Efficacy of Administrative Tribunals in Bangladesh: Jurisdictional, Procedural and Structural Issues

SHARMIN AKTAR

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Department of Law
University of Dhaka

CERTIFICATE OF SUBMISSION

This is to certify that this Ph.D. thesis, titled 'Efficacy of Administrative Tribunals in Bangladesh: Jurisdictional, Procedural and Structural Issues' has been prepared by Sharmin Aktar under my supervision.

The researcher has fulfilled all the requirements of submission of thesis as prescribed by the rules and regulations of the University of Dhaka. I, therefore, recommend this thesis for submission and evaluation for the award of the degree of Doctor of Philosophy.

Date:

(Dr. Borhan Uddin Khan)
Professor and Chairman
Department of Law
University of Dhaka

ABSTRACT

The thesis examines efficacy of Administrative Tribunals of Bangladesh to identify and explore in depth the implications of this major public law for practical applications. The findings of this examination are located and then interpreted with a view of assessing how far Bangladesh needs to go for having an effective Administrative Tribunal regime of a reasonable standard. Outlining the historical legacy and contemporary developments of Bangladesh including France, England, India and Pakistan, taking into consideration theories, analyzing everything so far as Administrative Tribunals are concerned, it is demonstrated that these Tribunals are yet to be developed in a coherent manner and are perceived by law-makers as alternative institutional mechanisms of justice rather than matters of public policy. Legislations do not contain any in-built mechanism to promote smooth justice and in many cases these remain part of the problem rather than part of the solution.

Administrative Tribunals are efficient subject to defects or imperfections noted in the thesis, which means they have attained conditional efficacy; and efficacy in full swing will be reached after a specific time span. Indeed, it is a matter of no doubt that the search for efficacy of a single institution constantly remains a never-ending revisiting of issues and many possibilities of solutions cannot be predicted at all times, and for all places and all scenarios; and hence, what has been seen at present to occur in our Tribunals certainly calls for ameliorative efforts in the thesis. As a whole, it is proposed that the obstacles need to be addressed and require context-specific solutions. It is thus concluded by recommending steps to be followed by the state to strengthen this institution.

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LIST of ABBREVIATIONS

A.T. Execution Suits	Administrative Tribunal Execution Suits
A.T. Suits	Administrative Tribunal Suits
AAT	Administrative Appellate Tribunal
AC	Appeal Cases
ACAS	Advisory, Conciliation and Arbitration Service
AIR (All)	All India Reporter (All)
AIR (Cal)	All India Reporter (Calcutta)
AIR (P.C.)	All India Reporter (Privy Council)
AIR (SC)	All India Reporter (Supreme Court)
AIR	All India Reporter
AL	Awami League
All ER	All England Law Reports
Art.	Article
Arts.	Articles
AT	Administrative Tribunal
ATC	Administrative Tribunal Cases
BCR (AD)	Bangladesh Case Reports (Appellate Division of the Supreme Court of Bangladesh)
BCR (HCD)	Bangladesh Case Reports (High Court Division of the Supreme Court of Bangladesh)
BLC	Bangladesh Law Chronicles

BLC (AD)	Bangladesh Law Chronicles (Appellate Division of the Supreme Court of Bangladesh)
BLC (HCD)	Bangladesh Law Chronicles (High Court Division of the Supreme Court of Bangladesh)
BLD (AD)	Bangladesh Legal Decisions (Appellate Division of the Supreme Court of Bangladesh)
BLD (HCD)	Bangladesh Legal Decisions (High Court Division of the Supreme Court of Bangladesh)
BLD	Bangladesh Legal Decision
BLT	Bangladesh Law Times
BLT (AD)	Bangladesh Law Times (Appellate Division of the Supreme Court of Bangladesh)
BLT (HCD)	Bangladesh Law Times (High Court Division of the Supreme Court of Bangladesh)
Cal.	Supreme Court of California
CAT	Central Administrative Tribunal
CRO	Civil Rules and Orders
CRPF	Central Reserve Police Force
CRPF SLR (Cal)	Central Reserve Police Force Service Law Reporter (Calcutta)
DLR (AD)	Dhaka Law Report (Appellate Division of the Supreme Court of Bangladesh)
DLR (HCD)	Dhaka Law Report (High Court Division of the Supreme Court of Bangladesh)

DLR	Dhaka Law Report
EAT	Employment Appeal Tribunal
ERRA	Enterprise and Regulatory Reform Act
FtT	First-tier Tribunal
Govt.	Government
HCD	High Court Division
HMRC	Her Majesty's Revenue and Customs
HR	Human Resource
ICC	Interstate Commerce Commission
ILR (Bom)	International Law Report (Bombay)
JT (SC)	Judgment Today (Supreme Court)
KB	King's Bench
MDMR	Ministry of Disaster Management and Relief
Mich.	Supreme Court of Michigan
MLR (AD)	Mainstream Law Reports (Appellate Division of the Supreme Court of Bangladesh)
MLR (HCD)	Mainstream Law Reports (High Court Division of the Supreme Court of Bangladesh)
MLR	Mainstream Law Report
Mont.	Supreme Court of Montana
NLR	National Law Report
NWFP Service Tribunal	North-West Frontier Province Service Tribunal
NWFP	North-West Frontier Province

PLD	Pakistan Legal Decisions
PLJ	Pakistan Law Journal
SC	Supreme Court
SCC	Supreme Court Cases
SCMR	Supreme Court Monthly Review
SJC	Supreme Judicial Council
SLR (Cal)	Service Law Reporter (Calcutta)
SLR (Delhi)	Service Law Reporter (Delhi)
Supp SCR	Supplement Supreme Court Reports
The AT Act	The Administrative Tribunals Act
The AT Rules	The Administrative Tribunals Rules
The CPC	The Code of Civil Procedure
U.S.	United States Supreme Court
UDA	Upper Division Assistant
UT	Upper Tribunal
WLR	Weekly Law Reports

Chapter One
Introduction

1.1 Introduction and Background of the Study

Administrative law is as old as government itself and it stems from the proliferation, as a functional response to the changing needs of the world community.[1] In its modern connotation it was not recognized as a separate branch of law until the nineteenth century. Indeed, such recognition was not widespread until the twentieth century in the Anglo-American countries and the dominance of private law was the reason for this delay. Administrative law is essentially part of the private law of persons and in England and the United States administrative law was unknown. However, whether or not administrative law has a proper place in the Common Law world is now a dead issue,[2] though the debate about distinguishing public law and private law has been wide-ranging and variously focused and the distinction has contributed to a paradox in legal thinking.[3]

The Dicey theory that anything like a *driot administratif* is incompatible with the traditions and principles governing the Common Law have been swept away by the inexorable needs of modern industrial society and the welfare state.[4] In the United States the rise of administrative

[1] Chiti, E. and Editors, B. G. M., *Global Administrative Law and EU Administrative Law* (Verlag Berlin Heidelberg: Springer, 2011), 1.

[2] Friedmann, W., "French Administrative Law and the Common Law World", *University of Toronto Press* 11, no. 1 (1955): 143.

[3] Allison, J. W. F., "Variation of View on English Legal Distinctions Between Public and Private", *Cambridge University Press* 66, no. 3 (2007): 698.

[4] See above, note 2.

law is contemporaneous with the need for governmental regulation of industry. Such a need led to the creation in 1887 of the Interstate Commerce Commission (ICC). In the years that followed the creation of the ICC the same need for regulation was felt in other parts of the American economic scene. This was especially true during the period following the economic crisis of 1929. The result has been the establishment of a host of regulatory agencies modeled on the ICC. The most important are the Federal Trade Commission, established in 1914, regulating unfair trade practices; the Federal Power Commission, 1930, regulating water, electric, and gas power; the Federal Communications Commission, 1934, regulating broadcasting and wire communications; the Securities and Exchange Commission, 1934, regulating dealings in securities; the National Labor Relations Board, 1935, regulating labor practices; and the Civil Aeronautics Board, 1938, regulating aviation. American administrative law developed from the operation of these different regulatory agencies, vested with significant powers to determine, by rule or by decision, private rights and obligations. During the 1920s courses on administrative law began to be offered in law schools, the American Bar Association set up a special committee on the subject, and it came increasingly to occupy the attention of courts and lawyers.

On the other hand, in Britain the development of administrative law is intimately connected with the modern growth of social-service functions of the state. During the sixteenth and seventeenth centuries, the Star Chamber was created, a Supreme Court which dealt with crimes of political significance and the Chamber imposed a strict control over the organs of local government and the exercise of judicial and administrative functions.[5] In the first part of the nineteenth century Parliament swept aside the archaisms that had become encrusted in the Common Law. Toward the end of the century it was seen that negative reform of this type was not enough; public

[5] Kiinnecke, M., *Tradition and Change in Administrative Law* (Verlag Berlin Heidelberg: Springer, 2007), 75.

opinion required the state to bring ever-increasing parts of the population under its guardianship. The growth of social-service agencies led British jurists of the twentieth century to reject Dicey's denial of the existence of administrative law.[6] In fact, from the historical Diceyan perspective, the various institutional and procedural shifts of the late nineteenth and twentieth centuries towards a distinct public law applied by specialized administrative tribunals or according to special procedures were threatening departures from tradition.[7] The proliferation of various administrative tribunals to resolve the disputes of an expanding and increasingly complex administration were belatedly recognized by Dicey,[8] and denounced by Lord Chief Justice Hewart.[9]

Even afterwards, the report of the Committee on Ministers' Powers of 1932 and the Report of the Committee on Administrative Tribunals and Enquiries (the Franks Committee) led to the Tribunals and Inquiries Act, 1958 which contributed a lot to the development of administrative law in England.[10] In 1963 judicial attitude towards administrative law was changed when the House of Lords revived the principles of 'Natural Justice'.[11] It was given still further impetus by a group of striking decisions in 1968-69.[12] Since then judges have shown no reluctance to reformulate principles and consolidate their gain. They have pressed on with what Lord Diplock in a case of 1981 described as "that progress towards a comprehensive system of administrative

[6] Thakker, C. K., and Thakker, M. M. C., *Lectures on Administrative Law* (Lucknow: Eastern Book Company, 2011), 10.

[7] See above, note 3, 706.

[8] Dicey, A. V., "*Droit Administratif* in Modern French Law", *Law Quarterly Review* 17, (1901): 302.

[9] See above, note 3.

[10] Wade, S. W. and Forsyth, C., *Administrative Law* (New York: Oxford University Press, 2003), 15-16.

[11] Ridge vs Baldwin, (1964) AC 72.

[12] See above, note 10, 17.

law that I regard as having been the greatest achievement of English courts in my judicial lifetime."[13] At present courts are vigorously asserting their powers, now augmented by the Human Rights Act of 1998, and there seems to be no danger of another relapse.[14] England does not lack 'public law courts' – most Tribunals (notably the First tier and Upper tribunals) are effectively public law courts.[15] Different Tribunals, e.g., Employment Tribunals etc. are now functioning in England and so England is now following Continental countries but in a different dimension.

In Continental countries there is a special system of administrative courts whose sole concern is with administrative law.[16] The most striking difference between the Common Law and Civil Law system is the absence within the Common Law system of any separate administrative courts as they developed in Civil Law countries.[17] In France the subject has its beginnings in the post revolutionary era, with the setting up of the *Conseil d'État* at the end of 1799 and the creation within it in 1806 of a separate section to decide cases touching on the validity of administrative action, a function performed by law courts in Anglo-American countries.[18] The existence of a separate administrative court and its development of autonomous legal principles focused the attention of French jurists upon administrative law as a distinct subject worthy of doctrinal attention.[19] Due to the presence of jurists, the Council very early began to develop legal

[13] O'Reilly vs Mackman, (1983) 2 AC 237; Mahon vs Air New Zealand, (1984) AC 808.

[14] See above, note 10, 19.

[15] Cane, P., *Administrative Law* (New York: Oxford University Press, 2011), 4.

[16] Hall, D. E. and Hall, D., *Administrative Law* (London: Butterworts, 1983), 5.

[17] See above, note 5, 11.

[18] Zweigert, K. and Kotz, H., *Introduction to Comparative Law* (New York: Clarendon Press, 1998), 80-84.

[19] See for details, 'Administrative Law', available at: <http: //www.encyclopedia.com/topic/Administrative_law.aspx>, last visited on 26.11.15.

standards with which to temper the arbitrary control exercised by the Council over the governmental machinery.[20] That is why, the predominant aspect of French administrative law, unlike other types of French law, is that it is judge made, in spite of the fact that legislative statutes concerning administrative activity abound, and indeed are multiplying at a truly alarming rate.[21] At present in most of the Civil Law countries including France, two distinct set of courts are running, one is ordinary courts for civil and criminal cases and the other is administrative courts for administrative matters.[22] However, administrative law in England is applied by special administrative courts, while in France it is applied in the same courts.[23] All over the globe, the concept of Administrative Tribunals has evolved from this French *Conseil d'Etat*. Bangladesh is also the follower of this Civil Law system for Administrative Tribunals. What I have noted above is administrative Law at the national level. Global administrative Law is devoted to a case of involvement of private parties in the implementation of administrative law beyond the state.[24] The sector considered is climate change, where the instrument of the certification system has been used extensively both on the global and national level.[25]

However, among other things which administrative law includes are the civil rights and liberties of private individuals in their dealings with the state and with officials as representatives of the state.[26] It controls and prevents the excesses of power and tries to combat over there.[27] It is found

[20] Diamant, A., "The French Council of State: Comparative Observations on the Problem of Controlling the Bureaucracy of the Modern State", *The Journal of Politics* 13, no. 4 (1951): 563.

[21] Langrod, G., "The French Council of State: Its Role in the Formulation and Implementation of Administrative Law", *The American Political Science Review* 49, no. 3 (1955): 674.

[22] Gupta, H. P., *Comparative Law* (Allahabad: Central Law Agency, 1997), 58; See above, note 15.

[23] Chand, B., "Administrative Courts in England", *The Indian Journal of Political Science* 2, no. 2 (1940): 207.

[24] See above, note 1, 9.

[25] Ibid.

[26] Parker, E. M., "State and Official Liability", *Harvard Law Review* 19, no. 5 (1906): 340.

from the research done by public administration scholars that a great deal of unethical behavior among public servants alone or in collusion with political officials is one of the crucial considerations in the developing nations.[28] Two strategies are required to be adopted. First of all, an elaborate provision for the training of public officials, during which process emphasis is placed on ethics and values, rather than on the acquisition of knowledge and skills as in the past, has to be enacted.[29] Another strategy has been to create a range of external control mechanisms, that means, Administrative Tribunals, to complement or even compete with the existing internal public service responsibility requirements.[30] There are no doubt that procedural and functional mechanisms as well as principles evolved by the court for the purpose of controlling the misuse of the power of the government all over the globe is yet satisfactory.

Administrative law in all the countries is an instrument in the hands of middle class to combat administrative authoritarianism through the instrumentality of the court and there is need to make administrative law a shield for the majority of the people. So accountability of the government can be ensured by the tribunals, if people have easy access to it; and it is possible, if the procedure is informal, the trial is speedy and less expensive and there is a chance of instituting public interest litigation. It is noteworthy that the traditional theory of *Laissez Faire* has been given up and the old Police State has now become a Welfare State and because of this radical change in the philosophy as to the role to be played by the state, its functions have increased.[31]

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[27] See for details, 'Training Package on Administrative Law', available at: <http://persmin.gov.in/otraining/UNDPProject/undp_modules/Administrative%20Law%20N%20DLM.pdf>, last visited on 03.03.2013.

[28] Dwivedi, O. P. and Olowu, D., "Bureaucratic Morality: An Introduction", *International Political Science Review* 9, no. 3 (1988): 164.

[29] Ibid.

[30] Ibid.

[31] See above, note 6, 228.

To devise and carry out welfare schemes it is always necessary to affect adversely some private rights of property and personal liberty.[32]

Parallel to the welfare schemes that are trying to control whimsical administrative powers and thus to ensure the rights of government servants on the matters of terms and conditions of service, there emerged a number of options. The options were not prevalent in the British regime and government servants could not express their grievances against the British government. They are now allowed to go against the government in India, Pakistan and Bangladesh. Moreover, they are not enjoying full fruits of law because of the lack of power of the court to execute its decisions, not completing the proceedings in time and not awarding decision promptly. Consequently the state falls into trouble due to the clash and enmity among the government servants and lack of training, due diligence etc.

Undoubtedly, the main reason of creating separate Tribunals for dealing with special subjects is to bring into existence a body or bodies that will deal with disputes relating to those subjects speedily, efficiently and with concentrated attention, though there has long been ambivalence in attitudes towards the relationship between courts and tribunals.[33] In fact, a tribunal is a very efficacious instrumentality, which from a functional point of view is somewhere between a court and the government department exercising adjudicatory power.[34] However, the Administrative Tribunal is expected to take the load off the shoulders of not only ordinary Courts but of superior courts.[35] With the increase of various kinds of litigations it has been increasingly felt need to

[32] Fazal, M. A., *Judicial Control of Administrative Action in India, Pakistan and Bangladesh* (Allahabad: Law Book Company Pvt. Ltd., 1990), 1.

[33] Cane, P., *Administrative Tribunals and Adjudication* (Oxford: Hart Publishing, 2009), 266.

[34] Massey, I. P., *Administrative law* (Lucknow: Eastern Book Company, 2007), 181.

[35] Ibid, 618.

provide service holders quicker and cheaper justice. Excessive delay in settlement of their service matters not only affect individual moral but sap the vitality of the system as a whole in the long run. Administrative Tribunals are particularly designed to guard against such delays in dispensing justice, while keeping intact its spirit and quality. There is no doubt that these Tribunals will make for a more contended and efficient governmental machinery.

All over the world Tribunals are functioning side by side the ordinary courts of law because of some advantages it provides to justice seekers and administrators of justice. The social legislation of the twentieth century demanded Tribunals for purely administrative reasons: they could offer speedier, cheaper and more accessible justice and are essential for the administration of welfare schemes involving large number of small claims, whereas the process of courts of law is elaborate, slow and costly.[36] It is necessary to point out here that disputes and difficulties arising between public authorities and citizens are either settled by Administrative Tribunals or by ordinary courts.[37] In some countries there are no Administrative Tribunals and so administrative trials are brought before ordinary courts and settled by them in accordance with the provisions of administrative law,[38] whereas in other countries some administrative cases are brought before ordinary courts and others before Administrative Tribunals.[39]

Bangladesh has adopted the second alternative. Parallel to twentieth century demand, Administrative Tribunals in Bangladesh are trying to maintain a balance between the behavior of executive entities and its discretionary power under article 117 of the Constitution of the

[36] See above, note 10, 886.

[37] Colliard, C. A., "Comparison between English and French Administrative Law", *Cambridge University Press* 25, (1939): 120.

[38] Ibid.

[39] Ibid.

People's Republic of Bangladesh, the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982. Indeed, Administrative Tribunals of Bangladesh have failed to achieve desired goals to a great extent and the messy framework for the Administrative Tribunals evades the attention of researchers and policy makers for many years. Analytical and empirical research carried out in this thesis as mentioned in chapters four, five and six showed that these Tribunals need improvement. The thesis conceptualizes the whole spectrum of justice in Administrative Tribunals from three dimensional perspectives and these now appear exposed to critical questioning.

1.2 Statement of the Problem and Objectives of the Study

Since the inception of Administrative Tribunals, its aim is to provide simple, cheap, speedy justice to aggrieved employees. Legal practitioners and appellants acknowledge the positive role of these Tribunals and at the same time they express that their further strengthening and expansion are required in a more explicit and effective manner. This thesis will examine the strengths and weaknesses of Administrative Tribunals for enhancing its role in streamlining administrative processes by monitoring and demarcating the boarders between professional autonomy and administrative accountability. The research will conceptualize the efficacy of Administrative Tribunals of Bangladesh from three different perspectives, namely, jurisdictional, procedural and structural issues and with this end in view, it will scrutinize original principles, practical and implementation barriers.

However, five problem statements are determined while doing research on the efficacy of Administrative Tribunals of Bangladesh. These are a) Administrative Tribunals of Bangladesh fail to receive applications coming from all the service holders, b) these are facing difficulty in

properly ensuring the rights of the litigants due to lack of powers conferred on them, c) its efficacy are challenged as the proceedings are not speedier as well as cheaper as per expectation and the procedural technicality appear exposed to critical questioning, d) these Tribunals face troubles to avoid deadlock and are in a dilemma on the ground of limitation when an application is filed for setting aside an order of dismissal or an ex parte order and e) these forums are combating to maintain quality of and respect for the Tribunals as the existing recruitment method opens a space of political favoritism for the judges as well as may become subservient to rather than the watchdog of the executive; and loopholes in other structural issues also contribute in declination of prestige of Tribunals.

According to the problem statements mentioned above, the objective of the study is set and this is to investigate the efficacy of Administrative Tribunals from the view point of jurisdictional, procedural and structural issues and therefore, the research will seek to demonstrate the causes of jurisdictional, procedural and structural shortcomings of the present arrangements from the viewpoint of experts, various stakeholders and doctrinal discourses. In line with its efficacy, ways and means for overcoming the weaknesses of those issues and improving its performance will also be transpired. This critical analysis will bridge a gap between public needs and national requirements as well as will be an endeavor towards identifying major deficiencies in the system and recommending appropriate measures for overcoming them.

1.3 Significance of the Study

In an increasingly diversified economy, a fair and independent system for resolving service disputes is essential for enabling the state to act as a model employer. Service conditions that are applicable to public sector employees are expected to serve as benchmarks for comparable

employment in private sector. Furthermore, prompt redressal of grievances of public employees is required so that they can effectively serve the interests of the general public. Again, after its establishment, very few empirical studies have been conducted to examine the performance of these institutions. The present thesis asserts and seeks to demonstrate issues which are neglected so far in the domain of theoretical and empirical studies can be a valuable source of data and insights, with the potential to enrich and refine scholarship for Administrative Tribunals. Besides, the thesis is designed to identify the causes that hinder its performance from the viewpoint of established principles and the Administrative Tribunals of some countries like, France, India, Pakistan and England; and these will be presented before the concerned authorities so that effective steps could be taken for removing troublesome factors.

