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Strict Procedures are the reason for Delay in Justice delivery system "Truth or Myth" – A critical study of Administrative tribunal Act to find out the authenticity of the statement

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ABSTRACT

The purpose of enacting any law is given in the preamble of that Act. The Administrative Tribunals Act, 1985 was also enacted with a purpose to provide for the adjudication of disputes and complaints related to recruitment and conditions of service controlled by government in connection to Article 323A of the Indian Constitution. The preamble of the Act stated that "The Act seems to provide a speedy relief in cases related to service matters were pending before the various courts, this setup of administrative tribunal is to deal exclusively with service matters". So, from the above stated statement it is very clear that this act will be used only for the redressed against the Administrative wrongs in the public sector but there are no provisions in this Act related to the private sector. Earlier the type of matters adjudicated by courts, where the system was slow and costly and found not applicable in the problems of specialized nature of welfare legislation, therefore under " the Administrative Tribunals Act, 1985" a special Administrative court established for the dealing of only the service matter of the employees.

This Act was introduced from coming with the requirements of new situation and inadequacies of the ordinary courts. It is appreciative for the problems of specialized nature and also not too formalistic or legal. It is also observed that, in the administration of the welfare legislation, the formal procedural laws which was binding in the court of law proceedings considered to be clogs and further it was felt that through the principles of natural justice the adjudication of such problems must be governed, where the rules of evidence should not be strictly bound as the courts are bound. Therefore, a new technique of adjudication to redress the grievances and also responded the social requirement of the time.

This paper is basically focusing into three points:-

- Administrative tribunals are required for welfare state.
- Application of natural justice principles removed the clogs in the administration of justice and
- 'Administrative Tribunals Act' may help to control the delay in justice system under certain conditions.

1. Introduction

The concept of the welfare state is based on the 'rule of law' and the 'administration of justice' at the core. The word justice is coined in the preamble of the Constitution of India, where it is expressly ensured to all citizen of the country. Justice can be prevail in the society with an efficient and effective justice delivery system along with that speedy trials and expeditious disposal of cases is also required under due process of law. The 'rule of law' must be adhered for the exercise of public power and it also postulates the equality, freedom and accountability. For the assurance of justice in democratic form of government must have faith on the concept 'Salus Populi est Suprema Lex' i.e. welfare of the people is the supreme law.

In the Justice delivery system the concept of Natural Justice is not new in fact it is an inbuilt component for the matters of right and liberty of the people rather it is the procedural requirements for any judicial or quasi-judicial authority to act judicially. There is nowhere the principles of natural justice codified, its nature is procedural and aims for delivering justice to the parties. The Article -21 of Indian constitution also recognized the procedural rules of natural justice and also applies to the courts in India. The tribunals too are playing responsive roles to implement the principles of Natural Justice. For the better decisions in tribunal system, there must be a reasonable decision making procedure with an amalgamation of principles of natural justice, as some of the statutes provide massive power to the administrators to make decisions. There are 3 main rules of natural Justice which mainly focusing on giving an opportunity to the parties concerned to be heard in front of the judgment maker and secondly the judgment makers must be impartial and deliver their decision without any biased approach and thirdly, the decision must be with reason. These are the principles acting as a guiding principle towards administrative decision making.

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2. 'Administrative Tribunals' and 'Welfare State':

The 'Police State' become a 'Welfare State', so, the functions played by the state have increased for becoming the 'Democratic Progressive State'. The meaning of welfare state is to ensure common people that they are socially secure and to provide social security, expeditiously disputes must be resolved with in short span of time and shall be less costly, and for that the only ordinary court of law is not sufficient further more socio-economic issues are not legal purely. To resolve the socio-economic disputes, establishment of tribunals are must. Therefore, to settle the quasi-judicial issues the 'Administrative Tribunals' established with the Constitution of India's recognition. These tribunals are free from technical procedures comparatively and disputed are resolved with the help of concerned experts along with the policy commitments.

Article 227 and 136 of the constitution of India plays an important role in the tribunal system, before forty second amendment Act, 1976, the tribunals are under the superintendence of High Court given under Article-227 which was deleted from the said article, but by the constitution (forty-fourth amendment) Act, 1978, the word 'tribunal' was reinstated. In 1978 the Article 323 A added in the Constitution of India by the forty-second amendment Act, and under this the 'Administrative Tribunals' established to deal with the matters related to recruitment and conditions of service appointed to public services and posts in connection with the affairs of the Union or any State or of any local or other authorities within the territory of India or under control of the Government of India or of any corporation owned or controlled by the Government of India. There is a provision in the Constitution of India under Article-136, the Supreme Court is empower to entertain an appeal from tribunals with special leave petition.

