
(1988) 09 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2790 of 1986, 2426 of 1987

K.P. Verma and I.K. Saran

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-1988

Acts Referred:

Bihar Administrative Tribunal Act, 1981 — Section 6(2)
Constitution of India, 1950 — Article 311(2), 323A

Citation : (1988) PLJR 1036

Hon'ble Judges : S.B. Sinha, J;N.P. Singh, J

Bench : Division Bench

Advocate : K.P. Verma in Person 2790/86, Mr. I.K. Saran in Person 2426/87, for the Appellant; R.B. Mahto, Advocate General, J.N.P. Sinha, G.A.K.P. Singh, Government Header V. Bal Mukund Pd. Sinha and Nirmal Kumar Sinha, for the Respondent

Judgement

S.B. Sinha, J.—These two writ petitions filed by the two practising Advocates of this Court, inter alia, involve the question as to whether the Bihar Administrative Tribunal Act, 1981, is ultra vires the Constitution of India or not. The said Act was enacted for creating an alternative forum for adjudication of disputes relating to service matters concerning officers and other employees of the Bihar Government. The said Act applies to the following matters:--

- (a) Appointment,
- (b) Promotion to any post,
- (c) Seniority of persons appointed/promoted and,
- (d) All other conditions of service excluding transfer and posting.

2. However, in terms of section 6(2) of the Bihar Administrative Tribunal Act, 1981 (hereinafter called for the sake of brevity as the Act), the matters relating to the orders of dismissal and removal or reduction in rank of the employees which come within the purview of clauses (a), (b) & (c) of proviso to Article

311(2) of the Constitution have also been taken away from the purview of the provisions of the Act.

3. The contention of the petitioners is that the said Act having been enacted in terms of Article 323A of the Constitution of India does not conform to the requirements thereof and, as such, the same is ultra vires. The petitioners have further contended that, in any event, by reason of the provisions aforementioned the jurisdiction of the civil courts having been ousted the provisions thereof must be struck down inter alia on the ground that the Tribunal constituted under the said Act does not have the powers to enforce its order and/or pass ex parte order of interim injunction so as to give urgent and immediate relief to the applicants.

In effect and substance, the contention is that the Tribunal is merely a statutory functionary and is not a "court" and in any event being not a real substitute for the civil court the provisions thereof are liable to be struck down. It has also been contended that the constitution of the Tribunal in terms of the provisions of section 3 of the Act is ultra vires Article 14 of the Constitution of India as the Tribunal must consist of at least one-third members having experience in judicial service or in law and the same having not been complied with the constitution of the Tribunal must be held to be wholly illegal. It has also been contended that so far as other members are concerned, the matter relating to their appointment is wholly unguided and uncanalised as no guideline has been provided in the Act relating to their qualification or experience, etc., to hold the said posts.

4. It is a common ground that the Tribunal at present consists of the Hon"ble Mr. Justice S.K. Choudhuri, a retired Judge of this Court, Shri S.K. Sinha, a retired I.A.S. Officer, Shri G. Narain, a retired I.P.S. Officer, Shri N. Kujur, a retired I.A.S. Officer, and Shri P.N. Trivedi, a retired Chief Engineer as members. According to the petitioners, except the Chairman, the other members have no experience as a judicial officer or in law and in that view of the matter the mandate thereof to the effect that one third of the members should have experience in judicial service or in law has been violated.

5. Mr. K.P. Verma, petitioner in C.W.J.C. No. 2790 of 1986, has further submitted that by enacting the said Act and creating the Tribunal, the directive principle enshrined in the Constitution to the effect that justice should be delivered to the litigants at their doorstep has been violated, as, by creation of the Tribunal at Patna with no other Bench at any other place in the whole of the State of Bihar, all the employees who intend to file a representation and are posted at a far away distance from Patna would all have to come to Patna wherefore they would have to incur heavy expenses, whereas, if the jurisdiction of the civil court was not ousted, the aggrieved employees could have moved the civil court which is situated in every Sub-Divisional or district headquarters.

6. The learned Advocate General and the learned Government Advocate appearing for the State of Bihar, on the other hand, submitted that the said Act has not been enacted in terms of Article 323A of the Constitution of India but has

been enacted in terms of entry 41 of list II of the 7th schedule of the Constitution.

According to the learned counsel, the State of Bihar has the necessary legislative competence to enact the said Act. It has further been contended that the Tribunal has the necessary power to execute its own orders and to take appropriate action for enforcing the same inasmuch as it is bestowed with all the powers of a civil court in terms of section 10 thereof. So far as the composition of the Tribunal is concerned, the State, in its counter-affidavit filed in C.W.J.C. No. 2426 of 1987, stated as follows:--

6. That it is stated and submitted that Shri S.K. Sinha, Respondent No. 3, was appointed in the Indian Administrative Service, was posted as Assistant Magistrate, Laheriasarai, during the period May 1953 to October, 1953. He was posted as Settlement Officer, Purnea, from 4.11.1953 to 21st of May, 1954. He was posted as Sub-Divisional Officer, Samastipur, between the period 28th May 1954 to 1956.

He was posted as the Deputy Commissioner, Palamu, between the period 29th October, 1956, to the 23rd January, 1958, and as the District Magistrate and Collector, Bhagalpur, between the period 15th February, 1956, to 31st July, 1959. Thereafter Sri S.K. Sinha held several other posts and has been appointed as a member of the Bihar State Administrative Tribunal, Patna.

7. That it is thus submitted that Sri S.K. Sinha respondent No. 3 was fully qualified under the provisions of the Bihar Administrative Tribunal Act, 1981, to be appointed as a member of the said Tribunal.

8. That it is stated and submitted that Sri N. Kujur, respondent No. 4 was appointed in the Bihar State Civil Service. He was a Second Class Magistrate in 1954 and was posted at Daltonganj (Garhwa) and in that capacity he disposed of several criminal cases. In 1957, he was posted as 1st Class Magistrate, and was posted at Daltonganj. In 1954, he functioned as Sub-Divisional Officer at Latehar. From 1962 to 1965 he functioned as Sub-Divisional Officer, Purnea, and during 1978-79 he functioned as District Magistrate, Saharsa.

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10. That it is submitted that both the respondents 3 and 4, i.e., Shri S.K. Sinha and Sri N. Kujur have sufficient experience and also have knowledge of law because they have worked as Presiding Officer of the various courts for several years and in that capacity had to dispose of cases and their appointments are perfectly legal under the provisions of the Bihar Administrative Tribunal Act, 1981.

11. That it is stated and submitted that out of the four members of the said Tribunal Respondents No. 3 and 4 constitute more than 1/3rd of the members of the Bihar Administrative Tribunal Act and the Chairman being an ex-Judge of the Patna High Court the constitution of the Bihar State Administrative Tribunal is perfectly legal, valid and in accordance with the provisions of the Bihar

Administrative Tribunal Act, 1981.

7. The petitioners, however, contend that on a perusal of the provisions of the said Act, it would appear that the object and purport for the legislative mandate to the effect that one third of the members would have experience in judicial service or in law is absolutely clear in as much as thereby the legislature intended that a person having judicial experience or having experience in law would participate adjudication proceeding for which they have the necessary training. In a supplementary affidavit filed on behalf of the petitioners, it has been pointed out that except the Bench in which the Hon'ble Mr. Justice S.K. Choudhuri presides there are other Benches which do not comprise of any member having experience in judicial service or in law.

8. In view of rival contentions of the parties, the following questions arise for consideration in these writ applications:--

(1) Is the said Act ultra vires the Constitution of India?

(2) Is section 14 of the Act whereunder the jurisdiction of the civil court is barred is ultra vires the Constitution of India?

(3) Whether the constitution of the Tribunal is ultra vires Article 14 of the Constitution as well as section 3 of the said Act?

9. Re: Questions 1 and 2:--

Mr. I.K. Saran, who has appeared in person in C.W.J.C. No. 2426 of 1987, has submitted that a service Tribunal can be created only in terms of Article 323A of the Constitution of India and the Tribunal so created must be a real substitute for the civil court whose jurisdiction is sought to be taken away. He, in this connection, has placed strong reliance upon *S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others*, ; *P. Sambamurthy v. State of Andhra Pradesh*, AIR 1987 SC 663 ; and *J.B. Chopra and Others Vs. Union of India (UOI) and Others*, .

10. Article 323A of the Constitution of India reads as follows:--

(1) The Parliament may, by law, provide for adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government.

(2) A law made under clause (1) may

(a) provide for establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cases of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of Article 371D:

(g) contain such supplemental incidental and consequential provisions (including provisions as to fees) as the Parliament may deem necessary for the effective functioning of, and for the disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this Article shall have effect notwithstanding anything contained in any other provision of this Constitution or in any other law for the time being in force.

11. Entry 41 of list II of the 7th Schedule of the Constitution of India deals with State Public Service and State Public Service Commission.

Entry 65 of List II of the 7th Schedule confers power upon the legislature of the State to make any enactment with regard to the jurisdiction or power of all courts except the Supreme Court, with respect to any of the matters in the List.

