



PARLIAMENT OF INDIA
RAJYA SABHA

54

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

FIFTY FOURTH REPORT

ON

THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) BILL, 2012

**(PRESENTED TO THE RAJYA SABHA ON 17th DECEMBER, 2012)
(LAID ON THE TABLE OF THE LOK SABHA ON 17th DECEMBER, 2012)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
DECEMBER, 2012 / AGRAHAYANA, 1934 (SAKA)**

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COMPOSITION OF THE COMMITTEE

(2011-12)

1. *Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Shri Amar Singh
3. Shri Parimal Nathwani
4. Dr. Bhalchandra Mungekar
5. Shri Ram Jethmalani
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Vilas Paswan
8. Dr. Abhishek Manu Singhvi
9. @Shri Bhupender Yadav
10. Vacant

LOK SABHA

11. Shri Arun Yadav
12. Kumari Meenakshi Natrajan
13. Shri Shailendra Kumar
14. Shri S. Semmalai
15. Shri Anirudhan Sampath
16. Shri Lalu Prasad
17. Shri Prasanta Kumar Majumdar
18. Shri N.S.V. Chitthan
19. Smt. Deepa Dashmunsi
20. Dr. Prabha Kishore Taviad
21. Shri P. T. Thomas (Idukki)
22. Shri Kirti Jha Azad
23. Shri D.B. Chandre Gowda
24. Shri Pinaki Misra
25. Shri Harin Pathak
26. Shri Arjun Ram Meghwal
27. Shri Madhusudan Yadav
28. Shri Vijay Bahadur Singh
29. Smt. Chandresh Kumari
30. Vacant
31. Vacant

(i)

* *Nominated to be Chairman of the Committee w.e.f. 4th May, 2012 vice resignation by Dr. Abhishek Manu Singhvi.*

@ *Nominated to be the Member of Committee w.e.f. 4th May, 2012.*

COMPOSITION OF THE COMMITTEE

(2012-13)

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Dr. Abhishek Manu Singhvi
3. Shri Jesudas Seelam
4. Shri Ram Jethmalani
5. Shri Bhupender Yadav
6. Shri Ramchandra Prasad Singh
7. Shri Sukhendu Sekhar Roy
8. Shri Ram Vilas Paswan
9. Shri Sanjiv Kumar
10. Shri Parimal Nathwani

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri P.C. Gaddigoudar
13. Shri D.B. Chandre Gowda
14. Shri Shailendra Kumar
15. Shri Jitender Singh Malik
16. Shri Arjun Ram Meghwal
17. Shri Pinaki Misra
18. Shri S. Semmalai
19. Shri S.D. "Shariq"
20. Smt. Meena Singh
21. Shri Vijay Bahadur Singh
22. Dr. Prabha Kishore Taviad
23. Shri Suresh Kashinath Taware
24. Shri Madhusudan Yadav
25. Vacant@
26. Vacant
27. Vacant
28. Vacant
29. Vacant
30. Vacant
31. Vacant

SECRETARIAT

Shri Deepak Goyal, Joint Secretary
Shri K.P. Singh, Director
Shri Ashok Kumar Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director
Smt. Catherine John L., Committee Officer

(ii)

@ Vacancy caused due to induction of Smt. Chandresh Kumari in the Council of Minister w.e.f. 28th October, 2011.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Fifty Fourth Report on the Administrative Tribunals (Amendment) Bill, 2012.

2. In terms of the rules relating to the Department-related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred* the Bill (**Annexure-I**), as introduced in the Lok Sabha on the 27th April, 2012 and pending therein, to this Committee on the 29th May, 2012 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/ organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies on the 30th June, 2012, in response to which Five memoranda containing suggestions were received, from different organizations / individuals / (**Annexure-II**) etc. The Committee had internal discussion on the provisions of the Bill in its Meeting held on 26th November, 2012.

