

REPORT NO

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PARLIAMENT OF INDIA
RAJYA SABHA

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

SEVENTY-FOURTH REPORT

**The Tribunals, Appellate Tribunals and Other Authorities
(Conditions of Service) Bill, 2014**

(Presented to the Rajya Sabha on 26th February, 2015)

(Laid on the Table of Lok Sabha on 26th February, 2015)



Rajya Sabha Secretariat, New Delhi
February, 2015/ Phalguna 1936 (Saka)



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ACRONYM

DRT	Debt Recovery Tribunals
DRAT	Debt Recovery Appellate Tribunals
PCI	Press Council of India
CAT	Central Administrative Tribunal
CLB	Company Law Board
NIT	National Industrial Tribunal
ITAT	Income Tax Appellate Tribunal
CAT	Central Administrative Tribunal
TDSAT	Telecom Disputes Settlement and Appellate Authority
JAC	Judicial Appointment Commission
NTC	National Tribunal Commission

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE
(As Constituted on 31st August, 2013)

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

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

LOK SABHA

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

COMPOSITION OF THE COMMITTEE

(As Constituted on 1st September, 2014)

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

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Majeed Memon
4. Shri Parimal Nathwani
5. Smt. Rajani Patil
6. Shri Sukhendu Sekhar Roy
7. Shri Ramchandra Prasad Singh
8. Dr. Abhishek Manu Singhvi
9. Shri K.T.S. Tulsi
10. *Shri Bhupender Yadav

LOK SABHA

11. Shri Suvendu Adhikari
12. Shri Subrata Bakshi
13. Adv. Sharad Bansode
14. Shri P.P. Chaudhary
15. Shri Abu Hasem Khan Chowdhury
16. Choudhary Mehboob Ali Kaiser
17. Shri Shanta Kumar
18. Shri Santosh Kumar
19. Shri S. Bhagwant Mann
20. Shri Anoop Mishra
21. Shri B.V. Naik
22. Shri Vincent H. Palla
23. Shri V. Panneerselvam
24. Shri Vithalbhai Hansrajbhai Radadiya
25. Dr. A. Sampath
26. Shri Bharat Singh
27. Shri Udhayakumar M.
28. Shri Varaprasad Rao Velagapalli
29. Dr. Anshul Verma
30. #Shri Tariq Anwar
31. \$Adv. Joice George

SECRETARIAT

Dr. D.B. Singh, Additional Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

* Change in the nomination of Shri Aayanur Manjunatha w.e.f. 30th September, 2014.

Vacancy existing since the constitution of the Committee was filled-up on 11th September, 2014.

\$ Change in the nomination of Shri Innocent w.e.f. 22nd December, 2014.

INTRODUCTION

I, 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 Seventy-fourth Report of the Committee on The Tribunals, Appellate Tribunals & Other Authorities (Conditions of Service) Bill, 2014 (**Annexure I**).

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 19th February, 2014 to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 24th February, 2014, for examination and report to Parliament within two months *i.e.* by the 24th April, 2014. The Committee, however, in view of busy schedule of Members during the General Elections to the Sixteenth Lok Sabha, could not complete consideration of the Bill during its term. The Committee was reconstituted *w.e.f.* the 1st September, 2014. After its reconstitution, extension of time for presentation of its report was granted till the 27th February, 2015.

3. In order to solicit the views of stakeholders, the Committee issued a Press Communiqué on 8th March and 13th September, 2014. In response thereto the Committee received several memoranda containing suggestions from various organizations/ individuals / experts. Comments of the Department of Justice on the views/suggestions so received, were obtained for consideration of the Committee. The Committee heard the views of Secretary, Department of Justice on 13th March, 2014 and Additional Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Additional Secretary, Ministry of Environment and Forests, representatives of the Department of Justice, Ministry of Law and Justice on 24th March 2014.

4. The Committee after its reconstitution again heard the views of Secretary, Department of Justice, Ministry of Law and Justice on the Bill in its sittings held on 26th September, 2014. The Committee heard. Shri K. Ashokan, Presiding Officer, Debt Recovery Tribunal-II, New Delhi; Shri Ashish Kalia, Presiding Officer, Debt

Recovery Tribunal-III, New Delhi, Shri Sudhir Kumar, Former Member, Central Administrative Tribunal and Shri M.R. Madhavan, President PRS Legislative Research, New Delhi on 16th December, 2014 as non-official witnesses.

