

## **ADMINISTRATIVE TRIBUNALS IN BANGLADESH: AN APPRAISAL ON ESTABLISHMENT AND PROCEDURE**

**Dr. S. M. Hassan Talukder\***

### **1. Introduction**

During long past time, disputes arising out of the administrative actions both in the public and private sectors had been subjects of judicial review in the courts of law. The courts with the growth of population and socio-economic complexities had been crowded with influx of cases of various natures. The volume of cases on the administrative sides also increased with considerable dimension occupying great chunk of court's time to deal with such cases. The result was that there was inordinate delay in the disposal of cases, which adversely reflected on the efficiency and sound functioning of the administration. Taking into account of these realities, the framers of the 1972 Constitution of Bangladesh included in it for the first time provisions concerning the establishment of Administrative Tribunals for the purpose of ensuring speedy and efficacious disposal of cases relating to service matters, by ousting the jurisdiction of the ordinary courts in respect of such matters.

Eight years later of the enactment and enforcement of the Constitution, the Parliament of Bangladesh, in fulfillment of the constitutional mandate, enacted the Administrative Tribunals Act, 1980 (Act No. VII of 1981), empowering the Government to establish by notification in the Official Gazette one or more Administrative Tribunals<sup>1</sup> to deal with matters and disputes especially pertaining to service matters of civil servants.

Accordingly, in exercise of the powers conferred by Section 3(1) of the Administrative Tribunals Act, 1980, the Government, by a notification<sup>2</sup> established an Administrative Tribunal at Dhaka on 01 February, 1982, for the whole of Bangladesh. Thus, an Administrative Tribunal was established for the first time in the history of Bangladesh to resolve disputes concerning the terms and conditions of the service of civil servants. In fact, the Tribunal was given herculean task of resolving disputes relating to service matters of civil servants throughout the country.

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\* Assistant Professor, Department of Law, University of Dhaka.

1 See sub-section (1) of sec. 3 of the Administrative Tribunals Act, 1980, which runs thus "The Government may, by notification in the official Gazette, establish one or more Administrative Tribunals for the purpose of this Act".

2 Notification No. S.R.O. 58-L/82-JIV/1T-1/81, dated 01 February, 1982.

Ten years after the establishment of the first Tribunal, it was ultimately realised in 1992 that the single Tribunal was unable to deal with the increasing number of cases expeditiously and, as such, on 30 May, 1992, the second Administrative Tribunal was established at Bogra.<sup>3</sup> The Government took more than nine years to set up further Tribunals to ensure speedy justice. On 22 October, 2001, the Government of Bangladesh established 05 more Administrative Tribunals in the country.<sup>4</sup> Thus, the total number of Administrative Tribunals stands at 07.

Since Administrative Tribunal in Bangladesh is a newly born institution and no in depth study on this institution has yet been made, an attempt is, as such, taken hereunder to appraise the provisions<sup>5</sup> concerning the-

- (a) composition of Administrative Tribunals;
- (b) qualifications of the Members of Administrative Tribunals;
- (c) terms and conditions of the office of the Members of Administrative Tribunals; and
- (d) procedure of Administrative Tribunals in Bangladesh.

## **2. Composition of Administrative Tribunals**

Provisions concerning the composition of Administrative Tribunals in Bangladesh have been laid down in Section 3(3) of the Administrative Tribunals Act, 1980. Making Administrative Tribunal a single member tribunal, this Section runs thus:

An Administrative Tribunal shall consist of one member who shall be appointed by the Government from among persons who are or have been District Judges.

Thus unlike the Administrative Tribunal (statutorily called Service Tribunal) of Pakistan, which is consisted of a Chairman and such member or members not exceeding three as the President may from time to time appoint,<sup>6</sup> and the

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3 Notification No. S.R.O. 119-L/92/249-JIV/5C-5/89, dated 30 May, 1992.

4 Notification S.R.O. No. 288-Law/2001, dated 22 October, 2001.

5 Provisions are contained in the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982.

6 As regards composition of Administrative Tribunal in Pakistan, sec. 3 (3) of the Service Tribunals Act, 1973, provides – “A Tribunal shall consist of- (a) a Chairman, being a person who is, or has been, or is qualified to be, judge of a High Court; and (b) such

Administrative Tribunal of India, which is consisted of a Chairman and such number of Vice-Chairman and Judicial and Administrative Members as the Government may deem fit,<sup>7</sup> the Administrative Tribunal in Bangladesh is a single member tribunal.