Again, positive sides of it will also be traced and this will help the concerned stakeholders when devising future strategies. Not only this, it will also help the relevant authorities to improve their performance because there are various impediments in the system which could be removed simply by changing behavioral pattern without bringing any modification in the Act of 1980. Besides, most of the litigants who are concerned with Administrative Tribunals are not well aware of the operation of these Tribunals as it is a recent creation. This endeavor will certainly benefit all of them by providing material information on the Administrative Tribunals Act, the Administrative Tribunals Rules as well as Constitutional provisions. This will also help the functionaries to maintain a balance between the discretionary power of the concerned authorities and rights of the civil servants and in this way its aim is to meet the standards of justice and attain the legitimate expectations of the aggrieved parties.

1.4 Methodology

The whole thesis is based both on qualitative and quantitative research. The thesis has used quantitative survey and followed it up with qualitative interviews and reviews of literature and observations. The research questions dictated the method. Qualitative and Quantitative research methods used in the thesis include (a) content analysis by reviewing of scholarly literature, published writings and survey of four years cases of three Administrative Tribunals and (b) face to face in-depth individual interviews on the basis of structured and unstructured questionnaire.

Data has been collected from primary as well as secondary sources. The early part of the thesis develops through review of relevant theories and literature, an evaluative framework against which the efficacy of Administrative Tribunals of Bangladesh has been assessed. In developing this framework, particular attention is paid to ensure that it is contextually relevant for Bangladesh. Further, the present study, while analyzing its efficacy, looks into the historical data, both primary and secondary, that explain its historical development and thereafter locates, through content analysis of existing laws and reported and unreported cases, the efficacy of this alternative mechanism from the viewpoint of jurisdictional, procedural and structural issues. It then appraises this against the evaluative framework of the study and the context specific realities of Bangladesh. To analyze the cases, the present thesis relies on all reported decisions of the Supreme Court of Bangladesh. Accordingly, all the major law reports of Bangladesh were consulted. In order to find out question as to whether the Administrative Tribunals are providing speedy justice or not, the thesis relies on all the cases of Administrative Tribunal 1, Administrative Tribunal 3 and Administrative Tribunal Bogra for four years starting from 2009 to 2012.

Therefore, for primary data the thesis depends on Bare Acts, Rules and precedents. Besides, the thesis depends on all reported cases of the Supreme Court of Bangladesh as well as on all cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 during the period of 2009 to 2012. With a view of gathering primary data in the thesis, interview with certain stakeholders has also been taken. Secondary data has been collected from books, journals, reports and newspapers. Time to time secondary data has also been collected by searching web.

1.5 Scope and Limitations of the Study

The thesis is confined to the analyses and investigation of efficacy of Administrative Tribunals in Bangladesh from the viewpoint of jurisdictional, procedural and structural issues. Though the review of literature expresses a lot of factors, but it will not go beyond it and is limited to a very scholarly and well-informed synthesis of three dimensions of Tribunals, namely, function, operation and composition. It is not concerned of departmental proceedings nor the separate legislations for different government bodies and authorities are the focal point here. The research reflects a concern that begins with the application filed to our Administrative Tribunals after the completion of inquiry proceedings done by the departments. It confines itself to article 117 of the Bangladesh Constitution, the Administrative Tribunals Act, 1980**,** the Administrative Tribunals Rules, 1982 and other laws incidental thereto. Taking into consideration of these laws the thesis tries to present as to whether these Tribunals are efficient from the point of view of jurisdictional, procedural and structural issues. Here, the present study primarily has in mind the principles that shape its framework and these principles in relation to Administrative Tribunals followed in all the countries are not devoid of rationality rather are capable of being tailored to the context of Bangladesh and remain one of the important bases for analysis. The analytical

framework along with principles dictates the study not to confine its efficacy to understanding of principles. Rather it will demonstrate its practical and implementation barriers in performing functions and establishing justice. In this way, the present thesis attempts an integration of principles, application and implementation barriers in line with jurisdictional, procedural and structural issues of Tribunals. Besides, efforts have been made to read all reported cases of the Appellate Division of the Supreme Court of Bangladesh and four years cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3.

There are seven Administrative Tribunals,[40] but three have been chosen for critical analysis as the underlying reasons are four in number: (a) to maintain historical coherence between past and present, (b) as they were the pioneers, (c) the first two are well established, the focus upon which will enable me to attain the objectives of the study more and (d) to analyze the rationales that made our country establishing another Administrative Tribunal in the same city. Furthermore, research area, if wider, would be unmanageable in terms of the length of the thesis and would lose its status to be focused. In terms of fixation of period, which is 2009 to 2012, the date of institution of A. T. suits has been taken into account, keeping in mind that the latest data for the disposal of those suits up to December, 2015 will be found.

[40] Administrative Tribunal No.1 at Dhaka covers entire Dhaka, Narayanganj, Munshiganj, Manikganj, Gazipur and Narshingdi; Administrative Tribunal No. 2 at Dhaka includes entire Faridpur, Gopalganj, Madaripur, Shariatpur and Rajbari; Administrative Tribunal No. 3 at Dhaka exercises jurisdictions for the entire Mymensingh, Kishoregonj, Netrokona, Tangail, Jamalpur and Sherpur; Administrative Tribunal at Chittagong runs for the area of entire Chittagong, Cox's Bazar, Noakhali, Feni, Lakshmipur, Commilla, Chandpur, Brahmanbaria, Sylhet, Moulavi-Bazar, Habiganj and Sunamganj; Administrative Tribunal at Khulna covers entire Khulna, Bagerhat, Satkhira, Jessore, Magura, Jhenaidah, Narail, Kushtia, Chuadanga and Meherpur; Administrative Tribunal at Barisal includes entire Barisal, Pirojpur, Jhalakhati, Bhola, Patuakhali and Barguna; and Administrative Tribunal at Bogra runs for the area of entire Bogra, joypurhat, Pabna, sirajganj, Dinajpur, Thakurgaon, Panchagar, kurigram, Rangpur, Lalmonirhat, Gaibanda, Nilfamari, Rajshahi, Nawabganj, Naogaon and Natore.

1.6 Structure of the Thesis

The Study spreads over seven chapters. Chapter one is the skeleton of the whole thesis. It deals with the question as to why I was inclined to go research on this topic, also portrays the specific objectives of the study as well as of its importance, demonstrates as well method or technique of research and accordingly the whole thesis will be guided. Second chapter encompasses theoretical framework including principles, literature review and last of all standards for Administrative Tribunals. Among the principles relevant to Administrative Tribunals, two Constitutional principles, namely, the doctrine of 'Separation of Powers' and the 'Rule of law' and the other jurisdictional principle, known as, Doctrine of *ultra vires*, has been included. Besides, for the protection of rights of litigants, some of the concepts, namely, 'Natural Justice', the doctrine of 'Legitimate Expectation' are also applied in proceedings of Administrative Tribunals and therefore, what do these concepts mean and how these can be used as safeguards for civil servants for their protection after the end of departmental proceedings or departmental inquiry during the continuance of litigation in Administrative Tribunals has been elaborated in this chapter.

Following and depending on above noted principles, the researcher has prepared a theoretical framework. The administrative justice system of some other countries like France, India, Pakistan and England have been taken into consideration with a view of tracing out the scenario concerning this forum in other countries. The reason behind the selection of these countries is that from French *droit administratif* every country of the world has fashioned their Administrative Tribunals or Service Tribunals whereas Pakistan has been chosen as the first Administrative Tribunal in the name of Service Tribunal has been established in Pakistan in this sub-continent. India is the neighboring country with whom we are closely related and therefore

this country has been selected for discussion. On the other hand, England is the mother of Common law world and Dicey's concept of 'Rule of law' flourished in England is entirely opponent to the concept of separate justice system for civil servants. Besides, French system with some variations appears to be in operation over the whole of Europe with the exception of the United Kingdom. For these reasons England has been selected to observe as to how this concept has been structured in this country. The researcher has demonstrated this examination of four countries keeping in touch with the literature review. After going through principles concerning alternative mechanisms and administrative Tribunals of some countries, ideal features or standards of an administrative tribunal have been set and accordingly utmost effort has been spared to present as to what extent Administrative Tribunals have achieved its desired goals after its establishment in 1980.

In chapter three the researcher has explored origin and development of Administrative Tribunals outside and inside the sub-continent especially with reference to the position as it obtains in Bangladesh. Besides, this chapter embraces article 117 along with other provisions of the Constitution of Bangladesh which are working as Constitutional safeguards for the protection of civil servants and particular attention is also drawn on the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982 while dealing with structure, functioning, composition, and jurisdiction of our Administrative Tribunals. The next three chapters, namely, four, five and six provide an overview of its efficacy and to that end, it interrogates relevant laws and audits the jurisprudence of the Supreme Court of Bangladesh to ascertain how the legislature and the judiciary address jurisdictional, procedural and structural issues, and analyses the extent to which their approaches are sensitive to the need of contextual rationality. These three chapters ultimately establish that the current legal framework does not contain any in-built mechanism to

ensure its efficacy and thereby creates space for biases. Designed to be a Bangladesh specific analysis of efficacy of Administrative Tribunals of aforementioned three issues, chapters four, five and six interrogate, keeping the standards as sketched in chapter two in mind, the position of the state authority in the present day legal framework. At the inception of chapter four, the first among the three, detailed methodology of the whole research has been pointed out and its application is found in chapters four, five and six. Chapter four covers structural matters whereby deficiencies in structural issues are focused, dearth of resources and other facilities are uncovered and particular attention is drawn on recruitment method of Members and Officials working therein. It was revealed in this chapter that there is no standardized systems of appointment but whatever mechanism is used in any particular country, it has to be transparent and open to public scrutiny as transparency and public scrutiny in the mechanisms for all sorts of appointments are of paramount importance to ensure appointment of the best available persons to judicial office and to enhance public confidence in the judiciary.

Chapter five specifically deals with jurisdictional issues and in doing this first of all, the clauses 'Service of the Republic' 'or Statutory Public Authority', which is the root of jurisdiction as to subject matter of Administrative Tribunals, has been cleared. Despite this significant aspect, limitations to jurisdictional issues now appear exposed to critical questioning and thereby, Administrative Tribunals are necessitating reconceptualization of the whole spectrum of justice from this perspective. Lack of original principles, practical and implementation barriers about jurisdictional issues are found and transpired. Chapter six focuses as to whether Administrative Tribunals of Bangladesh have achieved its desired goals or not from the point of view of procedural issues and to that end, this chapter has been written on the re-assessing of its efficiency in the light of relevant laws and of responses received from legal experts in service

laws as well as of decided cases. It is found by analyzing four years cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 that these institutions have failed to reach to the goal of quick justice according to a standard as depicted in chapter two. Moreover, procedural technicalities and impediments, which exist in law and practice, are portrayed. Finally, chapter seven summarizes the findings and concludes the study. The ramifications of these findings are critically analyzed according to standards set forth in chapter two and these analyses offer suggestions which have to be used to carve out a way forward for reform in Administrative Tribunals of Bangladesh. It reinforces that justice in Administrative Tribunals, one of the most neglected fields in the domain of policy debates, needs to be reformed to shape it with better performance and efficiency.

Chapter Two

An Appraisal of Dominant Theories of Administrative Tribunals: Setting Standards of Justice

The chapter is designed to explore the theoretical foundation underpinning the efficiency of Administrative Tribunals of Bangladesh from the viewpoint of jurisdictional, procedural and structural issues. To that end, the chapter at first, analyses and interrogates dominant theories, approaches and debates on Administrative Tribunals in order to establish the evaluative framework against which the efficacy of Administrative Tribunals of Bangladesh can be appraised. Evaluative framework is also depicted and made depending on previous literature of Administrative Tribunals of Bangladesh as well as on available literature on Administrative Tribunals of France, England, Pakistan and India.

There is a wealth of literature on advantages of Administrative Tribunals particularly the advantages of the Tribunals functioning in Bangladesh. After careful examination of literature review, it is discovered that none of these tell about its efficiency and even beyond the country, very few relevant literatures concerning the matter are found. Moreover, the chapter asserts and focuses on the key themes or synthesis from the literature and to show on what point it is linked to previous literature and on what points it is not and all these directions have been considered in the context of narrowing the research question. Afterwards, in particular, the research was here directed towards structuring innovative standards for Administrative Tribunals gathered from different scholars from different standpoints and these standards will be able to build a rationally principled framework for Tribunals.

2.1 Decisive, Scholastical Doctrines for Administrative Tribunals around the World

Two principles, namely, the 'Rule of Law' and the 'Separation of Powers', are connected closely with Administrative Tribunals; and regarding the judicial control of administrative actions, other concepts, namely, the doctrine of *ultra vires*, the concept of 'Natural Justice' and the doctrine of 'Legitimate Expectation' come up. All these concepts were presented below one after another, demonstrating that there is a strong nexus between the administrative arbitrariness and its accountability, trying to portray that these administrative arbitrariness and accountability can be mingled through checks and balances and by the use of the technique '*ultra vires*'; and remaining conscious of the safeguards, public servants resort to keep themselves away from autocratic and tyrannical regimes.

2.1.1 Rule of Law vs Accountability of Public Officials

The first concept relevant to Administrative Tribunals is the 'Rule of Law', which is not a well defined legal concept,[1] which means all people and institutions are subject to and accountable to law that is fairly applied and enforced, which is portrayed as the principle of government by law.[2] 'Rule of Law' in its most basic sense is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power.[3] 'Rule of Law' not only limits the

[1] Massey, I. P., *Administrative Law* (Lucknow: Eastern Book Company, 2008), 25.

[2] See for details, Chowdhury, J. A., *An Introduction to the Constitutional Law of Bangladesh* (Dhaka: Northern University Bangladesh, 2010), 144; 'Rule of Law', available at: <http://dictionary.reference.com/browse/rule+of+law>, last visited on 02.10.13; 'What is the Rule of Law?', available at: <http://C:/Users/User/Desktop/What%20is%20the%20rule%20of%20law.htm>, last visited on 06.03.15; 'What is the Rule of Law?', available at: <http://C:/Users/User/Desktop/What%20is%20the%20rule%20of%20law.htm>, last visited on 06.03.15; 'What is the Rule of Law?', available at: <http://C:/Users/User/Desktop/What%20is%20the%20rule%20of%20law.htm>, last visited on 06.03.15.

[3] Chowdhury, J. A., *An Introduction to the Constitutional Law of Bangladesh* (Dhaka: Northern University Bangladesh, 2010), 144.

arbitrariness of government but also makes the government more intelligent and articulate in its decision making.[4] As the literature on 'Rule of Law' is almost endless and it is impossible to consider thoroughly every literature, some of the remainder of this chapter examines and evaluates, although without any attempt to be exhaustive, the assumptions and implications of Professor A. V. Dicey.[5]

The second concept expressed by Dicey, meaning, everyone is subject to the ordinary law of the land and officials like private citizens are under a duty to obey the same law,[6] is relevant to the present thesis. Utmost effort was spent under the second concept to make a difference between English legal system and that of France.[7] He criticized the French legal system of *droit administratif* in which there were distinct Administrative Tribunals for deciding cases between the officials of the state and the citizens.[8] According to him, "exemption of civil servants from the jurisdiction of ordinary courts of law and providing them with the special tribunals was the negation of equality".[9] He stresses that "there should have no special court or Administrative Tribunal for the state officials as is found in French *Droit Administratif*."[10] If there is any special

[4] Ibid.

[5] Professor Dicey, A. V. expounded this concept for the first time in his book 'the Law and the Constitution' published in 1885. His theory covers three distinct concepts, namely, absence of arbitrary power or supremacy of law, equality before law and predominance of legal spirit. See for details, Wade, W. and Forsyth, C., *Administrative Law* (New York: Oxford University Press, 2003), 20-23.

[6] See above, note 1, 26.

[7] Dicey's comparative view relied heavily on De Tocqueville's critical description of the French Council of State as the institutional means by which officials were exempted from the operation of French law. See for details, Allison, J. W. F., "Variation of View on English Legal Distinctions Between Public and Private", *Cambridge University Press* 66, no. 3 (2007): 707.

[8] Hall, D., *Administrative Law* (London: Butterworts, 1983), 5.

[9] Ibid.

[10] Ibid.

court or Administrative Tribunal in any country, there will have no 'Rule of Law' in accordance with this second concept discussed by Dicey.

What Dicey says with respect to French Administrative Tribunals is not exactly true.[11] In fact, Dicey misunderstood the real nature of *droit administratif*.[12] On the other hand, Dicey's view was also not right when he presumed that there is no administrative law in England, as the old prerogative remedies did not provide a historical basis for a distinct public law or for administrative law.[13] Even during his period in England, the Crown and his servants enjoyed special privileges and there were special tribunals having legislative and adjudicating powers.[14] Dicey himself recognized his mistake later on and observed that "there exists in England a vast body of administrative law".[15] Sir Ivor Jennings also elaborated the concept of the 'Rule of law'. In his 'Law and the Constitution', he attacked Dicey saying that "the 'Rule of law' framed by Dicey follow naturally from the existence of a democracy with free elections".[16] This is the second generation perspective.[17] There is no conflict between administrative law and 'Rule of Law'. Both aim at controlling the arbitrariness of public officials and making them accountable.

[11] See for details, Munro, W. B., *the Government of Europe* (London: Macmilan Company, 1938), 558. Munro, W. B. defines administrative law in France as a system of jurisprudence which, on the one hand, relieves public officials from amenability to the ordinary courts and, on the other hand, sets up a special jurisdiction to hold them accountable.

[12] See for details, Wade, H. W. R. and Forsyth, C. F., *Administrative Law* (Oxford: Oxford University Press, 2004), 24-25.

[13] See above, note 7, 705.

[14] Talukdar, S. M. H., *Development of Administrative Law in Bangladesh: Outcomes and Prospects* (Dhaka: Bangladesh Law Research Centre, 2011), 124.

[15] Ibid.

[16] See above, note 3, 148.

[17] Accordingly, 'Rule of Law' means the rule by a democratic law, a law which is passed in a democratically elected Parliament after adequate debate and discussion. So, 'Rule of Law' does not mean rule of any law framed by any government. Rule of the dictatorial laws promulgated by a dictator or usurper without democratic participation of

The concept was later on extended by the International Commission of Jurists known as the 'Delhi Declaration', 1959, which was subsequently confirmed at Lagos in 1961. This Declaration sets three ideals of 'Rule of law', namely, (a) establishing and maintaining conditions so that the dignity of man as an individual can be uphold by the functions of the legislature; (b) adequate safeguards against abuse of power by the executive are not enough for establishing 'Rule of law' rather there must be the existence of effective government capable of maintaining law and order and of ensuring economic and social conditions of life for society; and (c) last of all, independent judiciary and a free legal profession. The 'Delhi Declaration' of 1959 necessitates adding a few more words. Adequate safeguards against abuse of executive power are not enough rather the government has to be capable of upholding justice and the judiciary to be independent.

2.1.2 Growth and Expansion of Administrative Tribunals and Two Aspects of the 'Separation of Powers'

Beside to the concept of 'Rule of Law', there is another theory connected closely to Administrative Tribunals and this is the theory of 'Separation of Powers'.[18] Probably the principal doctrinal barrier to the development of administrative process has been the theory of 'Separation of Powers'.[19] Aristotle, Calvin, Jean Bodin advocated 'Separation of Powers' but the

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the people cannot qualify as law to be binding upon the people. Thus, laws must be general, public, prospective, clear, consistent, and capable of being followed, stable, impartially applied and enforced. Moreover, laws must be reasonably acceptable to a majority of the populace or people affected (or at least the key groups affected) by the laws. See for details, Ibid.

[18] Jain and Jain expressed: "If the 'Rule of Law', as enunciated by Dicey, affected the growth of Administrative Law in Britain, the doctrine of 'Separation of Powers' had an intimate impact on the development of Administrative Law in USA". See for details, Jain, M. P. and Jain, S. N., *Principles of Administrative Law* (Nagpur: Lexis Nexis India, 2013), 31.

[19] Indeed, the theory tells that the powers of legislative, judicial and executive should be separated into three organs and each organ will be entrusted to specific power and each of them will be limited, independent and supreme

writings of Locke and Montesquieu gave the theory of 'Separation of Powers' a base on which modern attempts to distinguish between legislative, executive and judicial powers are grounded.[20] Locke divided political power between an executive and legislature, each having independent fiduciary trusts to act for the public good.[21]

Locke's model was dualistic and this is the forerunner to modern 'Separation of Powers' theory. In the theory it is shown that the legislature is the sole or primary institutional check on executive power. Although Locke argued that the executive has a prerogative power to make exceptional decisions in emergencies, decisions without any institutional accountability whatsoever are not prerogative ones at all.[22] On the other hand, this sort of excessive power of the executive manifests an illegitimate exercise of power, which, in extreme circumstances, threatens tyranny and invites legislative or popular resistance.[23] Furthermore, even in those Common Law countries where parliamentary sovereignty prevails, the legislature is no longer the only check but also the courts.[24] However, Locke's reputation as an author of the Separation

within its own sphere. However, it can be contrasted with the fusion of powers in a parliamentary system where the executive and legislature (and sometimes parts of the judiciary) are unified. See for details, Thakker, C. K. and Thakker, M. M. C., *Lectures on Administrative Law* (Lucknow: Eastern Book Company, 2011), 32; Davis, K. C., *Administrative Law Treatise*, Vol. 1 (San Diego: K.C. Davis Publication Company, 1958), 31.