4. The Committee heard the presentation of the Secretary, Department of Personnel and Training, Senior officers of Legislative Department on the provisions of the Bill in its meeting held on 9th July, 2012. The Committee also heard the views of non-official witnesses in its meetings held on 12th October, 2012 (list at **Annexure-III**).

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

- (i) Background note on the Bill submitted by the Department of Personnel and Training , Ministry of Personnel, Public Grievances and Pensions; highlighting the factors necessitating the Government to introduce the Bill;
- (ii) Seventeenth Report of the Committee on the Administrative Tribunals (Amendment) Bill, 2006,

* Rajya Sabha Parliamentary Bulletin Part-II (No. 49716) dated the 30th May, 2012.

- (iii) Two Hundred Fifteenth Report of Law Commission of India (December, 2008)and,
- (iv) Views/suggestions contained in the written memoranda received from various organisations/ institutions/ individuals/ etc. on the provisions of the Bill and the comments of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions thereon.

6. The Committee adopted the Report in its meeting held on the 11th December, 2012.

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

New Delhi:
11th December, 2012

SHANTARAM NAIK
Chairman,
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

The Administrative Tribunals (Amendment) Bill, 2012 seeks to amend certain provisions of the Administrative Tribunals Act, 1985. The amendments sought to be carried out as also the background in the Statement of Objects and Reasons appended to the Bill which read as follows:-

“

X

X

X

2. *Under existing provisions contained in section 6 of the Act, a person shall not be qualified for appointment as Chairman unless he is or has been, a Judge of a High Court. The Chairman and every other Member of the Central Administrative Tribunal are appointed after consultation with the Chief Justice of India by the President. The Chairman and every other Member of the Administrative Tribunals for a State or of Joint Administrative Tribunal are appointed by the President after consultation with the Governor of the concerned State. Section 8 of the Act provides that the condition of the service of the Chairman is same as applicable to the Judges of the High Courts.*

3. *To make Judges of the Supreme Court eligible for appointment as Chairman, in the Central Administrative Tribunal, the State Administrative Tribunal and any Joint Administrative Tribunal and to bring uniformity in appointment of the Chairman and other Members of these Tribunals, following amendments are proposed to be made in the Act, namely:—*

(a) *to amend sub-section (1) of section 6 of the Act so as to provide that a person shall not be qualified for the appointment as Chairman unless he is, or has been, a judge of the Supreme Court or the Chief Justice of the High Court;*

(b) *to substitute sub-sections (3) to (5) of section 6 of the Act with new sub-sections so as to provide for consultation by the President with the Chief Justice of India and the Governor of the respective States, in the case of State Administrative Tribunal and Joint Administrative*

Tribunals in addition to consultation by the President with the Chief Justice of India in the case of appointment of Chairman and every other Member of the Central Administrative Tribunal;

- (c) to substitute section 10 of the Act so as to provide that the salary and allowances payable to and the other terms and conditions of service including pensions, gratuity and other retirement benefits, for the Chairman shall be the same as are applicable to the Judge of the Supreme Court or the Chief Justice of the High Court and Members shall be eligible for such benefits as are applicable to a Judge of the High Court;*
- (d) to amend section 25 of the Act so as to confer power upon a Member authorised by the Chairman to transfer any case pending before one bench to any other bench for disposal in addition to the Chairman having such power;*
- (e) to make consequential amendments in the Act.*

x

x

x

”

2. The Administrative Tribunals Act, 1985 was enacted in pursuant to Article 323A of Constitution to set up Central Administrative Tribunal (CAT), State Administrative Tribunal (SAT) and Joint Administrative Tribunal (JAT) to provide speedy and inexpensive justice to litigant Government servants in service matters. There are Seventeen Benches and Thirty Three Divisional Benches of the CAT and State Administrative Tribunals in six States (Andhra Pradesh, Karnataka, Kerala, Maharashtra, West Bengal and Odisha). The Act was last amended in 2006. The Seventeenth Report of this Committee (2008) deals with the said amendments to the Act proposed in 2006.