Furthermore, unlike the Service Tribunal of Pakistan or the Administrative Tribunal of India, the Administrative Tribunal in Bangladesh has no Benches to perform its functions in an effective and fair manner. With regard to the working of Service Tribunal by Benches in Pakistan, initially there was no provision in the Service Tribunals Act, 1973. In 1978, a new Section, 3A, was added to the Act to ensure fair, smooth and effective functioning of the Service Tribunal by Benches consisting of not less than two members.<sup>8</sup> Like the Service Tribunal of Pakistan, the Administrative Tribunal of India has also Benches consisting of one Judicial Member and one Administrative Member<sup>9</sup> to dispose of cases in an efficient manner.

### **3. Qualifications of the Members of Administrative Tribunals**

As regards basic qualifications of the members of the Administrative Tribunals in Bangladesh, sub-section (3) of Section 3 of the Administrative Tribunals Act, 1980, provides that the Government can appoint as the member of the Administrative Tribunal only a person who is or has been a District Judge.

Thus, the Administrative Tribunal is composed of a District Judge who is the head of the Judiciary at the district level having, indeed, at least 15 years

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member or members not exceeding three, each of whom is a person who possesses such qualifications as may be prescribed by rules, as the President may from time to time appoint”.

- 7 Concerning composition of Administrative Tribunal in India, sec. 5 (1) of the Administrative Tribunals Act, 1985, provides that “Each Tribunal shall consist of a Chairman and such number of Vice-Chairman and Judicial and Administrative Members as the appropriate Government may deem fit and, . . .”.
- 8 Sec. 3A was inserted in the Service Tribunals Act, 1973, by the Service Tribunals (Amendment) Ordinance, 1978. It provides that “The powers and functions of a Tribunal may be exercised or performed by Benches consisting of not less than two members of the Tribunal, including the Chairman, constituted by the Chairman”.
- 9 Sec. 5(2) of the Administrative Tribunals Act, 1985, provides that “Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member”.

experience in the judicial service<sup>10</sup> and, as such, is expected to resolve relevant disputes in a satisfactory manner. But, it is noticeable that whereas the Administrative Tribunal of Bangladesh is composed of a District Judge alone, the Chairman of the Service Tribunal of Pakistan is to be appointed from among the persons who are or have been judges of High Courts or are qualified to be judges of High Courts although the qualifications of other members (not exceeding three) have not been determined by the relevant Act.<sup>11</sup> Like Pakistan, the Chairman of the Administrative Tribunal of India is required for being appointed from among the persons who is, or has been, a judge of a High Court. But in case of Indian Administrative Tribunal, the Vice-Chairman<sup>12</sup> of the Tribunal, who has held that office for at least two years, can also be appointed as the Chairman of the Tribunal. Unlike Pakistan, in India the Judicial Member of the Administrative Tribunal is required to be a person who is, or has been, or is qualified to be, a judge of a High Court; or has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years.<sup>13</sup> The Administrative

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10 In judicial sphere, a District Judge in Bangladesh belongs to a cadre service known as Judicial Service. At the very beginning, he starts his service carrier as an Assistant Judge. Normally, a few years later, he is promoted to service as Senior Assistant Judge. From the post of Senior Assistant Judge, promotion lies to the post of Joint District Judge. Thereafter, from the post of Joint District Judge, promotion lies to the post of Additional District Judge. A District Judge is appointed from the Additional District Judges. See the Civil Courts Act, 1887.

11 Unlike the Chairman, for the members of the Service Tribunal of Pakistan there exist no prescribed basic qualifications in the Service Tribunals Act, 1973. This issue has been left in the hands of the President. See sec. 3 (3) of the Service Tribunals Act, 1973.

12 Regarding qualifications for appointment as Vice-Chairman, sec. 6(2) of the Administrative Tribunals Act, 1985, provides that a person shall not be qualified for appointment as the Vice-Chairman unless he - (a) is, or has been, or is qualified to be a judge of a High Court; or (b) has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or (bb) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or (c) has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member.