Entry No. 12 of the List III of the 7th Schedule provides for evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.

Entry 13 of the same List provides for civil procedure including matters relating to CPC before the commencement of the Constitution, limitation and arbitration.

12. In this connection, certain other provisions relating to legislative competence with regard to powers and functions of courts may be noticed.

Entry 46 of list III of 7th Schedule provides for jurisdiction and powers of all courts, except the Supreme Court, with respect to any matters in that List.

Entry 11A of List III of 7th Schedule provides for administration of justice, constitution and organisation of all courts, except the Supreme Court and the High Courts.

Entry 95 of List I of 7th Schedule provides for jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in that List, and admiralty jurisdiction.

13. By reason of the provisions of the said Act, the powers of the High Court under Articles 226 and 227 of the Constitution have been left intact and have not at all been touched. The matter relating to the constitution of the Tribunal for the purpose of adjudication of the disputes relating to certain matters as enumerated therein being the subject matter of the State List, there cannot be any doubt, the same comes within the preview of List II of the 7th Schedule of the Constitution of India.

14. Plainly enough, the State has, therefore, the power to constitute tribunals for adjudication of the dispute relating to service matters as the word "State Public Services" is wide enough to include the conditions of service and adjudication of the disputes in relation thereto and In that view of the matter, the State will have the necessary legislative competence to constitute and provide for jurisdictional power of a court in relation to the matter relating to the State Public Service.

In this connection, reference may also be made to Article 251 of the Constitution of India which reads as follows

251. Inconsistency between laws made by Parliament under Arts 249 and 250 and laws made by the Legislature of States--Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of law made by the legislature of a State is repugnant to any provision of law made by Parliament which Parliament has under either of the said Articles power to make, the law made by Parliament, whether before or after the law made by the legislature of the State, shall prevail, and the law made by the legislature of the State to the extent of the repugnancy but so long only as the law made by Parliament continues to have effect, be inoperative.

Nothing has been pointed out before us that the provisions of the said Act is repugnant to or the provision of law made by the Parliament.

15. The Administrative Tribunal Act, 1985, which applies to Central Government employees, evidently, has got nothing to do with the employees of the State unless the same is extended to the employees of the State in terms of the provisions of the said Act. It is also clear that the said Act has not been enacted in terms of Articles 323A of the Constitution of India, and as mentioned herein before the said Act has been enacted in terms of Entry 31 read with Entry 65 of the List II of the 7th Schedule of the Constitution.

The said Act was enacted to provide for the constitution of the tribunal to adjudicate dispute in respect of matters relating to employment of employees of the Government of Bihar. It applies to all the Government servants except the persons mentioned in sub-section (4) of section 1 thereof. Section 2(b) defines "Government servant" as any person appointed to Government services and posts in connection with the affairs of the State. Tribunal has been defined in section 2(d) of the Act as meaning the Bihar Administrative Tribunal constituted u/s 3. Section 3 provides for composition of the Tribunal.

Section 4 of the Act provides for the tenure of the members of the Tribunal including the Chairman whereby and whereunder they shall hold office for a period of three years from the date on which he enters upon his office and the maximum appointment of such members shall be for two terms subject to the condition that they would not continue to hold the office after the age of 65 years.

Section 5 of the Act provides for the seat of the Tribunal.

Section 6 which provides for the jurisdiction, power and Authority of the Tribunal reads as follows:--

(1) Save as otherwise expressly provided in this Act Tribunal shall exercise all the jurisdiction, power and authority which immediately before the commencement of this Act were exercisable by the Court (except the Supreme Court and High Court) with respect to--

- (a) appointment,
- (b) promotion to any post,
- (c) seniority of persons appointed/promoted, and
- (d) all other conditions of service excluding transfer and posting.

(2) Notwithstanding anything contained in clause (d) sub-section (1) of this section, the Tribunal shall have no jurisdiction with respect to any matter involving the dismissal, removal or reduction in rank of a person who is a member of a civil service of the State or who holds a civil post under the State, if the provisions of clause (a) or clause (b) or clause (c) of the proviso to clause (2) of Article 311 of the Constitution apply to, in relation to, such dismissal, removal or reduction in rank.

(3) Subject to the provisions of this Act the law in force immediately before the commencement of this Act with respect to the practice, procedure and disposal of the petitions for the issue of directions, orders or writ under Article 226 of the Constitution by the High Court of Patna, shall with such modification as may be made by the Tribunal apply with respect to the practice, procedure and disposal of petitions by the Tribunal in exercise of its jurisdiction, power and authority under this section:

Provided that the Tribunal shall not grant an interim injunction in respect of any matter pending before it, except, after giving notice to the State Government, local authority or officer or authority under that Government or local authority and the parties concerned and after giving an opportunity of being heard to all or any of them.

Section 7 of the Act empowers the authority to receive representation.

Section 8 of the Act provides for disposal of the representations.

Section 9 provides for the procedure of the Tribunals.

Section 10 of the Act provides for the power of the Tribunal to summon and examine witnesses and direct production of documents.

Under section 11 of the Act, the Tribunal shall be deemed to be a Civil Court for purposes of sections 345 and 346 of the Code of Criminal Procedure.

Section 14 of the Act bars the jurisdiction of Civil Courts.

In terms of the provisions of section 13 of the Act, rules have been framed by the State of Bihar known as the Bihar Administrative Tribunal Rules, 1982.

16. As mentioned hereinbefore, Mr. I.K. Saran has placed heavy reliance upon a decision of the Supreme Court in the case of *S. Sampat Kumar v. Union of India* (supra) and submitted that, as in the case of the Administrative Tribunal Act, 1985, which is to be a real substitute for the High Court, the State Tribunal must necessarily be a real substitute for a civil, court. The petitioner has further contended that judicial review being a basic structure of the Constitution of India unless the Tribunal becomes a real substitute for the Civil Court, the same cannot provide for a forum for proper judicial review as far as the aggrieved employees are concerned. By way of illustration, the petitioner has contended that, in terms of the proviso to section 6 of the Act, the Tribunal has been provided with the power to pass interim injunction only after giving notice to the State Government or the local authority or other persons as the case may be and after giving an opportunity of being heard to them. He contends that the Tribunal thus has no power to pass *ex parte* interim injunction which power a Civil Court has under Order 39, Rule 3 of the Civil Procedure Code. According to him, the lack of power to grant an *ex parte* interim order makes the Tribunal a less effective substitute and, as such, the said proviso is *ultra vires* the Constitution.

17. Similarly, the petitioner contended that the Tribunal having no power to execute its own order or to initiate a proceeding for its contempt under the provisions of the Contempt of Courts Act, it will not be in a position to execute its own order, The petitioner, therefore, contend that it is nothing but a Tribunal of enquiry and not a Court.

The petitioner, in this connection, has relied upon the Administrative law of J.P. Garner at page 225. According to the petitioner, the functions of such Tribunal are investigatory and inquisitorial rather than in accordance with the more normal accusatory or adversary pattern of tribunals in this country.

18. In my opinion, these contentions have no force. In *Sampat Kumar's* case (supra), the Supreme Court was considering the question as to whether the Administrative Tribunals Act, 1985 would be a real substitute for the High Court in view of the express provisions contained therein whereby and whereunder the jurisdiction of a High Court to entertain any application or adjudicate any matter which comes under the provisions of the said Act had been barred, In terms of the provisions of the said Act not only the jurisdiction of the High Court to entertain any application under Articles 226 and 227 of the Constitution was

casted but it contains a provision in section 29 thereof as a result whereof all the applications pending in the High Court will have to be transferred to the Administrative Tribunal.

The source of power of the High Court to issue a writ under Articles 226 and 227 of the Constitution is the Constitution itself and not the statutes enacted by the legislature. Thus, the right to move the High Court under Articles 226 and 227 being itself a constitutional right the said power could not have been taken away in terms of the provisions of any statutory enactment. In this view of the matter the Supreme Court held that the Central Administrative Tribunal must be a real substitute for the High Court and must be held to be in a position to grant all reliefs as that of a High Court. In that situation, it has been held by the Supreme Court in Sampat Kumar's case (supra) that the composition of the Tribunal must be as such so that the aggrieved employees of the Central Government may have the same and similar faith as they had in the High Court itself.

Such is not the position here. As noticed hereinbefore, the State has enacted the said Act in exercise of its power conferred upon it by reason of Entry No. 41 read with Entry No. 65 of List II of the 7th Schedule of the Constitution.

19. There is no doubt that a Civil Court has the plenary jurisdiction to try all suits of civil nature unless its jurisdiction is expressly or by necessary implication barred under any statute as provided for in section 9 of the Civil Procedure Code. Therefore, the jurisdiction of the Civil Court can be casted by any statute whether the same is enacted by the State Legislature or by the Parliament. In view of the express provision contained in section 9 of the Civil Procedure Code, no litigant can be said to have any legal far less any constitutional right to get his grievances adjudicated by a Civil Court. There are various statutes which provide for constitution of statutory Tribunals which Tribunals have exclusive jurisdiction to deal with matters which come within the purview of such Acts under which such Tribunals are constituted and in respect of such matters Civil Court's jurisdiction are ousted Such tribunals are not necessarily real substitutes for Civil Courts. There are various Tribunals which are presided over by an executive officer and not by a judicial officer and the procedure to follow in such tribunals may be customary in nature as compared to elaborate procedure followed in a civil court. Before such tribunal, even the provisions of the Evidence Act may not be applicable and still then it cannot be said that such statutes are ultra vires the Constitution. It may further be borne in mind that although a person having a cause of action has a right to have his grievances adjudicated but has no right to get the dispute adjudicated in a particular forum.