[20] See above, note 14, 216.

[21] Jenkins, D., "The Lockean Constitution: Separation of Powers and the Limits of Prerogative", *McGill Law Journal* 56, no. 3 (2011): 543-589.

[22] Ibid.

[23] Ibid.

[24] A practical theory of the Lockean Constitution must somehow account for the judiciary's historical development into an independent, third branch of government.

doctrine is unwarranted as he neither unequivocally recommended it nor conceived it in the modern tripartite form.[25]

The term '*trias politica*' or 'Separation of Powers' was coined at first by *Charles-Louis de Secondat, baron de La Brède et de Montesquieu*, the 18th century French social and political philosopher.[26] This principle has been widely used in the development of many democracies since that time.[27] He, in fact, took the content of the theory from the development in British Constitutional history of the early 18th century.[28] He told:

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty. Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.[29]

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[25] There are two major reasons for this criticism. The first is that Locke insists on the existence of one supreme power, namely, legislature on which all others must be subordinate. This implies that Locke regarded the Separation of Powers as a convenient arrangement but not something vitally important. The second reason is that Locke often treated judicial power as part of the executive power and that his threefold separation of legislative, executive, and federative powers does not correspond to the constitutional model which was propounded by Montesquieu and adopted in modern constitutions to greater or lesser extents. See for details, Ratnapala, S., "John Locke's Doctrine of the Separation of Powers: A Re-Evaluation", *American Journal of Jurisprudence* 38, no. 1 (1993): 189.

[26] His publication, Spirit of Laws, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently. See for details 'Separation of Powers-An Overview', available at: <http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx>, last visited on 4.3.2015.

[27] See for details, 'Separation of Powers: Parliament, Executive and Judiciary', available at: <http://www.peo.gov.au/uploads/peo/docs/fact-sheets/separation_powers.pdf>, last visited on 04.03.2015.

[28] Then the king exercised administrative powers, Parliament exercised law making powers and the courts exercised judicial powers. This structural classification of functions of Uk government had later on been changed to the parliamentary form of government. See for details, Massey, I. P., *Administrative law* (Huderabad: Asia Law, 1985), 40; see above, note 8, 39.

[29] See for details, 'Montesquieu and the Separation of Powers', available at: <http://oll.libertyfund.org/pages/montesquieu-and-the-separation-of-powers>, last visited on 04.03.15.

All the elements of the pure doctrine of 'Separation of Powers' are to be found in Montesquieu's thought. His theory is invoked to challenge the legitimacy of administrative law, although no 'Separation of Powers' in the strict sense of the term is possible.[30] Government is an organic unity and various parts are closely interwoven. Therefore, absolute 'Separation of Powers' is both impossible and undesirable and the theory leads to isolation and disharmony. Realizing these, he, later on, added to these ideas the further dimension of a theory of checks and balances between the legislative and executive powers, drawn largely from the theory of mixed government. The theory of 'Separation of Powers' is characterized as a principal conceptual barrier to the changes and growth of administrative law all over the world.

It is undeniable at the same time that the doctrine has contributed a lot for the growth and expansion of Administrative Tribunals. Moreover, it had its effect on Frenchman.[31] However, the presence of administrative laws is one of the general characteristics which differentiate Common Law systems from the Civil Law systems. Administrative laws can be studied under three heads, namely, legislative power, judicial power and purely executive or administrative power. The main function of this paper is to find out the ways by which administrative authorities may be kept within limits and their discretionary power may not become arbitrary powers through the

[30] See above, note 8, 43.

[31] This doctrine implied that the courts must not under any pretext interfere with the liberty of administrative action. This principle was accepted by revolutionary assemblies and a law in 1790 was enacted, which declare that the judicial functions are distinct and must be separated from administrative functions. The Constitution of 1781 also forbids the courts to take any action that interferes in the administrative field. This 'Separation of Powers' was a logical outcome of two features, which characterized the old regime in France. They are the weakness of the courts and overpowering strength of a centralized administration. Because of this doctrine public officials stood relieved of all the responsibility before the ordinary courts of the state for wrong done by them or for acts done in execution of their official duty. For them a separate court like system arose and this is distinct from the regular courts. There are lots of criticisms of this separate body of law for public servants. But the French people have always advocated for administrative law and they neither see anything wrong in it, nor do they demand for its abolition. On the other hand they regard it as 'a palladium of their liberties' and as 'a protection against arbitrary government action'.

help of Administrative Tribunals. Nevertheless, the doctrine has two aspects, institutional and functional. These two aspects have been defined and critically evaluated in chapters four and five respectively, notwithstanding that our Constitution does not support the doctrine of 'Separation of Powers'.[32]

2.1.3 Jurisdictional Principle of *Ultra Vires* and Procedural Fairness

The doctrine of *ultra vires*,[33] strikes down an act when it violates statute, principles of 'Natural Justice'.[34] It is of two kinds, namely, substantive *ultra vires* and procedural *ultra vires*.[35] Very often, statutes provide for a procedure for doing certain things, e.g., notice, hearing, time limit etc. but rarely spell out the consequences of non-compliance with it.[36] The court has, in these cases, drawn a distinction between mandatory procedure and directory procedure.[37] The former is said to go to the jurisdiction of the authority and its non-compliance renders a decision void, while a breach of the latter is disregarded.[38] Under the jurisdictional principle of *ultra vires*, judges of Administrative Tribunals are not allowed to cross the wall. Any decision contravening the jurisdictional principle will be declared null and void. In recent times, procedural fairness has

[32] See for details, the Constitution of the People's Republic of Bangladesh, articles 115, 116, 22, 55, 65 and 117.

[33] One of the techniques to control administrative actions judiciously.

[34] The term is used with regard to local bodies, corporations or other government authorities and to lower courts and tribunals, when exceeding authority or power given to them by law.

[35] When an Act of legislature is enacted in excess of power conferred on the Legislature by the Constitution, the legislation is said to be *ultra vires* the Constitution and the same is applicable with regard to delegated legislation. This is known as substantive *ultra vires*. When any authority fails to comply with the procedural requirements prescribed by law, it is known as procedural *ultra vires*.

[36] Fazal, M. A., *Judicial Control of Administrative Action in India, Pakistan and Bangladesh* (Allahabad: Law Book Company Pvt. Ltd., 1990), 51.

[37] Ibid.

[38] Ibid.

emerged as a unique check on the executive and Administrative Tribunals observe as to whether this procedural fairness has to be complied with or not.

2.1.4 Measuring 'Natural Justice' and Their Relevance

Different studies further demonstrate that in course of time two doctrines, namely, the doctrine of 'Natural Justice' and the doctrine of 'Legitimate Expectation' evolve for protecting the rights of bureaucrats. The research keeps its first look on insights of the principle of 'Natural Justice'.[39] Whilst the term 'Natural Justice' is often retained as a general concept, it has largely been replaced and extended by the more general 'duty to act fairly'.[40] What is required to fulfill this duty depends on the context in which the matter arises. In a famous English decision in *Abbott vs Sullivan*, it is stated:

> The principles of 'Natural Justice' are easy to proclaim, but their precise extent is far less easy to define. It has been stated that there is no single definition of 'Natural Justice' and it is only possible to enumerate with some certainty the main principles. During the earlier days the expression 'Natural justice' was often used interchangeably with the expression Natural Law, but in recent times a restricted meaning has been given to describe certain rules of judicial procedure.[41]

'Natural justice' is concerned with two rules,[42] namely, the rule against bias (*nemo judex in causa sua*),[43] and the right to a fair hearing (*audi alteram partem*).[44] Where it appears that any

[39] 'Natural Justice' is a term of art that denotes specific procedural rights in English legal system and the systems of other nations based on it and it is similar to American concepts of fair procedure and procedural due process having roots that to some degree parallel the origins of 'Natural Justice'. See above, note 36, 191-192.

[40] See above, note 6.

[41] (1952) 1 K.B. 189.

[42] See above, note 36, 192.

[43] It means that a person adjudicating on a dispute must have no pecuniary or proprietary interest in the outcome of the proceedings and must not reasonably be suspected, or show a real likelihood, of bias. See for details, Ibid.

[44] The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by Natural Justice. The principle of *audi alteram partem*, that is, hearing

administrative agency is obliged to act judicially, there is a presumption that all aspects of the rules apply, in which case the court would require clear statutory words in order to justify any exclusion of 'Natural Justice'.[45] In Bangladesh, no statutory provision is found for rule against bias, whereas some of the statutory provisions are available for a rule of fair hearing.[46] Indeed, procedural laws are grounded on rules of 'Natural Justice'. The rule of pecuniary bias disqualifying a judge operates in the Indo-Pak subcontinent,[47] and for the first time a case concerning the issue came before the Bombay High Court in 1895.[48] Indian and Pakistani courts have applied the rule against bias strictly wherever personal prejudice or ill-will could be proved

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both sides of the question, goes back several centuries and has been applied in a variety of circumstances. See for details, Ibid; Hossain, Z., *Law of Writs* (Dhaka: Universal Book House, 2012), 297.

[45] See above, note 8, 157.

[46] See for details, the Constitution of the People's Republic of Bangladesh, 1972, article 135 (2); the Code of Civil Procedure, 1908, order 9, rule 13; the Public Servants (Inquiries) Act, 1950; the Government Servants (Discipline and Appeal) Rules, 1985; Md. Abdur Rashid and Another vs Abdul Barik and Others, (1984) 4 BLD (AD) 83. Article 135 (2) of the Constitution of Bangladesh reads as follows: "No person who holds any civil post in the service of the Republic shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause why action should not be taken." The trace of this principle is also found in the Civil Procedure Code which deals with procedural matters and not substantive rights. Procedural laws are grounded on rules of 'Natural Justice'. If summons are not duly served on the defendant, that is a good ground for setting aside an *ex parte* decree under order 9, rule 13 of the CPC. In such a case, question of knowledge is not at all relevant and *ex parte* decree will be set aside even if the defendant had knowledge of institution of suit. Further, the Public Servants (Inquiries) Act, 1950, and the Government Servants (Discipline and Appeal) Rules of 1985 displays the contents of 'Natural Justice', namely, 1) notice to accused; 2) copy of charge and list to be furnished to accused; 3) evidence of prosecution and examination of witnesses; 4) evidence for defence and examination of witnesses and 5) report of the officer with reasons.

[47] See above, note 44, 308.

[48] (1895) ILR (20 Bom.) 502. In the case the accused was an employee of Treacher and Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused. The accused moved the High Court in its revisional jurisdiction under section 435 of the Code of Criminal Procedure (Act No. X, 1882) on the ground of bias. It was held that "the Magistrate was disqualified from trying the case". The proceedings including conviction and sentence were set aside and it was directed that the complaint be disposed of by a duly qualified magistrate.

from the proceedings or from the conduct of the parties.[49] The doctrine of 'Natural Justice' in service matters was applied in Bangladesh prior to the establishment of ATs and the AAT and this is till today guiding us. It was held:

> There is no escape from the view that so far as we are concerned the requirement of reasonable opportunity requires that the evidence, on which reliance is to be placed against a charged officer must be taken in his presence and that he must then have an opportunity of cross-examining the witness. Any evidence, therefore, which was not taken in the presence of the charged officer, could not be relied upon against him. The import of the word 'evidence' can not only be cross-examination. It must include the entire evidence of the witness, and the evidence taken in the presence of the charged officer then no evidence which was not taken in the presence of the charged officer can be made use of.[50]

Besides, it was decided:

> The rules of 'Natural Justice' are complied with if previous statements of witness are read over to them and marked during the departmental inquiry. When the evidence is oral, normally the examination of the witnesses will, in its entirety, take place before the party charged, who will have full opportunity of cross examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that contents of the previous statements should be repeated by the witness word by word and sentence by sentence is to insist on bare technicalities, and rules of 'Natural Justice' are matters of substance. They are sufficiently complied with when previous statements given by witness are read over to them marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them.[51]

In theoretical discourse on Administrative Tribunals, it is found that no two cases adhering to the principle of 'Natural Justice' are exactly alike. Each case has to be decided on its own facts and circumstances. To substantiate the position, the use of hearsay evidence in departmental proceeding,[52] conduct of preliminary inquiry behind the back of the delinquent officer,[53] and a representation in writing excluding oral hearing from the principles of 'Natural Justice' could be

[49] See above, note 44, 307. See for details, Mohammad Mohsin Siddique vs Govt. of West Pakistan, (1964) PLD (SC) 64; Pratap Singh vs State of Punjab, (1964) AIR (SC) 72; A.P.S.R.T Crop. vs S. Transport, (1965) AIR (SC) 1303.

[50] Union of India vs T.R. Varma, (1957) AIR (SC) 882.

[51] State of Mysore vs Shivabasappa Shivappa Makapur, (1963) AIR (SC) 375.

[52] Haryana and Another vs Ratan Singh, (1977) AIR (SC) 1512.

[53] Nand Kishore Prasad vs State of Bihar, (1981) C.R.P.F. (2) SLR (Cal) 182.

helpful.[54] On this point, a debate is primarily centered on the issue as to what extent administrative decisions are liable to be questioned. Administrative decisions require interference of tribunals, if there is disregard of the principle of 'Natural Justice', but in no case, the Tribunals can challenge their authority to order or to impose penalty. Reliance can be put on a decision on which one can hardly offer any innovation:

> The order of discharge from service passed against the delinquent by order of the Governor-General is not liable to be questioned on the ground that material may not have justified the passing of that order. It is not within the competence of the civil court to sit in judgment over the decision of the authority that is competent by law to dismiss a public servant provided he has been afforded an opportunity to defend himself consistently with the substance of the Constitutional guarantee.[55]

2.1.5 'Legitimate Expectation': A New Phase to 'Natural Justice'

Another doctrine known as the doctrine of 'Legitimate Expectation'[56] has an appeal to the protection of rights of civil servants, who face difficulty in articulating their grievances beyond department. The doctrine is an outcome of synthesis between the principle of Administrative Fairness (a component of the principles of 'Natural Justice') and the rule of Estoppels. The principle of 'Legitimate Expectation' means an expectation that may arise from an express promise given on behalf of the public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.[57] It is a Common law principle which applies to the situation where a person has an expectation or interest in a public body retaining a long standing practice or keeping a promise.

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[54] Pradesh Industries Limited vs Union of India, (1966) AIR (SC) 671.

[55] Major UR Bhatt vs Union of India, (1962) AIR (SC) 1344.

[56] Lord Denning first used the term 'Legitimate Expectation' in 1969. From that it has assumed the position of a significant doctrine of public law in almost all jurisdictions. See for details, Nigar, M. and Urmi, H. N., 'Doctrine of Legitimate Expectation in Administrative Law: A Bangladesh Perspective', available at: <http: // works.bepress.com/meher.nigar/2>, last visited on 27.09.14.

[57] Sirajul Islam vs Bangladesh, (2008) 60 DLR (HCD) 79.

It is pertinent to mention that a person cannot have a legitimate expectation that an authority will do something which is *ultra vires*.[58] In other words, any expectation to be a legitimate one must succumb with the terms of the statute. It does not mean that the authority enjoys an absolute liberty using the shield of statutory scheme. The courts will make sure as far as possible that the authority is held to its promises by looking for other plausible ways to redress the unfairness. In judging the acts of a public body, courts in most cases are inclined to rely on the principle of 'Wednesbury unreasonableness' arising out of *Associated Provincial Picture House Ltd. vs Wednesbury Corp*.[59] Here it was decided: "Decision is so unreasonable that no reasonable authority could ever have come to it".[60] The court further held:

> For it to intervene and overturn the decision of the defendant corporation, the condition would have to be so unreasonable that no reasonable authority would ever consider imposing it. Such a condition did not fall into the category of being so unreasonable that it would not be reasonably considered by such a public authority.[61]

Therefore, the claim failed and the decision of the Wednesbury Corporation was upheld. The principle endorsed in this case known as 'Wednesbury unreasonableness' is cited in English courts as a reason for courts to be hesitant to interfere into the decisions of administrative bodies. However, this doctrine is found in article 27 of the Constitution of Bangladesh which abhors arbitrariness and insists on fairness in all administrative dealings.[62] It contains both positive and negative contents; if it is applied negatively, an administrative authority can be prohibited from violating the legitimate expectations of the people and if applied positively, an administrative authority can be compelled to fulfill their legitimate expectations. In *Asaf Khan and Others vs*

[58] R vs the Secretary of State for Education and Employment ex P Begbie, (2002) 1 WLR 1115.

[59] (1948) 1 KB 223.

[60] Ibid.

[61] Ibid.

[62] The protection of equality before law is available in case of arbitrary class legislation as well as in case of arbitrary state action and this is now strongly established.

The Court of Settlement, Dhaka and Others, Justice M.M. Ruhul Amin in favour of the Division Bench expressed: "Legitimate Expectation is a concept of administrative law, which means that an administrative authority cannot abuse its discretion by legitimate expectation by disregarding undertaking or statement of its intent".[63]

It appears that the doctrine of 'Legitimate Expectation' in Bangladesh has been developed mainly covering contractual obligations of the government. A modern government has multifarious activities and in performance of those activities, the government has to enter into contracts of different types. The doctrine of 'Legitimate Expectation' has been developed, focusing on the point that in a contract between the government and any individual, though the state is in the equal footing of other party of the contract, at the same time, the duty of the government to act fairly which is implied in the contract cannot be ignored.[64]

A frequent application of this doctrine is seen in service matter that is also a contract of employment.[65] Though an employment in the service of Republic initiates a contract, the relationship of the government with the servant is more of a status than contract and is controlled by the provisions of the Constitution and the laws and rules.[66] This contention gives an employee in the service of Republic an extensive opportunity to challenge any administrative action affecting his service. This opportunity includes confronting the authority even when his service is based on a contract and the impugned action has been taken under the guise of the contract of employment. A landmark case in this respect is *Bangladesh Biman Corporation vs Rabia Bashri*

[63] (2003) 23 BLD (AD) 24.

[64] See above, note 56.

[65] Ibid.

[66] Islam, M., *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2002), 576.

Irene and others.[67] The state contended that "the expectation that has arisen between the petitioners and the Corporation is of a relationship pursuant to a contract and beyond contract the petitioners are not entitled to anything as regard their service".[68] Rejecting the contention of the state, the supreme judiciary held:

> In the context of employment by statutory corporations, the relationship of the corporation with its employees is not that of master and servant and all contracts with statutory corporation are subject to challenge in the writ jurisdiction. The corporation by its past practice has created the legitimate expectation in its employees that after completion of the prescribed period they would be absorbed as permanent staff. By not absorbing them as permanent and appointing them under a new contract, the corporation has acted discriminatorily.[69]

It is worth noting also the case of *Md. Shamsul Huda and others vs Bangladesh and others*,[70] where ten additional judges were not appointed as judges in the High Court Division ignoring the recommendation of the Chief Justice and without communicating any reasons to the Chief Justice and thereby, violated the expectation of the petitioners which was based on the established practice being followed over thirty years. Thus the doctrine of 'Legitimate Expectation' has been emerged in employment sector in Bangladesh as a safeguard for employees in the service of the Republic sometimes by upholding past practice, sometimes by resorting to Constitutional convention, or sometimes promoting the practice of seniority.[71] It in

[67] (2003) 55 DLR (AD) 132. In the case writ petitions were filed challenging validity of some parts of the individual contract of employment as violative of legitimate expectation of the employees of being absorbed as permanent staff after completion of their 5 years tenure and their expectation was reasonable in view of the practice existing at the time of their employment. They were not absorbed as permanent employee rather reappointed under a fresh contract depriving them of some benefits including of being absorbed as permanent staff.

[68] Bangladesh Biman Corporation vs Rabia Bashri Irene and others, (2003) 55 DLR (AD) 132.

[69] Ibid.

[70] (2009) 17 BLT (HCD) 62.

[71] The general concept of the doctrine of 'Legitimate Expectation' is that the administrative authority cannot abuse its discretion by following any inconsistent policy by disregarding undertaking or statement of intent or by ignoring any past practice covering this matter. See for details, Nigar, M. and Urmi, H. N., "Doctrine of Legitimate Expectation in Administrative Law: A Bangladesh Perspective", available at: <http: // works.bepress.com/meher_nigar/2>, last visited on 27.09.14.

essence requires the concerned authorities to act reasonably in dealing with the rights and interests of the people under their control in given circumstances.[72] At the same time, the concept of 'Legitimate Expectation' cannot be given such wide interpretation so as to allow any wishful hope without lawful root.[73] In *Hafizul Islam (Md.) vs Government of Bangladesh and Others*, Justice Amirul Kabir Chowdhury held: "'Legitimate Expectation' to be enforceable shall have some legal basis. Mere wishful expectation without legal basis is not sustainable in the eye of law. When the action of the government is taken fairly showing reasons, it cannot be struck down".[74] Advocating the true essence of this doctrine, the supreme judiciary, in *Chairman, Bangladesh Textile Mills Corporation vs Nasir Ahmed Chowdhury*, goes as follows:

> For a 'Legitimate Expectation' to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue until some rational grounds for withdrawing it are communicated to him and he is given an opportunity to defend his cause. [75]

A descriptive idea of this doctrine is restated in *Golam Mustafa vs Bangladesh*, where the Court observed:

> Judicial review may be allowed on the plea of frustration of 'Legitimate Expectation' in situations, namely, I. if the authority makes a promise expressed either by their representations or conducts; II. within the 'Wednesbury' principle the decision of the authority was arbitrary or unreasonable; III. the concerned authority failed to act fairly in taking the decision; IV. the expectation to be a legitimate one must be based on clear facts and circumstances leading to a definite expectation and not a mere wish or hope and also must be reasonable in the circumstances and V. judicial review may allow such a 'Legitimate Expectation' and quash the impugned decision even in the absence of a strict legal right unless there is an overriding public interest to defeat such an expectation. [76]

Though the doctrine of 'Legitimate Expectation' was imported from English Law and greatly influenced in the country by Indian case laws where 'Legitimate Expectation' was only

[72] Bangladesh Soya-Protein Project Ltd. vs Secretary, Ministry of MDMR, (2001) 6 BLC 681.