13 See sec. 6 (3), the Administrative Tribunals Act, 1985.

Member of the Tribunal is to be a person who has, for at least two years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or has, for at least three years, held the post of a Joint Secretary to the Government of India.<sup>14</sup>

Although, unlike India and Pakistan, there is no provision in Bangladesh to appoint a person who is, or has been, a judge of the High Court Division of the Supreme Court as the member of the Administrative Tribunal. Only a District Judge can be appointed as the member of the Administrative Tribunal who is, indeed, qualified to be a judge of the Bangladesh Supreme Court<sup>15</sup> comprising the High Court Division and the Appellate Division. But, it should be stressed here that if the Vice- Chairman of the Administrative Tribunal in India is appointed as its Chairman then, like a judge of the High Court, also a carrier civil servant in the rank of Secretary or Additional Secretary becomes eligible to be appointed as the Chairman of the Administrative Tribunal in India. So is the case in Pakistan where a civil servant having no academic legal qualification can be appointed as a judge of the High Court<sup>16</sup> and, as such, shall be eligible to be the Chairman of the Service Tribunal. In Bangladesh, only a judicial officer having legal qualification can only be appointed to the single member Administrative Tribunal.

#### **4. Terms and Conditions of Office of the Members of Administrative Tribunals**

The provisions concerning the terms and conditions of office of the member of Administrative Tribunal in Bangladesh have been laid down in Section 3

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14 See sec. 6 (3A), the Administrative Tribunals Act, 1985.

15 As per Art. 95 (2) (b) of the Bangladesh Constitution, a person shall be qualified for appointment as a judge of the Bangladesh Supreme Court if he/she has, for not less than 10 years, held judicial office in the territory of Bangladesh.

16 Art. 193 (2) (b) of the Pakistan Constitution (1973) has provided for not less than 10 years' period for civil servants for being eligible for consideration for appointment as a Judge of the High Court and out of the above 10 years, it has been provided that for a period of not less than three years, he must have served as or exercised the functions of a District Judge in Pakistan. 1998 SCMR 2190 = PLJ 1999 SC 2425.

(4) of the Administrative Tribunals Act, 1980, which provides that a member of an Administrative Tribunal shall hold office on such terms and conditions as the Government may determine.

Thus, the Government has been empowered to determine the terms and conditions of the member of the Administrative Tribunal who happens to be a District judge. This provision is contrary to personal independence of the judges, which means that judges are not dependent on Governments in any way that might influence them in coming to decisions in individual cases.<sup>17</sup> However, the Government of Bangladesh, in pursuance of the provisions of Section 3(4) of the Administrative Tribunals Act, 1980, has not yet formulated and adopted any separate Rules concerning the terms and conditions of the members of Administrative Tribunals and, as such, they are being regulated by the Government Rules, framed under Article 133<sup>18</sup> of the 1972-Constitution, applicable to persons in the service of the Republic (the service of the Republic has been defined in Article 152 (1) of the 1972-Constitution to mean any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic). In this regard, the observations made by Justice Mustafa Kamal (CJ) in Secretary, Ministry of Finance Vs. Masdar Hossain<sup>19</sup> are worthy of note :

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17 See Griffith, J.A.G. : *The Politics of the Judiciary*, (1977) 29. Quoted in Bari, M. Ershadul: *Importance of an Independent Judiciary in a Democratic State*, published in the Dhaka University Studies part-F (a yearly journal of the Faculty of Law) IV No.1, (June 1993) 2.

18 Art. 133 provides that "Subject to the provisions of this Constitution Parliament may by law regulate the appointment and conditions of service of persons in the service of the Republic: Provided that it shall be competent for the President to make rules regulating the appointment and the conditions of service of such persons until provision in that behalf is made by or under any law, and rules so made shall have effect subject to the provisions of any such law."

19 52 DLR (2000) AD 86.

Judicial service is recognized and treated separately in Articles 115<sup>20</sup>, 116 and 116A (Part VI) of the Constitution and cannot be part of the civil, administrative or executive service of the country. The definition of the 'service of the Republic' in Article 152 (1) of the Constitution is broad and includes defence and judicial services, but that does not mean that judicial service or defence service is a part of the civil or administrative service. Article 133 (Part IX) cannot be invoked for the judicial officers, as there are separate provisions for them in Articles 115 and 116 (Part VI) of the Constitution. Judicial officers are not persons in the service of the Republic for the purpose of Article 133 and hence the Rules regarding their appointment and conditions of service cannot be framed under Article 133 (Part IX). . . . . As the defence service is under Part IV, so is judicial service under Part VI. In such a situation, the defence service has been correctly organised by separate Acts and Rules and in a similar way the judicial service shall have to be organised in accordance with the provisions of Part VI and the enactment and rules made thereunder.

It is noticeable that for the members of the judicial service and magistrates exercising judicial functions, the Non-party Care-taker Government has adopted appropriate Rules<sup>21</sup> in 2007 in accordance with the guidelines given by the Appellate Division of the Bangladesh Supreme Court in the aforesaid case.

