Damocle's sword over the Administrative Tribunals which would hamper the fair delivery of justice to the Government employees.

11.21. The Committee takes note that in the 99th Report on Demands for Grants (2003-04) of the Ministry of Personnel, Public Grievances and Pensions by the Department Related Parliamentary Standing Committee on Home Affairs, the Committee while examining the matter relating to the abolition of a few State Administrative Tribunals, noticed that no reasons for such proposal for abolition of State Administrative Tribunals had been given by the State Government and that the Central Government had also not given any reasons for forwarding such request of such State Governments. Therefore, that Parliamentary Standing Committee asked the Central Government to intimate the Committee the reasons given by few State Governments for the abolition of State Tribunals and the considered opinion of Central Government on such reasons given by the State Government.

11.22. Furthermore, having noted the views expressed by the Department Related Parliamentary Standing Committee on Home Affairs in the preceding paragraph, this Committee feels that since the Government is an interested party in the cases filed in Administrative Tribunals, granting unfettered powers to the same Government to abolish Administrative Tribunals will be shocking and is clearly subversive of the principles of justice. It would make a mockery of the entire adjudicative process. There is every chance that this power can be abused or misused.

11.23. The Committee is also confronted with the following deposition before it by a witness:

“.....on 6th December, 2005 we had held a Lawyers-Litigants meet in which about 38 Service Organisations and Federations and the Lawyers' Body together deliberated on this issue. They passed a resolution opposing this move. After the Cabinet passed it and before its introduction in Rajya Sabha, all the Employees Associations came forward and said that it is an institution which is adjudicating disputes relating to service, their grievances and give the decisions in six to eight months time whereas on the other hand, Courts take 12-15 years to adjudicate on these matters. Moreover, it is not only the present employees but also the pensioners who are covered by the tribunal. In Courts, they have a category of sr. citizens and the cases of pensioners are listed under that category. These cases are taken up once in a week and that too after 2 p.m. Only one or two cases come up and the rest are not even taken up. In contrast to that, whether you are a senior or junior, your case is decided in the Tribunal within six to eight months.”

11.24. The Committee is constrained to observe that the delegation of power to the Executive to abolish the Administrative Tribunals will make the Tribunals vulnerable to the arbitrary action of the bureaucracy, seriously undermining the independence and impartiality of the Judiciary. This would be violative of “basic structure of the Constitution” and would result in death knell of Rule of Law. This is bound to defeat not only the very purpose of establishment of the Administrative Tribunals, but also the objective of Article 323-A of Constitution of India.

11.25. The Committee is of the strong view that the creation of an institution is a very serious, consistent and rigorous work for the Government. At the same time, abolition of such an institution is very simple and also very grievous in nature and more so when no alternative efficient system has been envisaged. Therefore, the endeavour should be to protect and reinforce the same, rather than destructing it, unless it is counter productive. Administrative Tribunal is a specialised institution created on the mandate of the Constitution of India. So it is the legislative duty to make it healthy, robust and dynamic. Moreover, the Committee felt that Administrative Tribunals are of great benefit to persons in public service, who are unfairly treated by their bosses and by their Departments, and therefore nothing should be done to whittle down the effect of Administrative Tribunals.

11.26. The Committee specifically questioned the representative of the Government of Tamil Nadu as to what was the alternative mechanism in the place of the Tamil Nadu State Administrative Tribunal which was abolished in February, 2006. They replied that the cases were transferred to

the High Court. In such an event, if Section 27 D is approved, it will create an anomaly. There would be no forum to replace the tribunal, but there will be a provision to hear the appeal by Division Bench as is proposed by Section 27D. This is one of the reasons which makes this Committee to recommend that the power of abolition of Administrative Tribunals should not be given to the Executive. On the other hand, the Executive should be accountable to the Parliament for such decisions, failing which the Constitutional mandate will not be acted upon.

