

APPEAL AGAINST THE DECISIONS OF ADMINISTRATIVE TRIBUNALS IN BANGLADESH: AN ANALYSIS AND EVALUATION

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I. Introductory:

Apart from the courts of law, which are the regular means of resolving conventional disputes, there are other means¹ of settling contentions of special nature. Administrative Tribunal is one of such a means established by law and developed in a piecemeal manner with the advent of welfare states. For, with the increasing growth of welfare states, more and more hitherto unregulated areas² started to be regulated under various enactments passed from time to time. These enactments became potential sources of dispute, which the existing courts were not in a position to deal with properly because of the increased number of disputes of special nature. Ultimately, it was keenly felt that a separate forum, Administrative Tribunal, to be established to deal with such a conflict. In the same vein, the framers of the 1972 Constitution of Bangladesh³ included in it for the first time provisions concerning the establishment of Administrative Tribunals.

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¹ Other means are: 1) Administrative Tribunals; 2) ministerial decision after statutory inquiry; and 3) ministerial decision in which the minister uses his discretion without any prescribed procedure.

² These areas are, among others, social security, unemployment benefits, industrial injury compensation, unfair dismissal, compulsory purchase and landlord & tenant problems.

³ *The Constitution of the People's Republic of Bangladesh*. It was adopted by the Bangladesh Constituent Assembly on 04 November, 1972 and came into force on 16 December, 1972.

Article 117 (1) of the Bangladesh Constitution empowers the Parliament to make laws for the establishment of one or more Administrative Tribunals to deal with matters relating to the terms and conditions of persons in the service of the Republic;⁴ the acquisition, administration, management and disposal of any property vested in or managed by the Government and service in any nationalized enterprise or statutory public authority;⁵ and any law mentioned in the First Schedule to the Constitution.⁶

In pursuance of Article 117(1) of the Constitution of Bangladesh, the Bangladesh Parliament enacted the Administrative Tribunals Act, 1980.⁷ But, the Act has empowered the Administrative Tribunals to resolve disputes only relating to or arising out of the terms and conditions of service of persons in the service of the Republic or of any statutory public authority.⁸ Despite the constitutional provisions, the Administrative Tribunals have not been vested with the power to deal with matters relating to the acquisition, administration, management and disposal of any property vested in or managed by the Government, service in any nationalized enterprise and most of the laws mentioned in the First Schedule to the Constitution.⁹ Indeed the House of the Nation (Bangladesh Parliament) did not fully comply with all the provisions contained in Article 117 of the Bangladesh Constitution.

However, the Administrative Tribunals Act, 1980, which came into force on 01 February 1982,¹⁰ provides for the establishment of Administrative

⁴ Art. 117 (1) (a), *the Constitution of the People's Republic of Bangladesh*.

⁵ Art. 117 (1) (b), *ibid*.

⁶ Art. 117 (1) (c), *ibid*.

⁷ The Administrative Tribunals Act, 1980, was tabled before the legislature in 1980 and it was passed in 1981 and as such it is numbered as Act No. VII of 1981. It received the assent of the Acting President on 5.6.1981 and was also published in the Bangladesh Gazette on the same date.

⁸ Sec. 4, the Administrative Tribunals Act, 1980.

⁹ Arts. 117(1) (b) and 117(1)(c), *the Constitution of the People's Republic of Bangladesh*.

¹⁰ Vide Notification No. S.R.O. 30 - L/82/JIV/1T - 3/81, Dhaka, 12 January 1982.

Tribunals. Detailed provisions concerning the composition, jurisdiction and procedure of the Administrative Tribunals have been laid down in the Act. The Act also contains provisions for appeal against the decisions of the Administrative Tribunals. In this article, an attempt is made to only analyze and evaluate those provisions that influence appeal against the decisions of Administrative Tribunals in Bangladesh.