Like the Chairman and members<sup>22</sup> of the Service Tribunal of Pakistan, the members of the Administrative Tribunals in Bangladesh 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 *Conseil d' Etat* and in Germany, professional judges are appointed for life and cannot be arbitrarily removed. These two are the most important factors

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20 Art. 115 says that "Appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf."

21 These are the Bangladesh Judicial Service Commission Rules, 2007; the Bangladesh Judicial Service (Pay Commission) Rules, 2007; the Bangladesh Judicial Service (Constitution of Service, Appointment to Service, Suspension, Dismissal and Removal) Rules, 2007; and the Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and Other Conditions of Service) Rules, 2007.

22 See sec. 3 (4) of the Service Tribunals Act, 1973. This section provides that "The Chairman and members of a Tribunal shall be appointed by the President on such terms and conditions as he may determine."

that have made French and German Administrative courts judicial bodies of repute, which inspire confidence.<sup>23</sup> In order to make members of the Administrative Tribunals 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 Tribunals in Bangladesh appears to be unsatisfactory and contrary to their personal independence.<sup>24</sup>

## 5. Procedure of Administrative Tribunals

Since tribunals are not courts of law and, as such, court procedure does not apply to them. They are not bound to follow the procedure laid down for civil courts unless so provided in the enabling Act. They have their own procedures for performing their functions. Accordingly, the procedure to be followed by the Administrative Tribunal in Bangladesh to resolve disputes pertaining to service matters of civil servants has been laid down in the Administrative Tribunals Act, 1980, and the Administrative Tribunals Rules, 1982.

### 5.1 Eligibility for Application

In Bangladesh, the right to move an Administrative Tribunal is only available to those persons<sup>25</sup> who are employed in the service of the Republic or of any statutory public authority.<sup>26</sup> But, before one can approach the

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

24 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) 300.

25 As per sec. 4 (3) of the Administrative Tribunal Act, 1980, "person in the service of the Republic or of any statutory public authority" includes a person who is or has retired or is dismissed, removed or discharged from such service, but does not include a person in the defence services of Bangladesh or of the Bangladesh Rifles.

26 As per sec. 2 (aa) of the Administrative Tribunals Act, 1980, "statutory public authority" means an authority, corporation or body specified in the Schedule to the Administrative Tribunal Act, 1980. And the bodies specified in the Schedule to the Administrative Tribunal Act, 1980, are- Sonali Bank, Agrani Bank, Janata Bank, Bangladesh Bank, Bangladesh Shilpa Rin Sangstha, Bangladesh Shilpa Bank, Bangladesh House Building Finance Corporation,



Administrative Tribunal for redress of his grievance, he should fulfill the following criteria:

- a) He should have availed all the remedies available to him under service laws.<sup>27</sup>
- b) He should have a *locus standi* in the subject matter.<sup>28</sup>

Thus, it is evident that an Administrative Tribunal shall not ordinarily admit an application unless the person approaching it has exhausted all other remedies available to him under the relevant service laws. An employee who suffers by any order of any administrative authority can invoke the jurisdiction of Administrative Tribunal provided he has exhausted all the forums available to him under the service rules as to redress of grievances. Only an employee can make application to the Administrative Tribunal for redress of his grievances under the provisions of Administrative Tribunals Act and Rules. Such a precondition of exhausting all available departmental remedies also exists in Pakistan and India. But the period allowing the higher departmental authority to make decision on the departmental appeals or revisions is two months in Bangladesh whereas it is three months (ninety days)<sup>29</sup> in Pakistan and six months<sup>30</sup> in India.

In France, there is no requirement to invoke a departmental remedy before invoking jurisdiction of administrative courts. In Germany, the requirement of invoking departmental remedies are taken seriously, and a very large number of cases are decided at the stage without ever having to go before

Bangladesh Krishi Bank, Investment Corporation of Bangladesh and Grameen Bank.