5. In its meeting held on 30th December, 2014, the Committee heard Customs, Excise & Service Tax Appellate Tribunal (CESTAT), National Consumer Disputes Redressal Commission (NCDRC), Income Tax Appellate Tribunal (ITAT), National Green Tribunal (NGT) and representatives of the respective nodal Ministries of Environment, Forests and Climate Change, Consumer Affairs (Department of Consumer Affairs), Food & Public Distribution and Law and Justice (Department of Legal Affairs). On 22nd January, 2015 the Committee heard Armed Forces Tribunal, Appellate Tribunal for Electricity and representatives of Ministry of Defence, Ministry of Power, Ministry of Corporate Affairs and Ministry of Labour and Employment

6. In its meeting held on 17th February, 2015, the Committee heard the Secretary, Department of Legal Affairs, Chairman, Law Commission of India and Shri Arvind P. Datar, Senior Advocate, Supreme Court of India.

7. The Committee during its Study-visit from the 31st October to the 6th November, 2014 interacted with Regional Benches of Central Administrative Tribunal, Railway Claims Tribunal, Assam State Administrative Tribunal, Company Law Board, *Customs, Excise and Service Tax Appellate Tribunal* and Income Tax Appellate Tribunal at Guwahati and Kolkata. During its Study-visit to Chennai from 27th January to 4th February, 2015 it interacted with Intellectual Property Appellate Board, Company Law Board, Coastal Aquaculture Authority and Debt Recovery Appellate Tribunal and Associations of Cost Accountants.

8. 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 Justice, Ministry of Law and Justice;
- (ii) Relevant Acts/Rules under which Tribunals/Commissions were set-up;
- (iii) Two Hundred Thirty Second Report (2009) on Retirement Age of Chairpersons and Members of Tribunals - Need for Uniformity) of Law Commission of India;

(iv)

- (iv) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Department of Justice thereon;
- (v) Views expressed during the oral evidence tendered before the Committee by various Tribunals other official and non-official witnesses; and
- (vi) Replies of Tribunals/Commissions to the Common Questionnaire prepared by the Secretariat on the issues dealt with by the Bill.
- (vii) Tribunals, Courts and Enforcement Act, 2007;
- (viii) Leggatt Committee Report (2001); and
- (ix) Supreme Court of India Judgments/orders in the matter of :-
 - (i) *L. Chandra Kumar vs. Union Of India and Others (AIR 1997 S.C. 1125 to 1155);*
 - (ii) *Union Of India vs R. Gandhi, President, Madras Bar Association (Civil Appeal No. 3067 of 2004);*
 - (iii) *Rajiv Garg Vs Union of India (Civil Writ Petition No.120/2012); and*
 - (iv) *Madras Bar Association vs. Union of India (C) No. 150 of 2006;*

9. The Committee considered and adopted its Report in its meeting held on the 25th February, 2015.

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;
25th February, 2015

(Dr. E.M. SUDARSANA NATCHIAPPAN)
Chairman,
Department-related Parliamentary Standing
Committee on Personnel, Public Grievances, Law and Justice

REPORT

The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 intends to provide uniform service conditions with regard to retirement age, tenure of appointment, reappointment, housing allowance, travelling allowance, sumptuary allowance, Leave Travel Concession, leave, conveyance and telephone facility, etc. for Chairpersons and Members of twenty-six Tribunals/Commissions/statutory bodies enumerated in First Schedule of the Bill. Second and Third Schedules of the Bill contain details of perquisites to be provided to the Chairpersons and Members of those entities.

2. The Bill is intended to be an overarching legislation introduced pursuant to the order passed by Hon'ble Supreme Court on 4th December, 2012 on the Civil Writ Petition No.-120/2012 in the matter of Rajiv Garg Vs. Union of India which is still pending in the apex court.

3. The attempt of Government to bring in uniformity in service conditions of Chairpersons and Members of Tribunals/Commissions/ statutory bodies is, however, limited to the aforesaid areas; while eligibility conditions and manner of appointment of Chairperson, Vice-Chairperson (if any) and Members (Judicial/Technical), pay and remuneration, grounds and manner of their removal, provisions of supporting staff and infrastructure facilities are precluded from the scope of the Bill . In these respects, there will be no uniformity and Tribunals would continue to be regulated by the respective statute under which they were established.

