

NATIONAL JUDICIAL ACADEMY



SEMINAR ON THE WORKING OF THE CENTRAL ADMINISTRATIVE TRIBUNALS IN INDIA

October 08th & 09th, 2016

PROGRAM REPORT

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***Annual National Seminar on Working of the Central Administrative
Tribunal (P-994)***

October 8&9, 2016

PROGRAMME REPORT

**Programme Coordinator – Sumit Bhattacharya, Research Fellow, National Judicial
Academy**

Resource Persons		
1	Hon’ble Dr. Justice S. Muralidhar	Judge, High Court of Delhi
2	Hon’ble Mr. Justice K. Chandru	Former Judge, Madras High Court
3	Prof. (Dr.) S.S. Singh	Director, National Law Institute University, Bhopal

A two day seminar on working of the Central Administrative Tribunals in India (hereinafter CAT) (P-994) on 8th and 9th October, 2016 was conducted at the National Judicial Academy, Bhopal (hereinafter NJA). The participants were the Members of the CAT from across the country. The Seminar intended to explore the scope, contours & limits of judicial review in CAT along with scope & application of judicial discretion in adjudication. The seminar *inter alia* deliberated on Constitutional & Administrative law principles relevant for adjudication in CAT and explored the feasibility of settling service matter issues outside CAT *via* ADR initiatives. Further, issues like the unabated flood of disputes relating to various service matters before the CAT was explored to identify possible reasons and solutions. The discourse also provided an opportunity to debate, discuss and evaluate upon the pace & progress towards paperless adjudication i.e. a movement towards ‘e-Courts’. The National Seminar was attended by a total of 15 judicial and administrative member participants of the CAT representing High Courts of Allahabad, Delhi, Bombay, Guwahati, Gujarat, Kerala, Madras, Patna and Punjab & Haryana. The intention to have

a platform for sharing experiences, especially bottlenecks, and success stories from both administrative and service side as well as from the judicial side was insightful and enriching.

Day I

Session 1

Theme - *Scope, Contours & Limits of Judicial Review in CAT*

Speaker - Hon'ble Justice K. Chandru & Hon'ble Justice G. Raghuram

The theme of the Session 1 was *Scope, Contours & Limits of Judicial Review in CAT*. In his inaugural address Justice Raghuram welcomed the participating members of the CAT to the National Seminar at NJA. The Hon'ble Director NJA briefly shared about the conception of the Academy and thereafter expressed why there is a need for specialized and continuous training for the judges reconciling to the fact that judges are not born but made. Explaining the need for the 'hybrid' nature or expertise constituting a tribunal (e.g. accountancy and judicial expertise in case of Income tax; technical and judicial in service CESTAT etc.), it was said that the expectation is that the distillate of the administrative expertise with the judicial capabilities would provide sustainable outcomes for adjudicating the techno-service disputes. Reference was made to the long persistent and currently settled issues of direct v. temporary recruitment issues. The issue and ramifications of resource selections to run the tribunals to be often suboptimal was briefly touch based. Such incumbents are not able to deliver the best to the requirement of the role and are often seen to be learning the role while being on the job that too frequently at the fag end of the career. The expertise in 'public law' which is of paramount import seems to be often missing. Judges are the last resorts who are looked forward to for a final diagnosis of the social discontent.

Justice Chandru reflected on historic evolution of the first law relating to services which was embedded in the Govt. of India Act of 1935. It was done by the British to suit their requirements owing to the superintendence of the growing bureaucracy. The precursor to Article 311 providing a reasonable safeguard to the government servant has been borrowed from the 1935 Act. The Writs which were prevailing even before the Constitutional inception were not enough to guard the service interest of a Govt. Employee (e.g. Certiorari would come into play against a judicial order

and not against an administrative order then). In cases of Quo Warranto wherein any tax payer can question on the pretext of wrongful appointment. There was no effective remedy for a Govt. Servant in the 1935 Act, except a procedural safeguard wherein he can file a civil suit declaratory in nature. Subsequently, if the declaratory suit is in the favour of the Govt. Servant another suit to translate the declaratory order to a monetary gain in the form of a back wage was to be instituted. The claim for back wages had a limitation rider of 3 years.¹ Amongst various eloquent issues the speaker further stated that the Tribunal orders under the old law could be challenged in the Supreme Court which completely choked Supreme Court with appeals from the Tribunals. Therefore in *L Chandrakumar case* the Supreme Court said that a Tribunal will be a forum for first instance for a case. Secondly, the High Court under whose jurisdiction the Tribunal falls will be able in a Division Bench review the appeals from the Tribunal. Therefore, denying to extend the right under Article 226 to these tribunals.