20. It is needless to point out that the bar in relation to the exercise of jurisdiction of the Civil Court depends upon the provisions in the statute barring such jurisdiction and in a given case a civil court may have the jurisdiction to entertain a suit in certain circumstances although its jurisdiction in certain matters falling under the said statute may be expressly ousted. It is, however, needless to point out that in any event the litigant will have a right to challenge

the orders of such statutory tribunal before a High Court under Articles 226 and 227 of the Constitution, as all such courts and tribunals constituted under any legislative Act are subject to the control and superintendence of the High Court. By reason of the impugned Act the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and that of the Supreme Court under Article 136 of the Constitution have not been taken away and, as such, there cannot be any doubt that right of an employee to get his grievance redressed in a court of law exists.

21. An noticed hereinbefore, in view of the fact that by reason of the provisions of the said Act, the power of this Court under Articles 226 and 227 of the Constitution is wholly unaffected, the Act cannot be said to be unconstitutional only because allegedly it is not a real substitute for the civil court. Not only the tribunal is competent to adjudicate upon the disputes within its jurisdiction which may itself provide for a judicial review but then the jurisdiction of this Court under Articles 226 and 227 of the Constitution as also that of the Supreme Court under Articles 32 and 136 of the Constitution remains untouched. In this view of the matter, in my opinion, there is no substance in the contention of the learned counsel that the Act being not a real substitute for the civil court the same is ultra vires the Constitution.

22. The distinction between the courts and the tribunals are well known, Reference in this connection may be made to the case of Gouri Shankar Bajoria Vs. Ram Banka, at page 400). This aspect of the matter, however, shall be elaborately considered at a later stage.

23. The Act, however, in my opinion stands on a different footing. The tribunal is not only to consist of a Chairman who is or qualified to be a Judge of the High Court but one third of its members must also be persons having experience in judicial service or in law. The jurisdiction of the said Tribunal is limited. As mentioned hereinbefore, it does not have any jurisdiction in the matter of transfer and posting of the employees nor has it any jurisdiction with respect to the matter involving dismissal, removal or reduction in rank of the person. The Tribunal, in terms of section 6(3) of the said Act, will have mutatis mutandis all the powers relating to practice, procedure and disposal of petitions for the issue of orders directions or writs under Article 226 of the Constitution of India by the High Court of Patna.

24. In terms of section 10 of the said Act, the tribunal has been conferred with all the powers of civil court. It is, therefore, absolutely clear that except the power to grant ex-parte interim injunction as laid down under the proviso to section 6 of the said Act, the tribunal will have all the powers of the civil court which necessarily mean that it will exercise all such powers including the inherent power which a civil court has including the powers to execute its own order and by a logical corollary all the powers of execution contained in the Civil Procedure Code.

25. It is therefore, not correct to say that the Tribunal has no jurisdiction to execute its own order. There cannot, therefore, be any doubt whatsoever that it is a court within the meaning of the provisions of the Evidence Act as also within the meaning of the provisions of the Contempt of Courts Act.

26. The definition of "Courts" under the Indian Evidence Act is not exhaustive (See IIR (4) Cal. 483(FB)). Although the said definition is for the purpose of the said Act alone, all authorities must be held to be courts within the meaning of the said provision who are legally authorised to take evidence. The word "Court" under the said Act has come up for consideration at different times under the different statutes.

The Commissioner who has been authorised to take evidence of the witnesses has been held to be a court (See Jyoti Narayan Vs. Brijnandan Sinha,). The Rent Controller has been held to be a court (see G. Bulliswamy Vs. C. Annapurnamma,). The Election Tribunals have been held to be courts (see 1967 All. L.J. 5 at page 7). Coroners before whom evidence can be adduced have been held to be courts (see 71 BLR 732).

27. In Brajnandan Sinha Vs. Jyoti Narain, , it has been held that any Tribunal or authority whose decision is final and binding between the parties is a court. In the said decision, the Supreme Court, while deciding a case under the Commissions of Inquiry Act held that a court of enquiry is not a court as its decision is neither final nor binding upon the parties. In Shri Virindar Kumar Satyawadi Vs. The State of Punjab, , the Supreme Court has made a broad distinction of a court and quasi judicial Tribunal. In the The Sitamarhi Central Co-operative Bank Ltd. Vs. Thakur Jugal Kishore Sinha, , a Division Bench of this Court has held Assistant Registrars appointed under the Bihar and Orissa Co-operative Societies Act to be courts. In the said decision, this Court has held that, when a question arises as to whether the authority constituted under a particular Act exercising judicial or quasi judicial power is a court or not, then the following tests must be fulfilled before the said authority can be termed as a court:--

- (a) the dispute which is to be decided by him must be in the nature of a civil suit;
- (b) the procedure for determination of such dispute must be judicial procedure; and
- (c) the decision must be a binding nature.

28. The aforementioned judgment has been affirmed by the Supreme Court in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . In Chandra Kishore Jha etc. Vs. The State of Bihar, , a Division Bench of this Court has held that the Compensation Officer acting under the Bihar Land Reforms Act, 1950, is a court as the said officer exercised judicial power deciding civil dispute and pass an order which is final and binding between the parties. In S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay

Chandra Misra, ;, the Board of Revenue has been held to be a court subordinate to the High Court for the purpose of the provisions of the Contempt of Courts Act.

29. It is, therefore, clear that the said Tribunal, which is empowered to issue summons for appearance of any person and examining him on oath would be a court within the meaning of the provisions of the Evidence Act as also in terms of the Contempt of Courts Act, own order. There cannot, therefore, be any doubt whatsoever that it is a court within the meaning of the provisions of the Evidence Act as also within the meaning of the provisions of the Contempt of Courts Act. As the said Tribunal is also subordinate to this Court within the meaning of Article 227 of the Constitution, the Tribunal will have the necessary jurisdiction to refer a matter to this Court in case there is any disobedience or willful violation of the orders passed by the said Tribunal. The said power of the Tribunal also can be culled out in view of the express provision contained in section 10 of the said Act where by and where under the Tribunal has been conferred with all the powers of the civil courts while trying a suit.

30. Although section 11 of the said Act provides that the Tribunal shall be deemed to be a civil court for the purpose of sections 345 and 346 of the Code of Criminal Procedure, the same does not mean that its power to refer the matter to this Court under the Contempt of Courts Act has been taken away. By reason of section 11 of the said Act, an express power has been conferred to a limited extent to the Tribunal that it shall be a civil court in terms of sections 335 and 346 of the Code of Criminal Procedure but in respect of other matters, it may itself have the power to punish the contemner. Such power does not exist in the civil courts also.

31. The modern sociological condition as also the needs of the time have necessitated growth of administrative law and administrative tribunal. Executive functions of the State calls for exercise of discretion and judgment also and not a mere dumb obedience of the orders so that the executive also forms Quasi-judicial and quasi legislative functions and, in this view of the matter, the administrative adjudication has become an indispensable part of the modern state activity. However, judicial process differs from administrative adjudicative process. Sometime administrative adjudication is understood as the same thing as administration of justice, though both the terms relate to deciding upon disputes yet over the years a great many difference have been noticed in them which may be placed in the table as under:--

Judicial Adjudication

1. In this the disputes are decided by the persons specially trained in law.
2. The Courts normally cannot move a matter by themselves, e.g. Suo moto.
3. The Courts are bound by earlier precedents and settled principles of Law.
4. The Courts decisions are objective.

5. Normally only the parties directly interested in the lis take part in it.
6. The Law provides many safeguards against the arbitrary decisions of the Courts in the shape of procedures, appeals, revisions, reviews, etc., etc.,
7. The judgments must be given with detailed reasons by the Courts.
8. Judges enjoy a legal immunity from responsibility of acts done in discharge of their duties and their conduct can not be a subject of discussion in any form, even in Parliament.
9. The Laws of evidence and other principles of Common Law are fully applicable to the Courts.
10. The justice in courts is without "biss" or "affection or ill will,

Administrative Adjudication

In this the disputes are decided by the persons having administrative experience.

The administrators may initiate action by themselves.

The administrators may decide each case on its merits.

The decisions of administrators are usually subjective.

In this even other citizens may appear in the interest of public.

In administrative adjudication normally the decisions are final and there is a much greater scope for arbitrary decisions of the adjudicators.

The administrative adjudicators may pass even cryptic non speaking orders.

This is not so normally in case of Tribunals unless the law incorporating them may provide.

The Tribunals are not bound by any such law and need to follow only the principles of Natural Justice.