4. The Committee notes that the Bill is at best only a half baked attempt to bring uniformity in various aspects of the Tribunals constituted under different Acts of the Parliament. The Committee feels that the Government should have used the opportunity provided by the order of Hon'ble Supreme Court in the Rajiv Garg's case to take a holistic look on factors that hamper efficient and independent functioning of Tribunals in the country and come out with a comprehensive Bill that while ensuring uniformity in various aspects amongst Tribunals falling in the same category should have paved the way for independent and efficient functioning of these Tribunals by providing them with independence, security and capacity

associated with Courts. The Bill, Committee feels, sadly lacks in providing a blue print for an independent and efficient functioning of the Tribunals in the country.

Bodies/Tribunals in the First Schedule

5. The statutory bodies included in the First Schedule of the Bill have different purposes, nature, composition, status of Chairperson and Members, etc. Bodies included in the First Schedule of the Bill, thus, differ in various respects and there seems to be no intelligible differentia based on which Tribunals have been included in the First Schedule as would be evident from the following paras:

5.1 The Committee was informed that the commonality which run through all those bodies is that all of them are headed either by a retired Judge of the Supreme Court or the High Court. About one-third of Tribunals enumerated in First Schedule to the Bill are headed by a retired judge of Supreme Court or Chief Justice of High Court. Those Tribunals are – National Green Tribunal, National Consumer Disputes Redressal Commission, Competition Appellate Tribunal, Appellate Tribunal for Electricity, Press Council of India, Telecom Disputes Settlement and Appellate Authority, Securities Appellate Tribunal, Authority for Advance Ruling, Armed Forces Tribunal, Airports Economic Regulatory Authority Appellate Tribunal. The Committee, however, finds that in some Tribunals listed in the First Schedule of the Bill, even persons other than a retired Judge of the Supreme Court or a High Court, are eligible to become Chairperson. The Committee was informed that the Presiding Officer of Debt Recovery Tribunals is of the rank of a District Judge but a Presiding Officer of DRT having three years experience could become the Presiding Officer of DRAT. Similarly, National Industrial Tribunal is headed by a District Judge having three years experience.

5.2 The order of Supreme Court in the Rajiv Garg case relates to bringing in uniformity amongst Tribunals/Commissions operating at the national level. The Schedule on the other hand includes certain bodies such as Coastal Aquaculture Authority and Press Council of India which are not *per se* Tribunal and do not decide *lis* between the parties even though some of the functions to be performed by them are quasi-judicial functions. On the other hand, even certain of the appellate bodies have been excluded from the Schedule of the Bill. Some of these bodies are :

- a. Appellate Authority for Industrial and Financial Reconstruction;
- b. Appellate Tribunal for Forfeited Property;
- c. Appellate Tribunal under Prevention of Money Laundering;

- d. Central Information Commission;
- e. Employees' Provident Fund Appellate Tribunal; and
- f. Inter-State Water Dispute Tribunals

5.3 While some of the Tribunals are single Bench bodies (Debt Recovery Appellate Tribunal, National Industrial Tribunal, National Highways Tribunal), other Tribunals are multi-Bench bodies (Income Tax Appellate Tribunal, Customs Excise and Service Tax Appellate Tribunal, Telecom Disputes Settlement and Appellate Authority).

5.4 Some Tribunals are manned by a sole member (judicial) while others are manned by judicial and technical members.

5.5 The National Industrial Tribunal is within the system of regular court but has been included under the First Schedule of the Bill.

5.6 While some of the Tribunals are first appellate bodies some others are second appellate bodies, rest are authorities of first instance or regulatory bodies. The Coastal Aquaculture Authority has only regulatory power.

5.7 Except Income Tax Appellate Tribunal and National Industrial Tribunal all other statutory bodies under the First Schedule have been set up after 1976, while most of them having been constituted by Acts of Parliament under enabling Articles of 323A and 323B of the Constitution which were inserted by 42nd Constitutional Amendment.

5.8 The status of Armed Forces Tribunal is different from other Tribunals in view of the Articles 227(4) and 136(2) of the Constitution.

5.9 Appeal against the orders of Armed Forces Tribunal, National Green Tribunal, National Consumer Disputes Redressal Commission and Telecom Disputes Settlement and Appellate Authority lies to the Supreme Court, while appeals against the orders of Central Administrative Tribunal/State Administrative Tribunal lie to Division Bench of High Court after L. Chandra Kumar case (1997).