Yet another interesting point brought out by the speaker was that Article 371 B (5) in case of Andhra Pradesh, wherein the order of a Tribunal i.e. a judicial order will come to effect only after it was vetted by the State Govt. this was struck down the Supreme Court with reference to Article 50. Another issue of concern pointed out was that alternate forums and remedies are avoided while a case is tried in a Tribunal and often an appeal to the High Court is preferred.

Session 2

Theme - *Constitutional & Administrative Law Principles Relevant for Adjudication in CAT*

Speaker - Prof. (Dr.) S.S. Singh, Hon'ble Justice K. Chandru & Hon'ble Justice G. Raghuram

Session 2 was on the theme *Constitutional & Administrative Law Principles Relevant for Adjudication in CAT*. The speaker (Prof. S.S. Singh) deliberated on two exceptions to the alternative judicial remedies through the lens of principles of administrative law as a) Doctrine of *ultra vires* and b) violation of natural justice. Elaborating on 'justice' Prof. Singh said that it is a process to reach to those who are deprived of as an end product. Views on procedural fairness

¹ In a typical case while the case may run for several years, the limitation allowed a back wage for only 3 years by the 1935 Act.

was discussed while referring to Justice Jackson (1953), Justice Frankfurter (1943) in ‘History of Liberty’ to Justice Krishna Iyer (1978) thereafter in the case law jurisprudence in *Maneka Gandhi Case*². Clarity on as to when does the law relating to ‘natural justice’ must be invoked was discussed. It was emphasized by Prof. Singh that the role of ‘natural justice’ comes into play when in a prescribed procedure there exists a silence. Few important case law including *Ridge v. Baldwin*³ and *Ghanshayam Das Gupta Case*⁴ were referred by the speaker. *Ridge v. Baldwin* was a land mark labour law related case heard by the House of Lords wherein the doctrine of natural justice (procedural fairness in judicial hearings) was expanded to pervade into administrative decision making. It opened up decisions taken by the UK executive to judicial review in English law. The case *Union of India v. Tulsiram Patel*⁵ and the doctrine of pleasure was critically analysed during the discourse.

Session 3

Theme - Scope & Application of Judicial Discretion in Adjudication

Speaker –Hon’ble Justice K. Chandru, Prof. (Dr.) S.S. Singh, & Hon’ble Justice G. Raghuram

Session 3 dealt with *Scope & Application of Judicial Discretion in Adjudication*, wherein it was emphasized by the speakers that under the doctrine of separation of powers, the ability of the judges to exercise discretion is an aspect of Judicial Independence. As to the point why a judge has been provided with the power of judicial discretion it was discussed that since the judge experiences the first hand exposure of the facts and issues in dispute, he has the vantage point to weigh and exercise judicial discretion to fill up the gap with the best possible legal alternative available to suit the case in hand and for the ends of delivering justice. The speaker said that there are no fixed rules for applying discretion. The whole theme is to eliminate individual choice and carefully make prudent choices out of the legally available alternatives.

² *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

³ *Ridge v Baldwin* [1964] AC 40.

⁴ *Board Of High School v. Ghanshyam Das Gupta*, 1962 SCR Supl. (3) 36.

⁵ 1985 SCR Supl. (2) 131.

Session 4

Theme - *The Art of Judgment*

Speaker -Hon'ble Justice K. Chandru, & Hon'ble Justice G. Raghuram

In Session 4 based on the theme *The Art of Judgment*. Discussing the art of judgment the speaker insisted that there can be different methods of arriving at the same conclusion but art of doing a thing is an acquired skill, which renders a judgment its qualitative value and its effectiveness. It was discussed that differences in the social, economic, cultural and political order produce radically different patterns of judgment. Various types of judges and their typical identities were exemplified to be categorized broadly into three kinds; philosophers, scientists and advocates. Hon'ble Justice Krishna Iyer falls in the category of philosopher whereas Hon'ble Justice P N Bhagwati, Hon'ble Justice D A Desai and Hon'ble Justice Kuldeep Singh as a social scientists. It was said that a judge in the category of advocate, leave traces of eloquences, in their judgments.