II. Analysis and Evaluation

The relevant provisions concerning appeal against the orders or decisions of Administrative Tribunals in Bangladesh have been laid down in Section 6 of the Administrative Tribunals Act, 1980. According to sub-section (1) of Section 6 of the Administrative Tribunals Act, 1980, the jurisdiction to hear and determine appeal against the orders or decisions made by Administrative Tribunals under Section 4 (1)¹¹ is vested in the Administrative Appellate Tribunal.¹² This sub-section reads as under:

The Administrative Appellate Tribunal shall have jurisdiction to hear and determine appeals from any order or decision of an Administrative Tribunal.

Thus, it appears that the Administrative Appellate Tribunal has not been given original jurisdiction; its jurisdiction is of appellate nature. It hears and determines appeal against any order or decision of the Administrative Tribunal. Unlike in India, where only the Supreme Court of India has been given the jurisdiction of appeal against the decisions of the

¹¹ Sec. 4 (1) of the Administrative Tribunals Act, 1980, provides that “An Administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by any person in the service of the Republic or of any statutory public authority in respect of the terms and conditions of his service including pension rights, or in respect of any action taken in relation to him as a person in the service of the Republic or of any statutory public authority.”

¹² The Government of Bangladesh established the Administrative Appellate Tribunal on 22 August 1983, in exercise of the power conferred by sec. 5 (1) of the Administrative Tribunals Act, 1980. See Notification No. S.R.O 58-L.82-JIV/1T-1/81, dated 22 August 1983.

Administrative Tribunal¹³ (on the grounds of, as case law suggests, illegality, error of law and violation of principles of natural justice), the Supreme Court of Bangladesh has not been vested with the power to exercise the appellate jurisdiction over the Administrative Tribunal. Even the example of Pakistan has not been followed in this regard. Although the Service Tribunals Act, 1973 does not provide for regular appeal to the Supreme Court against the decision of Service Tribunal, appeal against its decisions lies to the Supreme Court subject to grant of leave only on a substantial question of law of public importance¹⁴.

Neither the Administrative Tribunals Act, 1980, nor the Administrative Tribunals Rules, 1982, provides for as to which of the orders are appealable, and which are non-appealable. Since the Code of Civil Procedure, 1908, has been made applicable to the proceedings before the Administrative Tribunals and the Administrative Appellate Tribunal,¹⁵ it may be argued that all orders are not appealable. For, all orders under the Code of Civil Procedure, 1908, are not appealable and the list of appealable orders are to be found in Order 43 of the First Schedule to the Code of Civil Procedure. Furthermore, it will be incongruent with the legislative intent if all the orders of the Administrative Tribunals are considered to be appealable. When not expressly enumerated, it will be in consonance with the purpose of the law to hold that only the orders which are finally made or which are substantive in nature are appealable. The orders that are not substantive and in no way affect the interest of any party in relation to the determination of the main dispute or merit of the cases are not appealable.¹⁶

¹³ See sec. 14 (1), the Administrative Tribunals Act, 1985.

¹⁴ Art. 212(3) of the Constitution of Pakistan, 1973, provides that an appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal.

¹⁵ See sec. 7 (1), the Administrative Tribunals Act, 1980.

¹⁶ Bakar, Khondakar Md. Abu : *The Laws on Service in Bangladesh*, (1998) pp. 64-65.

Under Section 6 (2)¹⁷ of the Administrative Tribunals Act, 1980, an appeal against the order or decision passed by the Administrative Tribunal will lie to the Administrative Appellate Tribunal. It is pertinent to mention here that when an order or decision is passed by the Administrative Appellate Tribunal, an appeal, under Section 6A, shall lie to the Appellate Division of the Bangladesh Supreme Court.

With regard to the extent of powers of the Administrative Appellate Tribunal to hear and determine appeals against the decisions or orders of the Administrative Tribunals in Bangladesh, sub-section (3) of Section 6 of the Administrative Tribunals Act, 1980, as originally enacted, provides that-

The Administrative Appellate Tribunal may, on appeal, confirm, set aside, vary or modify any order or decision of an Administrative Tribunal, and the decision of the Administrative Appellate Tribunal in an appeal shall be final.