There are very important cases decided by the administrative tribunals and through those cases, we can analyze the requirement of substitute, which also lessen the burden of ordinary court of law and also providing justice to the people with minimum cost and less time.

3. Application of natural Justice in Administration of justice:

The principles of natural justice plays an important role in the process of adjudication in the 'Administrative Tribunal', basically this doctrine is applied for the function of determining civil rights or obligations. Initially it was applied in the 'Courts' i.e. in the judicial functions further it was extended to statutory authorities or tribunals exercising quasi-judicial functions. The court stated in 'Mangilal V. State'[1] that if the provisions are not available in the procedural laws then every court or tribunal of judicial or quasi-judicial character have the power to adopt modalities necessary to achieve requirements of 'Natural Justice'".

Origin and the concept of natural Justice:-

The First and essential principles of any orderly society is Justice but no expected definition is there for justice rather various classification given regarding justice. But the John Rawls given idea in the theory of Justice 1971 about the Justice he proposes two principle theory of justice-

The liberty theory, where each person must have the basic liberty as an equal right compatible with a similar liberty for others.

The equality theory, where he explains about the social and economic inequalities, which should be arranged to give greatest benefit to the least advantaged members of society and the offices and positions must be open to everyone under the conditions of fair equality of opportunity form these 2 principles find perfect conformity with the Natural justice.

Concept of Natural Justice:-

The concept of natural justice is having a long history which is mainly drives from "Lex natural" or "Jus Naturale" (Greek word). The customary laws or laws of land must have some conformity or linkage to the eternal immutable laws of nature. In secular language the Natural justice is name for basic principles and procedures that governed the adjudication at disputes of two persons or between the person and organization where each part must feel fair process have occurred.

In ancient India, principles of Natural Justice were well recognized where Brihaspati said-

"A judge should decide cases without any consideration of personal gain or any kind of personal bias; and his decision should be in accordance with the procedure prescribed by the text". I.e. No bias and no personal gains. It shows the fair example of existence of natural justice in ancient India too.

Similarly, Katiyana says- If the king wants to inflict upon the litigants those one the parties to the disputes and illegal or unrighteous decision then it is the duty of judge to warn the king probate him, it shows the separation of powers executive do something which is wrong or violates the principles of natural Justice. The executives should be warned by the judge.

These are the two clear examples of existence of Natural Justice in the ancient India afterwards it was made more systematic by English legal system and become the part of common law and from there the three main components came out for the process of institutionalizing the ancient principles of natural justice which is universal and must applies procedurally and implemented in the value of every single country.

The three basic principles of natural justice are:-

Nemo Judex In Causa Sua (Rule against Bias)-

a) Personal bias

Subject matter bias- Subject having interest academically or technically in the subject matter.

b) Pecuniary bias

Departmental bias- (working in extreme influence)

Ex- Contempt of court

Audi Alterem partem- No one should be condemned un heard

a) Notice

b) Hearing

c) Cross examine

d) Legal representation.

Decision/ speaking order- There must be fair reason behind every decision, this Reasoned principle added recently.

The term Natural Justice is nowhere mentioned in Indian constitution rather like golden thread sagaciously passed through the body of Indian Constitution. Provisions considered as embodiment of natural justice in -

Preamble, A-21 personal liberties, the equality, 22, 39-A, 311

The concept of 'Natural Justice' is based on fairness although it is not defined anywhere but it seems to be based on the facts and circumstances of each case, so its application differs from case to case which deems to be fair.

4. Role of 'Administrative Tribunal Act' 1985:-

The Administrative Tribunal Act, 1985 enacted by the parliament of the by exercising the power conferred under Article-323 A of the Indian Constitution. The adjudication provided by tribunals to the persons appointed to public services of Union, States or any local or other authorities for any matter related to their recruitment & conditions of services. This Act is not applicable to Army, Naval or Air-force or any armed forces of the union and also not applicable to secretarial staff of both the houses of parliament as well as state legislature. It is not applied on any officer or servant of Supreme Court, High Court and Subordinate Courts.