These have to apply the special policy and thus cannot view things with that Cold neutrality of the impartial judge" (Schwartz in American Administrative Law, P. 61)."

Dr. Durga Das Basu in his Administrative Law, Second Edition, at page 280 has also given broad features which characterise a Court".

However, this broad distinction may not be held to be applicable as how in India apart from the Administrative Tribunals pure and simple as in the United Kingdom or the United States of America, various special Tribunals are being constituted, and that although they are not regular "courts" and have judicial authorities but have all the trappings of the Court. The number of such Tribunals is on the increase owing to the welfare role taken up by the State under our Constitution, as such so that "the number of Indian statutes which constitute

administrative authorities, purely administrative and quasi-judicial, is legion," (See Durga Das Basu, Administrative Law, 2nd Edition at page 285).

Although in its constitution, it is a Tribunal as the source of authority is by reason of a statutory provision and it is empowered by the statutory provisions to exercise any adjudicating power of the State (See All Party Hill Leaders' Conference, Shillong Vs. Captain W.A. Sangma and Others, . e.g., the Election Commission, deciding disputes as to Party Symbols (ibid); the settlement Commission under s. 2451 of the income tax Act (C.I.T. v. Bhattachary, AIR 1979 S.C. 1724); Arbitrator appointed under s. 10A of the Industrial Disputes Act (Gujarat Steel Tubes v. Mazdoor Union, AIR 1910 S.C. 1896); the Central Government, exercising powers under s. III(3) of the Companies Act (Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, .

In this connection, it may further be necessary to bear in mind that the root of the word "Tribunal" is Tribunal which is a Latin word meaning a raised platform on which the seats of the tribunes or the magistrates are placed. Thus, all courts are tribunals but all tribunals are not courts.

However, there cannot be any doubt that these administrative tribunals or the administrative tribunals or the administrative courts are authorities outside the ordinary Court system which interpret and apply the laws when acts of public administration are attacked in formal suits or by other established methods. In essence the Administrative Tribunals may be called a specialised court of law, although it does not fulfil the criteria of a law court as is understood inasmuch as it cannot like an ordinary law court entertain suits on various matters, including the matter relating to the vires of legislation. However, such a Tribunal like ordinary law courts, as found hereinbefore, are bound by the rules of evidence and procedure as laid down under the law and are required to decide strictly, as per the law.

O. Hood Phillips and Paul Jackson in O. Hood Phillips' Constitutional and Administrative Law, Sixth Edition, at page 575 observed as follows:--

Administrative Jurisdiction" or "administrative Justice" is a name given to various ways of deciding disputes outside the ordinary courts. It is not possible to define precisely what bodies constitute the "ordinary courts" although this expression was used in the Tribunals and Inquiries Acts 1958 and 1971. There are some bodies that might be placed under the heading either of ordinary courts or of special tribunals. Guidance cannot be found in the name of a body; the Employment Appeal Tribunal, for example, is a superior court of record.

At page 576 under the Chapter "Special Tribunals" the author has stated as follows:--

These are independent statutory tribunals whose function is judicial. They are often called "administrative tribunals" especially those more closely related by appointment or policy to the Minister concerned, because the reasons for

creating them are administrative. The tribunals are so varied in composition, method of appointment, functions and procedure, and in their relation to Ministers on the one hand and the ordinary courts on the other, that a satisfactory formal classification is impossible.

It, therefore, in my opinion, logically follows that the tribunal, although not a law court in its true sense but is a court in a limited sense and is bound to act independently and impartially and exercise judicial authority without any fear or favour from any person and, thus, would be a court within the meaning of the provisions of the Evidence Act and the Contempt of Courts Act.

32. In view of my aforementioned findings, the Tribunal being a court subordinate to this Court in terms of Articles 226 and 227 of the Constitution of India, in the event an authority or a person commits contempt of the said Tribunal, it can after enquiry refer the matter to this Court and in a given case this Court will be competent to punish the contemner in accordance with the Contempt of Courts Act.

33. Recently, this aspect of the matter has been thoroughly considered by me in C.W.J.C. No. 3226 of 1987 with analogous cases disposed of on the 29th March, 1981, and it has been held therein that the authorities under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, are also courts within the meaning of the aforementioned provisions.

34. It is now well settled that a statutory Tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained Code even if it has not been specifically spelt out must be deemed to have conferred upon the Tribunal all powers in order to make its order effective.

In Savitri Rawat Vs. Govind Singh Rawat, , it has been held as follows:--

.....Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, Conceditur id sine quo res ipsa esse non potest" (where anything is conceded, there is conceded also anything without which the thing itself cannot exist) (Vide Earl Jowitt's Dictionary of English law, 1959 Edn., P. 1797). Whenever any thing is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the

person against whom it is made is minimal as it can be set right quickly after hearing both the parties.....

In *Arabinda Das and etc. Vs. State of Assam and Others*, , it has been held as follows:--

We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.

In this view of the matter, it cannot be said that the Tribunal is merely a Tribunal of enquiry, inasmuch as, as mentioned hereinbefore, its powers are not investigatory or inquisitorial but are, in fact, adjudicatory in nature. It, therefore, logically follows that the Tribunal is a "court" and it will have all the powers of a court including its inherent power and, as such, it will have all the jurisdiction to pass any order in favour of a litigant in exercise of its inherent power to do justice to the parties litigating before it. A Full Bench of this Court in the case of *Bajrang Rai and Others Vs. Ismail Mian and Others*, has clearly laid down as to when and how such inherent powers can be exercised.

35. It is true that, in terms of the proviso to sub-section (3) of section 6 of the said Act, the Tribunal will have no power to grant ex-parte interim injunction. However, that does not mean that the absence of such power shall render the said provision unconstitutional.

In *Messrs Shriram Bearings Ltd. Vs. The Employees' State Insurance Corporation and Others*, , it was held as follows:--

.....The apprehension that such Insurance Court cannot grant injunction, or has no power to enforce its order passed in such proceeding is also unfounded. It is well settled that even courts and Tribunals which are constituted under different Acts, have inherent power to issue appropriate relief by way of injunction, to the party before it and it can enforce its orders. To hold otherwise will amount to hold that such Courts and Tribunals have only to make declaration which are not meant to be obeyed. This can never be conceived specially in cases of courts to which exclusive jurisdiction are vested and jurisdiction of ordinary Civil Court is

barred and ousted.....

36. In terms of Entry No. 46 of List II of the 7th Schedule, the State Legislature has the power to lay down the function and jurisdiction of the Court. It, therefore, necessarily has also the power to put restriction on the exercise of such powers and functions. As the Tribunal is to have all the jurisdiction and powers of a civil court, the Legislature had to make a provision barring its jurisdiction to pass an ex parte interim order. Even, under the provisions of Order 39, Rule 3 of the Civil Procedure Code, the jurisdiction of the civil court to pass an ex pane interim order has been curtailed and it can exercise such power only in an extraordinary circumstance as provided for therein and on assigning sufficient and cogent reasons therefore. There cannot, therefore, be any doubt that the Legislature has the necessary competence to put an embargo on the exercise of the Tribunal's power to grant ex parte interim injunction.

However, it goes without saying that in a given state the court after hearing the State or its officers may also grant such relief so as to undo a wrong, if any has been committed during the period a representation is filed and the matter is heard by the Tribunal in exercise of its inherent power or otherwise.

It must be borne in mind that there are various statutes under which even an accused cannot be granted bail without giving notice to and hearing the public prosecutors.

37. However, final orders passed by the Tribunal shall be a decree within the meaning of section 2(2) of the CPC and, as such, the same would be executable. Reference in this connection may be made to the case of (1947) L.R. 74 I.A. 264 (Privy Council) and Custodian, Evacuee Property Vs. Amarnath and Others, .

38. At this juncture, another submission of Mr. Saran may be noted. He, with reference to section 8(4) of the Act has submitted that, by reason thereof, the State Government is free to accept or reject the verdict of the Tribunal. There is nothing in the said provision to warrant such a contention. The said provision deals with the disposal of representations by the Tribunal and by the said provision merely the Tribunal is required to furnish a copy of its order to all concerned,

39. Mr. K.P. Verma, the petitioner in C.W.J.C. 2790 of 1986, has also raised another question. It has been contended that, in view of the constitution of the Tribunal, litigants have been deprived of the right to get the dispute relating to the service matter adjudicated upon by the civil courts which are nearer to their place of posting and, as such, have been deprived of a valuable right to have a court nearer to their borne or place of working. It is contended that the constitution of the Tribunal is against the directive principles of the State policy as enshrined in the Constitution. Thus it is that, in terms of Article 39A of the Constitution, the State is to secure that the operation of the legal system promote justice on the basis of equal opportunity and that the opportunity securing justice is not denied to any citizen. Apart from the fact that no

foundational facts have been laid down to show that only because the seat of the Tribunal is at Patna, the employees of the State have not been in a position to file their representations before the Tribunal in accordance with the provisions of the said Act but the very fact that in terms of section 5 thereof, the State Government or the Chairman has been specifically empowered to sit at such other place which may be specified from time to time clearly goes to show that, if specific numbers of representations are received from a particular region, it would be open to the State Government or even the Chairman of the Tribunal to hold the sittings of the Benches at such places. In view of the wide power conferred upon the State Government or the Chairman of the Tribunal to sit at any place, in my opinion, the same subserves the requirement of Article 39A of the Constitution.