[73] Hafizul Islam (Md.) vs Government of Bangladesh and Others, (2002) 7 MLR (HCD) 433.

[74] Ibid.

[75] (2002) 22 BLD (AD) 199.

[76] (2007) 15 BLT (HCD) 128.

procedural in its initial stage and substantive 'Legitimate Expectation' was comparatively a recent experience, in Bangladesh, 'Legitimate Expectations' are not classified as either procedural or substantive. If an expectation is found to be legitimate, the Apex court will protect that expectation by holding the relevant administrator to the representation that gave rise to the expectation. The development of this 'Legitimate Expectation' in Bangladesh is overall a symbol of positive sign to ensure a more accountable administration by force of expectation beyond law. The term 'Legitimate Expectation' has not been used till now in cases concerning service matters. The remedy for the violation of 'Legitimate Expectation' in non-government service matters is judicial review which is clear from the above last two cases, namely, *Bangladesh Biman Corporation vs Rabia Bashri Irene and others* and *Md. Shamsul Huda and others vs Bangladesh and others*.[77] But if a person is in the service of the Republic or of statutory public authority, then he has to go to Administrative Tribunals for enforcing his service rights under the umbrella of 'Legitimate Expectation'.

There are limitations on 'Wednesbury' principle. In applying it, the court defers to the exercise of discretion by the administrative authority and interferes only when an action is so out of proportion to the mischief sought to be curbed that no reasonable man can reasonably take it.[78] Hence, a stricter scrutiny of the reasonableness of an administrative action is required and here comes into play the doctrine of 'Proportionality', though it is generally accepted that it is not for the court to substitute its choice as to how the discretion ought to have been exercised for that of the administrative authority.[79] Yet there is a desire to fashion a criterion that will allow judicial

[77] See above, note 68; see above, note 70.

[78] Islam, M., *Constitutional Law of Bangladesh* (Dhaka; Mullick Brothers, 2012), 712.

[79] R vs Cambridge Health Authority, 2 All ER 129.

control without thereby leading to substitution of judgment or too great an intrusion on the merits.[80]

A question often arises whether an exercise of discretionary power may be interfered with for its harshness on application of the doctrine of 'Proportionality', though the problem of this principle requires the court to assess the merit of exercise of discretion by the administrative authority.[81] True to their traditional role of upholding the 'Rule of Law' and recognizing the vulnerability of the individual faced with coercive state power, a variety of mechanisms including the doctrine of 'Proportionality' have been developed to curtail government intrusion where it excessively impinges on individual rights and autonomy.[82] The doctrine of 'Proportionality' is recognized and exercised as a writ of certiorari in our domain of jurisprudence, though the Appellate Division of the Supreme Court refused to recognize the doctrine of 'Proportionality' stating:

> This concept involves the court to evaluate whether proportionate weight has been attached to one or other consideration relevant to the decision. As a ground for judicial review it is absolutely a new concept to our jurisprudence. In accepting it, this court shall have to accord different weights to different ends or purposes and different means which cannot be allowed in a review.[83]

Though there is no judicial recognition of this doctrine, it is observed that the concept of unreasonableness under article 31 is really unreasonableness in the 'Wednesbury' sense, but when deprivation of life or personal liberty is involved in an administrative action, a stricter scrutiny of unreasonableness is called for under article 32.[84]

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[80] Rogers vs Swindon NSH Primary Care Trust, (2006) 1 WLR 2649.

[81] See above, note 78, 712-713.

[82] Sullivan, E. T. and Frase, R. S., *Proportionality Principles in American Law* (New York: Oxford University Press, 2009), 3.

[83] Ekushey Television vs Dr. Chowdhury Mahmood Hasan, (2003) 55 DLR (AD) 26.

[84] See above, note 78, 717.

2.2 Juxtaposing Administrative Tribunals of France, England, India and Pakistan

After careful examination of the theories discussed above, juxtaposing Administrative Tribunals of some countries is required for the purpose of this research to make a linkage between these countries and that of Bangladesh with greater precision, which ultimately and appropriately leads to effective evaluation of efficacy of Administrative Tribunals of Bangladesh. However, Tribunals regarding service matters are now available in almost all the countries and hence, an inevitable question arises as to how many legal systems should be included. Traditional comparative lawyers tend to favor a limited number in order to focus on the actual comparison, since choosing a large number of countries may just lead to parallel country studies.[85] A frequent suggestion is that three may be a good number.[86] Just choosing two countries may overemphasize the contrast between these legal systems, whereas with three the comparatist may be nicely able to show what determines both similarities and differences.[87] Nonetheless, four countries, namely, France, England, India and Pakistan have been chosen for the purpose of this thesis.

French Administrative Tribunals has been selected and narrated as the Tribunals emerged from France. This emergence and subsequent transformation in various countries led me to choose France. Besides, the structure, recruitment of adjudicators, procedural mechanisms, safeguards, remedies etc. which they have shaped and formed may be a model for all over the world. English Tribunals have been taken into consideration not only because the country is greatly influenced by England but also England is totally an opponent of French Administrative Tribunals. India

[85] Siems, M., *Comparative Law* (Cambridge: University Printing House, 2014), 15.

[86] Ibid.

[87] Ibid.

being a neighboring country and Pakistan being the initiator of the first Administrative Tribunal in this sub-continent in the name of Service Tribunal has further been focused.

2.2.1 Administrative Tribunals in France: A Complete Separation from that of Civil Courts

Administrative Courts in France exist side by side the hierarchy of regular courts.[88] A main characteristic of judicial system of France is the division between administrative and ordinary courts.[89] Both these type of courts have their own organization, jurisdiction and procedure.[90] This complete separation between civil and administrative courts, that might appear a little strange according to Common law standards, is fairly familiar to most Civil law countries.[91] They are meant to keep the servants and officials of the state within their grant of power and to provide the citizens certain remedies against arbitrative actions.[92] The basis of French organization of Administrative Tribunals is the continuous development or division of labour.[93]

Administrative Courts in France exist in both the local and national level; on the local level, Administrative Courts are known as Administrative Tribunals and on the national level, the

[88] Khanna, S. L., *Comparative Law* (Allahabad: Central Law Agency, 2004), 143.

[89] Gupta, H. P., *Comparative Law* (Allahabad: Central Law Agency, 1997), 58.

[90] Ibid.

[91] Frydman, M. P., "Administrative Justice in France" (Key note address, 11th Australian Institute of Judicial Administration Tribunals Conference, Surfers Paradise); also available at: <http:///E:/Research/administrative%20tribunal%20in%20France/Administrative%20Justice%20in%20France%20by%20M.%20Patrick%20Frydman.htm>, last visited on 08.03.15.

[92] See above, note 88.

[93] According to Claude Albert Colliard, division of labour in the French terminology is a particular aspect of the well known division of powers. On the one hand, by reason of such division of powers, administrative questions and disputes can not be brought before ordinary courts and some statutes of the Revolutionary Period specially provide such prohibitions, while on the other hand, if justice is to be properly administered, it is necessary to specialize the requirements of labour. See for details, Colliard, C. A. "Comparison between English and French Administrative Law", *Cambridge University Press* 25, (1939): 121.

system is headed by the Council of State, that is, *Conseil d' Etat*.[94] The order of administrative jurisdictions has three levels of courts: Administrative Tribunals, the Administrative Courts of Appeal and the Council of State, at the top, that acts as a juge de cassation, that is, as a court reviewing only legal and procedural aspects of judgments, but not the assessment of the merits of the case.[95] This structure of Administrative Tribunals of France is available in all the relevant literatures, which are almost endless in number. The literatures provide a wealthy of data relevant to the thesis and help to achieve a fruitful comparative analysis but did not comment on efficacy of Tribunals.

Let's discuss at first the Council of State, the apex level for administrative matters. Its historical background was search out in chapter three in tracing out the roots of Administrative Tribunals of Bangladesh. The Council of State has approximately 300 Members and the actual number of Members working in the Council at a given time usually lies between 150 and 200. However, its Members may be temporarily assigned to other high rank public positions, such as, directors in different ministries, presidents of government agencies, ambassadors, etc. but they are not assigned to work as ministers or members of Parliament. Most Members are recruited from amongst the graduates of the National School of Administration.[96] Admission to this school is by annual competitive examination. The course of study is of three years duration and includes practical training in various administrative agencies.

[94] See above, note 88.

[95] See for details, 'Judiciary of France', available at: <http:///E:/Research/administrative%20tribunal%20in%20France/Judiciary%20of%20France%20-%20Wikipedia,%20the%20free%20encyclopedia.htm>, last visited on 03.04.2014.

[96] Popularly called ENA from its French acronym.

In fact, students in the school are in the position of civil servants and receive a fixed salary from the state. Thus, the personnel of the *Conseil d' Etat* are practical administrators. Promotions to hire cadres are through an absolute rule of seniority, which has completely eliminated the danger of purely political promotions and give them full guarantees of independence. In addition to promotion of junior members to upper echelons of the *Conseil d' Etat*, certain number of Members is appointed outside by the President of the Republic. They are chosen from persons in active administration with at least ten years of public service and their positions are, in fact, permanent.[97] Finally, the Council of State has to be presided over by a Vice-President, as the presidency of its general assembly is formally attributed to the Prime Minister. But the latter has no effective power in functioning of the institution and the Vice-President of the Council of State is the highest ranking official in French administration.

Except for the presidents of the Administrative Courts of Appeal, who are Members of the Council of State, Members of all Administrative Tribunals and courts belong to a special body of judges that is distinct both from the Council of State and from judicial judges. The number of these judges is a little more than 1000. They are granted full guarantees of independence by their status,[98] are irremovable and, in order to prevent them from any interference of executive power, all the main decisions concerning their career, such as, promotions or transfers are made by an independent council, called the Superior Council of Administrative Tribunals and the Courts of Appeal. This Superior Council is presided over by the Vice-President of the Council of State. Like Members of the Council of State, some of these judges are recruited from ENA. But due to the need for a growing number of judges in recent years, it has been necessary to implement

[97] Lobingier, C. S., "Administrative Law and Droit Administratif: A Comparative Study with an Instructive Model", *University of Pennsylvania Law Review* 91, no. 1 (1942): 41.

[98] Zweigert, K., and Kotz, H., *Introduction to Comparative law* (Oxford: Clarendon Press, 1998), 125.

other ways of recruitment. That is why, special competitions are now organized each year to select new judges among civil servants, lawyers or high level law graduates. Some of these judges may be selected in the course of their career to join the Council of State according to their merits.

Another remarkable feature of French administrative court system is that all Administrative Tribunals and Courts of Appeal are placed under the management of the Council of State. The Council is responsible for all aspects of their organization, functioning, staff recruitment or training, and funding. Thus, the Council acts not only as the supreme court of these jurisdictions, but also, in the mean time, as a kind of small ministry of administrative justice in charge of their administrative and financial management. For this purpose, the Council of State, which is, notably, completely separated from the ministry of justice, enjoys full managerial independence and budgetary autonomy.

It is found that the Council of State plays a double role through its different divisions, called sections. On the one hand, it is the supreme court of administrative jurisdiction and on the other hand, it is the legal adviser to the government.[99] The jurisdictional mission of the Council of State is exercised by its largest section, namely, the Litigation Section, which works in three different capacities. Firstly, it may work as first and last instance judge. Approximately 20 % of the cases are being settled by the Council each year.[100] In this regard, all matters including law can be placed before the Council. Most of the cases cover litigation of high importance, such as, complaints challenging governmental decrees, ministerial decisions or decisions made by certain national public agencies, and individual cases involving certain high-ranking civil servants. All

[99] See above, note 91.

[100] Ibid.

cases arising from decisions made by French public authorities in any place located outside the geographical scope of the jurisdiction of Administrative Tribunals are also directly submitted to the Council. Notably, this often happens when a French ambassador or consul makes a decision in a foreign country, as is frequent, for instance, in the field of immigration applications.

Secondly, the most common and natural role of the Council is to work as a juge de cassation. This is for all judgments issued by the Administrative Court of Appeal and also for some judgments of Administrative Tribunals in certain minor cases which cannot be appealed. The Council then reviews the whole case within all its legal aspects but does not look into facts which have been debated before previous courts. If the claim is regarded as valid, the Council, acting either as an appeal or first instance judge, is free to settle the case right away or to send it back to the court whose judgment has been successfully challenged. If the case is sent back, which seldom happens, the court or tribunal has to comply with what has been ruled by the Council. Finally, the Council may also serve as an appeal judge, in some cases, especially for litigation involving local elections which fall under the jurisdiction of Administrative Tribunals on first hearing but go directly on appeal to the Council of State instead of the Administrative Court of Appeal in order to reach more rapidly a final judgment in each case. The Litigation Section is divided into ten so-called subsections or chambers and these are in charge of a preliminary review of cases before these are settled in court sessions. Each of these subsections is specialized in certain fields of law.

The present day form Administrative Tribunals were established in 1953. They are the ordinary first instance judge for all cases other than those to be directly submitted to the Council of state. Administrative courts have jurisdiction over all disputes related to decisions or actions of public authorities. From tiny decisions made by any local authority to decrees issued by the President of

the Republic come under the jurisdiction of Administrative Tribunals. It is irrelevant as to whether the complainant seeks the annulment of an act or financial compensation for damage and everything relating to public administration are within the exclusive jurisdiction of Administrative Tribunals. The most common kinds of administrative cases include, for example, those related to the application of economic or social regulations, taxation, town-planning, building permits, public works, public service procurement, environmental projects, hospital liability, immigration permits, civil servants' career and pensions, European and local government elections, and so on.

In general, jurisdiction of the subject matter has been exercised mainly through two processes or remedies, namely, the plea of *ultra vires* which is based upon the destruction of an organic rule of service and a claim for annulment or revocation with one for damages and interest.[101] These two processes or remedies indicate that Administrative Tribunals of France have the power to annul administrative act or decision on the ground of its illegality but this power proves to be inadequate to give complete satisfaction to the complainant and, in particular, to fully protect his or her legitimate rights and that is why, by a 1995 Act, the administrative judge has been granted power to issue injunctions ordering the administration to take such measures as the court deems necessary to execute its judgement. These measures may vary from one case to another, depending on grounds for the annulment of the impugned decision. One peculiarity that exists in France is that the possible conflicts of jurisdiction between civil and administrative courts are quite exceptional and these are arbitrated by a special court, called the Tribunal des conflicts. Its

[101] See above, note 97, 43-44.

Members are chosen, on an equal representation basis, among judges of the Council of State and of the *Cour de cassation*.[102]

The Administrative Courts of Appeal has been established in 1987 and before their creation all judgments of the tribunals could be appealed directly to the Council of State. Growing number of cases resulted in an excessive work load for the Council and so made it necessary to establish an intermediate level of courts. Now, judgments of the tribunals can normally be challenged before the administrative courts of appeal. There are some minor cases which cannot be appealed and are only liable to be submitted to the Council of State.

The organization and procedural rules of Administrative Tribunals and the Courts of Appeal are reproduced from the Council of State. It is not embodied in a Code, like the civil law. Some of the rules have been established by the issue of decrees, but in large part they have been accumulated by the decisions of administrative courts, especially by the decisions of the Council of State.[103] In this respect it somewhat resembles the Common law which has been slowly built up in regular courts by one decision after another.[104] The Council's precedents are not legally binding but administrative jurisdictions practically always implement them very strictly. Because their judgments could, otherwise, be successfully challenged. Administrative courts are not bound by civil laws and the law which they administer is equity using that term as equivalent to 'Natural Justice'. Accordingly, the results which they have reached do not satisfy 'Natural Justice', the decisions are self condemned.

[102] Ibid.

[103] Tandon, M. P. and Tandon, R., *Comparative Law* (Delhi: Allahabad Law Agency, 1997), 122.

[104] Ibid.

It is noteworthy that administrative decisions may be enforced, even if they have been challenged before an administrative court, as long as they have not been rescinded by this court. Therefore, administrative courts have developed a full range of summary proceedings which allow the judge, under certain conditions, to suspend the enforcement of administrative decisions. Moreover, in the case of an infringement of personal freedom or some other fundamental rights and liberties, the administrative judge may even go beyond the mere suspension of the challenged decision and order any appropriate measure to protect those rights and liberties.

Civil law courts traditionally tend to decide by way of panels of judges, whereas individual judges are more prevalent in Common law courts.[105] In France, administrative court judgements are pronounced by collegial panels and number of judges varies depending on the importance and the legal difficulty of the case. In the Council of State there are several different levels of court sessions and these involve between three and seventeen judges on the bench. In Administrative Tribunals and the Courts of Appeal, panels are usually made up of three judges. In it there are also plenary court sessions including the president of the court and all presidents of chambers, and the most delicate cases are determined here. Besides, there is also a member of the court, known as, government commissioner. His title is seriously misleading but he does not stand for the Government and is a fully independent judge. His duty consists in looking into cases, once they have already been examined by a rapporteur, and publicly delivering his legal opinion during the court session, when he submits his own proposal for settling each case.

[105] See above, note 85, 50.

The principle of collegiality and the intervention of the government commissioner offer precious guarantees to achieve a perfect quality of judgements but they are not always compatible with the objective of reducing the duration of the procedure. That is why, some alternative procedures of judgement have been developed for the simplest cases. As for instance, a lot of basic rulings of courts including those dismissing obviously inadmissible complaints are now issued in the form of orders made by a single judge and they do this without even convening a public session. Besides, collegiality has been abolished in Administrative Tribunals in 1995 for litigation of minor importance.[106] Although the cases are settled by a single judge, he is assisted by a government commissioner. If the case is not a simple one, the judge can refer it to a collegial panel of the same Tribunal.

2.2.2 Employment Tribunals in England: A Part of the Civil Justice System

Alternatively, Common Law countries did not use to distinguish between courts for private and public law.[107] For instance, in matters of civil liability, the state was, and often still is, just a normal party in courts of general jurisdiction.[108] Yet, in the twentieth century, public and administrative law emerged as distinct fields of academic research.[109] In England, tribunals are major component of administrative justice system, though some of them are part of the civil justice system; Employment Tribunals are the most well-known example.[110] Tribunals that belong to administrative justice system are, in effect, although not technically, administrative

[106] Such as, liability cases of small financial amounts (less than 10 000 euros, or about 16 000 Australian dollars) or litigation related to local taxes, certain social benefits and driving licence withdrawals.

[107] See above, note 85, 49.

[108] Ibid.

[109] Allison, J. W. F., *A Continental Distinction in the Common Law-A Historical and Comparative Perspective on English Public Law* (Oxford: Clarendon, 1996), 19-23.

[110] Cane, P., *Administrative Law* (New York: Oxford University Press, 2011), 316

courts and the most important of these are the First-tier Tribunal (FtT) and the Upper Tribunal (UT).[111] As the research is concerned with service matters, hence Employment Tribunals among many others are relevant here. The hierarchy that is reserved for Employment Tribunals in England has three stairs. These are, from the lowest to the top, Employment Tribunals, the Employment Appeal Tribunal and the Court of Appeal.

Employment Tribunals in England are composed of three people, a legally qualified Employment Judge, and two lay Members.[112] The lay people each represent either employees or employers.[113] Lay Members use their employment experience in judging the facts. During the hearing, the Employment Judge is under a duty to ensure that the hearing is conducted fairly, taking into account both sides' submissions on law and facts.[114] Sometimes the Employment Judge sits alone, for example, to hear preliminary legal arguments or in a case involving a claim for unpaid wages. The Employment Tribunals Rules of Procedure govern the circumstances in which an Employment Judge may sit alone. The Employment Appeal Tribunal consists of a High Court judge as Chairman and two or four lay Members who have special knowledge or experience as employers' or employees' representatives. All the appointments of Members in Tribunals are made only after the recommendations of the Judicial Appointments Commission.[52]

Employment Tribunals are tribunal public bodies in England, Wales and Scotland which have statutory jurisdiction to hear many kinds of disputes between employers and employees.[115] The

[111] Ibid.

[112] See for details, 'Employment Tribunals', available at: <http://www.inbrief.co.uk/employees/employment-tribunals.htm>, last visited on 22.09.15.

[113] Ibid.

[114] Ibid.

[115] See for details, 'Employment Tribunal', available at: <http://en.wikipedia.org/wiki/Emplyment_Tribunal>, last visited on 22.09.15

most common disputes are concerned with unfair dismissal, redundancy payments and employment discrimination.[116] These Tribunals may award damages and grant interim relief which may order a former employer to continue to pay a dismissed employee until a full hearing. If a person is dismissed and makes an application for interim relief, the Tribunal must receive his claim within seven days of the dismissal. In an unfair dismissal case, the Tribunal can order the employer to reinstate the employee in the old job or re-engage him in a comparable job. In either case, the person would also receive backdated wages. Other employment benefits such as membership of the employer's pension scheme would be restored as if the employee had not been dismissed. However, if the employer refuses to re-employ the employee in accordance with the Tribunal's order, he cannot be compelled to do so but the Tribunal can increase the compensation that it has already awarded him. If the employer denies employing the person, the Tribunal can award financial compensation which is divided into a 'basic' award and a 'compensatory' award. The basic award is calculated by a formula that takes account of the age, length of service,[117] and the weekly pay, up to a maximum figure per week.[118] When making a compensatory award, the Tribunal has to consider what is just and equitable.