11.27. Therefore, the Committee wishes to place on record its unanimous opposition to granting the power of abolition of Administrative Tribunals to the Executive, which would extinguish the Constitutional right of Government employees, who are an integral part of a sound Governmental system. The Committee notes that the statistics have unequivocally proved that the tribunals function excellently except in stray cases due to absence of accountability. The Committee strongly feels that grievances of the Government employees should be redressed without undue delay in order to create job security which in turn imparts dynamism and vibrancy to governance. Aggrieved Government servants cannot reflect excellency in governance.

11.28. The Committee notes that the Constitution of India under Article 323A(2)(a) gives the power to the Parliament to enact a law to provide for the establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for each State or for two or more States. The Committee feels that this is one additional and vital security granted to Government employees in Part XIVA of the Constitution. This service security is fully explained in Article 323A(1). Hence the framers of the Constitution have it in mind that the right of establishment of such an Administrative Tribunal which is exclusive in nature is to be exercised only by the Parliament. This is further strengthened by vesting the power of establishment of an Administrative Tribunal for States also. Hence delegating the power to abolish such a Tribunal merely by a notification of the Executive will not reflect the sense of Article 323A.

11.29. The Committee takes note of the fact that Section 4 (1) of the Administrative Tribunals Act, 1985 provides that the Central Government shall establish the Central Administrative Tribunal whereas it may establish State Administrative Tribunals on request made by the respective State Government. The Committee is of the view that the establishment of Central Administrative Tribunal is a mandatory provision in the parent Act and that abolishing it would amount to repealing the parent Act.

11.30. The Committee is also of the considered opinion that the establishment of SAT should be made mandatory which would ensure the quick redressal of grievances of State Government employees which in turn would enhance their work efficiency. Therefore, the Committee recommends that Section 4(2) of the parent Act should be amended to the effect that the State Governments shall request the Central Government, to establish by notification, an Administrative Tribunal, for the State and that the Central Government shall abide by the request.

11.31. In the Statement of Objects and Reasons of the Bill, it is stated that there is a need for amendment of the Administrative Tribunals Act, 1985 in order to provide for an enabling provision for abolition of the Tribunal and also for transfer of pending cases to some other authority after the Tribunal is abolished and that it is considered necessary for taking care of the service conditions of its functionaries in case the Tribunal is abolished.

11.32. The Committee fails to appreciate the exact intention of the Government. On one hand it proposes the abolition of Administrative Tribunals and on the other, it foresees the transfer of pending cases to some other authority.

11.33. The Committee further notes that in the Bill, it is provided that if a proposal is forwarded by a State Government to the Central Government, the concerned State shall also forward along with it a proposal for the transfer of pending cases in consultation with the concerned High Court. When this clause in the Bill is read with the Statement of Objects and Reasons, it appears that the Government proposes that the pending cases be referred to some other authority.

11.34. Then the Committee is confronted with the prominent question as to why a Tribunal whose Constitutional validity and necessity have been upheld by the Apex Court, and the utility of which has been established by the statistics of its disposal of cases, should be abolished and the cases pending before it be transferred to some other authority.

12.1. In the proviso to Section 27(2)(b), the Government has proposed that the abolition of the Tamil Nadu Administrative Tribunal made by the Notification of the Government of India shall be given retrospective effect.

12.2. The Committee has taken note of the fact that the High Court of Tamil Nadu, in its judgment in *Tamil Nadu Government All Department Watchman and Basic Servants Association and others vs. Union of India*, had directed the Central Government to issue notification abolishing the Tribunal and to send back all the pending cases and records in the Tribunal to the High Court and that though the Supreme Court admitted the Special Leave Petition against the order, it declined to grant a stay on the operation of the said order of the High Court.

12.3. The Committee further notes that the Tamil Nadu Administrative Tribunal was abolished under such circumstances. But the Committee is of the view that this High Court order cannot be applied generally to all Administrative Tribunals. Since the Special Leave Petition against the order of the High Court is pending before the Hon'ble Supreme Court, the Committee is of the considered opinion that it cannot be conclusively said that an Administrative Tribunal can be abolished through a Government Notification, without invoking the legislative process.