Thus the Administrative Appellate Tribunal has been given wide powers. It may, on appeal, confirm, vary, modify or set aside any order or decision of Administrative Tribunal. And the decision of the Administrative Appellate Tribunal was final. Later in 1991 it was provided that the decision of the Administrative Appellate Tribunal in an appeal shall, subject to Section 6A, be final. Section 6A, which has been added to the Administrative Tribunals Act, 1980, by the Administrative Tribunals (Amendment) Act, 1991, has introduced changes in respect of the finality of the decisions of the Administrative Appellate Tribunal. As it provides:

It is hereby declared that the provisions of Article 103¹⁸ of the Constitution shall apply in relation to the Administrative Appellate Tribunal as they apply in relation to the High Court Division.

¹⁷ Sec. 6 (2) provides that "Any person aggrieved by an order or decision of an Administrative Tribunal may, within three months from the date of making of the order or decision, prefer an appeal to the Administrative Appellate Tribunal."

¹⁸ Art. 103 of the Bangladesh Constitution provides -

Thus, by Section 6A, Article 103 of the Constitution of Bangladesh has been made applicable to the decision of the Administrative Appellate Tribunal. This means that the Appellate Division of the Supreme Court shall have jurisdiction to hear and determine appeals from decisions, orders or sentences of the Administrative Appellate Tribunal. It appears that taking into account the composition of the Administrative Appellate Tribunal, which is composed of one Chairman¹⁹ and two other members, provisions have been made to prefer an appeal against its decisions, not before the High Court Division but before the Appellate Division of the Supreme Court directly. Thus a civil servant has got an opportunity to ascertain the appropriateness of the decisions given by the Administrative Appellate Tribunal in respect of service matters through the Appellate Division of the Supreme Court – the apex court of the land. Thus like the Supreme Courts of India and Pakistan, the Appellate Division of the Supreme Court of Bangladesh has ultimately been vested with the power to hear and determine appeals against the orders or decisions of the

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- (1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.
 - (2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division -
 - (a) certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or
 - (b) has sentenced a person to death or to imprisonment for life; or
 - (c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.
 - (3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave on appeal.
 - (4) Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

¹⁹ According to sec. 5(3) of the Administrative Tribunals Act, 1980, the Chairman shall be a person who is, or has been, or is qualified to be, a Judge of the Supreme Court.

Administrative Appellate Tribunal on leave. As in Bangladesh Bank vs. Administrative Appellate Tribunal, 44 DLR (AD) 239, the Appellate Division of the Bangladesh Supreme Court held that “Under the new dispensation that Article 103 of the Constitution shall apply in relation to Administrative Appellate Tribunal, the petitioners have only the right to seek leave for appeal”.

Time Limit for Appeal

Regarding time limit for appeal, sub-section (2) of Section 6 of the Administrative Tribunals Act, 1980, as originally enacted, provides that:

Any person aggrieved by an order or decision of an Administrative Tribunal may, within two months from the date of making of the order or decision, prefer an appeal to the Administrative Appellate Tribunal.

But this period of two months for preferring appeal before the Administrative Appellate Tribunal has been extended to three months by amending sub-section (2) of Section 6 by the Administrative Tribunals (Amendment) Act, 1997²⁰. Besides, sub-section (2A), added to Section 6 by this Amendment, and provides that if the Administrative Appellate Tribunal is satisfied on showing of sufficient cause of delay, appeal before it can be filed against the decision or order of the Administrative Tribunal within six months from the date of the decision or order and not later than that. Whereas like the Administrative Appellate Tribunal in Bangladesh there is no Administrative Appellate Tribunal in India and Service Appellate Tribunal in Pakistan to hear appeal against the decision or order of the Administrative Tribunal and Service Tribunal respectively.