In a discrimination case, the Tribunal can also award compensation for injury to feelings, that is, a sum of money paid to compensate for the upset and distress caused by discrimination. The amount awarded will vary depending on how badly a person has been affected. Evidence will be needed, so the Tribunal can assess this. In extreme cases, if there is evidence that a person has become ill because of discrimination; compensation can further be awarded for personal injury. In doing this, the Tribunal will require medical evidence which explains what illness has

[116] Ibid.

[117] Up to 20 years.

[118] £450 in 2013 but this normally changes each year.

developed and how it is linked to discrimination. Furthermore, the Tribunal can review its own decision or judgment on the application of any party or on its own motion.[119] Review is possible if it appears that an obvious and important mistake regarding the name of a party is incorrectly spelt in the heading. The Tribunal will then issue a Certificate of Correction stating the alteration to the Judgment.

The Enterprise and Regulatory Reform Act, 2013 (ERRA),[120] gives Employment Tribunals the discretionary power to impose financial penalties on employers who lose their case. Prior to 6 April 2014, Employment Tribunals had no powers to penalize employers for breaches of employment law, and therefore, employers could expect an order of only compensation quantified by damages, which could be uplifted depending on the circumstances. At present, Employment Tribunals are able to order employers to pay a financial penalty of between £100 to £5,000 as well as compensation, where it loses a claim and where there was one or more 'aggravating features'. The imposition of financial penalties will be completely at the Tribunal's discretion. The Tribunal has much less discretion over the amount of penalty, which must be 50% of the amount of compensation awarded with a 50% discount for employers who pay within 21 days of the Tribunal's decision.

The most interesting thing about this penalty is that rather than acting as an additional award to the employee, the employee will not actually receive a penny, as it will all be paid to Her Majesty's Revenue and Customs (HMRC). The term 'aggravating feature' is not explained or defined in the legislation. But the notes to the legislation set out a non-exhaustive list of factors

[119] See for details, the Employment Tribunals Rules of Procedure, 2013, rule 37.

[120] The Enterprise and Regulatory Reform Act, 2013 received Royal Assent on 25 April 2013 and came into force on 6 April 2014.

which a Tribunal may take into account in deciding whether to impose a financial penalty. This includes the size of the employer, the behavior of the employer and employee, and the duration of the breach. The notes also state that a Tribunal may be more likely to find that the employers had aggravating features where the action was committed intentionally or with malice; the employer had no Human Resource (HR) team; or the employer had repeatedly breached the employment right concerned.

In Great Britain, the Employment Appeal Tribunal (EAT) is a superior court of record. It is a statutory body established to hear appeals from Employment Tribunals. They can only hear appeals on questions of law, issues of fact being in exclusive jurisdiction of Employment Tribunals. The EAT may allow or dismiss an appeal or, in certain circumstances, remit the case to Employment Tribunal for further hearing. It does not generally order either party to pay the other's costs, except when the appeal is frivolous, vexatious, or improperly conducted. The parties may be represented at the hearing by anyone they choose, who need not have legal qualifications. The EAT cannot enforce its own decisions; separate application must be made to the court to enforce the order. A party may appeal to the Court of Appeal from a decision of the EAT, but only with the leave of the EAT or the Court of Appeal. The Employment Tribunals Act, 1996 sets out the jurisdiction of the EAT.

Where an application is made for a review of a judgment or order of the EAT,[121] it will normally be considered by the Judge or Judge and lay Members who heard the appeal in respect of which the review is sought. If the original judgment or order was made by the Judge together with lay Members, then the Judge may, pursuant to rule 33, consider and refuse such application for

[121] Rule 24 of the Practice Direction (Employment Appeal Tribunal-Procedure), 2013 deals with review.

review on the papers. If the Judge does not refuse the application, he or she may make any relevant further order, but will not grant the application without notice to the opposing party and reference to the lay Members, for consideration with them, either on paper or in open court. A request to review a judgment or order of the EAT must be made within 14 days of the seal date of the order, or must include an application, for an extension of time, with reasons, copied to all parties.

The Employment Appeal Tribunal is not only able to make awards for compensation, but also to act as an advisory service to employers. In this case, the Tribunal felt it necessary to make recommendations to the employer regarding their policy on discrimination. These recommendations are still mandatory and must be complied with by the employer within a specified time frame. Recommendations can also be to insist on the presence of an expert to advice on policy and implement training to key personnel so as to ensure compliance with all UK Legislation. The hope is that these recommendations will prevent future Tribunal cases, and make businesses more aware of their duties and boundaries as an employer when employing staff. If the employer fails to comply with the recommendation, the Tribunal awarded compensation can be increased. If no compensation was awarded initially, it can be awarded once it is clear that the employer has not complied with the recommendation. Although not binding, failure to comply with the Tribunal's recommendation could be damaging to the employer's reputation and be used as evidence against them in future discrimination claims.

Employment Tribunals are part of the tribunals system of England.[122] Although an Employment Tribunal is not as formal as a court, it must comply with rules of procedure and act

[122] See above, note 115.

independently.[123] These are constituted and operated according to the Employment Tribunals Rules of Procedure.[124] The Rules of Procedure set out the Tribunals' main objectives and procedures, and matters, such as, time limits for making a claim, and deal with requests for reviews. The Employment Tribunal can summon any person to appear before it; examine a witness or any person appearing before it on oath; and require any person to produce any document which the Tribunal considers relevant. The Rules for appeals are governed by the separate rules of the Employment Appeal Tribunal.[125]

Typical time limit for making a claim is three months from the date of the act complained of. Claims are normally initiated by individuals, and normally responded to by employers. The terms 'claimant' and 'respondent' are used to describe the parties involved in Tribunal proceedings. Tribunals are intended to be informal and to encourage parties to represent themselves. Conciliation is encouraged and that is why, the Advisory, Conciliation and Arbitration Service (ACAS) officer has been assigned.[126] This will assist the parties in reaching a binding agreement to end the claim. All communications with ACAS are subject to privilege and are confidential unless the party waives that right. The parties may also settle a claim by a Settlement Agreement or by drawing up a Tomlin Order and asking the Employment Tribunal to

[123] See above, note 119, rule 2 (c).

[124] Rules on how cases are handled in Employment Tribunals, from starting a claim to what happens at a hearing, are mentioned in the Employment Tribunals Rules of Procedure, 2013 as contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations (Act No.1237, 2013).

[125] Rules on how cases are handled in the Employment Appeal Tribunal, who hears appeals against decisions made by Employment Tribunals, are mentioned in the Employment Appeal Tribunal Rules, 1993 (as amended by the Employment Appeal Tribunal (Amendment) Rules 1996, 2001, 2004, 2005 and 2013; the Information and Consultation of Employees Regulations, 2004; the Companies (Cross-Border Mergers) Regulations, 2007; and the Transnational Information and Consultation of Employees (Amendment) Regulations, 2010) . Parties should read the Rules in conjunction with the Practice Direction (Employment Appeal Tribunal-Procedure), 2013.

[126] 'ACAS' has been defined in rule 1 and authority and powers of this officer has been mentioned in rules 3 and 93 respectively of the Employment Tribunals Rules of Procedure, 2013.

agree to the disposal of the case in accordance with that Order. If a person habitually and without reasonable excuse brings vexatious proceedings in Employment Tribunals, a government law officer may apply to the Employment Appeal Tribunal for an order declaring that person to be a vexatious litigant, which has the effect of barring that person from bringing further proceedings in Employment Tribunals without the consent of the Employment Appeal Tribunal.[127]

Parties are expected to comply with strictly enforced time limits when applying for a review or appeal. The time limit for a Review application is within 14 days of the judgment being issued. Time limit can be extended on a just and equitable basis. According to rule 5 of the Practice Direction (Employment Appeal Tribunal-Procedure) 2013, an appeal must be instituted within 42 days from the date of the order, direction or decision or judgment. This time limit is strictly enforced and appeals are often rejected due to time limit being missed or an incomplete Notice of Appeal being lodged.[128] An interim Tribunal order must be appealed within 14 days, and reasons must be provided. The time for making an appeal can be extended on good excuse.

There is another stair to go against the decision of the Employment Appeal Tribunal. An application to the EAT for permission to appeal to the Court of Appeal in England and Wales must be made within 7 days when a reserved judgment is handed down.[129] If not made then, or if refused, or unless the EAT otherwise orders, any such applications must be made to the Court of Appeal within 21 days of the sealed order. An application for an extension of time for permission to appeal may be entertained by the EAT where a case is made out to the satisfaction of a judge

[127] See above, note 119, rule 102.

[128] For example, if one page of the judgment is missing, the notice of appeal is invalid.

[129] See for details, the Practice Direction (Employment Appeal Tribunal-Procedure), 2013, rule 25.

or Registrar that there is a need to delay until after a transcript is received or for other good reason. The party seeking permission must state the point of law to be advanced and the grounds.

Alternative Dispute Resolution mechanism has been introduced in the aforesaid Direction of 2013 and accordingly, the EAT encourages alternative dispute resolution under rule 26 of the said Direction. In all cases, the parties should, and when so directed must, consider conciliation of their appeals. The Registrar or a Judge may at any stage make such a direction and require the parties to report on steps taken, but not the substance, to effect a conciliated settlement with the assistance of an ACAS officer notified by ACAS to the EAT.

2.2.3 Service Tribunals in Pakistan: A New Way in the Sub-continent

As Bangladesh was at a time under the control of Pakistan in the name of East Pakistan and the first administrative tribunal in the sub-continent was established in Pakistan, it is worth considering the position of Pakistan in this regard. Since 1947 up till 1969, there was no special forum where the civil servants could get their grievances redressed.[130] All matters related with the terms and conditions of service and the disciplinary actions were to be challenged in civil courts of the country. For the first time, in the history of Pakistan, a separate forum for civil servants was introduced by the Governor of West Pakistan through an Ordinance, called, the West Pakistan Civil Services (Appellate Tribunals) Ordinance, 1969.[131] The Appellate Tribunals created under the said Ordinance were empowered to deal only with the cases of seniority of

[130] Khan, M. I., "Administrative Reforms in Pakistan: A Case Study of Administrative Tribunals" (Ph. D. thesis, University of Karachi, 2005), 180.

[131] Ibid.

civil servants.[132] This Tribunal was not so empowered to co-ordinate the actual behavior of governmental executive agencies and to regulate administrative discretion.[133]

With a view of reviewing the whole structure of civil service in the country, a high powered Committee was formed in 1972. Alongside the other recommendations, the Committee opined for the setting up of Administrative Tribunals that would deal, exclusively, with matters of civil servants. Accordingly, the Interim Constitution of 1972 inserted article 216 for the establishment of Administrative Tribunals that would exclusively cover service matters. But the article was not implemented after the coming into force of the regular Constitution of 1973. This Constitution of 1973, by its article 212, empowered the legislature to make legislation for the establishment of one or more administrative tribunals.[134] In consonance with this constitutional provision, the Service Tribunal Act, 1973 was enacted and Service Tribunals were afterwards established accordingly in the country. Under the Constitution, the jurisdiction of all other courts is excluded.[135] This article is applicable only to Federal Service Tribunal.

All four provinces were asked to make a formal request in the form of a resolution that clause (2) of article 212 may be extended to Service Tribunals established under the Acts of Provincial

[132] Ibid.

[133] Ibid.

[134] Before the enactment of article 212, tribunals existed, that is, the Service Appellate Tribuals in various areas and their existence was recognized by the Constitution, but they were not intended to be exclusive forums, and therefore, they were subject to judicial review by the High Courts under article 199 of the Constitution. The new system of Administrative Tribunals, introduced by article 212, is distinct from the existing tribunal system, which was in function before 1973. The new system of Administrative Tribunals, introduced by article 212, has the exclusive jurisdiction in respect of matters relating to the terms and conditions including disciplinary measures of persons who are or have been in the service of Pakistan.

[135] See for details, the Constitution of the People's Republic of Pakistan, 1973, article 212 (2); Chairman PIAC and Others vs Nasim Malik, (1990) PLD (SC) 951. Accordingly, other courts are barred from granting an injunction, making any order or entertaining any proceedings in respect of any matter, which falls within the scope of such Tribunals.

Assemblies. The Provincial Assemblies of Punjab, Sindh and North-West Frontier Province (NWFP) made formal requests in the form of resolutions for the extension of provisions provided in Clause (2), whereupon the Parliament passed a Bill, called, the Provincial Service Tribunals (Extension of Provisions of the Constitution) Act, 1974.[136] Clause (2) was extended to the Service Tribunal of Balochistan with effect from the 19th May, 1976 after the Provincial Assembly of Balochistan made a formal request through a resolution. All the four provinces, following the federal legislation, enacted laws establishing Service Tribunals for their respective provinces.[137] Provincial legislations followed the Federal legislation with very few modifications. Each province has a single bench of Tribunal for the entire province. Besides these Subordinate Service Tribunals, the Federal Service Tribunal established under the Service Tribunals Act of 1973 has now five Benches.[138]

NWFP Service Tribunal consists of four judges of the High Court whereas Sindh Service Tribunal, Punjab Service Tribunal and Balochistan Service Tribunal consist of three judges of the High Court. All judges of the High Courts are to be nominated by the Chief Justice of the High Court as Members for the Tribunals of Punjab, NWFP and Sindh. On the other hand, the Chairman and Members of the Balochistan Service Tribunal are to be nominated by the Govt. from amongst the judges of the High courts. On the other hand, Section 4 of the Service Tribunal Act, 1973 deals with the constitution of Federal Service Tribunal. The powers and functions of a Tribunal may be exercised or performed by Benches consisting of not less than two Members of

[136] The Act was enforced from the 6th May, 1974.

[137] In the province of Sindh, the Sindh Service Tribunal Act, 1973 was enacted and came into force on the 5th December 1973. For the North West Frontier Province, the NWFP Service Tribunal Act, 1974 came into effect from the 28th March, 1974. For the province of Punjab, the Punjab Service Tribunal Act, 1974 is now in force. The Provincial Assembly of Balochistan passed an Act called the Balochistan Service Tribunal Act, 1974, which came into force on the 27th June, 1974.

[138] Three Benches at Islamabad and one each at Lahore and Karachi. Islamabad is the principal seat of the Tribunal.

the Tribunal including the Chairman.[139] The number of Members in the bench must not be less than two. Where the bench consists of two Members, namely, the Chairman and one Member, then the status of the Chairman is also of a Member. In this like situation, if there is difference in opinion, the Chairman shall constitute another bench excluding himself as per the Supreme Court's ruling.[140]

The Act of 1973 provides that the Chairman is to be selected from amongst persons who are or have been judges of the High Courts or they are qualified to be appointed as judges of the High Court.[141] No statutory qualifications are prescribed for Members of a tribunal so far.[142] The President has full discretion to appoint Members having qualifications prescribed by rules framed by the Govt. Members are normally drawn from amongst civil servants with little or no legal or judicial training. Moreover, the Service Tribunal is an appellate authority with regard to matters pertinent to the terms and conditions of civil servants.

Federal Service Tribunal deals with matters of those civil servants who are connected with the affairs of Federation, so the employees of Provincial Governments fall outside the jurisdiction. The jurisdiction of Federal Service Tribunal extends to those government servants who fall within the definition of civil servant as defined in the Civil Servants Act, 1973.[143] This Tribunal also extends its jurisdiction to statutory corporations. The Pakistan Supreme Court in different

[139] The Service Tribunal Act, 1973, section 3-A.

[140] Sui Northern Gas Pipelines Ltd. vs Mr. Aftab Ali Khan, (2002) PLJ (SC) 1148; Managing Director, Sui Southern Gas Company Ltd. vs Ghullam Abbas and Others, (2003) NLR 2003.

[141] See above, note 139, section 3 (a).

[142] Rule 2 of the Service Tribunals (Qualifications of Members) Rules, 1974 deals with the qualifications of members.

[143] Difficulty regarding the definition of 'civil servant' has been removed by bringing an amendment in the definition in section 2. The amendment was made by the Service Tribunals (Amendment) Act (Act No. XXXI, 1974).

appeals made it abundantly clear that 'employees of semi-government and autonomous bodies are entitled to be remedied in Service Tribunals'.[144] Consequently, upon the consecutive judgments of the Supreme Court, an amended Act was introduced on the 10th June, 1997 and a new section 2A was inserted after section 2 of the Service Tribunal Act, 1973. Now-a-days, the principle of Master and Servant has ceased to apply to employees of statutory corporations and all the employees, regardless of their status, as permanent or temporary, contractual or on daily basis, excluding workmen, of statutory corporations can move the Service Tribunal for the redressal of their grievances.[145]

Section 107 of the Code of Civil Procedure, 1908 empowers the Tribunal to enjoy all the powers of a civil court in relation to orders passed by departmental authorities.[146] Service Tribunals are competent to go into all issues of law and facts and can strike down any piece of subordinate legislation or any administrative action found ultra vires any law. Besides, as the Service Tribunal enjoys all the powers that are conferred upon civil courts of original jurisdiction by section 107 of the Civil Procedure Code, so it has the power to grant interim order.[147] The power to grant interim relief is exercisable by the Service Tribunal under its inherent jurisdiction of section 151 of the Civil Procedure Code. In the case of *Syed Imran Raza Zaidi vs Government of Punjab S and GAD*, Justice Zia Muhammad Mirza and Justice Bashir Jahangiri observed:

[144] Saeed Rabbani vs Director General, Leather Industries, (1994) PLD (SC) 123; Tanveer Iqbal vs OPF College, Islamabad, (1994) SCMR 958; Chairman, Broadcasting Corporation, Islamabad vs Nisar Ahmed and 30 Others, (1995) SCMR 1593; Dr. Munir vs Chancellor, NED University Karachi, (1996) PLJ (SC) 1686.

[145] Inspector General of Police vs Muhammad Farid Ex-Constable, (2003) NLR (Labour) 73.

[146] See for details, the Service Tribunal Act, 1973, section 5; Haji Kadir Bux vs Province of Sindh, (1993) SCMR 582; Muhammad Ahmed vs Pakistan through Secretary, Establishment Division, (1986) PLJ (Karachi) 441; Province of Punjab vs Ramjan Ali Khan, (1982) PLD (SC) 349; M. Yamin Qureshi vs Islamic Republic of Pakistan, (1980) PLD (SC) 22.

[147] Abdul Ghaffar vs Lahore Development Authority, (1958) PLD (Lahore) 769; Sindh Employees Social Security Institution and Others vs Adamjee Cotton Mills Ltd., (1975) PLD (SC) 32; M.A. Khakwani vs Mrs. Shaheen and Others, (1981) PLJ (Lahore) 122.

> Under sub section 2 of section 5 of the Service Tribunal Act, the Tribunal is deemed to be a civil court having all the powers which are vested in the civil court under the Civil Procedure Code. Such powers would include jurisdiction of the Civil Court under Order XXXIX, rules 1 and 2 of the CPC to stay execution or operation of the decree or order appealed from. These provisions can well be invoked by the Service Tribunal for the purpose of granting temporary injunction or interim relief pending the final disposal of the appeal. Apart from this, law is fairly well settled that even in the absence of an express provision for the grant of interim relief, the appellate court or tribunal having the power to grant the main relief can also grant the interim relief by suspending wholly or partially, the operation of the order under appeal before it, as such a power is reasonably identical or ancillary to the main appellate jurisdiction. Needless to observe that under the aforementioned section 5 (1), the Service Tribunal on an appeal filed before it can set aside, vary or modify the order appealed against, of course, after full and final hearing of the appeal. That being so, the Tribunals can very well grants the interim relief during the pendency of the appeal on the basis of aforementioned principal. Thus, viewed from whatever angle, the Service Tribunal has the power to grant interim relief or temporary injunction during the pendency of the appeal.[148]

Moreover, the Service Tribunal is not vested with the power to enhance the penalty or punishment awarded by the departmental authority.[149] Not only enhancement of punishment is outside the jurisdiction, but even, if the Tribunal alters the punishment, it has to give cogent and convincing reason.[150] In a case, where Service Tribunal altered punishment of removal from service to retirement from service without giving sufficient legal justification, the Supreme Court remanded the case to tribunal for re-examination of question of penalty.[151] Furthermore, The Service Tribunal has no power to review its own order.[152] When a civil servant has filed appeal, review or representation before a departmental authority, he has two choices before him.[153] He can either wait for such authority to pass the final order on his appeal, no matter how long it takes. He can then file an appeal against the final order before the Service Tribunal within a

[148] (1996) PLJ (SC) 601.

[149] WAPDA vs Zulfiqar Ali, (1988) PLD (SC) 693.

[150] Ibid.

[151] Ibid.

[152] Rule 22 of the Service Tribunal (Procedure) Rules, 1974 empowers the Tribunal only to correct clerical mistakes and does not confer power of review on the Tribunal.

[153] Haji Kadir Bux vs Province of Sindh, (1982) SCMR 582.

period of thirty days.[154] Secondly, after the passage of ninety days, if the departmental authority has not yet passed the final order on his appeal or review, he can file an appeal directly against the earlier order of the departmental authority before the Service Tribunal. Therefore, the civil servant has to approach the Service Tribunal against a final order by which he is aggrieved within 120 days, that is, ninety days waiting period for receiving a decision on appeal plus thirty days limitation period of the appeal before the Service Tribunal.[155] Condonation of delay is discretionary power of the Tribunal but the parties have to satisfy the Tribunal that there were sufficient reasons for delay.[156] One more point is that on the point of limitation, government departments are not to be treated differently.[157] Furthermore, appeal to the Supreme Court against the order of the Service Tribunal under clause (3) of article 212 would lie only when a substantial question of law of public importance is involved; and thus each and every order of the Service Tribunal, though it may suffer from some infirmity, cannot be challenged before the Supreme Court.[158]

2.2.4 Administrative Tribunals in India: A Supplemental to the High Courts

In India, Justice Shah Committee in 1969 and the First Administrative Reforms Commission suggested for the creation of special tribunals to look into the grievances of government

[154] See for details, the Service Tribunal Act, 1973, section 4 (1); the Balochistan Service Tribunal Act, 1974, section 5; the Punjab Service Tribunal Act, 1974, section 5; the NWFP Service Tribunal Act, 1974, section 5; the Sindh Service Tribunal Act, 1973, section 4.