Appeal to High Court

13.0. Section 27 D(1) as proposed in the Bill provides as follows:

“Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court.”

13.1. The Committee deliberated upon the proposed amendment in the backdrop of Article 323 A (d) of the Constitution which excludes the jurisdiction of all Courts except that of the Supreme Court under Article 136.

13.2. The Committee takes note of the facts submitted in the *Chandrakumar case* that the essence of the power of judicial review is that it must always remain with the judiciary and must not be surrendered to the Executive or the Legislature. The Constitutional bar is against the conferment of judicial power on agencies outside the Judiciary. However, if within the judicial set-up, arrangements are made in the interests of better administration of justice to limit the jurisdiction under Articles 32 and 226 of the Constitution, there can be no grievance. In fact it is in the interest of better administration of justice that the Supreme Court has developed a practice even in the case of violation of Fundamental Rights, of requiring parties to approach the concerned High Court under Article 226 instead of directly approaching the Apex Court under Article 32 of the Constitution. This, undoubtedly, has the effect of limiting the jurisdiction of the Supreme Court under Article 32 but, being necessary for proper administration of justice, cannot be challenged as unconstitutional. Service matters, which are essentially in the nature of in-house disputes, being of lesser significance than those involving Fundamental Rights, can also be adjudicated upon by Tribunals on the same reasoning.

13.3. During the discussion, the Committee observed as under:

“.....as far as an appeal is concerned, after making the provision for an appeal to the High Court, the very purpose for which this Central Administrative Tribunal was constituted, will be defeated because these were constituted for a specific purpose that employees should get the speedy remedy and the High Courts should not be over-burdened. And, on account of this, provisions were made that it will be presided over by a retired High Court judge or a Chief Justice because he should not be subordinate to the High Court. When a tribunal is presided over by a High Court judge, its status is different and when it is presided over by a district judge, it has got a different status. Now, the High Court judge who has served for so many years and who has been senior to so many judges sitting in the Division Bench will be subordinate to them. That will lead to a situation where several High Court Judges may not prefer to preside as the member of the Central Administrative Tribunal.”

13.4. The Committee feels that Article 136 is a wide power given to the Supreme Court to entertain appeal from any judgment made by any Court/Tribunal in the territory of India. But it is at the discretion of the Court to grant special leave to an appeal or not. The present clause 27D in the Bill gives a new right to the Government employees to enjoy a statutory appeal to the High Court in the event of any person being aggrieved by any order/decision of the Tribunal. This statutory appeal provision will lead to protracted litigation and will simultaneously reduce the status of the

Tribunal to the level of a District Court or a subordinate Court.

13.5. After a detailed discussion, the Committee unanimously opined as under:

“.....if an appeal is to be provided, it should be provided to the Supreme Court only.Under POTA and TADA, similar provisions were there and that the appeal is provided to the Supreme Court only. In that case, the constitutional validity has been upheld by the Supreme Court,

13.6. The following view was also expressed by one Hon'ble Member of the Committee during the deliberations of the Committee:

“.....Keeping in view the pendency in the High Courts and the Supreme Court, and the factual aspect that how much time is spent in this process, if we want to give speedy remedy, my view is that this appellate provision should not be there. That should not lie with the High Court. If it has to be there, it should lie with the Supreme Court.”

13.7. The Committee further notes that the original conception was of declogging all the service matters of Government employees and take them to a Tribunal with one appeal. But to bring the Act in line with the judgment of the Supreme Court in the case of *L. Chandra Kumar*, the Government has felt the necessity for an amendment to provide for appeal against the orders of an Administrative Tribunal to the respective High Courts. But the Committee is of the considered view that the original conception of the Administrative Tribunal be restored and that provision of appeal to the High Court is unnecessary and that Chapter IV-B ought not be there.