6. Tribunals are not part of regular judicial system but are alternate dispute resolution mechanisms created mainly for expeditious disposal of cases under the concerned Act under which those have been set up. Even though some of them are

complemental and supplemental to the High Court, they are within the supervisory/writ jurisdiction of the concerned High Court under Articles 226 and 227 of the Constitution.

7. Press Council of India (PCI) in their written submission have maintained that in view of its composition, function and mandate it should not be placed at par with other autonomous regulatory bodies in the Bill. They, therefore, have desired that service conditions of Chairman and Members of PCI should be out of the Bill to honour legislative intent associated with creation of PCI.

8. The Presiding Officers of Debt Recovery Tribunals, New Delhi who appeared as non-official witnesses, in their deposition submitted that both the Debt Recovery Appellate Tribunal (DRAT) as well as Debt Recovery Tribunal (DRT) are single bench quasi-judicial bodies set up under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. While DRAT has been included under the First Schedule to the Bill. DRTs have been excluded from the First Schedule of the Bill for the purpose of uniformity in service conditions and perquisites. They submitted that the Presiding Officer of DRT is equivalent to the rank of District Judge and Judicial Members of other Tribunals *viz.* Central Administrative Tribunal (CAT), Company Law Board (CLB), National Industrial Tribunal (NIT) and Income Tax Appellate Tribunal (ITAT) are also of the same rank and have been included in the First Schedule the Bill for uniformity purpose. Even a Presiding Officer of DRT having three years experience could become Presiding Officer of DRAT. Currently, Presiding Officer of DRT, Mumbai has been discharging the additional responsibility of Presiding Officer of DRAT, Chennai. The DRT has appellate power and hear appeals from Recovery Officers under Section 30 of the Recovery of Debt due to Banks and Financial Institutions Act, 1993. They have cited that the National Industrial Tribunal which is also headed by a District Judge having three years experience has also been included under the Schedule to the Bill for uniformity purpose. They, therefore, appealed to the Committee to include DRTs under Schedule to the Bill for the sake of parity.

9. Clause 13 of the Bill enables Government to include any other Tribunals/Commissions by Gazette Notification by amending the First Schedule of the Bill.

10. The Chairman of Law Commission has opined that all Tribunals deemed to be having the same status irrespective of whether they are exercising appellate jurisdiction or original jurisdiction, need to be treated uniformly.

11. The Committee, is in agreement with the view that all the Tribunals of similar status should be entitled to similar service conditions. The committee is of the view that for purpose of uniform service conditions, the classification of Tribunals may be based on an intelligible differentia. The committee feels that for purpose of uniform service conditions etc., the Tribunals headed by a Supreme Court Judge and where appeal against the order of the Tribunal lies to the Supreme Court may form a category distinct from the Tribunal/Commission whose order is appealable to the concerned High Court. The former Tribunals may form the category-I Tribunals while the latter may form category-II Tribunals. The first category may include Tribunals such as Armed Forces Tribunals, National Green Tribunal, National Consumer Disputes Redressal Commission, Telecom Disputes Settlement and Appellate Authority. The second category may include Tribunals/Commissions headed by Supreme Court Judge or Chief Justice of High Court where appeal against their orders goes to High Court. It may include Central Administrative Tribunal/State Administrative Tribunal. The Tribunals headed by a District Judge with certain experience or a person who qualifies to be a District Judge may form the third category.

12. The Committee further notes that the Schedule needs to be revisited and comprehensively revised. All Tribunals created under the Acts of Parliament which fall in any of the three categories should be included and those who do not qualify to be called Tribunals in the strict sense should be excluded from the Bills.

13. The Committee is not in favour of inclusion of regulatory bodies within the Tribunals for purpose of bringing uniformity in service conditions.

Differential Age of Retirement

14. Clause 4 of the Bill prescribes tenure appointment within following three sets of age of superannuation:-

- (i) Seventy years in the case of Chairperson and Members who have been a Judge of Supreme Court;

- (ii) Sixty seven years in the case of Chairperson and Members who have been a Judge of High Court;
- (iii) Sixty five years in the case of Chairperson and Members who have been qualified to be a Judge of High Court or a domain expert.