Binding Effect of the Decisions of Administrative Tribunal and Administrative Appellate Tribunal

Regarding binding effect of Tribunal's decisions and orders, Section 8 of the Administrative Tribunals Act, 1980, as originally enacted, provides that—

²⁰ Act No. 24 of 1997, which came into effect on 19 November 1997.

- (1) All decisions and orders of the Administrative Appellate Tribunal shall be binding upon the Administrative Tribunals and the parties concerned.
- (2) All decisions and orders of an Administrative Tribunal shall, subject to the decisions and orders of the Administrative Appellate Tribunal, be binding on the parties concerned.

Thus the decisions and orders of the Administrative Appellate Tribunal are binding upon the Administrative Tribunals and the parties concerned, and decisions and orders of the Administrative Tribunal unless appealed against and interfered with by the Administrative Appellate Tribunal are binding upon the parties concerned. Ten years later in 1991, the Administrative Tribunals (Amendment) Act, 1991,²¹ by amending Section 8, provides that the decisions and orders of the Administrative Appellate Tribunal “shall, subject to the decisions and orders of the Appellate Division, be binding” upon the Administrative Tribunals and parties concerned”. It also provides that the decisions and orders of an Administrative Tribunal shall, subject to the “decisions and orders of the Appellate Division or of the Administrative Appellate Tribunal, as the case may be, are binding on the parties concerned”. Thus the decisions and orders of both the Administrative Tribunal and the Administrative Appellate Tribunal have been given binding effect subject to the decisions and orders of the Appellate Division of the Supreme Court.

Composition of the Administrative Appellate Tribunal

Originally, sub-sections (2) and (3) of Section 5 of the Administrative Tribunals Act, 1980 provided for the following composition of the Administrative Appellate Tribunal:

- (2) An Administrative Appellate Tribunal shall consist of one Chairman and two other members who shall be appointed by the Government.

²¹ Act No. 23 of 1991, published in the Bangladesh Gazette Extraordinary, 22 July 1991.

- (3) The Chairman shall be a person who is, or has been, or is qualified to be a Judge of the Supreme Court or is or has been an officer in the Service of the Republic not below the rank of Additional Secretary to the Government and of the two other members one shall be a person who is or has been an officer in the service of the Republic not below the rank of Joint Secretary to the Government and the other person who is or has been a District Judge.

Thus if a Judge of the Supreme Court (or a person qualified to be a Judge of the Supreme Court) was appointed as the Chairman of the Administrative Appellate Tribunal then the majority of its members (two out of three) were from the judiciary (a Judge of the Supreme Court as the Chairman and a District Judge as one of the two members). Thus provision was made for the inclusion of a Judge of the highest court of Bangladesh and a chief judicial officer at the district level into the Administrative Appellate Tribunal to examine the correctness of the decision or order given by the Administrative Tribunal. But sub-section 3 of Section 5 also provided for the scope of appointing a civil servant not below the rank of Additional Secretary to the Government as the Chairman of the Administrative Appellate Tribunal. In that case, there was the dominance of non-judicial members in the Administrative Appellate Tribunal; two out of three (the Chairman and one of the two members not below the rank of Joint Secretary) were from among the officers in the service of the Republic. But these provisions concerning the composition of Administrative Appellate Tribunal could not be implemented as the Administrative Tribunal (Amendment) Ordinance, 1983 provided for a single member Administrative Appellate Tribunal thus:

An Administrative Appellate Tribunal shall consist of one member who shall be appointed by the Government from among persons who are, or have been, or are qualified to be judges of the Supreme Court.

Under the amended provision, the Administrative Appellate Tribunal was for the first time established on 22 August 1983. This shows that from the

very beginning a single-member Administrative Appellate Tribunal started functioning as the appellate forum of the Administrative Tribunal.