13.8. The Committee therefore notes with grave concern that the High Courts are already overburdened with huge number of pending cases. According to the statistics available as on 2005, there are approximately 34 lakh cases pending before High Courts. There is no proposal from the Government to increase the number of judges in the High Courts. This Committee has already drawn the attention of the Government to see that the Supreme Court makes proper recommendations to fill up the vacancies in the High Courts. In such a situation, overburdening the High Courts and opening the floodgate of appeals against any order or decision of the Tribunals will make any person aggrieved by any decision/order of the Tribunal to prefer frivolous appeals. This will not give finality to the decision of the tribunal, thereby defeating the objective of speedy justice as enshrined in Article 323A of the Constitution of India.

13.9. Furthermore, the Committee is of the firm view that when a legislation is made, the Judicial Impact Statement and the financial commitment are to be anticipated and measured. The Committee could gather from the available statistics that the State Governments are not ready to bear the financial commitment of the State Administrative Tribunals. Naturally the costs of these litigations and adjudications are shifted to the expenditure of the High Courts as there is no proper study about the cost of handling the adjudication. For every single litigation, the Courts are overburdened with insufficient infrastructure. The Committee had, in its Sixth Report on the Demands for Grants (2005-06) of the Ministry of Law and Justice recommended that the Government should explore the possibility of enclosing Judicial Impact Statement along with every Bill as is done in the United States. The Committee reiterates its recommendation in this regard and would like to impress upon the Government to ensure that the Departments who are initiating the Bills should come out with clear and transparent calculations on its financial impact on the Judiciary. This is the best way to reduce the pendency of cases before the Courts and simultaneously enhancing the infrastructure of the Judiciary.

13.10. The Committee notes that the Customs, Excise and Service Tax Appellate Tribunal, constituted by the Finance Act, 2003, is the appellate authority on matters relating to classification and valuation, with the appeals lying to the Supreme Court.

13.11. The Committee further notes that for the constitution of National Tax Tribunal, the Government had stated as under :-

“When the appeals or references from the orders of the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal lie with the High Courts, these Courts get flooded with such cases which needs considerable time to dispose them. Due to the heavy workload of the High Courts, there is a huge backlog of tax related cases as a result of which huge revenue is blocked in such litigations. This is

adversely affecting the national economy. Hence, urgent measures are required to be taken to speed up taxation matters pending before the High Courts.

It may also be noted that there are at present 21 High Courts. Many a time, decisions of the High Courts vary from each other which create uncertainty, delays and problems in the administration of tax matters. Conflict of decisions amongst various High Courts on the same point of law have the effect of distorting uniformity and give rise to unnecessary appeals to the Supreme Court which results in further delay.

National Tax Tribunal will help in clearing the backlog and mitigating the burden that lie at the doors of High Courts. The constitution of the National Tax Tribunal would i) relieve the taxpayers from the burden of pursuing the tax disputes for a long period and ii) substantially reduce the workload of different High Courts which could not concentrate and devote as much focus which the complex tax laws presently demand.”

13.12. The Committee, in view of the foregoing, concludes that there is no two opinion, as admitted by the Government in the National Tax Tribunal Bill, 2004, that in some specialised sectors, the appellate jurisdiction of High Court, which is already over burdened with pending cases, is bound to delay the delivery of justice, whereas, the Constitution envisages quicker justice in those fields by creating Tribunals. The Committee also finds that there is similar provision in the Consumer Protection Act, 1986 wherein the early finality of judgments are conceived.

13.13. Mr. Justice V.S. Malimath stressed upon this point as under:-

“.....Parliament enacted Article 323 A to provide for special Tribunals for the purpose of hearing specialized matters like service matters on two grounds. One is, High Court is so much burdened with other types of works and, therefore, it is not possible for it to expeditiously dispose of service matters. Second is, service matters need an amount of specialization and, therefore, an element of experience of service matters is necessary. Therefore, specialized tribunals were constituted excluding the jurisdiction of all courts of the country including the High Court. If these cases are pending for a long time, the Government servant, who is expected to assist in administration, will go on lingering before courts and his service will be affected. With this heart, will he be able to do work in the Government? So, expeditious disposal is necessary from the point of view of administration and that is the intention, and that is what has been debated when Article 323 A was enacted.”