40. In view of the finding aforementioned it must be held that the said Act including section 14 thereof is not ultra vires the Constitution.

41. Question No. 3:--Mr. Saran has submitted that the constitution of the Bench of the Tribunal has not been done in terms of section 3 of the Act. Although in terms of section 3(d) of the Act, one third of the members are required to have experience in judicial service or in law but such persons have not been appointed and now apart from the Chairman of the Tribunal no other person has the experience in judicial service or law. It has further been submitted that all the members of the Tribunal have been chosen from the executive side and their tenure is the pleasure of the Government.

42. Mr. Saran has further contended that if the Tribunal of this nature is manned by only judicial officers the same would restore confidence in the litigant public and the employees cannot expect justice at the hands of the I.A.S. and I.P.S. officers. Mr. Saran has further submitted that the very fact that the officers may have the second tenure at the discretion of the State clearly goes to show that such officers would pass orders only in favour of the State to have favours of the State Government by obtaining re-employment for the second term.

Mr. Saran has relied upon a decision of the Andhra Pradesh High Court in the case of K. Nageshwara Rao v. Union of India and others (1987 LIC 1802) and submitted that the Tribunal is not a real substitute of a civil court.

43. Section 3 of the said Act reads as follows:--

3. Composition of the Tribunal? (a) The State Government may by notification in the official Gazette constitute a Tribunal, to be called the Bihar Administrative Tribunal.

(b) The Tribunal shall consist of a Chairman and not less than two other members to be appointed by the Governor.

(c) The Chairman shall be a person who at the time of his appointment to the Tribunal is a Judge of High Court or is qualified to be a Judge of a High Court.

(d) Amongst others, one third of the members shall be the person having experience in the judicial service or law.

Section 4 provides for the tenure of the Chairman and the other members.

Section 9 provides for the procedure of the Tribunal which reads as follows:--

9 (1) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the Chairman from amongst the members thereof.

(2) Such of the matters other than those which are required to be heard and determined under sub-sections (3) and (4) of this section by a Division Bench or a full Bench or a full Bench may be heard and determined by a single member;

Provided that the member before whom the matter is posted for hearing may at any time adjourn it for hearing and determination by a Division Bench or a full Bench.

(3) Any matter the determination of which by the Tribunal involves any question of general application in relation to persons employed, not being any matter which is required to be heard and determined by a full Bench under sub-section (4) of this section, may be heard and determined by a Division Bench:

Provided that the member, before whom the matter is posted for hearing may at any time adjourn it for hearing and determination by a Division Bench or a Full Bench, in case he is satisfied that the matter involves a question of substantial importance.

(4) A Full Bench shall be a Bench of any number not less than three of the members and the following matters may be heard and determined by a Full Bench, namely,

(i) appointment or promotion to any post in respect of which the Tribunal exercises jurisdiction under this Act;

(ii) seniority of persons employed in respect of such posts; and

(iii) any other matter referred to it under sub-section (3) of this section;

(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall settle the point or points on which they differ, and the case shall then be referred by the Chairman for hearing on such point or points by one or more of the members (other than those who have first heard such case) and such point or points shall be decided according to the opinion of the majority of the members who have heard the case including those who first heard.

(6) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matter arising out of the exercise of its powers or of its functions.

44. Taking into consideration the objects and reasons of the Act, there cannot be any doubt that the said Act was enacted for the constitution of a permanent and impartial Tribunal. From the preamble of the said Act, It appears that the Tribunal is to be constituted for the purpose of adjudication of disputes in respect of matters relating to employment of all employees of the Government of Bihar. True it is that by reason of the provisions of the said" Act, the jurisdiction of the High Court has been taken away. It is further true that the Tribunal is not to act as a substitute of the High Court as, in the case of the Central Administrative Tribunals constituted under the Administrative Tribunal Act, 1985. Regard being had to the purpose for which the Tribunal has been constituted and further in view of the fact that the jurisdiction of the civil courts have been expressly barred under the provisions of the State Act there cannot be any doubt that subject to the provisions of this Act, the Tribunal is to impart justice to the employees of the State of Bihar in respect of their grievances against their employer, i.e. the State and others.

45. The disputes relating to service law are becoming complicated day by day. The Tribunal in a given case is not only required to adjudicate upon a question of fact but may also be required to interpret the provisions of the Constitution of India, various Acts, Rules and Circulars issued by the State of Bihar and may also have to consider different and various decisions of High Courts and the Supreme Court which may some time appear to be conflicting with each other.

46. The question as to whether laying down a qualification or holding a particular office presently or in the past should be a condition precedent for occupying the post of a member no direct authority has been cited nor any has come to our notice. However, in M.P. Jain and S.N. Jain's Principles of Administrative Law at page 184, it has been stated as follows:--

Adjudicatory functions may be entrusted to a single person or a multimember body. At times, no formal qualification may be prescribed for the person or persons appointed" to adjudicate; sometimes legal knowledge or training may be prescribed. Even knowledge in some other technical field may be laid down, e.g., a bench of the Income Tax Appellate Tribunal has one legal and one accountant member. In some cases, the adjudicatory body may be authorised to associate with itself an expert possessing special knowledge on a matter relevant to the enquiry to assist him.

The appointment and dismissal of the members of the adjudicatory bodies is in the hands of the executive, except in the case of a few "tribunals" where some restrictions have been imposed. For instance, the members of the Income Tax Appellate Tribunal are appointed through a selection committee consisting of a Judge of the Supreme Court, President of the tribunal and law Secretary of the Government of India. In a few cases in actual practice members of the "tribunals" are appointed in consultation with the High Court.

Similarly, in "O. Hood Phillips" Constitutional and Administrative Law," Sixth

Edition, at page 585, the matter relating to the appointment of members of tribunals has been stated thus:--

The Chairman of some tribunals are appointed by the Lord Chancellor, and the chairman of certain other tribunals are selected by the appropriate Minister from a panel of persons appointed by the Lord Chancellor.

The Council on Tribunals may make to the appropriate Minister general recommendations to the appointment of members of the tribunals specified in Schedule 1 (i.e., those under the supervision of the Council), and also of the relevant panels, and the Minister "shall have regard" to such recommendations.

A Minister may not, with certain exceptions, terminate the appointment of a member of a tribunal specified in Schedule, or of a relevant panel, without the consent of the Lord Chancellor.

In "Administrative Law" by P.P. Craig, 1983 Edition, at page 159, it has been stated as follows:--

A number of tribunals will have lay members as well as a chairman who is usually legally qualified. What type of people serve in such positions? Research which has been completed lends to confirm what one might well have expected. The average age is relatively high, a reflection of the fact that it is often only such people who can afford the time to undertake the task. The social background tends to be middle class, with an under representation of less privileged or ethnic groups. How far this actually influences decisions which are reached is difficult to measure. The platitude that we are all affected or "conditioned" by our social back ground is nonetheless an important one. Moreover in some areas appearances count for as much as reality whatever the true nature of the letter is. Thus feelings that middle class lay members may not always appreciate the difficulties of less privileged groups has been voiced particularly strongly in the context of supplementary benefit appeal tribunals.

The diversity in the type of tribunals is reflected in a similar variety in staffing arrangements. Some institutions have staff which have no connection with the civil service at all such as the clerk to local valuation courts, or where the tribunal work is incidental to other functions being performed, as in the case of the administration of the Civil Aviation Authority. For the most part staff are appointed by, and are connected with, the government department most closely concerned with the subject matter. Again the precise details of the staffing structure will vary from area to area. One aspect of staffing which has given rise to particular difficulties is in relation to the position of the clerk at a hearing. Sometimes he will retire with the tribunal as an adviser, but even when he does not do so questions have been raised as to the influence that he can exercise over the tribunal. The whole question of staffing of the tribunal system is a difficult one. As Wraith and Hutchesson have said.

For the moment it is sufficient to draw attention to the fact that although

tribunals are in theory as independent as the courts they are, in this particular matter, considerably less so in practice. For example, while Presidents and Chairman have increasingly been given an administrative or supervisory, as well as judicial role, they have no power to recruit staff, but must accept whomsoever a department, or its regional officer, may nominate; while the staffs themselves are in an ambivalent position, being seconded or "loaned" from the departments to which they belong and in which their future promotion and career may generally be assumed to lie; there being, as matters stand, no career prospect in the service tribunals alone. These arrangements place departments and staff alike in a potentially invidious position.

The suggestion that clerks should be appointed by the Lord Chancellor's Department rather than by the subject matter department was rejected by the Franks Committee. While recognising the advantages of independence that this would entail was felt to be impossible because there would be no real career structure that could be held out to such officers. Whether this is indeed a convincing rationale 25 years on is debatable. Wraith and Hutchesson have argued that the expansion in the number of tribunals, combined with the changing nature of the Lord Chancellor's Department, has altered the position, and advocate the creation of a separate tribunal service, a view worthy of further consideration.