There are three types of 'Administrative Tribunal' established under Administrative Tribunal Act, 1985 i.e. 'Central Administrative Tribunal', 'State Administrative Tribunal' and 'Joint Administrative Tribunal'. Each of the tribunals is provided with Chairperson, Vice-Chairperson and Judicial & Administrative members, under this Act every matters must be heard by a bench consisting of administrative and judicial members. The Chairperson is having power under Administrative Tribunal Act to allot certain cases to single member bench, but there is one condition provided by the act, that is, in the allotted matters there shall not be any question of law or any constitutional interpretation involved further this provision shall be maintained by the Supreme Court of India.

As per the statement showing the position regarding institution, Disposal and pendency of cases for the month of January,2020 in principal bench is 1029 cases balance as on 1/1/2020, freshly instituted cases are 401 and 18 cases restored, 7 cases remanded by High Court or Supreme Court, therefore the total number of cases in the month of January 2020 is 10635 out of that 508 cases disposed of during the month and if we calculate the total cases disposed of from all the benches in the month of January 2020 is 2816 cases out of 48965 cases. This data shows the condition of administrative tribunals. From January 1998 to January 2020 the number of Writ Petition filed against the order of Central Administrative Tribunal was 10421.

5. Research Method:-

My study is purely doctrinal in nature, where I used secondary data and sources available for the research like Gazette of India, statutes, books, journals, Newspapers, legal periodicals, Internet- law reports & judgments. All the authoritative books and sources were critically reviewed the in depth content then came up with certain suggestions for better application of the provisions of the Act.

6. Test of the Truth or Myths:-

In India there are procedural codes (civil procedure code and criminal procedure code) to solve the civil and criminal disputes but there are no such detailed guidelines or procedure codified for departmental enquiries. So, mainly the departmental enquiries are governed by the principles of natural justice. The principles of natural justice are not the rule of law therefore cannot override the law of land although it is subservient to the statutory provisions. It is only through the delegation of powers from legislative authority to quasi-legislative and from judicial to officials for the extensions of the functions of the government can be the only possible way to achieve the socio-economic requirements of the time and through the application of natural Justice principles clogs can be removed in the Administration of justice.

The study put lights on the requirements of the time as State changed the status from 'Police State' to 'Welfare State' and becoming 'Democratic Progressive State'. In this new era due to the development took place everywhere and there is a wide expansions of every field in ancient times there was an well organized and centralize administration but in nineteenth century there was a philosophy of contractual freedom with minimum government control and maximum free enterprise. Therefore no responsibility over the government for the management of economic or social life. Due to exploitation of masses and wealth concentration in a few hands, state started intervene and act for welfare of the people in the interest of social justice. This concept of welfare is also ingrained in the preamble of the constitution of India. Further to create the socialistic society, there was a social control over the private enterprise through state planning of economic resources. As there was an extension in the functions of state, the state activism took place and assumed more powers to regulate the society and become executive effective role by the state administration makes policies and also issues number of rules, bye laws and order by exercising the legislative powers, further it also acquired powers of adjudication to solve the disputes between the private individuals and government, for that the number of tribunals emerged. "The administration has acquired an immense accession of power to discharge the carried and multifarious functions, this is the truth of democratic societies, and the hegemony of the executive is now an accomplished fact."[2]

The administrative tribunal has also emerged to adjudicate the cases by professionals having specialized shushes with less cost, technicality and formality. That is why the Administrative tribunal came into vogue as per the social requirement of the time.

The next important points of the research is about the removal of clogs through Natural Justice principles in the administration of justice and the administrative tribunal act may help to control the delay in providing justice under some condition.. Before coming to the extraction of the research like to quote the quotation given by- Mr. Justice Jackson.

"Procedural fairness and regularity are of the indispensable essence of liberty."

There are number of countries having administrative agencies with bewildering variety of procedures in the field of administrative adjudication. In India a number of administrative tribunals existed with power to regulate their own procedures as per the statutory requirements. The Supreme Court stated that "administrative agencies should not be tied down to any rigid procedures and rule of evidence."[3]