3. The Committee had detailed deliberations on the amendments sought to be carried out in the Bill, which are discussed in the succeeding paragraphs.

Clause-2

4. Clause 2 of the Bill seeks to effect the following changes:-
 - i) Revise eligibility condition for the post of Chairman of CAT, SAT and JAT from the existing “Judge of the High Court” to the “Judge of the Supreme Court or Chief Justice of the High Court”; and
 - ii) Provide for consultation with Chief Justice of India (CJI) by the President of India in the matter of appointment of Chairman and Members of SAT and JAT.
5. Law Commission of India in its Two Hundred Fifteenth Report (2008) had recommended elevation in the level of the Chairman of the CAT, SAT and the JAT from the existing “Judge of the High Court” to that of “Judge of the Supreme Court or Chief Justice of the High Court”.
6. On an earlier occasion the Supreme Court had also observed that since the duties attached to the post of Chairman, CAT require that the incumbent also has considerable expertise in administrative matter, the Chairman of Administrative Tribunal should be a sitting/retired Judge of Supreme Court or Chief Justice of High Court. In view of this, Government through the proposed Bill has sought to revise the eligibility conditions for the position of Chairman of all the three categories of Tribunals to that of sitting/retired Judge of the Supreme Court or the Chief Justice of a High Court.
7. The Committee noted that in the past several retired Chief Justice of High Court had become Chairman of CAT/SAT.
8. The President of Chandigarh Bar Association in his written memoranda in response to Press Release, submitted that appointment of a Judge of Supreme Court as Chairman of CAT was not justified as the judgment of CAT were subject

to review by Division Bench of the High Court. Similar views were expressed by retired judicial members of CAT in their oral submission before the Committee.

9. The Ministry of Personnel in their comments on the aforesaid objection stated that the status of Members of CAT/SAT/JAT is equivalent to that of a High Court Judge and, therefore, it is desirable that the Chairman should be senior to the members. In support of their argument, they referred to Para 8.3 of Two Hundred Fifteenth Report of Law Commission of India(2008) which read as follows:-

“A Judge, sitting or retired, is eligible to be appointed as Chairman in view of the provisions contained in Section 6 of the Act of 1985. However, by tradition and practice, considering the importance of functions entrusted to the Tribunal, a Chief Justice of High Court, sitting or retired, is appointed as Chairman. The first seven Chairmen appointed since 1985 were all sitting or former Chief Justices of High Courts. Only for a brief period, two Chairmen thereafter were not Chief Justices of High Court. Presently, the Chairman is also former Chief Justice. It is, however, learnt that an order by the Hon’ble Chief Justice of India on the administrative side has been passed that the post of Chairman of the Tribunal would be always occupied by a sitting or former Chief Justice of High Court. A suitable amendment in section 6 of the Act of 1985 can be made to make only a sitting or former Chief Justice of High Court or Judge of the Supreme Court to be qualified for appointment as Chairman.”

10. In the given situation, the Committee takes note of the two landmark judgments related to Section 28 of the Administrative Tribunals Act, 1985 which deals with exclusion of jurisdiction of courts except the Supreme Court of India under Article 136 of the Constitution thereby implying that the appeals from the Tribunal shall lie with the Supreme Court. These are (i) S.P. Sampath Kumar Vs. Union of India (AIR 1989 SC 1185) and (ii) L.Chandra Kumar Vs. Union of India (AIR, 1997 SC 1125). In the case of S.P.Sampath Kumar, the Supreme Court held that Section 28 of the AT Act which excludes the jurisdiction of the High Court under Articles 226 and 227 of the Constitution is not unconstitutional. But, in the

later case of L.Chandra Kumar, the Supreme Court held that the writ jurisdiction of the High Court under Articles 226 and 227 constitutes basic structure of the constitution and cannot be extinguished by a legislation. Following these judicial pronouncements by the Apex Court, the decisions of the Tribunal are being heard in appeal in the Double Benches of the High Court within whose jurisdiction the Tribunal fell. With these developments the initial intention of streamlining adjudication in service matters has received some setback.