It may be mentioned here that where all members take part in the proceeding, the decision of such Tribunal would be on the basis of the expertise of such persons and the common sense point of view propounded by the laymen members of the committee. As the Committee would be headed by a Chairman having legal knowledge, it is inconceivable that such Tribunal would pass order which would wholly be absurd. At this juncture, some of the permanent tribunals which are functioning in India may be noticed. Income tax Appellate Tribunal consists of a Judicial member and one Accountant member. In spite of the fact that the income tax Appellate Tribunal has been functioning for a long time, it has, from time to time, received adverse comments from the Law Commission in the following terms:--

We are constrained to observe that men of the requisite calibre and independence are not being recruited for discharging so heavy a responsibility as that of the final fact-finding authority under the new pattern of taxation. There are many complaints that the disposal of appeals by the appellate Tribunal is very unsatisfactory for a variety of reasons. Often, the judicial and independent approach, which is necessary in the final fact-finding authority, is not displayed by the tribunal. In several cases the determination of complicated questions of fact and law is done in a very perfunctory manner. Very often, the tribunal does not clearly record its findings of fact or its reasons for arriving at its findings. In a number of cases, factual or legal contentions raised by the parties are not dealt with at all resulting in applications for rectification being made subsequently.....to give satisfaction to the large number of assesseees. A

decision of an independent authority is an undoubted necessity if justice is to be done to them. There is considerable delay in disposal of the appeals and very often It is said that they (the tribunals) spare very little time for the appellate work with which alone they are concerned. Very often, the members of the tribunal attend (he sitting at any time they choose, thereby not conforming to regular office hours, for the disposal of the work. Branch of two members of the tribunal hears the appeals, but in practice the contribution to the decision of the case by one of the members is often not appreciable. (See "The Administrative Tribunals Law and Procedure" by M.L. Jand at pages 34-35).

Custom adjudication is done by a Collector or a Deputy Collector who is competent to adjudicate upon confiscation or penalty without limit. Such Collectors or Deputy Collectors have special qualifications to hold such post.

Railway Rates Tribunal which is successor to Railway Rates Advisory Committee deals with certain complaints of undue preferences and unreasonable rates and other minor matters relating to railway administration versus consumers. The Tribunal consists of a Chairman who at the time of his appointment is or has been a Judge of the Supreme Court and two other members "who have special knowledge of commercial, industrial or economic condition of the country or of the commercial working of the railway."

L.I.C Tribunal was created to adjudicate the adequacy of compensation to be given to insurers whose business was taken over. The Tribunal comprised of 3 members of whom at least one was to be a sitting/retired Judge of High Court/ Supreme Court, and one was to have special knowledge on matters relating to enquiry.

Similarly, under the Coking Coal (Nationalisation) Act, 1972 and Coal Mines (Nationalisation) Act, 1973, such Tribunals are invariably manned by the Judges of the High Court and/or judicial officers.

The Tribunal under the Coal Bearing Areas (Acquisition and Development) Act 1957, consists of one member who is or has been or is qualified to be a High Court Judge.

However, the Central Government is entitled to nominate the member and in a particular case having the knowledge in mining to assist tribunal and, in such case, the person interested may also nominate any person for the same purpose.

Under the Waste Lands (Claims) Act, 1863, a special court is to be constituted comprising an even number of persons not less than 3 persons and one member of the court shall be a Judge of the district and or original jurisdiction of the district. Such a tribunal, however, on its own motion or on an application of any of the parties, if any question of usage having the force of law or construction of a document affecting the merits of the case shall arise, which it shall entertain reasonable doubts, will draw up a statement of the case and submit it with its opinion for the opinion of the High Court or the highest Civil Court of Appeal and

Revision in the territory in which the land is situate.

In terms of Workmen's Compensation Act, the Commissioners need not have any qualification as no such qualification had been prescribed. But it is well known that such a Commissioner is a high ranking officer of the Labour Department. In Bihar, Labour Courts are normally appointed as Commissioner under the Workmens' Compensation Act, 1923. By virtue of the notification issued in the year 1956 by the State of Bihar, if a claim is disputed by the employer, in such event, the Commissioner of Workmens compensation is bound to refer such dispute to a Labour Court constituted under the provisions of the Industrial Disputes Act for such adjudication. In terms of section 30 of the said Act, an appeal is provided on a question of law to the High Court.

Under the Minimum Wages Act, the incumbent of the office may be a Commissioner for Workmens Compensation or an officer of the State Government not below the rank of a Labour Court or a Judge of the Civil Court.

Under the State Employees Insurance Act, 1948, the Judge must be a person who is or has been a judicial officer or is a legal practitioner of five years' standing. In Bihar, District Judges have been appointed as Courts under Employees State Insurance Act.

Under the Motor Vehicles Act, 1939, the qualification has been laid down for a member of the Tribunal.

Rent Controllers are appointed throughout the State and the relevant statutes lay down the qualification therefor.

In terms of Foreign Exchange Regulation Act, 1953, the Appellate Board is to consist of the Chairman and not more than 4 members. However, no qualification has been prescribed for appointment to the Board and, so, the matter lies with the Government who may appoint any person whom it thinks fit and proper for the assignment. However, an appeal lies to the High Court on questions of law.

So far as the Tribunal under the Indian Companies Act is concerned it was to consist of a Chairman who is a sitting or a retired Judge of the High Court or is qualified to be appointed as such and other members whom the Government may deem fit but the said Tribunal has been abolished.

Under the Drugs Act, the Commission consists of 2 to 8 members and the Chairman; where as the Chairman must be a person who is or has been or is qualified to be a Supreme Court Judge or High Court Judge; other members of the Commission should have adequate knowledge of economic law, commercial accountancy, public affairs or administration. The Commission, of course, has various functions to perform including investigatory or advisory ones.

47. From the aforementioned conspectus of the constitution of various Tribunals, it is clear that except in one or two cases, qualification of members or the presiding officers has been statutorily prescribed.

Jag Griffith & H. Street in the "Principles of Administrative Law". Fifth Edition, at page 147, have dealt with the matter relating to Adjudications on matters of law and fact and the application of standards" and have observed as follows:

.....one may expect, therefore, to find non-legal specialist personnel on tribunal of this class. What is a "fair" rent; "adequate" compensation for a dispossessed land owner; are premises "educationally suitable", is a building of "special architectural interest"; is work "available"? These are typical examples of legal standards the working out of which has been entrusted to administrative bodies.

I have not taken into consideration the constitution of various Domestic Tribunal like those constituted under Medical Council Act, 1956, Licensing Order like Coffee Act.

Having regard to the nature of the provisions of the Act as also the functions, in my opinion, it would have been better if either minimum qualification of a member is laid down or at least the position which is being or has been held by a person as an officer of the State ought to have been unequivocally stated. It must be remembered that the position of members of tribunal lies somewhere in between the Judge and staff. Unlike Judge of a subordinate court, a member of the tribunal is not under the control of the High Court in matters of appointment, etc. Powers are conferred directly on the tribunal by statute and its officer enjoys higher status than ordinary civil servants.

So far as the administrative tribunal is concerned, there is no provision for preferring an appeal against its orders. In absence of any appellate form, even a gross mistake of facts committed by a member of the tribunal cannot be corrected.

S.A. De Smith in his "Judicial Review of Administrative Action" at page 30 states as follows:--

The High Court seldom review administrative findings of fact unless (i) a question of fact arises in ordinary civil proceedings (e.g. in an action for an injunction against a public body), or (ii) the administrative finding "goes to jurisdiction" (though even then the court will be reluctant to resolve a conflict of evidence in proceedings conducted by affidavits), or (iii) the findings are manifestly wrong, in which case they are likely to be characterised as erroneous in point of law. The court, unlike most of the continental administrative courts, lacks effective inquisitorial powers; and British administrative bodies, unlike American regulatory agencies, do not usually compile formal records setting out in detail the evidence and findings of fact. In Britain, judicial self-restraint in these matters is based on grounds of policy as well as practical considerations. The courts regard their primary role in administrative law as the maintenance of standards of legality rather than ensuring that administrative bodies get their facts right, although a tendency to require factual reliability as a condition precedent of legality is discernible.

Dicey has expressed himself with pride the virtues of regular courts monopolising the business of adjudication of disputes between the administration and the individual in England and with a sense of contempt about the dichotomy between the regular courts and the administrative courts of the French system. However, the French system known as "droit administratif" has once to stay.

However, in view of the decision in Sampat Kumar's case (supra) the right of a citizen to get his dispute adjudicated by an impartial and important tribunal must be held to be embedded under the Constitution. Such a right of an employee of the State to get his grievance redressed by an impartial tribunal must now be held to be a fundamental right so contained in Articles 14, 16 and 21 of the Constitution.