For the uniformity of procedure in administrative agencies the fourteenth law commission proposed to enact a rigid code, which was dropped. The different administrative adjudicatory

agencies adopted procedures haphazardly and unsystematically for the hearing, presentation of evidence, even not showing any uniformity for the serving of notice. Some of the administrative agencies are empowered to proceed Suo Moto. For the purpose of certain sections under, I.P.C. Cr.P.C. and C.P.C declare the proceedings of tribunals as judicial proceedings and for the settlement under industrial disputes Act 1947, informal procedure is following. Regarding the legal representation on behalf of parties is barred in some administrative agencies whereas the relatives or servants of claimant were allowed to present or appear. And during oral hearing it has been observed that the concept of natural justice is not an integral part of the decision but in the case Supreme Court observed “that there may be certain instances when a personal hearing may become a necessity under concept of natural justice.”[4]

The disclosure of inquiry report is not necessary to make available to the concerned parties where they were informed about the charges against party and also allowed the witnesses for cross examination and if in any case required there is a provision to adduce evidence is rebuttal for the sake of natural justice.

There is a famous maxim that *the justice must not only be done but should appear to have been done*. So, far there is no such definition established for the natural justice, it only depends on the circumstances of the cases. “The rules of natural justice unsusceptible of exact definition but they exist in a procedure what a reasonable man would regard a fair procedure in particular circumstances.”[5]

The concept of due process assures in administrative adjudication the fundamental procedural safeguards and also ensures about the notice and opportunity of being heard as an essential part. It is also an important part of natural justice as hearing before the decision and that to be issuance of notice before hand with an ample of time by which the party can prepare them for the case otherwise it would be an abuse of notice. In the Constitution of India under Article 19(2) to (6) implied the guarantee of equal protection of laws and also content reasonable restriction affected through procedures.

The other principle of natural justice i.e. “Nemo Judex causa sua” is in vogue, the courts from the very beginning following this principles. “The principle of natural Justice developed and further asked that the quasi-judicial authorities at the time of inquiries must be held in good faith and without bias.”[6] Apart from the biasedness the courts are bound to give reason behind each judicial decision although the administrative agencies have no statutory obligation to state any reasons for the decisions given by them, not constitutionally there is a principle imbibed otherwise the High Court or Supreme Court cannot exercise their Supervisory and appellate jurisdiction effectively as if there is no reasons given in the quasi-judicial decision under article 136 and 227 respectively. Otherwise the purpose of the right to appeal in apex court will not fully served.

In today’s context the administrative agencies are deciding more cases then courts, they are going along with the need of time by using its discretion power to meet the circumstances and need of the cases. While discharging their functions the Administrative agencies are managing the economic and social system too, but with the growing power of executive the liberties of individual must be protected and have to keep pace between liberties of individual and the idea of welfare state. For the better and effective execution of laws and policies have to put some measures by dividing the activities into different specialized branches with specialized duties. The greater importance is given to the executive among three organs of government in this era as they are performing both the function i.e. the quasi-legislative and quasi- judicial functions. So, technically it is known as administrative adjudication. The term administrative adjudication has defined as “investigation & settling of a dispute on the basis of fact and law by an administrative agency which may or may not be organized to act solely as a administrative court”[7] Therefore, there are two important point which are considering and i.e. the fact and the law. Here the quotation by Dickinson “matters of law grow downward into matters of law.”[8] The administrative agencies mainly decides the questions of facts and on that basis modern statutes describe the standards for administrative actions, in general. i.e. ‘Just & reasonable’. ‘Public interest’’ Public Convenience’……………, further it was in quasi- judicial decision. Therefore there is an occurrence of problem between necessity of the society and the individual liberty.

7. Conclusion and Suggestions

This alternative justice system definitely ensures the independence of administrative adjudication, which saves the individual rights and liberties. The Administrative Tribunals Act, 1985 restricts the administrative encroachment and brought the several organs of executive under the control.

Principles of natural Justice are guiding procedural norms, which aims at prevention of miscarriage of justice by providing independent, impartial and unbiased adjudicatory body, guided with fair procedure and accompanied by justifiable reasons.

In social welfare state like India, state has to perform- many fold functions to realize the constitutional dream of social, political and economic justice.

Justice is an ideal, which can’t be attained w/o following due course in every action thus every judicial, quasi- judicial and administrative authority shall adopt such practice and arrive at such decision which is fair, just and reasonable.

Strict Procedures are the reason for Delay in Justice delivery system is not satisfying as the administrative tribunal system is not justifying that justice providing by the experts and judicial members, otherwise more than ten thousand cases cannot be filed against the order of Central Administrative Tribunal, principal bench. According to the observation of researcher certain strict procedural rules are required to provide justice to common people and maintain the status of ‘Democratic Progressive Srtate’.

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