A tenure of five years has been prescribed within the age of superannuation in the Bill. A Chairperson and a Member can be re-appointed for another term of five years also. In effect a Chairperson and Members can serve in a Tribunal/Commission for maximum period of ten years. The extant Statutes currently prescribe one retirement age for Chairperson and another retirement age for Vice-Chairperson and Members (except Company Law Board where retirement age for Vice-Chairperson is 65 years and for judicial and technical Members 62 years). Further, retirement age of Chairperson in extant Statutes varies from seventy to sixty two years. The retirement age of Chairperson of seven bodies under the First Schedule of the Bill is seventy years. In respect of the three bodies viz., Central Administrative Tribunal/State Administrative Tribunal, Securities Appellate and Competition Appellate Tribunal, the retirement age for Chairperson is 68 years. For the rest of the bodies under the Schedule, the retirement age for Chairperson is 65 years except Company Law Board and National Highways Tribunal, where retirement age is 67 years for Chairman and 62 years for Members. The retirement age of Members in the Statutes is mostly 65 or 62 years except National Consumer Disputes Redressal Disputes Commission where 70 years is prescribed as retirement age for Members as well as Chairperson. A table showing comparative statement of tenure and superannuation age of Chairperson, Vice-Chairperson and Members of quasi-judicial entities enumerated in First Scheduled of the Bill is placed at **Annexure-II**.

15. The statutes also provide tenure appointment of three to five years for some of the bodies and regular appointment for Chairperson and Members in other bodies i.e., Income Tax Appellate Tribunal, Custom Excise and Service Tax Appellate Tribunal. Nine bodies under the First Schedule of the Bill has a provision for re-appointment for second tenure except for Coastal Aquaculture Authority where re-appointment can be done for two consecutive terms.

16. Three sets of retirement age as proposed in the Bill are based upon the retirement age of Judge of Supreme Court (65 years), Judge of High Court (62 years) and Secretary to Government of India (60 years) by adding period of one term of

proposed tenure (i.e., 5 years) as a policy decision of the previous Government of India which was considered by Group of Ministers of that Government.

17. The Committee does not appreciate the policy of making the retirement age individual-centric rather than post-centric. It apprehends serious flaws therein as a Chairperson or a Member of a Tribunal or Commission would have to retire at age of 70 years if he is a retired judge of Supreme Court or 67 years if he is a retired judge of High Court or 65 years if he qualifies to be a judge of High Court (those who come from the Bar) and those who are domain experts. It would amount to treating same class of individuals differently even though they perform same functions, belong to the same Tribunal, and have the same designation. The retirement age needs to be invariably associated with the post or position to which an individual is appointed and not otherwise. Linking the retirement age to the source of appointment does not appear to be a sound proposition and may not stand judicial scrutiny.

18. The Committee feels that the age of retirement should be to be the same for persons holding same positions in the Tribunals in a category as referred to in para 11 above. The Committee further suggests that the retirement age may be uniform for Chairperson and Members of Tribunals included in the same category as in the case of National Consumer Dispute Redressal Commission and Supreme Court and High Court. The Committee notes the Chairman and Members of the Tribunals shall hold office as such for a term of 5 years and shall be eligible for reappointment for another term subject to the conditions that they would cease to hold the office of the Chairman or Members as the case may be on attaining the age of retirement. The Hon'ble Supreme Court in Madras Bar Association case has favoured a term of seven or five years for National Company Law Tribunal on the ground that considerable time is required to achieve expertise in the concerned field and a shorter tenure often leads to a situation that by the time the Members achieve the required knowledge, expertise and efficiency their term will be over. The Committee is of the view that a longer term of 7 years may be provided so that knowledge expertise gained by the Members may be gainfully utilized. The retirement age of Chairperson and Members of all Tribunals/Commissions should be 70 years.

Issue of Reappointment

19. On the issue of reappointment, the Committee took note of decision of Hon'ble Supreme Court in the matter of Madras Bar Association vs. Union of India (2014) where Section 8 of National Tax Tribunal Act, 2005 has been declared as unconstitutional as it may impinge upon independent functioning of the Tribunal. The Supreme Court observed as under:

"....a provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of the NTT. Every Chairperson/Member appointed to the NTT, would be constrained to decide matters, in a manner that would ensure his reappointment in terms of Section 8 of the NTT Act. His decisions may or may not be based on his independent understanding. We are satisfied, that the above provision would undermine the independence and fairness of the Chairperson and Members of the NTT. Since the NTT has been vested with jurisdiction with earlier lay with the High Courts, in all matters of appointment, and extension of tenure, must be shielded from executive involvement."