Taking into consideration the aforementioned matters the qualifications of the members of the tribunal, their position and other allied matters should be viewed. In terms of the Act the executive has been conferred upon an unfettered power to make appointment. In England, the Franks Committee had recommended that the Chairman of the tribunal should be appointed by the Lord Chancellor and the Member should be appointed by the Council on Tribunals. It was further recommended that even where the Crown is the appointing authority, recommendations for appointments should be made by the Lord Chancellor, as regards removal, the committee recommended that responsibility for the removal of chairman and members should rest with the Lord Chancellor. The said recommendations, have, however not been given effect to under the Tribunals and Inquiries Act, 1958 (now Act of 1971) although the 1971 Act was enacted pursuant to the aforementioned recommendations.

In this situation, it is high time that the Central Government and the State Government should evolve a requisite system for laying down qualifications, particularly, while setting up tribunals which adjudicate upon complicated matters like service matters.

In Sampat Kumar's case (supra), the Supreme Court in relation to service disputes has observed that "some of these questions are so difficult and complex that they divert minds of even trained judges of the High Courts and the Supreme Court."

By reason of section 3(d) of the said Act, one-third of the members shall be persons having experience in judicial service or in law but from the facts stated hereinbefore, it appears that, according to the respondents, even the persons who acted merely as an executive magistrate comes within the purview of section 3(d) of the said Act. The Tribunal constitute under the Administrative Tribunal Act; the Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act and similar other Acts provide for qualification of presiding officers. Even under the provisions of the Industrial Disputes Act the qualification of the Presiding officer of the Labour Courts and Industrial Tribunal have been prescribed. it may be noticed here that under various other Statutes where

special Tribunals are constituted the qualification of the Presiding Officer and/or member thereof has been prescribed. In some other statutes, of course, the authorities under the said Act are to be appointed by the State of Bihar itself but then again the basic minimum qualifications for holding the said posts are always laid down.

Even in terms of section 7A(3) of the Industrial Disputes Act where the procedure is a summary one and the provisions of the Evidence Act are not applicable, the basic minimum qualification for holding the post of the Presiding Officer has been laid down. On the other hand, as has been noticed herein before, the Tribunal under the said Act is not only to exercise all the powers and to follow the procedures as laid down under the CPC but also it, as noticed hereinbefore, has to adjudicate upon the disputes relating to one of the most difficult branches of law.

In *K. Nageshwara Rao v. Union of India and others* (supra) a Division Bench of the Andhra Pradesh High Court has observed as follows:--

.....Experience has shown that the Service law is one of the difficult branches of law. Very often, questions are so intricate so elaborate, and inter-mixed with legal and constitutional questions that no simple answers are possible. We know of dismissal being fought upto the Supreme Court, with varying results.....

Having regard to the provisions contained in section 9 of the Act, it is possible that serious dispute may have to be resolved by the Bench, member/members whereof may not have even the minimum knowledge of law and experience of writing any judgment.

48. It has to be borne in mind that apart from the question of law, the Tribunal may also be called upon to adjudicate upon the complicated questions of fact that no appellate forum has been provided under the said Act the finding of fact recorded by the Tribunal may be held to be final as normally such findings of fact are not interfered with by the High Court in a writ petition or by the Supreme Court under Article 136 of the Constitution. It is possible to have disputes of complicated nature adjudicated upon by an officer of the State or by person who has retired from the service of the State but even in such cases the officers of the State must be high ranking officers so as at least to ensure impartiality.

The Presiding Officers of the Tribunal are expected to act independently. Such independence can be expected only of an officer of a high rank or from a person who is otherwise qualified to hold the post. Even under the provisions of the U.P. Public Service Tribunals Act, 1976, the Tribunal is to consist of judicial member and an administrative member and the qualification for both such members have been prescribed.

49. Under the Act, a term of three years has been prescribed. This aspect of the matter has been fully considered in *Sampat Kumar's* case by the Supreme Court; by the Andhra Pradesh High Court in *K. Nageshwara Rao*; and by a

Division Bench of this Court in Awadhesh Kumar Singh Vs. State of Bihar and Others, .

50. In Sampat Kumar's case, Bhagwati, C.J. held as follows:

.....But so far as the appointment of Chairman, Vice-Chairman and administrative members is concerned, the sole and exclusive power to make such appointment is conferred on the government under the impugned Act. There is no obligation cast on the government to consult the Chief Justice of India or to follow any particular selection procedure in this behalf. The result is that it is left to the absolute unfettered discretion of the government to appoint such person or persons as it likes as Chairman, Vice-chairman and administrative members of the Administrative Tribunal. Now it may be noted that almost all cases in regard to service matters which come before the Administrative Tribunal be against the government or any of its officers and it would not at all be conducive to judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice Chairman and administrative members, if a Judicial member or an administrative member is looking forward to promotion as Vice Chairman or Chairman, he would have to depend on the goodwill and favourable stance of the executive and that would be likely to affect the independence and impartiality of the members of the Tribunal. The same would be the petition vis-a-vis promotion to the office of Chairman of the Administrative Tribunal. The Administrative, members would also be likely to carry a sense of obligation to the executive for having been appointed members of the Administrative Tribunal and that would have a tendency to impair the independence and objective of the members of the Tribunal. There can be no doubt that the power of appointment and promotion vested in the executive can have prejudicial effect on the independence of the Chairman, Vice-Chairman and members of the Administrative Tribunal, if such power is absolute and unfettered. If the members have to look to the executive for advancement, it may tend, directly or indirectly, to influence their decision making process particularly since the Government would be a litigant in most of the cases coming before the Administrative Tribunal and it is the action of the Government which would be challenged in such cases. That is the reason why in case of appointment of High Court Judges, the power of appointment vested in executive is not an absolute unfettered power but it is hedged in by a wholesome check and safeguard and the President can make an appointment of a High Court Judge without consultation with the Chief Justice of the High Court and the Chief Justice of India and a healthy, convention has grown up that no appointment would be made by the Government which is not approved by the Chief Justice of India. This check or safeguard is totally absent in the case of appointment of the Chairman, Vice-Chairman and administrative members of the Administrative Tribunal and the possibility cannot be ruled out-indeed the litigating public would certainly carry a feeling-that the decision-making process of the Chairman, Vice-Chairman and members the Administrative Tribunal might be likely to be affected by reason of independence on the executive for appointment and promotion. It

can no longer be disputed that total insulation of the judiciary from all forms of independence from the coordinate branches of government is a basic essential feature of the Constitution. The Constitution-makers have made anxious provision to secure total independence of the judiciary from executive pressures or influence.....

51. True it is that in the aforementioned cases, the Supreme Court and the High Courts were concerned with the cases in relation to Tribunals which would be real substitutes for High Court but, in my opinion, there cannot be any doubt, although Tribunals may not have to be teal substitutes for the High Courts but it must provide for a forum as provided for in its statements of objects and reasons.

52. It is now well settled that the judicial review is a basic feature of the constitution.

Reference in this connection may be made to the case of *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, wherein Bhagwati J., (as he then was) observed as follows:

The power of judicial review is an integral part of our constitutional system and without it, there will be no government laws and the rule of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution. Of courses, when I say this I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament. But what I wish to emphasise is that judicial review is vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. If by a constitutional amendment, the power of judicial review is taken away and it is provided that the validity of any law nude by the legislature shall not be liable to be called in question on any ground, even if it is outside the legislative competence of the legislature or is violative of any fundamental rights, it would be nothing short of subversion of the constitution, for it would make a mockery of the distribution of legislative powers between the Union and the States and render the fundamental rights meaning less and futile. So also if a constitutional amendment is made which has the effect of taking away power of judicial review.

53. As seen hereinbefore, so far as the appointment of members is concerned, except the judicial members, no criteria has been laid down nor any guideline has been fixed. As seen hereinbefore, eves no qualification has been prescribed. Such absence of guidelines in the provision of section 3 of the Act is indeed surprising, inasmuch as the Government normally lays down qualification even for appointment of class III posts. Some criteria and qualifications have all along been considered to be a pre-requisite for entering into service of the State. The State cannot, in view of Articles 14 and 16 of the Constitution, be left with a wide

discretion to appoint anybody and everybody as its employee, particularly, for the purpose of holding such a high office as a member of the Tribunal which has adjudicatory functions to perform in an adversary system.

54. The Tribunal is required to decide disputes between the adversaries and in most of the cases the State being the adversary, it was expected of the State to constitute an impartial Tribunal. It is now well settled that justice is not only be done but also manifestly seem to be done. It is further well settled that a member of the adjudicatory Tribunal should not be biased whether the same is in relation to the subject matter of the dispute or a personal or pecuniary one.

It is, well settled that openness, fairness and impartiality constitutes basic structure of good administration (see *Vivekananda Travels v. Secy., State Transport Authority* (1987) 91 C.W.N. 491].

In the case of *Tomey v. Chio*, (1927) 275 B.S. 510, the necessity of an impartial Tribunal has been stressed.

In the instant case, the Tribunal which is a final court of fact is required to resolve the disputes of the parties not only judiciously but also judicially.