[155] Haji Kadir Bux vs Province of Sindh, (1982) SCMR 582; Federation of Pakistan vs Muhammad Azim Khan, (1989) SCMR 1271; Fazal Haji vs Pakistan through Establishment Division, (1990) PLD (SC) 692; Muhammad Jan Marwat vs Nazir Mohammad, (1997) SCMR 287; Zafar Iqbal vs WAPDA, (1995) SCMR 16; Abdul Rehman vs Inspector General Police, Punjab, (1995) PLD (SC) 546.

[156] WAPDA vs Abdul Rashid Dar, (1990) SCMR 1513; Zubaida Zahoor vs Deputy Director, Health Service, Bhawalpur Division, (1991) SCMR 1472.

[157] Chairman/Secretary, Pakistan Railway, Islamabad vs Muhammad Sharif Javaid Warsi, (2003) PLJ (SC) 407.

[158] Mohammad Yousuf vs Government of Pakistan, (1992) SCMR 1748.

employees.[159] The Supreme Court also opined in favor of establishment of separate tribunals for service related disputes in *K.K. Dutta vs Union of India*.[160] By the 42nd amendment in 1976, article 323A was inserted in the Constitution and accordingly, the Administrative Tribunals Act of 1985 was enacted. Chief Justice P. N. Bhagwati and Justice Ranganath Misra propounded the theory of Alternative Institutional Mechanisms in *S.P. Sampath Kumar vs Union of India* to defend the establishment of Administrative Tribunals which were conferred jurisdiction over service related matters.[161]

Administrative Tribunals excluded the exercise of judicial review by the High Courts in respect of service matters. This position was changed some years later by a constitutional bench in *L. Chandra Kumar vs Union of India* wherein it was held that "the orders of Tribunals constituted under articles 323A and 323B were subject to scrutiny of the High Courts under their writ jurisdiction by way of article 226 as well as on account of their power of superintendence over subordinate courts and tribunals, as provided under article 227."[162] As a consequence of this decision, the role of the Central Administrative Tribunal was characterized as supplemental rather than that of a substitute to the High Court.[163] The Administrative Tribunals Act, 1985 does not provide for any appeal or review of the order of the Tribunal except that a person aggrieved may file a special leave petition before the Supreme Court. However, after the decision of the Supreme Court in *L. Chandra Kumar vs Union of India*, Service Tribunals have been brought

[159] K. G. Balakrishnan, "All India Conference of the Central Administrative Tribunal" (Keynote address, Inaugural Session of the All India Conference of the Central Administrative Tribunal, New Delhi, August 2, 2008).

[160] (1980) 4 SCC 38.

[161] (1985) 4 SCC 458.

[162] (1997) 3 SCC 261.

[163] Ibid.

under the jurisdiction of the High Courts and their decision now shall be appealable before the High Courts also.

The Administrative Tribunals Act of 1985 provides for establishment of Central Administrative Tribunal (CAT) and State Administrative Tribunals. The CAT has 17 regular benches, 15 of which operate at the principal seats of the High Courts and the remaining two at Jaipur and Lucknow.[164] These Benches also hold circuit sittings at other seats of the High Courts.[165] A sitting or a retired Judge of a High Court heads the Central Administrative Tribunal and he is known as the Chairman of the Tribunal.[166] Besides the Chairman, the authorized strength consists of 16 Vice-Chairmen and 49 Members.[167] The conditions of service of the Chairman, Vice-Chairmen and Members are governed by provisions of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of the Chairman, Vice-Chairmen and Members), Rules, 1985, as amended from time to time.[168] The conditions of service and other pre-requisites available to the Chairman and the Vice-Chairmen of the Central Administrative Tribunal shall be same as admissible to a serving Judge of the High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 and High Court Judges (Traveling Allowances) Rules, 1956, as amended from time to time.[169] Each Tribunal shall consist of a Chairman and such number of Vice-Chairman and judicial and administrative Members as the

[164] See for details, 'Administrative Tribunals' available at: <http://www.archive.india.gov.in/knowindia/profile.php?id=36>, last visited on 20.04.15.

[165] See, Ibid.

[166] The Administrative Tribunals Act, 1985, section 5 (1).

[167] See for details, Central Administrative Tribunal, Principal Bench, New Delhi, available at: <http://cgat.gov.in/intro.htm>, last visited on 14.09.15.

[168] Ibid.

[169] The Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members), Rules, 1985, rule 15-A.

appropriate Government may deem fit; and subject to other provisions of this Act, jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.[170] Subject to other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.[171]

The appointment of judicial as well as administrative Members to Central Administrative Tribunals is supervised by a Selection Committee headed by a sitting judge of the Supreme Court and this selection committee acts under the authority of the Chief Justice of India.[172] Subject to aforementioned provision, the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.[173] Employees of Central Administrative Tribunal are required to discharge their duties under the general superintendence of the Chairman. Salaries, allowances and conditions of service of officers and other employees of the Tribunal are specified by the Central Government. Pursuant to these provisions the Central Government has notified the Central Administrative Tribunal Staff (Conditions of Service) Rules, 1985.

Central Administrative Tribunal deals with adjudication of disputes 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 other local authorities within the territory of India or under the control of Government of India and for matters connected therewith or incidental thereto. Besides to the Central Government employees, the Government of India has notified 45 other organizations to

[170] See above, note 166, section 5 (1).

[171] See, Ibid, section 5 (2).

[172] See, Ibid, section 6 (3).

[173] See, Ibid, section 6 (3).

bring them within its jurisdiction. Members of paramilitary forces, armed forces of the Union, officers or employees of the Supreme Court, or persons appointed to the Secretariat Staff of either House of Parliament or the Secretariat staff of State or Union Territory do not come under the provisions of the Administrative Tribunals Act, 1985. All the discussion as to subject matter jurisdiction reveals that Administrative Tribunals exercise jurisdiction only in relation to service matters of litigants covered by the Act.

Proceedings before the benches of Central Administrative Tribunal are not guided by the Code of Civil Procedure (the CPC) or the Evidence Act, but are bound by principles of 'Natural Justice'; [174]even in executing its own decision, no reliance is placed on the CPC.[175] The Central Administrative Tribunal is empowered to prescribe its own rules of practice for discharging its functions subject to the Administrative Tribunals Act, 1985 and the Rules made there under. For this purpose, the Central Administrative Tribunal Rules of Practice, 1993 have been notified. Similarly, for the purpose of laying down a common procedure for all Benches of the Tribunal, the Central Administrative Tribunal (Procedure) Rules, 1987 have been notified. The procedural simplicity of the Act can be appreciated from the fact that the aggrieved person can also appear before it personally. The Government can present its case through its departmental officers or legal practitioners.

The Tribunal has been conferred the power to exercise the same jurisdiction and authority in respect of contempt of itself as a High Court.[176] As mentioned earlier, under section 17 of the Administrative Tribunals Act, 1985, the Tribunals are empowered to punish for its contempt. It

[174] See, Ibid, section 22.

[175] See, Ibid, section 27.

[176] See, Ibid, section 17.

was held in *T. Sudhakar Prasad vs Govt. of A.P and Others* that "the Central Administrative Tribunal had the power to punish for its contempt in a manner akin to that of the High Court".[177] This power of contempt is a measure to ensure that parties comply with the Tribunals' orders. But the possibility of the unrestrained use of such power of contempt has been addressed by the Supreme Court. The Court advised the CATs "to exercise restraint in the use of contempt powers especially in circumstances where the parties have not been given sufficient notice or time to comply with the Tribunals' orders or where the orders of the Tribunal have been questioned before the High Court".[178] However, after its constitution, in the beginning, under section 29 of the Administrative Tribunals Act, 1985, the Tribunal received on transfer from the High Courts and subordinate courts 13,350 cases, which were pending there.[179] Where the pendency of cases is on higher scale in any Bench, Members are being deputed from other Benches to that Bench for wiping out the pendency.[180]

2.3 Administrative Tribunals of Bangladesh: Setting Standards of Justice

Discussions on Administrative Tribunals of France, India, England and Pakistan are acceptable only to the extent of setting standards which will be helpful for this dissertation. Moreover, after taking into consideration of different theories mentioned above, a non-exhaustive list of criteria has been set. Before focusing all of these, endeavor has been made to pinpoint the literature available and relevant to the thesis.

[177] (2000) Supp 5 SCR 610.

[178] Suresh Chandra Poddar vs Dhani Ram, (2002) 1 SCC 766.

[179] See above, note 167.

[180] See, Ibid.

S.M. Hassan Talukder in his thesis,[181] did a lot, differentiate Administrative Tribunal from other relevant concepts, such as, court and executive authority etc., examined its historical development in selected jurisdictions, such as, France, England, India and Pakistan. In order to present operation of Administrative Tribunals of Bangladesh, data were collected from both primary and secondary sources through census survey and convenience sampling. In the dissertation, 100 cases of Administrative Tribunal Dhaka for the period starting from 1984 to 1988 were chosen. Data gathered during the aforementioned period, as displayed in the thesis, was very old as it was submitted in 2004. All the cases during the period mentioned above were not taken and this is clearly not in consonance with the research methodology. Notwithstanding the above limitations, efforts were made to show on what matters the applications were filed, how many judgments of Tribunal were revised on appeal, how many were upheld or set aside, and lastly, how many contempt proceedings were drawn from the establishment to 01.06.2001. Some irregularities in its operation were specifically pointed out. Lots of dissatisfaction, so far as operation of Administrative Tribunals are concerned, was accumulated by relying on discussion of only three cases and on two lawyers' view and the displayed irregularities did lack coherent theoretical foundation for their stance. After all, haphazardly used tools made the thesis a weaker one. Afterwards, no one in the country challenges the dissertation, either substantiate or disprove it.

Md. Jamal Uddin Sikdar investigated cases on service matters, gathered 625 cases in his literature,[182] although nothing was told about the efficiency of Administrative Tribunals of Bangladesh. It was explored therein that there are lots of cases which were pending in courts for

[181] Talukdar, S. M. H., "Establishment and Operation of Administrative Tribunals in Bangladesh" (Unpublished Ph.D. Thesis, University of Dhaka, 2004), 1-293.

[182] Sikder, J. U., *Chakrir Bidhanaboli and Prashonghik 625 Cases* (Dhaka: Jamal Uddin Sikder, 2006), 1-900.

years without any fruit. As the author was in the admin cadre, he knew very well as to what irregularities were done in departmental proceedings and he highlighted these in the book. He opined that administrative authority, before exercising powers, should know law. If they were tightly trained in service jurisprudence, many proceedings would not have been drawn. Moreover, on service jurisprudence Dhaka Law Reports,[183] which accommodated enormous cases concerning Administrative Tribunals of Bangladesh under specific provisions, work as a valuable material for the thesis. In it focus was not only on the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982, but also on other service laws; but never did it talk about its efficiency from the context of Bangladesh.

Besides, Syeda Nasrin did not work with empirical testing. It is so far informative wherein detailed discussion pertinent to Administrative Tribunals of Bangladesh is found.[184] It was explored that part of administrative law relates to its establishment and opined that these Tribunals are authorized with ample power of adjudication and settlement of disputes relating to the terms and conditions of service of selective persons. It was expressed that powers conferred on Tribunals is conclusive and comprehensive despite some limitations. The book contains the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982 in their up-to-date existence along with the elaboration, explanation of each provision of the said laws with all reported case laws of reputed law reports in the country spread over the arena. There are comments and remarks corresponded with those, which are of own of the author. Her opinion merits consideration, though it lacks sufficient evidence. However, the literature is silent on the question of its efficacy. Furthermore, Syead Lutfar Rahman's and Sailur Nondini Syeada

[183] Dhaka Law Reports, *Statutory Laws on Service* (Dhaka: Esrarul Haque Chowdhury, 2006), 1-509.

[184] Nasrin, S., *The Administrative Tribunals Act and Rules 1982* (Dhaka: Titu Publications and University Publications, 2012), 1-405.

Roksana's work is used as a tool to understand the Administrative Tribunals Act, 1980, the Administrative Tribunals Rules, 1982, and all the allied laws on conduct and discipline.[185] It has an influential role as all the recent amendments related to the thesis have been picked up from there. No comments are found and hence, relying on them, there is no scope to demonstrate observation as supporters or critics.

Based upon the above discussion, it appears that Administrative Tribunals are likely to be a neglected area in the domain of judicial branch of Bangladesh. Scarcity of materials in the arena demonstrates it. Nevertheless, nothing is found regarding its efficiency and Hassan Talukder's thesis only covers a bit of its efficiency. Even then the literature review and theoretical framework speak of consistent findings setting standards of justice in this domain. These standards do not fix a parameter and are liable to change due to the changing circumstances of the society. The first standard is deeply seated in procedure. It is noteworthy that administrative adjudication is a dynamic system of administration, serves more adequately than any other method and one of its advantages is flexibility in terms of procedure. A Tribunal should not be barred by the provisions of the Evidence Act. In order to discover the truth, the Tribunal may resort to inquisitorial procedure, provided no principle of 'Natural Justice' is violated. Again, Tribunals shall be guided solely by the principles of 'Natural Justice' unfettered by anything in the CPC and shall have the power to regulate its own procedure. It is undeniable that case law concerning 'Natural Justice' is not consistent and the person affected and adjudicators may be unable to have a clear understanding of procedures which have to be followed. Flexibility may be justifiable to a certain extent, as Tribunals should have the freedom to decide procedures in

[185] Rahman, S. L. and Roksana, S. N. S., *Administrative Tribunals Manual* (Dhaka: New Warsi Book Corporation, 2012), 1-312.

accordance with the needs of the specific body, but this must not result in multiplicity of procedures followed by Tribunals, and then the law regarding procedures will be unpredictable. Hence, with a view of making a sound Administrative Tribunal, there must have a legislation for its functioning, which will provide expeditious disposal of cases and set a simple procedure reflecting principles of 'Natural Justice'.

The second standard is rested upon disputes that require to be handled by Administrative Tribunals. Administrative courts must have exclusive jurisdiction on all public law issues, over all disputes related to decisions or actions of public authorities. From tiny decisions made by any local authority to decrees issued by the President of the Republic must come under the jurisdiction of Administrative Tribunals. It is irrelevant as to whether the complainant seeks the annulment of an act or financial compensation for damage; and everything relating to public administration has to be kept within its exclusive domain. The most common kinds of administrative cases include, for example, those related to the application of economic or social regulations, taxation, town-planning, building permits, public works, public service procurement, environmental projects, hospital liability, immigration permits, civil servants' career, pensions, local government elections, and so on. Analyzing Administrative Tribunals of different countries, it appears that Tribunals are not empowered to hear all disputes of public administration. Dual forum is found practiced in resolving different conflicts of bureaucracy. Indeed, in specific disputes, two forums must not work disregarding equality among the justice seekers standing on similar footing. Hence, all the service related disputes government, non-government or semi government must be kept under its domain to uphold the Constitutional dignity of maintaining equality among the service holders seeking justice.

Appointment of Members and their guarantees of independence will determine the third standard. Two questions are linked to this standard and these are 'who appoints?' and 'who are appointed?' So far as the first question is concerned, recruitment of Members of Administrative Tribunals must not be made by the Executive, as it is a violation of the doctrine of 'Separation of Powers' and the concept of independence of judiciary. It needs to be noted that separation of judicial power from executive power is one of the facets of the principle of 'Rule of Law'. Recruitment of adjudicators in Tribunals requires to be overseen by a selection committee headed by a sitting judge of the Supreme Court, acting under the authority of the Chief Justice. This mechanism is, so far, able to ensure transparency in the matter of appointments. With these considerations in mind, the first question further concerns guarantees of independence, which rest chiefly on terms and conditions of service. Adjudicators must be granted life tenure or long tenure by their status. They must be irremovable, unless fall in very limited grounds of incapacity or misbehaviour; and in order to prevent them from any interference of the executive power, all the main decisions concerning their career have to be made by an independent council, called the Superior Council of Administrative Tribunals and the Administrative Appellate Tribunal. The Council needs to be responsible for all aspects of their organization, functioning, staff recruitment or training, promotion, transfer etc. and in this way the Council will work as a kind of small ministry of administrative justice in charge of their administrative management. So far as the second question is concerned, persons recruited need to be equipped with the expertise in service jurisprudence.

Furthermore, justice seekers must have full access to all sorts of remedies and the fourth standard rests upon this. Administrative Tribunals require to be granted the power to issue injunction, to award compensation, to impose penalty on the person who disobeys the decision and obstructs in

the performance of its functions and is a vexatious litigant. After all, it has to be equipped with inherent power to prevent miscarriage of justice or to prevent abuse of its process.

2.4 Summary and Assessment

Theories and Administrative Tribunals of France, England, Pakistan and India, as discussed in the present chapter, clearly demonstrate that the dominant trend in administrative jurisprudence is to search for an absolute answer based on a logical finality. But the issues, when analyzed from different paradigms, indicate to us the paradox of sticking to any fixed just decision. Indeed, the search for efficacy constantly remains a never-ending revisiting of issues and at the same time, this never-ending endeavor is bound to be obstructed to some extent by state laws, since legal decisions can hardly wait for infinite knowledge to reach efficacy. The bottom-line of the argument, therefore, is that both administrative autonomy and judicial intervention are comparative processes requiring an appropriate checks and balances between themselves as well as demand expediency, prevention of violation of the 'Rule of Law' and qualitative adjudication. Qualitative adjudication at the Tribunals' level will also prove fruitful in the sense that the higher courts will not be overburdened with unnecessary litigation. Also important, then, is to consider the demands of social, historical and practical contexts prevalent in the concerned jurisdiction.

Chapter Three

Historical and Legislative Discourse on Administrative Tribunals

Efficacy of Administrative Tribunals cannot faithfully be appraised by reference to legal formulation alone. It requires the identification of historical events to which efficacy are linked. To that end, this chapter begins with the appraisal of laws, so far as our Administrative Tribunals are concerned, by looking first of all back. It is seen that Administrative Tribunals established in 1982 in our country was not a new devise created by us rather the formula was initiated in the hands of the French. Tremendous advance was achieved by them in removing administrative matters from courts and submitting them to Administrative Tribunals. This chapter goes forward in clarifying the term 'Tribunal' in connection with Administrative Tribunals. Further value to the chapter has been added as it was tried to evaluate the concept of 'Separation of Powers' in line with the discussion on Administrative Tribunals. The chapter supplements the analysis of relevant laws focusing on functions, structure, procedure and several other matters connected thereto.

The chapter also remains conscious of the fact that a justice system, from anywhere and of any time, has its limitations and limits.[1] No jurisdiction at any given time fully complies with all the requirements, suggested by normative analysis and as depicted in chapter two. In fact, such requirements serve as guidelines for an Administrative Tribunal but sometimes remain far from commanding complete compliance. This assertion is not meant to convey a message that justice in Administrative Tribunals is messy, full of contradictions and incoherence. Contrarily, it is submitted that in establishing justice in Tribunals, each state has its own ideologies and

[1] Okafo, N., *Reconstructing Law and Justice in a Post colony* (Surrey: Ashgate Publishing, 2009), 23.

preferences, good or bad. It is a common tendency to foster those ideologies with practical limitations.

3.1 In Search of Administrative Tribunals of Bangladesh: From the French Constitution of 1799 to the Administrative Tribunals Act of 1980

Administrative Tribunals have their roots traced from French system of Administrative Tribunals.[2] In France, there exists dual system of adjudication, namely, *Droit Civila* which is the equivalent of our civil law or municipal law and is administered by civil courts, and *Droit administratif,* the other branch of law, is equivalent to our administrative law and is administered by different set of courts.[3] This French system of two sets of courts was the product of the French Revolution as there was a strong demand from the suffering people for a strong and effective check on the excesses of administration.[4] The political thought prevailing in 1789 was in favour of stopping the ordinary courts from interfering in the activities of the administration. Regarding this issue, Napoleon's work as a law reformer began while he was still First Consul.[5] As early as 1797, he wrote in his diary:

> We are very ignorant of political and social sciences. We have not yet defined executive, legislative and judicial powers. I see but one feature which we have defined clearly in 50 years-the sovereignty of the people; but we have done no more to settle what is constitutional than in the distribution of powers. The legislature should no longer overwhelm us with a thousand laws, passed on the spur of the moment, nullifying one absurdity by another and leaving us, although with 300 folios, a lawless nation. [6]

[2] Huda, A. K. M. S., *The Constitution of Bangladesh* (Dhaka: Istiaq Hasan, 1997), 1906.

[3] Ibid.

[4] Ibid.

[5] Lobingier, C. S., "Napoleon and His Code", *Harvard Law Review* 32, no. 2 (1918): 114.

[6] Johnston, R. M., *The Corsican: A Diary of Napoleon's Life in His Own Words* (New York: Houghton Mifflin Company, 1910), 69.

The 1791 Constitution had provided *les tribunaux ne peuvent entrepredre sur les fonctions administratives ouci les . . . administrateurs pour raison de leurs fonctions*.[7] In the Constitution of 1799 Napoleon revived the *Conseil du Roi* under the title of *Conseil d' Etat*,[8] conferred upon it jurisdiction to adjust administrative disputes and required its authorization for proceeding against government agents, except ministers, for acts connected with their duties.[9] So the *droit intermediaire*, the law of the revolutionary period between the first session of the Assemblee Constituante of 1789 and the coming to power of Napoleon Bonaparte in 1799, altered the traditional social order with almost unparallel speed and thoroughness.[10] All the institutions, namely, the absolute monarchy, the interlocking powers of king, nobility, clergy, and judiciary, the old territorial division of the country into provinces, the feudal regime of land, the courts system, and the tax system of the ancient regime were rooted out in very short order.[11]

However, the French Constitution of 1799 established the *Council d' Etat* which was the beginning of the system of Administrative Tribunals. The Council of State is one of the oldest institutions of France and its history goes back as early as XIIIth century and it was created by King Philip, the IVth.[12] Then the Council was established in order to give King Philip advice on

[7] It means that the courts shall not exercise administrative functions nor summon administrators on account of them. It was provided by the French Constitution, 1791, article 3, chapter V, title III.