The Clause 4 of the Bill is a replica of Clause 8 of the National Tax Tribunal Act, 2005. The Committee took note that reappointment provisions exists in some of the existing Acts under which Tribunals and Commissions have been set up.

20. The Committee apprehends that Clause 4 of the Bill is susceptible to be challenged and struck down, in view of aforesaid decision of the Supreme Court. Most of the stake holders have expressed similar apprehension in their written as well as oral submissions. Even the Chairman of Law Commission of India has expressed a similar view. The Secretary, Department of Legal Affairs in his oral submission has, however, stated that for reappointment, the selection process is the same as provided for the fresh appointment in the relevant statute and as such, in his view Clause 4 of the Bill appears not to be unconstitutional as some of the extant statutes already have similar provisions. **The Committee, therefore, is of the view that the provision relating to reappointment may be omitted particularly as the Committee has already recommended a uniform tenure upto seventy years for Chairman and Members of the Tribunals.**

21. **Committee also dwelt upon at length on the need of making regular appointments in the Tribunals in place of tenure appointments. The Committee noted that system of regular appointment is in existence in Income Tax**

Appellate Tribunal, Customs Excise and Service Tax Appellate Tribunal. It was felt that such appointments may be needed to make Tribunals more vibrant and to facilitate induction of young and talented experts and judicial officers with a reasonable length of experience in the related field. The tenure posting appears to be less attractive to the Advocates and other professionals.

22. The Committee, however, notes that lack of promotional prospects in system of regular recruitment may hinder the prospects of attracting best available talent in the field. The Committee, therefore, would like the Government to examine the possibility of making regular appointments in all Tribunals after suitably addressing the issue of career progression of such directly recruited Chairperson/Members. Committee feels that the expertise and experience of the Chairperson and Members of Tribunal/Commission can be utilised in the concerned High Court as appeal against the order of Tribunal invariably goes to High Court except for Armed Forces Tribunal, National Green Tribunal, National Consumer Dispute Redressal Commission and Telecom Disputes Settlement and Appellate Authority.

23. Although the existing statutes have provision for a sitting or retired judge of Supreme Court or High Court to become Chairperson or Member of certain Tribunals/Commissions, only retired judges have been manning the positions of Chairperson or members of the Tribunals. The Committee appreciates that sitting judges of the Supreme Court and High Courts, in view of their higher status conferred by the Constitution may not like to come to Tribunals, which certainly are not at par with the Supreme Court or the High Courts even though salary and allowances may be same in Tribunals and Supreme Court/High Courts. Even bureaucrats opt for the Tribunal at the fag end of their career or after retirement. Consequently, the Tribunals/Commissions have become a haven for retired judges and bureaucrats. The tenure appointment in those bodies gives impetus to the prevalent practice.

24. The post retirement assignment appears to be impinging upon independent functioning of judicial and quasi-judicial bodies as there is no

cooling off period for judges and bureaucrats before taking up post retirement assignment in Tribunal/Commission.

**Applicability of the Act to incumbent
Chairpersons and Members**

25. Clauses 3 and 9 relate to applicability of the provisions of Act, to incumbent Chairperson and Members of the statutory body in the First Schedule of Bill. The provisions in the Bill relating to new tenure and retirement age would not be applicable to incumbent Chairperson and Members in view of *proviso* to Clause 3 of the Bill. However, the new perquisites as proposed under Second and Third Schedules of the Bill would be applicable to the incumbent Chairperson and Members due to over-riding effect of Clause 9 upon Clause 3 of the Bill.

26. The retirement age of Members of Tribunal is proposed to be 67 or 65. The existing retirement age of Members of Income Tax Appellate Tribunal, Customs, Excise & Service Tax Appellate Tribunal, Securities Appellate Tribunal, Railway Claim Tribunal, Authority for Advance Ruling, Company Law Board, and Appellate Tribunal for Foreign Exchange is 62 years and, therefore, as per provision of the Bill, the existing Members of these Tribunals would not get the benefit of enhanced retirement age.