- 27 According to sec. 4 (2) of the Administrative Tribunals Act, 1980, no application in respect of an order, decision or action which can be set aside, varied or modified by a higher administrative authority under any law for the time being in force relating to the terms and conditions of the service of the Republic or of any statutory public authority, or the discipline of that service, can be made to the Administrative Tribunal until such higher authority has taken a decision on the matter.
- 28 According to sec. 4 (2) of the Administrative Tribunals Act, 1980, a person in the service of the Republic or of any statutory public authority may make an application to an Administrative Tribunal under sub-section (1), if he is aggrieved by any order or decision in respect of the terms and conditions of his service including pension rights or by any action taken in relation to him as a person in the service of the Republic or of any statutory public authority.
- 29 See sec. 4 (1) of the Service Tribunals Act, 1973.
- 30 See sec. 20 (2) of the Administrative Tribunals Act, 1985.

administrative courts. Some departments have tried departmental boards for decision in departmental matters. Such boards have members who have legal or judicial training, and they have successfully functioned as quasi-judicial bodies at times acting independently of the departmental executive.<sup>31</sup>

Although there is a tendency in recent years to broaden the scope of the expression '*locus standi*' in so far as the writ petitions filed in the public interest, the Administrative Tribunal under Administrative Tribunals Act, 1980, cannot entertain cases filed in the interest of the public<sup>32</sup> as they are created for the specific purposes of service matters. In this connection, in Kazi Shamsunnahar & others Vs. Commandant PRF, Khulna and others,<sup>33</sup> it was held that –

A person, who is or was in the service of the Republic or of any statutory public authority specified in the Schedule of our Act, has been retired, dismissed, removed or discharged from service, may make an application before the Administrative Tribunal for necessary relief but no person other than the person in the service of the Republic or of any statutory public authority can prefer such an application.

### **5.2 Filing of Application**

Regarding filing of application before Administrative Tribunal in Bangladesh, rule 3 (1) of the Administrative Tribunals Rules, 1982, provides that an application to the Administrative Tribunal shall be made in writing and may be made by the applicant in person, or by a person authorised by him in that behalf, or by a registered post. Thus, like India, where an application can be filed to the Administrative Tribunal either by the applicant in person or by a duly authorised legal practitioner,<sup>34</sup> and Pakistan, where a memorandum can be filed either by the appellant personally or

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31 Rashid, Pirzada Mamoon : *Manual of Administrative Laws*, (1998) 56.

32 The rule governing the writs of Habeas Corpus and Quo Warranto is that any person can apply for such writ. On the other hand, the rule governing the writs of Mandamus, Certiorari and Prohibition is that it is only the person whose rights have been infringed can apply for such writ. But this rule based on the traditional concept of *Locus Standi*, as evolved from the Anglo-Saxon Jurisprudence is vitiated in the cases of Public Interest Litigation. In legal sphere, the theory of Public Interest Litigation recognises maintainability of legal actions by a third party (not personally aggrieved) in unique situations.

33 (1997) 2 BLC 569.

34 See Rule 4(1), the Central Administrative Tribunal (Procedure) Rules, 1985.

through his advocate,<sup>35</sup> in Bangladesh a person in the service of the Republic or of any statutory public authority is entitled to make an application to the Administrative Tribunal in person or through a lawyer.

With regard to admission of application, rule 3 (6) of the Administrative Tribunals Rules, 1982, provides that the Administrative Tribunal shall admit the application if it is made in proper manner laid down in sub-rules (1), (2), (3), (4) and (5) of rule 3<sup>36</sup> and is not barred by the Administrative Tribunals Act, 1980. In Ali Emdad Vs. Labour Director and others,<sup>37</sup> it was held that an application not following the sub-rules (1), (2), (3), (4) and (5) of rule 3 of the Administrative Tribunal Rules, 1982, can be rejected by Tribunal, but before rejecting it, the Tribunal may give an opportunity for making the application according to those rules. Thus the Administrative Tribunal in Bangladesh can give a chance to those who failed to apply strictly in compliance with the provisions of the relevant rules.

### ***5.3 Subsequent Amendment of the Application***

The Section 7B,<sup>38</sup> which has been added to the Administrative Tribunals Act, 1980 by the Administrative Tribunals (Amendment) Act, 1997, has removed the impediment on the way of subsequent amendment of the application. Prior to the amendment, there was no scope to amend the application despite any fatal defect disclosed later on. Section 7B provides for larger scope to amend the application at any stage of the proceedings and even at the stage before the Appellate Division of the Supreme Court.

### ***5.4 Disposal of Application***

Where the application is admitted and a date for hearing of the application is fixed, if none of the parties appears and it is found that the notices to appear have been served upon the parties to the dispute, Tribunal may make an order dismissing the application.<sup>39</sup> Where on the day so fixed the applicant appears and the opposite party does not appear, Tribunal may, if it is found

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35 See Rule 5(1), the Service Tribunals (Procedure) Rules, 1974.