[8] Lobingier, C. S., "Administrative Law and Droit Administratif: A Comparative Study with an Instructive Model", *University of Pennsylvania Law Review* 91, no. 1 (1942): 40.

[9] See, the Code Penal, 1832, article 75.

[10] Zweigert, K., and Kotz, H., *Introduction to Comparative Law* (Oxford: Clarendon Press, 1998), 80.

[11] Ibid.

[12] See for details, Frydman, M. P., "Administrative Justice in France" (Key note address, 11th Australian Institute of Judicial Administration Tribunals Conference, Surfers Paradise); also available at: <http:///E:/Research/administrative%20tribunal%20in%20France/Administrative%20Justice%20in%20France%20by%20M.%20Patrick%20Frydman.htm>, last visited on 08.03.15.

government issues and to assist him in his mission to deliver royal justice to his subjects.[13] During the French Revolution it was suppressed greatly because it was strongly tied to the monarchy.[14] When Napoleon came to power in 1799, the Council of State was re-established in its modern form. On May 24, 1872 an epoch-making piece of legislation was enacted which gave to the Conseil's decisions the force of judgments, but at the same time revived the provision for a *Tribunal des Conflicts* to resolve questions of jurisdiction between the Conseil and the ordinary courts.[15] In 1889 the Conseil asserted exclusive jurisdiction of actions involving excess of power by administrative authorities.[16] Despite all the changes of political regimes, this Council of State has survived, since then, up to the present Republic. Since French ordinary courts cannot decide on matters concerning the state, lower level administrative courts were established in 1987.[17]

On the other hand, in English Common Law the issue relating to administrative affairs is dealt with by the ordinary Courts of law and important landmarks in the history of Tribunals have been the reports of three major official inquiries, namely, the Donoughmore Report,[18] the Franks Report,[19] and the Leggatt Review.[20] Accordingly, so far as service matters are concerned, if it is looked to the back, it appears that Administrative Tribunals were developed in England before the 20th century, during the 20th century and after.[21] The King's Council and the Court of Star

[13] Ibid.
[14] Ibid.
[15] See above, note 5.
[16] Ibid.
[17] Siems, M., *Comparative Law* (Cambridge: University printing House, 2014), 48-49.
[18] Donoughmore, 1932.
[19] Franks, 1957.
[20] Leggatt, 2001.
[21] Drewry, G., "the Judicialisation of Administrative Tribunals in UK: From Hewart to Leggatt", *Transylvanian Review of Administrative Sciences*, no. 28 (2009): 45.

Chamber are the oldest Tribunals in England before the 20th century and others existing during that period were Tribunals relating to customs and excise, income tax, and railways. At the beginning of the 20th century, a number of Tribunals were established by statutes, namely, the Old Age Pensions Act, 1908; the Education Act, 1921; the Housing Act, 1919; the Unemployment Insurance Act, 1920; the Roads Act, 1920; the National Health Insurance Act, 1924 etc.[22] In 1929 there was a sharp reaction against the growth of these adjudicatory bodies.[23] Lord Hewart, the then Chief Justice, wrote a book titled 'the New Despotism', where he launched a scathing attack on the ousting of the court's jurisdiction and vesting it in the hands of bureaucracy.[24] The proliferation of various Administrative Tribunals was strongly criticized by him.[25] The view of the learned Chief Justice had an impact on the thinking of the English government, and it was because of such a reaction that the British government in the same year appointed a Committee on Minister's Power headed by Lord Donoughmore known as Donoughmore Committee.

Describing the criticism by Lord Hewart against Administrative Tribunals as not well founded, the Committee in its report emphatically supported the independence of Tribunals and reached to a conclusion that there is nothing radically wrong about the existing practice of Parliament in permitting the exercise of judicial and quasi-judicial powers by Ministerial Tribunal.[26] The Committee made great contribution to the development of Tribunal system in England, although

[22] Talukder, S. M. H., "Establishment and Operation of Administrative Tribunals in Bangladesh" (Unpublished Ph.D. thesis, University of Dhaka, 2004), 41.

[23] Ibid.

[24] Chhabra, S., *Administrative Tribunals* (New Delhi: Deep and deep Publications, 1990), 4.

[25] Allison, J.W.F., "Variation of View on English Legal Distinctions Between Public and Private", *Cambridge University Press* 66, no. 3 (2007): 698.

[26] The Report of the Committee on Minister's Powers, 1932.

the report of the Committee has, in many respects, been criticized as being unduly legislative and irrational.[27] Besides, the Committee did nothing to raise their profile.[28] This led to the setting up of another Committee on Administrative Tribunals and Inquiries under the Chairmanship of Sir Oliver Franks. Soon after the publication of the Report of the Franks Committee, the Tribunals and Inquiries Act of 1958 was passed in England and since then, their status as a part of the judicial system came to be fully recognized. Half a century later, in 2007, following the Report of another official committee, chaired by a retired judge of the Court of Appeal, Sir Andrew Leggatt, the enactment of the Tribunals, Courts and Enforcement Act of 2007 has put the Tribunal system onto a completely new statutory footing and embedded them even more solidly into the fabric of the judicial system.[29]

Bangladesh inherited its legal system from English Common Law, where there is no rigid classification of public law and private law. In contrast, in France there is a separate system covering disputes concerning public law and the *Droit Administratif* with *Council d' etat* have separate hierarchy to decide all administrative disputes. Instances of countries are not rare which have adopted a mixed or combination of both the systems. Bangladesh is one of them which has adopted a mixed system. Nonetheless, in almost every other aspect, the system of administrative law and Tribunals, as developed by France has gone much further than the Common Law world in subjecting the administrative process to the 'Rule of Law'.[30]

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[27] Wraith, R. E. and Hutchesson, P. G., *Administrative Tribunals* (London, Royal Institute of Public Administration, 1973), 33.

[28] See above, note 21, 46.

[29] Ibid, 47.

[30] Friedmann, W., "French Administrative Law and the Common Law World", *University of Toronto Press* 11, no. 1 (1955): 145.

The first ever Administrative Tribunal in this sub-continent was constituted in 1890 under the Railways Act of 1890. The Tribunal was named as the Railway Rates Tribunal. Not only rates were determined by this Tribunal but disputes of railway employees were also decided. Another example of administrative adjudication is found from the Workmen's Compensation Act, 1923. The Act provided for the appointment of an authority, called, the Commissioner for Workmen's Compensation. The Commissioner was empowered to decide disputes regarding the liability of any person to pay compensation to an injured workman who had suffered injury during employment. Another Tribunal, namely, Motor Accident Claims Tribunal was constituted under the Motor Vehicle Act, 1939. The same Act provided for the creation of State Transport Appellate Tribunal. After partition in 1947, these adjudicatory institutions continued to exist. In addition to the old institutions, some more Tribunals and special courts came into existence because of the multifarious activities of the social welfare state. In this regard, the following adjudicatory bodies are worth mentioning: Anti Corruption Courts, Custom Courts, Courts of Banking Judges, Family Courts, Labour Courts, Labour Appellate Tribunal, Provincial Boards of Revenue (Revenue Tribunal for Each Province), Election Tribunal, Court of Income Tax Commissioner, Income Tax Appellate Tribunal, National Industrial Relations Commission (a Tribunal for industrial disputes), Provincial Bar Council Tribunals and Special Courts for Terrorists Activities.

Though there were several Tribunals, but none of these was related to administrative grievances. Since 1947 up till 1969 there was no special forum where the civil servants could get their grievances redressed. All the matters related with the terms and conditions of service and the disciplinary actions were to be challenged in the civil courts of the country. A separate forum for civil servants was introduced for the first time by the Governor of West Pakistan through an

Ordinance, called, the West Pakistan Civil Services (Appellate Tribunals) Ordinance, 1969. The Appellate Tribunals created under the said Ordinance were empowered to deal only with cases of seniority of civil servants. This Tribunal was not so empowered to co-ordinate the actual behavior of governmental executive agencies and to regulate administrative discretion. Prior to independence in 1971, there was a Report of the Law Reform Commission, 1967-70 recommending for the establishment of Administrative Tribunals. In this report they outlined the French administrative justice and recommended for the two, namely, a) Government should set up an Administrative Tribunal to deal with service matters but the High Court's jurisdiction under article 98 of the Constitution of 1962 should remain intact and b) the Tribunal should be presided over by a retired judge of the Supreme Court or the High Court, who should have the same security of office as a serving judge. After independence, Government did not take steps to set up Tribunals.

Even before the establishment of Administrative Tribunals of our country, the first Administrative Tribunal concerning service matters in this sub-continent has been established in Pakistan. The Pakistan Constitution of 1973 by its article 212 empowered the legislature of the country to make legislation for the establishment of one or more Administrative Tribunals. In consonance with this Constitutional provision, the Service Tribunals Act, 1973 has been enacted and Service Tribunals have afterwards been established accordingly in Pakistan. After liberation and for 9 years, Parliament did not pass any law establishing any Administrative Tribunal as envisaged in article 117. As the exclusionary definition of 'person' in article 102 (5) did not come into force, the High Court Division exercised the power of judicial review over service matters for about ten years until the passing of the Administrative Tribunals Act of 1980, shortly,

the Act, which came into effect on 1.2.82. The Act established not only an Administrative Tribunal but also an Administrative Appellate Tribunal.

At present, all over the world the biggest litigant is the government itself. In Bangladesh just three decades ago, lots of cases regarding service matters were hanging in courts and this was a major threat for our judicial system. However, prior to its establishment, the High Court Division had the original plenary jurisdiction of judicial review under article 102 in service matters (concerning the Govt. and public officials) with a regard of appeal to the Appellate Division, and that the civil court's original jurisdiction under the Civil Procedure Code was subject to the appellate and revisional jurisdiction of the High Court Division, and the Appellate Division had an appellate jurisdiction against the decision of the High Court Division. Though Administrative Tribunals have been established in our country under the Administrative Tribunals Act, 1980, but necessity of it was felt earlier. That is why, addressing the President of the then Pakistan Ayub Khan, the honorable Chief Justice of the Pakistan Supreme Court MR Kayani said in 1960:

> Sir, the Constitution which you have promised to the people will be incomplete if it does not contain safeguards for the civil servant's conscience and this one right of appeal and opportunity to show cause are not enough, so long as the power of hearing the appeal, the power of transfer and the powers of promoting or demoting a civil servant, are with the government. These powers should be in the hands of an Administrative Tribunal, independent of government, so that it makes no difference to us whether the government is Conservative or Liberal, Republican or Muslim League.[31]

As noted above, article 117 of the Constitution of the People's Republic of Bangladesh sanctions the setting up of Administrative Tribunals and following this article, the Administrative Tribunals Act, 1980 have been enacted on 5 June 1981.[32] It is a special law dealing with specific

[31] Sikder, Z. U., *The Rules on Service and Related 625 Cases* (Dhaka: Mrs. Rashida Begum, 2006), III.

[32] According to the Notification dated the 12th January, 1982, the number of the Act was Act No. VII, 1981. Accordingly the said Act shall come into force on the 1st February, 1982. But the first Administrative Tribunal at Dhaka was established by a Notification dated the 1st February, 1982.

issues mentioned therein. The Administrative Tribunals Rules of 1982 have also been made for the discharge of its functions and other incidental matters connected with it.[33] Accordingly, government by its notification dated the 1st February, 1982, established an Administrative Tribunal at Dhaka for the whole of Bangladesh and on that day the Act came into force. Again, under section 5 (1) of the Act of 1980, the Government is empowered by its notification in the official Gazette to establish an Administrative Appellate Tribunal for the purpose of this Act. In exercise of this power, the Government by its notification dated the 22nd August, 1983, established an Administrative Appellate Tribunal to hear and determine appeals from any order or decision of an Administrative Tribunal.[34]

It was impossible for a single Tribunal to deal with enormous number of cases and also was hazardous for all the Bangladeshi litigants to come to this only one Administrative Tribunal at Dhaka. These reasons forced law-makers to set up another Administrative Tribunal at Bogra by a notification dated the 30th May, 1992.[35] Necessity was felt again to extend the number of Tribunals and finally five more Administrative Tribunals were established by a notification dated the 22nd October, 2001.[36] The territorial jurisdiction of five Administrative Tribunals including the previous two were re-arranged by the said notification and in consonance with the notification, seven Administrative Tribunals are now running inside the country, out of which three at Dhaka, one at Bogra, one at Chittagong, one at Khulna and one at Barisal.

[33] The Rules shall come into force on 12 March, 1982.

[34] Notification No. S.R.O. 329-L/83/502-JIV/IT-1/83.

[35] Notification No. S.R.O. 119-L/92/249-JIV/5C-5/89.

[36] Notification No. S.R.O.288-Law/2001.

3.2 Defining the term 'Tribunal' in line with the Administrative Tribunal

Tribunals are a court of justice of a particular kind.[37] They are adjudicatory bodies, except ordinary courts of law, constituted by the state and invested with judicial and quasi-judicial functions, as distinguished from administrative or executive functions. Administrative Tribunals are authorities outside the ordinary court system, which interpret and apply the laws when acts of public administration are questioned in formal suits by the courts or by other established methods. They are neither courts nor executive bodies rather a mixture of both. They are judicial in the sense that they have to decide facts and apply them impartially without considering executive policy. They are administrative because the reasons for preferring them to courts of law are administrative reasons. These Tribunals have emerged not only in Bangladesh but also in many other countries with the objective of providing a new type of justice - public good oriented justice. These Tribunals manned by technical experts, with flexibility in operations, informality in procedures have gained importance in the adjudication process. However, according to Servai, "the development of administrative law in a welfare state has made Administrative Tribunals a necessity".[38]

For the first time in 1892 in *Royal Aquarium and Summer and Winter Garden Society Limited vs Parkinson*, Fry LJ, instead of defining the term 'Tribunal', made an ambiguous statement by saying: "The term 'Tribunal' has not, like the word 'court', an ascertainable meaning in English

[37] Thakker, C. K., *Lectures on Administrative Law* (Lucknow: Eastern Book Company, 2011), 228.

[38] Servai, H. M., *Constitutional Law of India* (Bombay: N.M. Tripathi Private Ltd., 1967); also available at: <http://www.academia.edu/4614327/ADMINISTRATIVE_TRIBUNALS_OF_INDIA_A_Study_in_the_light_of_decided_cases>, last visited on 22.04.2015.

law".[39] About four decades later in *Shell Company of Australia vs Federal Commissioners*, Lord Sankey LC observed:

> There are Tribunals with many of the trappings of a court which, nevertheless, are not courts in the strict sense of exercising judicial power. In that connection it may be useful to enumerate some negative propositions on this subject: 1. A Tribunal is not necessarily a court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a court. 6. Nor because it is a body to which a matter is referred by another body. An Administrative Tribunal may act judicially, but still remains an Administrative Tribunal as distinguished from a court, strictly so called. [40]

The definition gets extended while analyzing the case, titled, *Jaswant Sugar Mills vs Lakshmi Chand*. The Supreme Court here laid down some of the characteristics or tests to determine as to whether an authority is a Tribunal or not:

> These are 1. power of adjudication must be derived from a statute or statutory rule; 2. it must possess the trappings of a court and thereby be vested with the power to summon witnesses, administer oath, compel production of evidence, etc.; 3. Tribunals are not bound by strict rules of evidence; 4. they are to exercise their functions objectively and judicially and to apply the law and resolve disputes independently of executive policy and 5. Tribunals are supposed to be independent and immune from any administrative interference in the discharge of their judicial functions.[41]

The word 'Tribunal' is not used in article 117 within the meaning of the term 'court', as defined in article 152 of the Constitution. Within our jurisprudential domain, the court observed the distinction between a court and a Tribunal for the first time in the case of *Bangladesh vs AKM Zahangir Hossain* as follows:

> It is also to be remembered that there is a distinction between a court and a Tribunal. The court has a clear and distinct connotation whereas a Tribunal assumes wide range of character. It may be a judicial tribunal or may be a Domestic Tribunal and in between there are various ranges of adjudicating authority which are more often called Administrative Tribunals. But there is a

[39] (1892) 1 QB 431.

[40] (1931) 275 AC 297-298.

[41] (1963) AIR (SC) 677.

> common element, the authority is to decide either a dispute or an offence and it is to decide on fact and apply the rules to them, without considering executive policy.[42]

After applying the principle of *ejusdem generic,*[43] the Appellate Division of the Supreme Court held that "the 'Court' acts judicially and 'Tribunal' also acts judicially or at least quasi-judicially".[44] Afterwards, the assertion of MH Rahman J. in the case of *Mujibur Rahman vs Bangladesh* adds value to clarification of the term 'Tribunal': "There are Tribunals with many of the trappings of a court, which, nevertheless, are not courts in the strict sense of exercising judicial power. An Administrative Tribunal may act judicially, but still remains an Administrative Tribunal as distinguished from a court".[45] Agreeing with MH Rahman J, Mustafa Kamal J. said: "Parliament was granted the legislative power to establish one or more Administrative Tribunals, not courts. Chapter I and chapter II of Part VI deal with settlement of disputes through courts. Chapter III deals with administrative justice, that is, settlement of disputes through the mechanisms of Administrative Tribunals. A Tribunal has all the trappings of a court, but it is not a court proper".[46] As the literature defining the term 'Tribunal' and differentiating it from court is enormous; it is impossible to consider thoroughly every definition. Hence, to conclude it is to be said that a Tribunal is a judicial assembly performing judicial or quasi judicial functions.

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[42] (1982) 34 DLR (AD) 173.

[43] It means 'of the same kind, class, or nature'. In statutory construction, the *ejusdem generic* rule is that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. See for details, 'What is Ejusdem Generis', available at: <http://thelawdictionary.org/ejusdem-generis/>, last visited on 08.04.16.

[44] See above, note 42.

[45] (1992) 44 DLR (AD) 111.

[46] Ibid.

3.3 Mapping Administrative Tribunals: Structure, Jurisdiction and Method Including Proceeding Held in Departments

This section examines and evaluates, although without any attempt to be exhaustive, laws and principles relevant to our Administrative Tribunals. This is not meant to prescribe a new model of administrative justice, so far as service matters are concerned, rather it is used as a tool to understand all the closely connected jurisprudences; and these will be helpful in evaluating structures, functions and techniques, as analyzed consecutively in chapters four, five and six.

3.3.1 Constitutional Examination: Nature of Powers Entrusted to Administrative Tribunals

Article 117 of the Bangladesh Constitution, the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982 prescribe provisions for Administrative Tribunals of Bangladesh. While going through article 117 of the Constitution, it transpires that Administrative Tribunals fall under Part VI of our Constitution, titled, 'Judiciary', which contains three chapters. Of them chapter I deals with the Supreme Court,[47] chapter II deals with subordinate courts,[48] and chapter III dealing with Administrative Tribunals,[49] contains only one article 117. By this article, there is a special grant of an enabling legislative power to the Parliament to establish one or more Administrative Tribunals to exercise jurisdiction over matters specified in clauses (a), (b) and (c) of article 117 (1). The matters are relating to (a) the terms and conditions of persons in the service of the Republic including matters provided for in Part IX and award of penalties or punishments; (b) the acquisition, administration, management and disposal of any property vested in or managed by the government by or under any law, including the operation and

[47] See, the Constitution of the People's Republic of Bangladesh, article 94 to article 113.

[48] See, Ibid, article 114 to article 116A.

[49] See, Ibid, article 117.

management of, and service in any nationalized enterprise or statutory public authority; and (c) any law mentioned in the First Schedule. Clause (c) and part of clause (b) are in no way connected with Administrative Tribunals and hence do not come under the present discussion. Part of a sentence in clause (b), which is, 'service in any nationalized enterprise or statutory public authority' and clause (a) come under the discussion. However, the grant of power mentioned in article 117 is preceded by a *non-obstante* clause, 'notwithstanding anything hereinbefore contained'. Consequently, *non obstante* clause applies to all that preceded before in Part VI, that is, to the whole of Chapter 1 and II. In *Keshavananda vs Kerala*, the *non-obstante* clause has been interpreted to mean "not subject to other provisions of the Constitution and also as emancipating the grant from the restrictive provisions."[50] In this regard Justice Mustafa Kamal opined:

> Chapter III, because of the *non-obstante* clause, is liberated completely from chapters I and II. The Parliament was granted the legislative power to establish one or more Administrative Tribunals, not courts. Chapter I and chapter II of Part VI deal with settlement of disputes through courts. Chapter III deal with administrative justice, that is, settlement of disputes through the mechanisms of Administrative Tribunals. So, when any Tribunal is established under article 117, there will be a bar of jurisdiction of three kinds a) institution wise the bar is against a court b) section wise no proceedings can be entertained and no order can be made and c) subject matter wise, the bar is in respect of any matter falling within the jurisdiction of the Tribunal, that is, those mentioned in clauses a, b, and c of article 117. [51]

Our Administrative Tribunals have their habitat in the Constitution in its Part on Judiciary. As these fall under the Part on Judiciary, it is assumed that they exercise judicial power of the state. This assumption was shot by the observation made by Justice Mustafa Kamal in the following words:

> I think that the non-obstante clause in the beginning of article 117 (1) excludes this interpretation. Also I think that it was necessary to expressly confer judicial power on Administrative Tribunals. Article 65 of our Constitution vests the legislative powers of the Republic in the Parliament in

[50] (1973) AIR (SC) 1461.