Day II

Session 5

Theme - *Pace & Progress towards Paperless Adjudication: A Movement towards 'e-Courts'*

Speaker - Hon'ble Justice S. Muralidhar, Hon'ble, Justice K. Chandru

Session 5 dealt on *Pace & Progress towards Paperless Adjudication: A Movement towards 'e-Courts'*. The speaker (Justice S. Muralidhar) highlighted that the e-court project was conceptualized on the basis of the National Policy & Action Plan for Implementation of Information and Communication Technology (ICT) for reforming the Indian judiciary. The speaker exemplified the prevailing severely claustrophobic environment of a typical record section of a Court. The difficulties of data management and retrievals causing not only delays in the adjudicating process but the impairment caused owing to damaged records, irretrievable and

lost files was discussed to set the context of the session. The Session was conducted with the use of pictorial slides and video footages to explain the huge mismanagement, inconveniences and severe bottlenecks caused owing to the gigantic accumulation of hard files. It was also highlighted as to how the electronic conversions and digitization of such documents enables a functional Court. The benefits of better utilization of human resource, security of data, faster and effective retrievals *inter alia* other infrastructure related benefits were displayed and discussed. One of the vital aspect which the e-courts provides other than faster disposal of cases is the transparency that it renders to the public and especially to the litigants was a point of discourse agreed by all in the conference.

Session 6

Theme - *Reasons for Unabated Flood of Disputes Relating to Promotions, Pay fixation & Disciplinary Proceedings at CAT & Possible Solutions*

(Break out Groups)

Speaker - Hon'ble Justice S. Muralidhar, Hon'ble, Justice K. Chandru

The Session 6 was on the theme of *Reasons for Unabated Flood of Disputes Relating to Promotions, Pay fixation & Disciplinary Proceedings at CAT & Possible Solutions*. This was an activity based Session wherein the participating members formed four groups and discussed *intra group* about the factors which they think majorly contribute to the cause of large inflow of cases owing to the issues relating to promotions, pay-fixation and disciplinary proceedings before CAT. The Session was meant for not only involving members to openly and candidly interact and share their jurisdiction specific issues, but also to kindle an atmosphere of 'best practice' sharing to help them deliver better at their work place. Issues discussed included, misconceptions on seniority-cum-merit in cases of promotion, grounds of compulsory retirement, age related issues, eligibility claims on promotions, issues relating to transfers etc. It was also stated that the conflicting judgments of High Court's leads to litigation. Sensitization of the service laws within all the Govt. departments was suggested to reduce the case loads owing to frivolous litigations. Yet another issue pointed out was that the lawyers though being fully aware about the limitation

bar, somehow try to pursue their cases garbed under excuses leading to unnecessary filing of cases.

Theme - *Possibility of Settlement of 'Service Disputes' out-side CAT: Feasibility of ADR*

Speaker - Hon'ble Justice S. Muralidhar, Hon'ble, Justice K. Chandru

The last Session 7 was on the topic, *Possibility of Settlement of 'Service Disputes' out-side CAT: Feasibility of ADR*, wherein the scope of ADR as an option to reduce the volume of litigation at CAT and accelerating the pace of dispute resolution was explored. A consensus evolved as to the idea. Moreover, capacity building in conducting a process of ADR was discussed. Eligibility criterion to be a mediator or an arbitrator was discussed and standardization of such eligibility on a PAN Indian context in compliance to the international guidelines were debated. In the pretext it was deliberated that it is essential that the High Court judges must be exposed to training to handle mediations at the District levels. Lawyer having 15 plus years of experience must be considered for the job uniformly across the nation. It was suggested that for this the Cat should categorize cases, involving retired members, lawyer, graduate etc. to assist in categorize cases and pay them their charges. In any lok adalat/mediation, pay fixation and pension matters can be settled. Make a policy for the mediation methods, counselling for mediation as an option to bring the parties to dispute may be done, here it would be easier as one of the parties is Govt. department.

The concluding remarks was deliberated by Hon'ble Justice G. Raghuram by summing up the program and thanking the resource persons and the participants. The participants thanked and shared their learning experience by acknowledging the rare opportunity of meeting and sharing knowledge at the Annual National Seminar conducted by NJA.