11. The Committee also took note of the fact that the Law Commission of India in its Two Hundred Fifteenth Report had not only recommended for elevation of level and status of Chairman of CAT, SAT, JAT to a Judge of Supreme Court (in Para 8.3) but also recommended for revision of L. Chandra Kumar case by a larger Bench of Supreme Court.

12. Para 8.5 of the said report states as follows:

“The Law Commission is of the opinion that in view of the circumstances stated in previous chapters, the subject definitely requires the attention of the Government of India and the State Governments and the judgment of the Hon’ble Supreme Court in L. Chandra Kumar’s case requires reconsideration by a large Bench of the Supreme Court in the interest of the Government servants, both Central and the State, to achieve the object of the Act, namely, speedy and less expensive justice. If this proposal is taken up in the right perspective, it will not only reduce the heavy expenditure by way of fees etc. to the counsel and also the time.”

13. The Committee through its Questionnaire dated 17th October, 2012 while ascertaining appropriateness in term of judicial discipline for allowing revision of the Judgment of a Judge of Supreme Court (as Chairman of CAT/SAT) by a Division Bench of High Court had desired to know from the DOPT whether the decision of Supreme Court in the case of L. Chandra Kumar case needs to be reviewed by the Supreme Court in the event of enactment of proposed Legislation.

In response to the said query, the Department of Personnel & Training have commented as follows:

"The proposed amendment to the Administrative Tribunals Act, 1985 is based on the advice/recommendations of the Chief Justice of India and 215th report of the Law Commission.

As per the original scheme of the Administrative Tribunals Act, 1985, under Section 28 the appeal against orders of Central Administrative Tribunal lies with the Supreme Court. The same changed in 1997 after the judgement of Supreme Court in L.Chandra Kumar's case. Though, the Section 28 remains the same. Now, due to this judgement writ jurisdiction of High Courts is invoked in respect of orders passed by CAT. As per the opinion of Ministry of Law and Justice no review petition could be filed. In a recent judgement in the case of Namit Sharma VS. Union of India (WP(C) No. 210/2012) the Supreme Court vide order dated 13.09.2012 has inter-alia held that the Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or Judge of the Supreme Court of India. Thus the same issue of orders of Judge of Supreme Court being challenged before High Court would arise in the case of Information Commission also.

This point raised by the Parliamentary Standing Committee regarding the judgement of CAT/SAT pronounced by a judge of Supreme Court in the capacity of Chairman being reviewed by High Court appears valid for Information Commissioners also and it is proposed to be further examined in consultation with the ministry of Law and Justice."

14. The Committee takes note of the recommendations of the Law Commission, the decisions of the Hon'ble Supreme Court of India in the two cases referred to above as well as the recommendations of this Committee as contained in its Seventeenth Report on the Administrative Tribunals (Amendment) Bill, 2006. The Committee is of the considered opinion that the amendment in Section 6(1) of the AT Act, 1985 which is being proposed through the Bill in hand would lead to a dichotomy where the decisions of the CAT/SAT/JAT which is proposed to be headed by a sitting/retired Judge of

the Supreme Court or a Chief Justice of the High Court would be taken up in appeal in the High Court. The Committee also takes note of the recommendations of the Law Commission which has recommended raising the level of the Chairman of CAT/SAT/JAT and also the revision of the judgement of the Supreme Court in L.Chandrakumar case by a larger Bench. In view of this, the Committee is of the considered view that the Ministry of Personnel should in the first instance explore the possibility of approaching Supreme Court for revision of its decision in L.Chandrakumar case and the action of elevating the level and status of the Chairman of CAT/SAT/JAT be taken only thereafter. The proposed amendment in Section 6(1) of the Administrative Tribunals Act, 1985, can be accepted only in case it is ensured that the decisions of CAT/SAT/JAT are made appealable in the Supreme Court. The Committee has arrived at this conclusion because the Members unanimously feel that the tendency on the part of the judicial officers to seek such posts needs to be discouraged.