36 Sub-rules (1), (2), (3), (4) and (5) of rule 3 of the Administrative Tribunal Rules, 1982, mainly deal with the filing of application and contents thereof.

37 18 (1998) BLD (AD) 137.

38 Sec. 7B provides that the Tribunal may, at any stage of the proceedings, allow the applicant to alter or amend his application in such manner and on such terms as it thinks fit.

39 Rule 6 (4), the Administrative Tribunals Rules, 1982.

that the notice to appear has been served, hear the application *ex parte*.<sup>40</sup> Where on the day so fixed, the opposite party appears and the applicant does not appear, the Tribunal may make an order dismissing the application: provided that where the opposite party admits the claim of the applicant or from the materials on record it is found that the relief claimed by the applicant should be allowed, the Tribunal shall make an order granting the relief to such extent as it deems fit.<sup>41</sup> These provisions, which are similar to the provisions of Rules 15 & 16<sup>42</sup> of the Central Administrative Tribunal (Procedure) Rules, 1985, and Rule 19<sup>43</sup> of the Service Tribunals (Procedure) Rules, 1974, of India and Pakistan respectively, are identical with those of Order IX of the Code of Civil Procedure, 1908 laid down for civil courts.

Any party to the dispute aggrieved by an order made under rules 6 (4), 6 (5) and 6 (6) of the Administrative Tribunals Rules, 1982, may apply to the Tribunal for an order to set aside the dismissal or the order made *ex parte* which are similar to the provisions of rule 13 of Order IX of the Civil Procedure Code. If the Tribunal is satisfied that there was sufficient cause for the non-appearance of the party, the Tribunal shall make an order setting aside the dismissal or the order made *ex parte* on such conditions as it deems fit.<sup>44</sup> The Tribunal may, if it deems fit in any case, postpone the hearing of an application to a future day to be fixed by it.<sup>45</sup> The Tribunal shall, after the application has been heard, give its decision in writing with reasons therefor, at once or on some future day of which notice shall be given to the parties, and make an order accordingly.<sup>46</sup> The decision or order once given or made shall not afterwards be altered or modified, save for the purpose of correcting a clerical or arithmetical mistake or any error arising from any accidental slip or omission<sup>47</sup> which is in line with the provisions of Section 152/153 of the Civil Procedure Code.

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40 Rule 6 (5), the Administrative Tribunals Rules, 1982.

41 Rule 6 (6), *ibid*.

42 Rules 15 & 16 are concerned with procedure required for disposal of application by Administrative Tribunal.

43 Rule 19 is concerned with procedure required for disposal of appeal by Service Tribunal.

44 Rule 6 (7), the Administrative Tribunals Rules, 1982.

45 Rule 6 (8), *ibid*.

46 Rule 6 (9), the Administrative Tribunals Rules, 1982.

47 Rule 6(10), *ibid*.

It is noticeable that under the existing laws, Administrative Tribunal in Bangladesh has no power to grant interim relief in respect of a case pending before it for final adjudication.<sup>48</sup> Neither does the Administrative Tribunals Rules, framed in 1982 pursuant to Section 12 of the Administrative Tribunals Act, 1980, for carrying out the procedural aspect of the Act confer on the Administrative Tribunal any such power.<sup>49</sup>

### ***5.5 Execution of Decree***

According to rule 7 of the Administrative Tribunals Rules, 1982, the Administrative Tribunal shall, for the purpose of execution of its decisions and orders, follow, as far as practicable, the provisions<sup>50</sup> of the Code of Civil Procedure, 1908. In Munshi Mozammel Hossain Vs. Post Master, Faridpur,<sup>51</sup> it was held that Administrative Tribunal can execute, functioning as an executing court, its own decisions or orders and also the decisions and orders of the Administrative Appellate Tribunal following the provisions of Civil Procedure Code relating to execution of a decree.

### ***5.6 Inspection of any Record or Document***

According to rule 8 (1), any party to a dispute may, with the permission of the Tribunal, inspect any record or document in the custody of the Tribunal, other than a record or document with respect to which privilege may be claimed on behalf of the State. An inspection under rule 8(1) shall be in the presence of such officer of the Tribunal as it may specify.<sup>52</sup> This is a healthy provision for ensuring proper representation by any party to a dispute.

### ***5.7 Power of the Administrative Tribunal for the Purpose of Hearing of an Application***

Under Section 7(1)<sup>53</sup> of the Administrative Tribunals Act, 1980, an Administrative Tribunal, while hearing an application, is given the power of

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48 Kamrul Hasan Vs. Bangladesh and others, 49 (1997) DLR (AD) 44.