55. The provisions contained in section 3 of the said Act have to be considered on the back-drop of the statement of law propounded by the Supreme Court and as noticed herein, before. However, in the instant case, the petitioners have not questioned the vires of section 3(1) of the Act on the ground that the same has been rendered unconstitutional in absence of any guideline indicated by the legislative Act by not laying down any minimum qualification to be possessed by the member of the Tribunal for the nature of the office, if any, he was required to hold before he is appointed as a member of the Tribunal. However, the guideline for upholding the validity of the section may be construed in the light of the requirement contained in section 3(d) of the said Act from a perusal whereof it would be evident that the legislature in its wisdom has issued a mandate upon the State Government to constitute this Tribunal in such a manner as that one third of its members must be persons having experience in judicial service or in law. The word used in section 3(d) is "shall" and, therefore, the same is mandatory in nature. Having regard to the scheme of the Act as also the necessity of constituting an impartial Tribunal there cannot be any doubt that the Tribunal of the kind, as in the instant case, cannot function unless there are some members who have experience in judicial service or in law. The words "having experience in judicial service or law" are significant enough to point out the legislative intent and, in my opinion, the same has got to be given effect to by the State being imperative in nature. This position has also not been questioned by the learned Advocate-General or by the learned Government Advocate. The very fact that on behalf of the State it has been submitted that two of the members have been appointed in terms of section 3(d) of the Act, it is absolutely clear that the State also accepts that without such members being in the Tribunal the constitution thereof would be illegal. However, the State of Bihar

will be well advised to make suited amendment in section 3 of the Act laying down minimum qualifications for appointment of members and/or issuing requisite guide line in relation thereto so as to save the said provision from being challenged as unconstitutional.

56. As would be noticed from the discussions made hereinbefore, none of the members except the Chairman have any judicial experience/Two of the members are retired I.A.S. Officers; one is a retired I.P.S. and another is a retired Chief Engineer. The State, as noticed hereinbefore, in its counter-affidavit, states that the respondents 3 and 4, i.e., Sri S.K. Sinha and Sri N. Kujur have sufficient experience and knowledge of law as they allegedly worked as Presiding Officers of various courts for several years. So far as Shri Sinha is concerned, it is stated that he being a member of the Indian Administrative Service was posted in the capacity of Sub-Divisional Officer, Deputy Commissioner and District Magistrate and Collector till 31.7.1959. Similarly, in respect of Shri Kujur, he being a member of the State Civil Services, he was Second Class Magistrate in 1954 and he was also given the power of First Class Magistrate in 1957. It was stated that he also functioned as District Magistrate, Saharsa.

57. The very fact that the Tribunal is to be constituted for providing an impartial forum for adjudication of service matters, the legislature in its wisdom thought it fit to make such a Tribunal an impartial one by providing with at least one-third of the members having experience in judicial service or law. A person who is holding the post of Sub-Divisional Officer or the District Magistrate may or may not have the experience in law. The words "experience in law" must be construed in such a fashion so as not to bring within its embrace such persons who at one point of time or other had something to do with law or had been the presiding officers of some courts. "Experience in law" in the contest of service laws any not mean experience in criminal law. Further, the respondents Nos. 3 and 4 held the office of the Sub-divisional Officer and District Magistrate long back.

58. The Supreme Court in Sampat Kumar's case (supra), categorically held that a Secretary of the Central Government who also may have some experience as S.D.O. / Collector at the threshold of the career cannot be said to be a person having experience in law. The words "having experience in law" must, therefore, be interpreted in the context of the words "having experience in judicial service".

The learned Advocate General has placed strong reliance on a decision in the case of Statesman (Private) Ltd. Vs. H.R. Deb and Others, wherein it has been held that a Magistrate holds a judicial office.

Before dealing with the aforementioned case, it is significant that the State in its counter-affidavit has merely stated that the respondents 3 and 4 have also knowledge of law because they have worked as Presiding Officers. In the case before the Supreme Court, it was held that the respondent was qualified to hold the office of a Labour Court as he had been holding a fixed post for 19 years and

performing the functions primarily of a judicial character. Such is not the position here. It has not been stated that the functions of respondents 3 and 4 primarily were of judicial character. In this view of the matter, it cannot be said that they are qualified to hold the office having experience in judicial service. A person, merely because he happens to be a Sub-Divisional Officer or the District Magistrate, cannot be said to have gained experience in law. Under the Industrial Disputes Act, a person is qualified to become the Presiding Officer of a Labour Court if he has held a judicial office. In terms of section 3(d) of the Act the person must have experience in judicial service but the executive officers cannot be said to have any experience in judicial service.

59. The words "experience in law" must be construed in the context in which it has been enacted. In the Instant case, the word "experience" is very significant. Although the same does not mean that the person must be holding judicial office for the purpose of gathering experience but the same certainly means that he has acquired such knowledge in law while dealing with legal matters and, thus, acquired enough experience to discharge the functions of the Tribunal. The adjudicatory function of the Tribunal is in relation to civil disputes. A person who has held the office of a Magistrate and that too decades back cannot be said to have experience in law so as to be qualified to be appointed as a judicial member of a Tribunal meant to adjudicate upon civil disputes. It is a well settled principle of law that the provision should be construed in conformity with the legislative intention, schema of the Act and public policy. It is a further well settled principle of law that the statute should be construed after ascertaining legislative intent and the context and scheme of the Act.

60. By reason of the provisions of the said Act, the members of the Tribunal who are to be appointed for discharging their adjudicatory functions are of two types- judicial members and non-judicial members. The very fact that the qualifications required for becoming a judicial member of the Tribunal are (a) experience in judicial service; (b) experience in law, clearly goes to show that such experience in judicial service or experience in law must be such so as to enable such member to discharge his functions judicially and not administratively. A person who had held a job on the executive side and has merely for some time in course of his performance of such functions as an executive officer also performed functions of a judicial character, would not in my opinion make him either a person having experience in judicial service or "experience in law."

Reference in this connection may be made to the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, wherein the Supreme Court has held as follows:--

Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute

must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole as a whole and discover what each section, each clause, each phrase and each word is meant and designed to any as to fit in to the scheme of the entire Act. No part of a statute and to word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place....

61. It may further be borne in mind that the very fact that one-third of the members shall be persons having experience in judicial service or law categorically exclude such persons whose main functions were executive in nature.

In this connection, reference may further be made to "The Interpretation and Application of Statutes" by Reed Dickerson. The author at page 135 has discussed the subject while dealing with the importance of context in the following terms:--

.....The essence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience."

It is, therefore, in my opinion, absolutely clear that the classification of such persons who come within the purview of section 3(d) of the Act must be construed with reference to the words "having experience in judicial service" and "having experience in law", in the context of section 3 of the Act to mean the persons who are experienced in adjudication upon disputes in an adversary system or have an in-depth knowledge of both substantive and procedural law.

62. The contention of the respondents, therefore, cannot be accepted that the respondents 3 and 4 have acquired sufficient experience in law only because they happened to hold the posts of S.D.O. and District Magistrate for some time at the threshold of their career. Such does not appear to be the intention of the legislature in enacting section 3(d) of the Act.

63. In this view of the matter, there cannot be any doubt that Shri S.K. Sinha and Shri N. Kujur do not have the experience either being in judicial service or in law as required in terms of section 3(d) of the Act. On this ground alone, the constitution of the Tribunal has to be declared as illegal. In the instant case I do not think that it would be proper to quash their appointments. In this situation, I am constrained to issue a writ of mandamus upon the State of Bihar to appoint sufficient number of members who would be having experience in judicial service or experience in law so that the number of such members may become one-third of the total number of members comprising the Tribunal within two months from

today.

64. However, it may be observed by way of clarification that the judgments so long rendered by the Tribunal cannot either be void or nullities but they must be held to be valid in terms of the de-facto doctrine of holding office". Reference in this connection may be made to the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, .

65. Before parting with the case, a serious infirmity in section 9 of the Act may be noticed. In terms of section 9(4) of the Act, the matters relating to appointment of promotion or seniority are to be heard by a Full Bench but there appears to be no bar in the hearing of the matter relating to termination of service dismissal, discharge or removal from services or reduction in rank by a Division Bench. Complicated questions of facts and law may arise where punitive measures by way of dismissal, removal or reduction in rank are taken up a member of the service on the basis of a departmental proceeding.

66. In view of the fact that the right of employment has been held to come within the purview of Article 21 of the Constitution, it does not appeal to any reason as to why such matters are not given as much importance, if not more, as is given in the case of appointment, promotion or seniority. However, as the vires of the said provision has not been challenged before us nor any foundational facts have been stated in the writ applications as to whether such matters should be adjudicated by a single member or a Division Bench of the Tribunal or not, I refrain myself from making any pronouncement of this issue, as at present advised. However, it is expected the Chairman and the members of the Tribunal shall bestow certain considerations over the same. However, in order to obviate any difficulty the State should also make suitable amendment in the said provision so as to remove the anomaly in the matter. In the result, the application is allowed to the extent mentioned hereinbefore. However, on the facts and in the circumstances of this cases, there will be no order so to costs.

N.P. Sinha, J.

I agree.