27. As per Clause 9, however, allowance are being made uniform for Chairpersons and Members of all Tribunals. This is resulting in reduced housing and sumptuary allowances for some existing Chairpersons and Members who are retired Judges of Supreme Court or High Court as compared to what they are entitled to at present. On the other hand, some existing Members/Chairpersons would be entitled to higher allowances than what they are getting at present.

28. A suggestion has been made that provisions of this Bill may be made applicable to only Members and Chairpersons who join after coming in force of the provisions of the Bill and existing incumbent to the office of the Chairpersons and Members of various Tribunals may be given an option either to be regulated by the provisions of the Bill or the extant provisions as applicable to them. The Committee feels that the Government may consider the suggestion.

Leave Sanctioning Authority

29. The leave sanctioning authority for the Chairman and for Members in the absence of Chairman has been proposed in the Bill to be the Minister in-charge under Clause 20. The Committee noted that the President of India is leave sanctioning authority in respect of Chairman of some of the Tribunals e.g., Telecom Disputes Settlement and Appellate Authority, National Consumer Disputes Redressal Commission and Railway Claims Tribunal. **In case, the proposed provision in the Bill is agreed to, it would supersede the provisions of these Acts where President is the leave sanctioning authority. The Committee is not in agreement with the Clause 20 of Bill mainly for two reasons. Firstly, if leave sanctioning authority remains with the ministry-in-charge it would affect the independence of the Tribunal as the concerned Ministry is one of the parties to the disputes that come for adjudication before the Tribunal and secondly, it affects the status of Tribunals. The Committee wishes that such an authority should rest with an independent agency, like National Commission for Tribunal, which has been dealt with in the later part of this Report.**

Inclusion of grounds of removal under the Bill

30. The Committee has been apprised that differential grounds of removal exist in the respective Acts/Rules for the twenty-six Tribunals covered under the Schedule of the Bill. Some, like CAT, Securities Appellate Tribunal, Armed Forces Tribunal, Intellectual Property Law Board, provide for only two grounds for removal, i.e. proven misbehavior or incapacity. Some others, such as the National Green Tribunal, TDSAT provide for five grounds- insolvency, conviction for moral turpitude, physical or mental incapacity, acquiring interest prejudicial to its functions and abusing his position in a manner that is against public interest. **The Committee feels that the grounds for removal of Chairman and Members need to be uniform and be included in the present Bill. The Law Secretary in his oral evidence has also agreed to such proposal. The Government may consider including grounds of removal in the present Bill.**

Need for a comprehensive Bill

31. Majority of Tribunals have been created as alternative disputes resolution mechanism for expeditious disposal of cases and also to reduce pressure upon concerned High Courts. But backlog of cases have been mounting in those bodies. As

on 31st December, 2014 position of cases pending in certain Tribunal of Commissions is given below:-

Pendency of cases as on 31st December, 2014

S. No.	Name of quasi-judicial entity	Pendency
1.	Central Administrative Tribunal	1,55,118
2.	Income Tax Appellate Tribunal	99349
3.	Customs, Excise and Service Tax Appellate Tribunal	96039
4.	Railway Claim Tribunal	44756
5.	Armed Forces Tribunal	15603
6.	Company Law Board	4201
7.	National Green Tribunal	2875
8.	Debt Recovery Appellate Tribunal	1010
9.	National Industrial Tribunal	750
11.	Competition Appellate Tribunal	162
12.	Cyber Appellate Tribunal	34

32. Some of the Tribunals i.e., National Highway Tribunals, Cyber Appellate Tribunal and Airport Economic Regulatory Appellate Authority are dys-functional due to vacancies therein. The post of Presiding Officer in all eight Benches of National Highway Tribunal (which is a single Member Bench) located at Chandigarh, Lucknow, Kolkata, Mumbai, Jabalpur, Bengluru, Chennai and Guwahati are lying vacant. The post of Presiding Officer in Cyber Appellate Tribunal is vacant since July, 2011. Therefore, it cannot function in the absence of its Chairperson in view of Section 49 of Information, Technology Act, 2000. The Competition Appellate Tribunal was assigned additional charge of Airport Economic Regulatory Appellate Authority since its inception till 20th August, 2014. Now it is dys-functional.