49 See Chowdhury, Khaled Hamid : Jurisdictional Issues under the Administrative Tribunals Act, 1980, 50 DLR Vol. L, 1998.

50 The provisions relating to the execution of a decree as contained in the Code of Civil Procedure, 1908, are mainly from sec. 34 to sec. 74 (Part II).

51 43 (1991) DLR 415.

52 Rule 8 (2), the Administrative Tribunals Rules, 1982.

53 Sec. 7 (1) provides that " For the purposes of hearing an application or appeal, as the case may be, a Tribunal shall have all the powers of civil court, while trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of

a Civil Court in trying a suit under the Code of Civil Procedure, 1908, in respect of summoning and enforcing attendance of any person and examining him on oath, discovery and production of any document, requiring evidence on affidavit, requisitioning any public record or a copy thereof from any office, issuing Commission for examination of witnesses or documents and such other matters as may be prescribed.<sup>54</sup>

Section 7 (8) provides that “where, in respect of any matter, no procedure has been prescribed by this Act or by rules made thereunder, a Tribunal shall follow such procedure in respect thereof as may be laid down by the Administrative Appellate Tribunal.” Thus the Administrative Tribunal has not been given the power to determine its procedure in the absence of specific provisions in the Act or in the rules made thereunder. But the procedure to be laid down by the Appellate Tribunal must be in conformity with the principles of natural justice.<sup>55</sup> As in Abdul Latif Mirza Vs. Government of Bangladesh,<sup>56</sup> the Appellate Division of the Bangladesh Supreme Court clearly observed that the principles of natural justice are part of the law of the country. Moreover, the Appellate Division in Mujibur

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the following matters, namely:- (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of any document; (c) requiring evidence on affidavit; (d) requisitioning any public record or a copy thereof from any office; (e) issuing commissions for the examination of witnesses or documents; (f) such other matters as may be prescribed”.

54 Here the term “prescribed” means prescribed by the Administrative Tribunals Act, 1980, or prescribed by the rules framed thereunder.

55 Natural Justice is a concept of common law and it is the common law world counterpart of the American ‘procedural due process’. The concept of Natural Justice is generally expressed in two fundamental principles. These are: a) *Nemo iudex in causa sua*, i.e., nobody shall be judge in his own cause; and b) *Audi Alteram Partem*, i.e., party shall not be condemned without giving an opportunity of hearing. Soon after, a third rule was envisaged, and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably (A.K.Kripak Vs. Union of India, AIR 1970 SC 150). In legal sphere, apart from these fundamental principles of Natural Justice, there are also some ancillary rules following from these principles. These are: Right to Notice; right to present case and evidence; no evidence should be taken at the back of other party; report of the enquiry to be shown to the other party; reasoned decisions; institutional decision or one who decides must hear; rule against dictation or decision must be actually his who decides.

56 (1982)34 DLR (AD) 173.

Rahman Vs. Bangladesh<sup>57</sup> held that although an Administrative Tribunal cannot strike down any bar or rule on the ground of its constitutionality, it could strike down an order for violation of the principles of natural justice.

***5.8 Right of the Legal Representatives of the Deceased Applicant to Continue the Proceeding***

The Administrative Tribunals Act, 1980, did not provide for the right of legal representatives of the deceased applicant to continue the proceedings in order to obtain the pensionary benefit. About seventeen years later, in 1997, the Administrative Tribunals (Amendment) Act, 1997<sup>58</sup> added Section 7A to the Act to rectify the situation. As Section 7A provides –

Death of the applicant.- (1) Where a person is dismissed or removed from service and an application is made under section 4 against such removal or dismissal and that person dies during the pendency of the case, the right to sue of that applicant shall survive if his service had been pensionable under any law for the time being in force.

(2) Where the right to sue survives under sub-section (1), such legal representative of the deceased applicant who would have been entitled to the pensionary benefit at the event of the death or retirement of the deceased applicant may be substituted, upon an application, made to the Tribunal or, as the case may be, to the Appellate Division, within sixty days from the date of the death of the applicant.

(3) The legal representative of the deceased as referred to in sub-section (2) shall be entitled to the pensionary benefit, which would have been payable to that deceased if he had not been removed or dismissed:

Provided that, such pensionary benefit shall not be payable unless the Tribunal or, as the case may be, the Appellate Division, declares the order of the dismissal or removal, as the case may be, as illegal or void:

Provided further that, for the purpose of this section, the applicant shall be deemed to have died or retired, as the case may be, on the day on which he was removed or dismissed.