15. The Committee was informed that the sub-Sections (4) and (5) of Section 6 of the AT Act do not specifically provide for consultation of Chief Justice of India (CJI) by the President of India for appointment of Chairman and Members of a SAT or a JAT. Sub-Section (3) of Section 6, however, mentions about the consultation of CJI by the President for appointment of Chairman and members of CAT. Owing to equality in the status of members of CAT with that of SAT or JAT, there has been a practice of consulting the CJI in matters of appointment of Chairman as well as Members of SAT and JAT. Further, Rule 5 (iii) of Administrative Tribunal (Procedure for Appointment of Members) Rules, 2011, framed under the AT Act , categorically mentions about such a consultation of the CJI. But, Sub-Sections (4) and (5) of the Section 6 which deal with the appointment of Chairman and Members of SAT and JAT, respectively, does not specifically provide about consultation with the CJI. The Ministry of Personnel in

their background note on the Bill pointed out that while examining the proposal for appointment of Chairman of SAT of Kerala, the CJI had directed the Government to amend relevant provisions of the Administrative Tribunals Act before sending another proposal for appointment of Chairman and members of the SATs.

16. The Committee feels that amendment proposed to sub-Sections (4) and (5) of Section 6 of the AT Act are aimed to rectify genuine omissions. Accordingly, the Committee endorses the amendment proposed in sub-sections (3), (4) and (5) of Section of 6 of the AT Act.

Clauses 3 & 4

17. Clauses 3 and 4 of the Bill seek to bring about the following changes in the AT Act, 1985:

- (i) Upward revision of salaries, allowances and change in the conditions of service of Chairman of Administrative Tribunals in view of amendment proposed to Section 6 (1) of the AT Act through clause 2 of the Bill; and
- (ii) Deleting sub-Section (3) of Section 8 of the AT Act and placing its provisions under Section 10 of the Act in a revised format.

18. The amendment proposed at (i) above is linked with the amendment to Section 6(1) of the AT Act, 1985 aimed towards raising the level and status of the Chairman of CAT, SAT and JAT.

19. As regards the amendment proposed at (ii) above, Section 8(3) of the AT Act provides that the conditions of service of Chairman and Members shall be the same as applicable to Judge of the High Court. Section 10 of the AT Act deals with the salary and allowances and other terms and conditions of service of the Chairman and Members of the Tribunals. The Ministry of Personnel in their

background note has stated that Section 8(3) should ideally have been placed under Section 10 which deals with the condition of service of Chairman and Members of Administrative Tribunals. Accordingly, the Bill seeks to delete the provisions of sub-Section (3) of Section 8 and recast the same under Section 10 and also to reflect the upward revision in salary, allowance, pension, gratuity and other retirement benefits in the case of Chairman, consequent upon amendment proposed under clause 2 of the bill.

20. The Committee has no objection in so far as the deletion of Section 8(3) of the AT Act and placing its provisions under Section 10 which is the more appropriate Section under which such provisions should have been placed. However, the Committee finds that the upward revision of salary, allowance, pension, gratuity and other retirement benefits in the case of Chairman of CAT, SAT and JAT is directly related to the amendments sought under Clause 2 of the Bill which has since been dealt with by the Committee in paras 4 to 15 above. Accordingly, the Committee recommends that action in terms of clauses 3 and 4 of the Bill related to the upward revision of salary, allowances, etc. in the case of Chairman should follow the outcome of the Committee's recommendations in relation to Section 6(1) of the AT Act.