33. The vacancies position as on 31st December, 2014 in certain Tribunals under First Scheduled to the Bill (**Annexure-III**). The pendency in those Tribunals has defeated the purpose for which those Tribunals have been created as parallel to High Courts. It is due to the fact that those bodies have not been provided with the requisite manpower and/or infrastructure facilities, as a result of which Tribunals system could not achieve the objective for which those have been created.

34. The Chairman Law Commission while deposing before the Committee has drawn the attention of the Committee to the change made in the Tribunals system in United Kingdom on the basis of Leggat Committee. On the basis of recommendations of Leggat Committee (2001), the Tribunals, Courts and Enforcement Act, 2007 was enacted by the British Parliament. Under that Act an independent body called Judicial Appointment Commission (JAC) has been created to select candidates for Tribunal for appointment by Law Chancellor. The Law Chancellor is also responsible for providing administrative and staff support to all Tribunals. A permanent Tribunal service has also been created for manning the Tribunals in UK.

35. He has suggested for setting up of a National Tribunal Commission and also to introduce a common cadre based Tribunal service to be selected by that Commission and to be appointed by Law Minister/President of India. He also suggested that all Tribunals service should be placed under Ministry of Law and Justice for independent functioning of those bodies. Similar view has been expressed by the apex court in L. Chandra Kumar Case. At present, Income-Tax Appellate Tribunal and Appellate Tribunal for Foreign Exchange are under the Ministry of Law and Justice (Department of Legal Affairs). Other Tribunal are under their nodal Ministries for the sake of convenience. Some of the Tribunals like Income-Tax Appellate Tribunal, Railway Claims Tribunal, Company Law Board, Telecom Disputes Settlement and Appellate Authority, Appellate Tribunal for Foreign Exchange, National Green Tribunal have favoured the observation of Supreme Court of India in the interest of independent functioning of those bodies.

36. The Committee expresses its concern over the sad state of affairs in the Tribunals/Commissions. Some of them are dysfunctional due to large scale vacancies. Some of the bodies cannot function without the presiding officer in view of the position in the respective Acts. The post of presiding officer of Cyber Appellate Tribunal is vacant therefore the body is dysfunctional in view of Section 49 of Information Technology Act, 2000.

37. The Committee has been apprised that most of these Tribunals have not been provided with adequate residential accommodations, proper office infrastructure or adequate supporting staff, many of the posts of those bodies are lying vacant and also cases are mounting in those bodies and the purpose for which those bodies were created have been defeated.

38. It is time for Government to provide necessary infrastructure, human and financial resource to the Tribunals for speedy delivery of Justice. The Committee, therefore, endorses the view of Law Commission of India for creation of National Tribunals Commission to oversee selection process, eligibility criteria for appointment introduction of common eligibility criteria for removal of Chairman and Members as also for meeting the requirement of infrastructural and financial resources. The Government may improve the Bill by bringing in a comprehensive legislation proposing uniform condition of service with regard to eligibility conditions for appointment, ground of removal, uniform retirement age, allowances and other prerequisites for Chairperson and Members of Tribunals/Commissions belonging to the same category and these functions and responsibilities be vested in the National Tribunal Commission may be created for the purpose.

39. The Committee also feels that NTC should deal with Tribunals only. The regulatory Bodies which do not perform quasi-judicial function, should be kept out of purview of this Bill and may be dealt with separately.

40. While considering this Bill, the Committees attention was drawn to the following issues which are very essential to the efficient and independent functioning of quasi judicial bodies :-

- (i) The authority in decision making of Government should endeavour to deliver fair justice in their day to day functioning and decision taking by proper application of rules, regulations, judicial precedents, directions, etc., as a result of which appeals against their decision could be reduced to minimum and cases before Tribunals will substantially go down.**
- (ii) Appeals before the tribunals involves cost which is borne out of tax payers money. Presently no cost is levied as court fee in the tribunal proportionate to the quantum of relief sought. The Government should contemplate to impose fee for regulating appeals as well as generating revenue to meet expenditure required for infrastructure, supporting staff, etc.**
- (iii) It should be imperative upon the Government to categorically mention in the Financial Statement of the Bill proposing to create a quasi-judicial body, the cost of setting up of a quasi judicial body including provision of**

infrastructure and salary. Committee wishes that in the future Bills the nodal ministry as well as the Ministry of Law and Justice should ensure that such details in the Financial Statement appended to the Bill are invariably given.

41. The Committee strongly feels that it is high time for the Government to positively look into the issues raised above.

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