13.14. The Committee further sees no harm in envisaging Supreme Court as an appellate authority after the judgment of CAT/ SAT in addition to the writ jurisdiction of High Courts through Articles 226/227 of the Constitution of India as decided in the *L. Chandrakumar case*. The Committee also notes that in *Maneck Custodji Surjarji Vs. Sarafazali Nawabali Mirza (AIR 1976 SC 2446)*, it was held that jurisdiction under Article 227 of the Constitution of India is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestrictive power to the High Court to do whatever it liked.

13.15. The Committee opines that Section 27D will not serve the mandate of Article 323A as to an exclusively enhanced jurisdiction for the Administrative Tribunals. The qualification of the Chairman and Members of the Administrative Tribunals are that of High Court judges and senior most Secretaries of the Government. Hence the additional/supplemental to the High Court stature given to the Administrative Tribunals will be reduced by having the appeal to the High Court even though it would be a Division Bench.

13.16. The Committee is of the view that if Section 27D is to be accepted, the nodal Ministry should make an assessment of the financial commitment which would arise in handling such adjudication and that the nodal Department should be in a position to assess whether it is possible for the Union/State Government to meet the needs in terms of infrastructure and the cost of handling the litigation by the concerned High Courts.

13.17. In view of the above, the Committee is of the opinion that statutory appeal can be provided under Section 27D, but that it shall lie to the Supreme Court.

13.18. Subject to the above observations/recommendations, the Clause was adopted.

14. Clauses 6 and 7 were adopted without suggesting any changes.

15. Clause 1, Enacting Formula and Title were adopted without changes.

General Suggestions/ Recommendations of the Committee.

Extension of jurisdiction of Central Administrative Tribunal

16. The Committee feels that within the two decades of the implementation of the Administrative Tribunals Act, 1985, *Chandrakumar case* has taken away nine years and created uncertainty on the existence of Administrative Tribunals. By enlarging the jurisdiction of the Central Administrative Tribunal, its stature will be elevated in the eyes of the people. In many Organisations/ Constitutional bodies, the employees' grievances redressal mechanism has not grown to their level of expectation. Therefore, the Committee feels that it is high time that a proper mechanism is put in place for the employees of other organisations such as NDMC, DDA, Nationalised Banks, Central Universities, Prasar Bharati, Election Commission of India, UPSC, MTNL and BSNL, Central Information Commission, Central Vigilance Commission etc. , whose service conditions are at par with those of Central Government employees, and that they are to be covered in the Administrative Tribunals Act, 1985.

17.0. The Committee takes note of the following observation of the Hon'ble Supreme Court in the *Chandrakumar case* :

“It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. To this end, it is suggested that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall. We are, however, of the view that this may not be the best way of solving the problem.....The situation at present is that different Tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. However, even in the case of Tribunals created by Parliamentary legislations, there is no uniformity in administration. We are of the view that until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law.....”

17.1. The Committee notes that for instance, even though the Income Tax Appellate Tribunal earlier pertained to the Ministry of Finance, its nodal Ministry is the Ministry of Law and Justice. **Therefore, the Committee is of the considered opinion that the nodal Ministry for the Administrative Tribunals should also be the Ministry of Law and Justice.**

18. **Penalties:-** France has a legal practice of holding the erring officer liable to indemnify the aggrieved party by personally paying fine for every day of default in complying with the orders of Tribunal, besides interest. The Committee recommends that provision should be incorporated in the Administrative Tribunals Act for holding the erring officer liable to indemnify the aggrieved party by personally paying fine for every day of default in compliance with the orders of the Tribunal. This would expedite the enforcement of orders of Tribunal.

19. **Legal Aid:** - The Committee feels that legal aid should be provided at least for all Class IV employees and workers of temporary status etc. Legal aid should be available in all Benches of the Tribunals and in such manner as will enable Government employees in need, to get the assistance they require.