The single-member Administrative Appellate Tribunal functioned till 08.07.87 when the original provisions concerning its composition were restored by the Administrative Tribunals (Amendment) Act, 1987. As it was provided that-

The Administrative Appellate Tribunal shall consist of one Chairman and two other members who shall be appointed by the Government.²²

But the original provisions of Section 5(3), concerned with the requisite qualifications of the chairman and members of the Administrative Appellate Tribunal, were not exhaustively restored by the said Administrative Tribunals (Amendment) Act, 1987. As in the amended Section 5(3) it was provided that:

The Chairman shall be a person who is, or has been, or is qualified to be, a Judge of the Supreme Court, and of the two other members, one shall be a person who is or has been an officer in the service of the Republic not below the rank of Joint Secretary to the Government and the other a person who is or has been a District Judge.

Thus under the amended provisions only a Judge or a person qualified to be a Judge of the Supreme Court, not any carrier civil servant, is qualified to be appointed as a Chairman of the Administrative Appellate Tribunal. Furthermore, the amended provisions ensure the majority of the judicial members (including the Chairman) in the Administrative Appellate Tribunal; the Chairman being the Judge of the Supreme Court and one of the two members being from among the District Judges. However, presence of a Joint Secretary, a carrier civil servant, with professional judges in the Administrative Appellate Tribunal is likely to be helpful, as it brings expertise and inside information of the working of administrative departments which can go a long way in deciding questions of fact.

²² Amended sec. 5 (2).

Term of Office of the Chairman and Members of Administrative Appellate Tribunal

With regard to the term of office of the Chairman as well as members of the Administrative Appellate Tribunal, it was originally provided that:

The Chairman or any other member of the Administrative Appellate Tribunal shall hold office for a term of three years or until he attains the age of sixty years, whichever is earlier, and on such conditions as the Government may determine.²³

Thus the term of office (three years or until the attainment of the age of sixty years) of the Chairman and members of the Administrative Appellate Tribunal was clearly fixed and as such enable them to perform their functions without fear or favor. But this was amended in August 1983 to the following effect:

The member of the Administrative Appellate Tribunal shall hold office on such terms and conditions as the Government may determine.

Thus the amended provision made the members of the Administrative Appellate Tribunal dependent on the Government for their terms and conditions of service that adversely affected their personal independence. When in July 1987, the Administrative Appellate Tribunal was to consist of three members instead of one, the provision concerning terms and conditions of their service was kept unchanged:

The Chairman or any other member of the Administrative Appellate Tribunal shall hold office on such terms and conditions as the Government may determine.

Thus, the members of the Administrative Appellate Tribunal hold office on such terms and conditions as the Government may determine and the law does not provide for any security of tenure of the members. In France, the members of *Conceal d' Etta* and in Germany, professional judges are appointed for life and cannot be arbitrarily removed. These two are the most important factors that have made French and German Administrative

²³ Sec. 5 (4).

courts judicial bodies of repute, which inspire confidence.²⁴ In order to make members of the Administrative Appellate Tribunal feel secure enough to dispense justice freely, it is essential that they should have a term of office fixed for a number of years or until a certain date of retirement. In the circumstances, the security of tenure of the members of Administrative Appellate Tribunal in Bangladesh appears to be unsatisfactory and contrary to their personal independence.²⁵

III. Conclusions:

Under Section 6 (1) of the Administrative Tribunals Act, 1980, the Administrative Appellate Tribunal is empowered to decide appeals from any order or decision of the Administrative Tribunals. Neither in the relevant Act nor in the relevant Rules, nothing has been specified as to which orders are appealable and which are non-appealable.

At the beginning, the Administrative Appellate Tribunal, as mentioned above, was the only forum to decide appeal against the decision of the Administrative Tribunal. The decisions of the Administrative Appellate Tribunal were, therefore, final. Subsequently in 1991, the Administrative Tribunals Act, 1980 was amended empowering the Appellate Division of the Supreme Court to decide appeal against the decisions of the Administrative Appellate Tribunal. But no one can move the Appellate Division against the decisions of the Administrative Appellate Tribunal as a matter of right; appeal is allowed only on leave. However, a civil servant has, thus, got an opportunity to ascertain the appropriateness of the decisions given by the Administrative Appellate Tribunal in respect of service matters through the Appellate Division of the Supreme Court – the apex court of the country.