Clause 5

21. Clause 5 of the Bill proposes amendment to the proviso to Section 10 (A) of the AT Act which provides for reappointment of existing members in terms of Section 8 of the Act. Section 6 of the AT Act deals with the qualification for appointment as Chairman and Member of the Administrative Tribunals. The Ministry of Personnel in their background note on the Bill have pointed out that the reference to Section 6 has "inadvertently being left out in the proviso". The amendment vide Clause 5 of the Bill seeks to include reference to Section 6 also in the proviso to Section 10(A) of the AT Act

22. The Committee takes note of the fact that the amendment suggested *vide* clause 5 of the Bill seeks to add the words “Section 8” in the proviso to Section 10(A). The amendment being with an objective to rectify a drafting error, the Committee recommends that the same may be carried out.

Clause 6

23. Clause 6 of the Bill proposes amendment to Section 25 of the AT Act. Through this amendment it is proposed to empower the Members of the Tribunals also to transfer any case on an authorization by the Chairman. The existing provisions of the said Section 25 vests this power only with the Chairman.

24. The Committee accepts the amendment proposed in Clause 6 of the Bill and it hopes that it would facilitate speedy disposal of cases. The Committee recommends, accordingly.

RECOMMENDATIONS/OBSERVATIONS OF

THE COMMITTEE AT A GLANCE

1. The Committee takes note of the recommendations of the Law Commission, the decisions of the Hon'ble Supreme Court of India in the two cases referred to above as well as the recommendations of this Committee as contained in its Seventeenth Report on the Administrative Tribunals (Amendment) Bill, 2006. The Committee is of the considered opinion that the amendment in Section 6(1) of the AT Act, 1985 which is being proposed through the Bill in hand would lead to a dichotomy where the decisions of the CAT/SAT/JAT which is proposed to be headed by a sitting/retired Judge of the Supreme Court or a Chief Justice of the High Court would be taken up in appeal in the High Court. The Committee also takes note of the recommendations of the Law Commission which has recommended raising the level of the Chairman of CAT/SAT/JAT and also the revision of the judgement of the Supreme Court in L.Chandrakumar case by a larger Bench. In view of this, the Committee is of the considered view that the Ministry of Personnel should in the first instance explore the possibility of approaching Supreme Court for revision of its decision in L.Chandrakumar case and the action of elevating the level and status of the Chairman of CAT/SAT/JAT be taken only thereafter. The proposed amendment in Section 6(1) of the Administrative Tribunals Act, 1985, can be accepted only in case it is ensured that the decisions of CAT/SAT/JAT are made appealable in the Supreme Court. The Committee has arrived at this conclusion because the Members unanimously feel that the tendency on the part of the judicial officers to seek such posts needs to be discouraged. [Para 14]

2. The Committee feels that amendment proposed to sub-Sections (4) and (5) of Section 6 of the AT Act are aimed to rectify genuine omissions. Accordingly, the Committee endorses the amendment proposed in sub-sections (3), (4) and (5) of Section of 6 of the AT Act. [Para 16]

3. The Committee has no objection in so far as the deletion of Section 8(3) of the AT Act and placing its provisions under Section 10 which is the more appropriate Section under which such provisions should have been placed. However, the Committee finds that the upward revision of salary, allowance, pension, gratuity and other retirement benefits in the case of Chairman of CAT, SAT and JAT is directly related to the amendments sought under Clause 2 of the Bill which has since been dealt with by the Committee in paras 4 to 15 above. Accordingly, the Committee recommends that action in terms of clauses 3 and 4 of the Bill related to the upward revision of salary, allowances, etc. in the case of Chairman should follow the outcome of the Committee's recommendations in relation to Section 6(1) of the AT Act. [Para 20]

4. The Committee takes note of the fact that the amendment suggested *vide* clause 5 of the Bill seeks to add the words "Section 8" in the proviso to Section 10(A). The amendment being with an objective to rectify a drafting error, the Committee recommends that the same may be carried out. [Para 22]

5. The Committee accepts the amendment proposed in Clause 6 of the Bill and it hopes that it would facilitate speedy disposal of cases. The Committee recommends, accordingly. [Para 24]

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