Thus, by virtue of the newly inserted Section 7A, one of the most efficacious Sections of the Act to serve humanitarian cause, the right to sue survives regarding pensionary right of the legal representatives of the deceased applicant and are now entitled to continue the proceedings, and in the event

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57 44 DLR (1992) (AD) 111.

58 Act No. 24 of 1997.

the order of dismissal or removal is declared illegal, they will be entitled to pensionary benefits of the applicant as if he retired or died while in service.

## **6. Conclusions**

### ***Does the Present Composition of Administrative Tribunal Ensure Fair Justice?***

Unlike the Service Tribunal in Pakistan or the Administrative Tribunal in India, the Administrative Tribunal in Bangladesh is a single member Tribunal and, as such, has no scope to discharge its functions in Benches. As it is a single member Tribunal, it cannot always be expected to ensure fair justice, expeditious and effective disposal of cases. Accordingly, it may be recommended that Section 3 of the Administrative Tribunals Act, 1980, should be amended suitably in order to enable all Administrative Tribunals in Bangladesh to work in Benches.

### ***Are the Method of Appointment and Term of Office of Members Conducive to Ensure Independence in Performing Their Functions?***

Indeed, the Government of Bangladesh legally enjoys uncontrolled powers in the appointment of the members of Administrative Tribunals, as there is no provision for taking into account the qualities of a District Judge who should be appointed as a Member of the Tribunal. Since almost in all cases, the Government is a party, it may be suggested to introduce an appropriate amendment in Section 3 of the Administrative Tribunals Act, 1980, so that the most efficient, learned and impartial District Judges could be appointed to ensure fair justice.

Like the members of the Service Tribunal in Pakistan, the members of the Administrative Tribunals in Bangladesh have no terms of office fixed for a number of years or until a certain date of retirement. They are appointed by the Government and hold office on such terms and conditions as the Government may determine. Thus unlike India, where the members of the Administrative Tribunal hold office for a period of 5 years or unless attain the age of 62 years, the members of the Administrative Tribunals in Bangladesh have not been provided with the security of tenure. Consequently, they have to depend on the whims of the executive for their



term of office, which is contrary to the personal independence of the members of the Administrative Tribunals.

Therefore, in order to make the members of the Administrative Tribunals feel secure enough to dispense justice freely and fearlessly, it may be recommended that Section 3 of the Administrative Tribunals Act should be amended so that they hold office for a period of at least five years or until attain the age of retirement.

### ***Is the Procedure of Administrative Tribunal Fair?***

In dealing with an application, the Administrative Tribunal in Bangladesh does not exactly follow the same procedure as the Civil Courts follow in a trial of suit. As most of the disputes concerning service matters of civil servants are based on official record, the Administrative Tribunal is not generally required to take evidence of witness by following a lengthy process of trial. Thus, the procedure of Administrative Tribunal in Bangladesh has been made simple.

Furthermore, by adding Sections 7A and 7B by the Administrative Tribunals (Amendment) Act, 1997, important changes have been made in the Administrative Tribunals Act, 1980. Section 7A enables the legal representatives of the deceased servant to have pensionary benefit, which was not available under the original law. By abolishing the provision to the effect that no application to alter or amend his application despite revelation of any serious fault at a later time, Section 7B empowers the applicant to amend his/her application at any stage of the proceedings and even at the stage before the Appellate Division of the Supreme Court. An aggrieved employee has been given the opportunity to appear before an Administrative Tribunal in person or engage lawyer to represent him. The provision to appear before the Tribunal in person by the employee reduces the cost of litigation although representation by lawyer ensures proper and meaningful defence.

While agreeing with the broad proposition that interim order should not be issued in each and every matter thereby restraining the hands of the

executive, we cannot but disagree that such order should never be issued or there would be no occasion at all to issue an interim order. Sometimes, the power to grant interim order or injunction is very essential for effective dispensation of justice. But under the existing laws, the Administrative Tribunal in Bangladesh has no power to grant stay or injunction as an ad-interim measure in the absence of which in many cases the aim of seeking relief becomes frustrated thereby reducing the jurisdiction of the Administrative Tribunals nugatory. As the alternative remedy is not efficacious, in many cases, the person aggrieved seeking immediate relief takes the disputes into the writ jurisdiction of the High Court Division of the Bangladesh Supreme Court. In the circumstances, the Administrative Tribunal in Bangladesh should have powers to grant stay and interim order or injunction.