²⁴ Rashid, Pirzada Mamoon : *Manual of Administrative Laws*, (1998) pp. 53-54.

²⁵ In respect of personal independence of the judges, the International Bar Association says that it means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control. See Halim, Md. Abdul: *Constitution, Constitutional Law and Politics: Bangladesh Perspective*, (1998) p. 300.

The provisions of amended Section 6 (2) as well as inserted Section 6(2A), which have greatly extended the time limit for appeal, are liberal for an appellant and, thus, salutary. These provisions have actually paved the way for making the Administrative Appellate Tribunal more accessible.

The Administrative Appellate Tribunal has a good composition of two judicial members and one career civil servant. The composition ensures the majority of judicial members. Besides, the presence of a career civil servant with professional judges in the Administrative Appellate Tribunal is likely to be helpful, as it brings expertise and inside information of the working of administrative departments which can go a long way in deciding questions of fact.

The relevant provision of the Administrative Tribunals Act, 1980, has made the members of the Administrative Appellate Tribunal dependent on the Government for their terms and conditions of service that adversely affected their personal independence, which means that judges are not dependent on Governments in any ways that might influence them in coming to decisions in individual cases.

In fine, as regards appeal against the decisions of Administrative Tribunals in Bangladesh, it is important as well as pertinent to point out here that the author has, as part of his doctoral research²⁶, examined the decisions of 100 sample cases²⁷ tried by the Administrative Tribunal, Dhaka and of appeal disposed of by the Administrative Appellate Tribunal, Bangladesh. From the examination, it is found that in 61% of the cases, the decisions of Administrative Tribunal have been supported and ratified on appeal by the Administrative Appellate Tribunal. In 34% of the cases, the decisions of

²⁶ Title of the Ph.D. thesis: Establishment and Operation of Administrative Tribunals in Bangladesh.

²⁷ These 100 cases have been collected by convenience sampling from the— i) *Administrative Appeal cases, 1986, 1987 and 1988*, compiled and edited by Khandaker Hasib Uddin Ahmed; ii) *Administrative Appeal cases, 1991*, compiled and edited by Fatima Nazib; and iii) *Administrative Appeal cases, 1992*, compiled and edited by K.A. Nasrina Khanom, prepared under the authority of the Administrative Appellate Tribunal, Bangladesh.

Administrative Tribunal have been set aside on appeal by the Administrative Appellate Tribunal. In 4% of the cases, the Administrative Appellate Tribunal on appeal has revised the decisions of Administrative Tribunal. In 1% of the cases, the Administrative Appellate Tribunal on appeal has upheld the decision of the Administrative Tribunal on different ground.

Here 34% is, indeed, a large figure and unacceptable. As such, in order to bring down the number of set aside decisions of Administrative Tribunal on appeal, the members of the Administrative Tribunals should be appointed from amongst the prescribed Judges who are of keen intellect, high legal acumen, integrity and impartially. They should be properly trained in their roles and responsibilities. Furthermore, the Executive should be replaced with the Supreme Court as the authority to transfer, posting and promoting members of Administrative Tribunals²⁸ so that they can perform their functions without fear or favor by strictly adhering to their professional conduct. And with a view to gaining this object, Article 116 of the Bangladesh Constitution may be amended and restored to its original position as enacted in 1972.²⁹

²⁸ In this connection, Mohammad Fazlul Kairm, Judge of the Appellate Division of the Bangladesh Supreme Court, in an interview with the researcher on 23.06.2003, strongly expressed similar view to strengthen the independence of Administrative Tribunals.

²⁹ Article 116 of the Bangladesh Constitution as originally enacted in 1972 says – “The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the Supreme Court”.