20.0. **Provision of Appeal:** - At present the appeal against the order of Tribunal is under Article 136 of the Constitution to the Supreme Court which is not efficacious to secure the end of justice. A statutory provision of appeal in addition to the above, to the Supreme Court should be made.

20.1. If statutory provision of appeal to the Supreme Court cannot be envisaged, a clarifying amendment should be made that the order of a Tribunal finally disposing of an application will not be called in question in any Court, except by way of special leave petition in the Supreme Court.

**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE
SEVENTEENTH REPORT ON THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) BILL, 2006**

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice headed by Dr. E.M. Sudarsana Natchiappan, M.P., Rajya Sabha has presented its Seventeenth Report on the Administrative Tribunals (Amendment) Bill on 5th December, 2006. The Report has also been laid on the Table of the Lok Sabha.

2. The Bill, as introduced in Rajya Sabha on 18th March, 2006 was referred to the Committee for examination and Report on 27th March, 2006.
3. While considering the Bill, the Committee considered suggestions and heard views of interested organisations/institutions/individuals/experts on the provisions of the Bill.
4. The Bill seeks to amend the Administrative Tribunals Act, 1985 by an enabling provision for abolition of Central Administrative Tribunal and State Administrative Tribunals and for transfer of pending cases to some other authority after the Tribunal is abolished. It also seeks to take away contempt powers from Administrative Tribunals and to provide for appeal against the orders of Administrative Tribunals to the respective High Courts.

Contd.....2/-

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5. The Committee recommends that the Administrative Tribunals should be vested with “Civil Contempt” powers since there are no separate execution rules for enforcing implementation of the judgments/orders of the Administrative Tribunals.
6. On the issue of abolition of Administrative Tribunals, the Committee is of the opinion that since Administrative Tribunals is a vital security granted to Government employees in Part XIV A of the Constitution, delegating the power to abolish such a Tribunal merely by a notification of the Executive will not reflect the sense of Article 323A of the Constitution. The Committee recommends that the power of abolition of Administrative Tribunals should not be granted to the Executive and that the proposal for such abolition should invariably get the concurrence of the Parliament.
7. The Committee recommends that appeals from orders of Administrative Tribunals should be provided only to the Supreme Court and not High Courts as enshrined in Article 323A(2) of the Constitution, since High Courts are already overburdened with huge number of pending cases. It also recommends that if statutory provision of appeal to the Supreme Court cannot be envisaged, a clarifying amendment should be made that the order of a Tribunal finally disposing of an application will not be called in question in any Court, except by way of special leave petition in the Supreme Court.

Contd.....3/-

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8. The Committee recommends that when a legislation is made, the Judicial Impact Statement and financial commitment should be anticipated and measured. It recommends that the nodal Ministry for the Administrative Tribunals should be the Ministry of Law and Justice instead of

Ministry of Personnel, Public Grievances and Pensions.

9. The Committee recommends that the employees of all Organisations, whose service conditions are at par with those of Central Government employees, should also be entitled to be covered under the Administrative Tribunals Act, 1985.

10. The Committee does not approve of granting retrospective effect to the notification of Government of India abolishing the Tamil Nadu State Administrative Tribunal since it would not be proper to validate the Notification till the judgement is given by the Apex Court in the Special Leave Petition which was filed challenging the abolition.

11. The Committee recommends that the establishment of State Administrative Tribunals should be made mandatory. It recommends that provision should be incorporated in the Administrative Tribunals Act, 1985 for holding the erring officer liable to indemnify the aggrieved party by personally paying fine for every day of default in compliance with the orders of the Tribunal.

12. The Committee recommends that legal aid should be provided at least for all Class IV employees and workers of temporary status etc. in all Benches of the Tribunals.

New Delhi

December 5, 2006

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— Rajya Sabha Parliamentary Bulletin Part-II (No. 42996) dated the 28th March, 2006.