[51] (1992) 44 DLR (AD) 127.

> express terms and article 55 (2), after the 12th Amendment, provides that 'the executive power of the Republic shall, in accordance with this Constitution, be exercised by or on the authority of the Prime Minister'. There is no express vesting of judicial power in the Judiciary in our Constitution. I respectfully agree with the rule of construction based on Lord Diplock's opinion in *Hinds and Others vs the Queen*.[52] If applied to our Constitution, it produces a different result than that submitted by Mr. Ahmed.[53] Our Constitution expressly provides in paragraph 6 of the Fourth Schedule the continuity of the incumbent Chief Justice and the Judges of the erstwhile High Court of Bangladesh in the new dispensation and the transfer of legal proceedings from the previous Courts to the two Divisions of the Supreme Court. Until the provisions of Chapter II of Part VI are implemented, the Constitution provides that the matters provided for therein shall be regulated in the manner in which they were regulated immediately before the commencement of the Constitution. Our Constitution, therefore, expressly intended that the previously existing superior courts shall continue to function, albeit in a new dispensation, and the subordinate courts too shall continue to function. Although the Constitution itself omitted to confer judicial power on the Supreme Court and the subordinate courts by any express provision, there can be no doubt whatsoever that the Supreme Court and the subordinate courts are the repository of judicial power of the state, because they have been previously existing and the Constitution allows them to function, although in a new form. Tribunals are not pre-existing adjudicative machineries. They are a new creation. Mere placing them in the Part on Judiciary in the Constitution will not make them wielders of judicial power of the state. In their case, there must be an express conferment of judicial power, more so because they are not courts, but tribunals. Since there is none in the Constitution, I hold that Administrative Tribunals do not exercise the judicial power of the state.[54]

The above noted observation reveals that Administrative Tribunals do not exercise judicial power of the state. More importantly, it appears that Administrative Tribunals are blend of formal court system and Alternative Dispute Resolution mechanisms. This assertion is clarified while Mustafa Kamal J. expressed:

> Delay in formal court proceedings has recently given rise to a new concept of multitiered court-house consisting of the formal court system as well as the Alternative Dispute Resolution mechanisms like conciliation, arbitration and mediation boards. This trend was known to the draftsmen of our Constitution. The Constitution made provisions in article 117 for conferring state's judicial powers on some Tribunals and enabled the Parliament to make necessary legislation for evolving a system that may in future cumulate some of the attributions which are

[52] (1976) 1 All ER 353. In this case Lord Diplock expressed: "As respects the judicature, particularly if it is intended that the previously existing courts shall continue to function, the Constitution itself may even omit any express provision conferring judicial power on the judicature. Nevertheless, it is well established as a rule of construction applicable to constitutional instruments under which the governmental structure is adopted that the absence of express words to that effect does not prevent the legislative, the executive and the judicial powers of the new state being exercisable by the legislature, by the executive and by the judicature respectively."

[53] Submission of Mr. Syed Ishtiaq Ahmed was gathered from (1992) 44 DLR (AD) 128. He argued that "since an Administrative Tribunal has its habitat in the Constitution in the Part on Judiciary, it wields, like the Supreme Court and the Subordinate Courts, the judicial power of the state". It has further been argued that "a Tribunal has to be composed of a person who holds high Constitutional judicial office, to prevent it from degenerating into a subordinate court and its incumbent has to possess judicial independence in the form of security of tenure".

[54] See above, note 51, 128.

divided between the formal court system and the growing practice of adjudication of disputes by Tribunals.[55]

3.3.2 Composition of Administrative Tribunals and Treatment of Members as Distinct from Civil Servants

What is mentioned in article 117 of the Constitution emphasizing Administrative Tribunals is very few. The Administrative Tribunals Act, 1980 (AT Act of 1980) and the Administrative Tribunals Rules, 1982 (AT Rules of 1982) accommodate a detailed discussion of lots of factors, although these laws have limitations, as incorporated in chapters four, five and six and are still unaddressed; and hence the laws are not beyond criticism. However, before addressing those limitations, it is imperative in this section to examine laws which have significant bearing on structure and jurisdiction of Administrative Tribunals. Section 3 (3) of the Act provides that "an Administrative Tribunal shall consist of one Member who shall be appointed by the government from among persons who are or have been District Judges" and section 3 (4) stipulates that "the Member shall hold office on such terms and conditions as the government may determine".

Furthermore, the Administrative Appellate Tribunal shall consist of one Chairman who is, or has been, or is qualified to be, a Judge of the Supreme Court; and of the two other Members, one shall be a person who is or has been an officer in the service of the Republic not below the rank of Joint Secretary to the government and the other a person who is or has been a District Judge.[56] It is noticed from *Government of Bangladesh and Others vs Sontosh Kumar Saha and Others* that the power of a Division Bench of the High Court Division has been given to the

[55] Ibid, 120.

[56] See, the Administrative Tribunals Act, 1980, sections 5(2) and 5(3).

Administrative Appellate Tribunal.[57] Their terms and conditions of service shall be determined by the government.[58]

In *Mujibur Rahman vs Bangladesh*, the vires of sections 3 (3), 5 and 6 (3) were challenged. Section 3 (3) concerns us here and the appellant's submission on the basis of which the argument was put forward is that "prior to the establishment of the Administrative Tribunal, shortly, the Tribunal, and even prior to the coming into force of the Constitution; the High Court Division had the original plenary constitutional jurisdiction of judicial review under article 102(1) and also appellate and revisional jurisdiction over civil courts in service matters, culminating either in a right of appeal or in a right to prefer a petition for leave to appeal to the Appellate Division. All of these jurisdictions are lost after about a decade by the establishment of the Tribunal. Section 13 of the Act denudes civil courts and the Supreme Court even from the jurisdiction to try pending cases. The Tribunal now combines in itself the entire bundle of powers which the High Court Division and civil courts enjoyed prior to its establishment, including the power to administer Constitutional guarantees given to a person in the service of the Republic under Part IX of the Constitution. As the Constitution itself does not expressly state the status and qualification of the Tribunal's incumbents, those are to be deduced from both article 117 and Part VI as its necessary intendment."[59] Mustafa Kamal Justice strongly negated the above noted submission and observed:

> Section 3 (3) of the Act providing for nomination of those who are or have been District Judges as Chairman of the Administrative Tribunal can hardly be questioned. A great majority of cases involving service matters originated not in judicial review but in suits. The Tribunal's basic function is to deal with matters in the nature of suits. It was, therefore, necessary to choose someone with a trial experience to preside over these Tribunals. A District Judge is eminently

[57] Unreported (AD) date of judgment 15.12.2015.

[58] See above, note 56, section 5 (4).

[59] See above, note 51, 125, submission by Ahmed, S. I.

> suited to discharge this function. He will be the judge of facts, whether disputed or undisputed, and of law. By his nomination, no subordinate court has been created, as urged, and the case of *AKM Ruhul Amin vs District Judge*,[60] is no authority on Administrative Tribunal matters. The Tribunal will, of course, administer the Constitutional guarantees given to a person in the service of the Republic in Part IX of the Constitution, but that power had always been exercised by civil courts and it cannot be said that a District Judge is unsuitable to exercise that power. We would have looked askance at the Tribunal, if a Secretary to the government or a holder of an administrative post would have been appointed as its Chairman, for he is eminently unsuitable to discharge a judicial dispute resolving function, and there would have been no public confidence on the Tribunal, if such a provision was there, but the choice of a District Judge cannot be taken exception to on the ground that he had never exercised the power of judicial review, because judicial review as provided in article 102 of our Constitution, is not his function. There is thus no unconstitutionality in section 3 (3) of the Act.[61]

It is relevant here to raise another question as to what will be the status of judges working in Administrative Tribunals; whether judges engaged in Tribunals are judicial officers or executive appointees. No explicit answer is found anywhere, but it would be helpful to rely on *Masder Hossain (Md.) and 440 Others (Petitioners) vs Govt. of Bangladesh and Others (Respondents)*, [62]which actually determines the status of judges and the forum the judges take resort to for any relief or redress. It was held that "judicial service is not a service of the Republic within the meaning of article 152 (1) of the Constitution, and it is functionally and structurally distinct and separate service from the administrative service of the government and that the judicial service should not be placed at par on any account and should not be mixed up with the administrative services".[63] The Court further declared that "the Bangladesh Judicial Service Recruitment Rules, 1981 are applicable to the officers of judicial service and directed the government to frame rules separately for the purpose of posting, promotion, grant of leave, discipline, pay, allowances, pension and other terms and conditions of service in accordance with articles 116 and 116A for

[60] (1986) 38 DLR (AD) 271.

[61] See above, note 51, 131-132.

[62] (1997) 2 BLC (HCD) 444.

[63] Masder Hossain (Md.) and 440 Others (Petitioners) vs Govt. of Bangladesh and Others (Respondents), (2000) 52 DLR (AD) 82; Ibid.

the judicial service and Magistrates exercising judicial works".[64] Neither the President nor the Parliament framed law or rules in respect of conditions of service, pensions, benefits, discipline and conduct for the judicial service and Magistrates exercising judicial works. The Court observed that "the Services (Reorganization and Conditions) Act, 1975 have no application to the judicial service".[65] In pursuance of this direction, the President has created the Bangladesh Judicial Service Commission by promulgating rules. Again as per direction and guidelines in *Masder Hossain*, the Government Servants (Discipline and Appeals) Rules of 1985 are made applicable to judicial officers until such law or rules are framed by the government. According to judicial pronouncement, judicial review against any disciplinary action taken against the members of judicial service is not available in the Administrative Tribunal.

Therefore, adjudicators occupied over the Tribunals are judicial officers, are not in the service of the Republic within the meaning of the Constitution, are not required to go and submit before the Tribunal for any grievance or relief with regard to their service conditions and are entitled to go to the High Court Division to seek relief for matters concerning service. Quiet understandably by analogy it has to be said that bureaucrats engaged over the Administrative Appellate Tribunal are executive appointees and *Masder Hossain's* case pushes them to go to Administrative Tribunals for matters concerning their service.

3.3.3 Exercise of Jurisdiction by Administrative Tribunals and Necessary Requisites

The interrogation and analysis of jurisdiction of Tribunals start with an investigation of article 117 of the Constitution and section 4 of the Administrative Tribunals Act of 1980 makes the

[64] Ibid.

[65] Ibid.

jurisdiction of such a Tribunal exclusive.[66] This forum has original jurisdiction only and the question of pecuniary jurisdiction never comes in dealing with suits, as the subject matter entirely determine the eligibility criteria of a litigation suited to the Tribunal. Here one issue remains vital and that is the retrospectivity or prospectivity of the said Act. It is found that the Act of 1980 has no retrospective effect. It was held in *Government of the People's Republic of Bangladesh, represented by the Comptroller and Auditor General of Bangladesh vs Abdul Latif Chokder*: "The Administrative Tribunals Act, 1980 cannot be retrospective, as there is no indication in the law itself. Normal interpretation of any enactment is prospective unless, of course, the enactment itself indicates a different intention".[67]

However, before depicting laws covering original jurisdiction on selective subject matters, it is significantly required to put attention on territorial jurisdiction of Tribunals. All over the country at present seven Administrative Tribunals are running. Of them, Administrative Tribunal No.1 at Dhaka covers entire Dhaka, Narayanganj, Munshiganj, Manikganj, Gazipur and Narshingdi; Administrative Tribunal No. 2 at Dhaka includes entire Faridpur, Gopalganj, Madaripur, Shariatpur and Rajbari; Administrative Tribunal No. 3 at Dhaka exercises jurisdictions for the entire Mymensingh, Kishoregonj, Netrokona, Tangail, Jamalpur and Sherpur; Administrative Tribunal at Chittagong runs for the area of entire Chittagong, Cox's Bazar, Noakhali, Feni, Lakshmipur, Commilla, Chandpur, Brahmanbaria, Sylhet, Moulavi-Bazar, Habiganj and Sunamganj; Administrative Tribunal at Khulna covers entire Khulna, Bagerhat, Satkhira,

[66] For judicial recognition, see, Abdul Mannan Talukdar vs HBFC, (1990) 42 DLR (AD) 104; Junnur Rahman vs BSRS, (1999) 51 DLR (AD) 166; Bangladesh vs Mohammad Faruque, (1999) 51 DLR (AD) 112; Bangladesh vs Mahbubuddin Ahmed, (1998) 50 DLR (AD) 154; Mansur Ali vs Janata Bank, (1991) 11 BLD 23; Dr. Abdul Lahel Based vs Ministry of Health, (1986) 38 DLR 409; Ayub Ali vs Bangladesh, (1994) 46 DLR 191; Serajul Islam Thakur vs Bangladesh, (1994) 46 DLR 318; Abdul Latif vs Bangladesh, (1991) 43 DLR 446; Mriganka Prasad vs Ministry of Communication, (2000) 5 BLC 112; Nurul Islam vs Bangladesh, (2001) 20 BLD (AD) 562.

[67] (1997) 49 DLR (AD) 29-32.

Jessore, Magura, Jhenaidah, Narail, Kushtia, Chuadanga and Meherpur; Administrative Tribunal at Barisal includes entire Barisal, Pirojpur, Jhalakhati, Bhola, Patuakhali and Barguna; and Administrative Tribunal at Bogra runs for the area of entire Bogra, joypurhat, Pabna, sirajganj, Dinajpur, Thakurgaon, Panchagar, kurigram, Rangpur, Lalmonirhat, Gaibanda, Nilfamari, Rajshahi, Nawabganj, Naogaon and Natore. It is clear that Administrative Tribunal No. 1, Dhaka covers 6 districts; Administrative Tribunal No. 2, Dhaka covers 5 districts; Administrative Tribunal No. 3, Dhaka runs for 6 districts; Administrative Tribunal at Chittagong is for 12 districts; Administrative Tribunal at Khulna is for 10 districts; Administrative Tribuinal at Barisal regulates its functions for the area of 6 districts; and Administrative Tribunal at Bogra is for 16 districts.

Several points of clarification concerning jurisdiction as to subject matter, which is, of course, original, employed by legislation side by side case study have been outlined here. Administrative Tribunals are empowered with exclusive jurisdiction to hear and determine applications made by a person in the service of the Republic or of any statutory public authority in respect of the terms and conditions of service.[68] In this regard the clauses 'service of the Republic' and 'statutory public authority' has enormous importance and these have been clarified in section 5.1.

3.3.3.1 From the Beginning to the End of Departmental Proceeding

An application can be made to an Administrative Tribunal, if he is aggrieved by any order or decision of the higher authority in respect of terms and conditions of service.[69] It appears that the person affected by the decision of authority concerned has to approach at first the higher

[68] See above, note 56, section 4 (1).

[69] See, Ibid, section 4 (2).

authority before proceeding to Administrative Tribunal and must make an application to it as per the law in force in this regard.[70] The application undoubtedly reveals the dissatisfaction of the person concerned over departmental proceedings and this pushes us to put full concentration on different stages of a proceeding followed during inquiry. Any violation of the principle of Natural Justice during this proceeding is seen as a failure of justice, which makes the incident fit for the Tribunal subject to satisfaction of conditions as enshrined in section 4 of the Act of 1980. However, departmental proceeding against a public servant is initiated, ended up and penalty is imposed accordingly under the Government Servants (Discipline and Appeal) Rules, 1985.[71]

No definition of 'Departmental Proceeding' is found from any of our jurisprudential discourses, either from the aforementioned Rules of 1985 or from case law. The term 'Departmental Proceeding' has been reiterated for a number of times in several decisions instead of Proceeding of Inquiry and thereafter its result.[72] Therefore, inquiry conducted under the Government Servants (Discipline and Appeal) Rules, 1985 is considered as Departmental or Disciplinary Proceeding according to case law. The inquiry and the imposition of punishment are two stages of a Departmental Proceeding.[73] Both the stages are indivisible, just one continuous proceeding and are equally judicial.[74] In the Rules of 1985, grounds for penalty are mentioned elaborately,[75] and penalties, major or minor, will be imposed on the government servant according to rule 3.[76]

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[70] Chowdhury, J. A., *An Introduction to the Constitutional Law of Bangladesh* (Dhaka: Northern University Bangladesh, 2010), 540.

[71] The Government Servants (Discipline and Appeals) Rules,1985 was a piece of legislation which was promulgated by the President with the consultation of the Public Service Commission with the object to regulate the conditions of service, pay, allowances, pensions, discipline and conduct of Public Servants and statutory corporations.

[72] (1961) AIR (Cal) 40; (1964) AIR (SC) 1854; (1976) AIR (SC) 2037; (1969) SLR (Mys) (HC) 362; (1997) BLD (AD) 214; (1988) BLD (AD) 84.

[73] (1963) AIR (SC) 395.

[74] Ibid.

Prior to the imposition of penalties, inquiry procedure has to be followed in accordance with rules 5, 6 and 7, which provide procedure for different misdeeds.[77] While dealing with allegations calling for major or minor penalties or in case of subversion, it is incumbent on the disciplinary authority to comply with the provisions of rule 10. There are two circumstances wherein rule 6 or 7 does not apply. It happens in one case when dismissal or removal from service or reduction in rank on the ground of conduct which lead to a conviction of a criminal charge.[78] In another case, the Rules of 1985 empowers the authority not to give the accused an opportunity of showing cause after recording reasons in writing.[79]

A government servant against whom action is proposed to be taken under relevant rules may be placed under suspension under rule 11 subject to any inquiry or proceeding aiming at some punishment.[80] This power of suspension shall not be used lightly; the authorities must form a definite opinion as to whether suspension is indispensably necessary and formation for that opinion must be on definite allegations.[81] The competent authority can re-instate the employee, if he is not dismissed, removed, reduced in rank or compulsorily retired, but re-instatement after suspension remains used under the Service Rules. Rigidity is rarely resorted to by authorities while acting on the basis of rule 13. It suffices to mention here one helding, which is: "In the absence of a clear bar against reinstatement, the competent authority cannot be said to be devoid

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[75] See, the Government Servants (Discipline and Appeal) Rules, 1985, rule 3.

[76] See, Ibid, rule 4.

[77] Rule 5 of the Government Servants (Discipline and Appeal) Rules, 1985 deals with inquiry procedure in case of subversion whereas rule 6 deals with inquiry procedure in cases calling for minor penalties. Inquiry procedure in cases calling for major penalties is available in rule 7.

[78] See above, note 75, rule 8.

[79] See, Ibid.

[80] Anwarul Haque Khan vs Government of Bangladesh, (1979) 30 DLR (HCD) 22.

[81] Ibid.

of power to reinstate an employee who resigned from his service but being repented sincerely craves for withdrawing his resignation".[82] After the completion of departmental proceeding, there is a scope to make a departmental appeal, which is provided for in Part III of the Rules of 1985. The proceedings before an appellate authority are continuation of the proceedings before the Enquiry Officer and both these proceedings taken together point to the conclusion.[83] A Government servant may appeal within the period of 3 months from the date on which the appellant was informed of the order appealed against any departmental order imposing penalty, major or minor, to the authority to which the authority making the order is immediately subordinate or where the order is made by an authority subordinate, to the appointing authority.[84] An appeal may be admitted after the expiry of three months on the satisfaction of sufficient causes. Thereafter, the employee has choices to proceed review or revision within specific time frame and subject to some conditions enunciated in rules 23 and 24 respectively.[85]

3.3.3.2 Strategy Devised by the Amendment to Promote Quick Justice

After the end of departmental proceeding as well as departmental appeal under the Government Servants (Discipline and Appeal) Rules, 1985, scope is available to make an application to Administrative Tribunals. The difficulty here lies in a provision, which provides that no

[82] Mohboob Murshed vs Bangladesh, (1980) 32 DLR (AD) 77.

[83] (1969) SLR (Delhi) 66.

[84] See above, note 75, rules 17 and 18.

[85] See for details, the Government Servants (Discipline and Appeal) Rules, 1985. Rule 23 of the Rules of 1985 provides two procedural pre-conditions for entertaining an application for review: Firstly, the application is to be submitted within three months of the date on which the applicant was informed of the order by which he is aggrieved; the period can be extended on the satisfaction of sufficient causes. Secondly, the application for review shall be submitted to the President through the Head of the office in which the applicant serves or, if he is not in service, the Head of the office in which he served last. Similarly, rule 24 observes the fulfillment of two conditions prior to the acceptance of an application for revision. One is that the President may revise any order passed in appeal, or any order which is appealable but against which no appeal has been preferred. Other is that the order is to be revised within one year of the date on which the order was passed.

application can be made to Administrative Tribunal until such higher authority has taken a decision on the matter.[86] It appears that the aggrieved employee has to wait for the decision of the higher authority and this raises a question as to how long he will spend. This provision has been extended later on by way of an amendment in 1997 through section 2 of the Act No. XXIV. At present, a decision on an application or appeal is to be made within the period of two months from the date on which an application or an appeal was preferred, otherwise, it shall, on the expiry of such period, be deemed that the application or appeal has been disallowed.[87] That means, after the end of two months, aggrieved civil servant is allowed to proceed Administrative Tribunals and alternatively, a case is not maintainable before the expiry of two months. An application can be admitted by the Tribunals without insisting on exhaustion of departmental remedies. Two matters concern us here. Firstly, the use of the clause 'deemed to be' is debated irrespective of its advantages, as illustrated in chapter six and a recommendation is advised accordingly, which spreads over chapters six and seven. Secondly, in relation to exhaustion of remedies, either departmental redress or review before the President, within the period of maximum two months pursuant to second proviso to section 4, case laws need assessment. Review concerning the matter before the President was first raised and clarified in a case.[88]

The case is related to dismissal from service. Dr. Md. Tofajjal Hossain instituted a suit before the Administrative Tribunal at Dhaka for setting aside the order of dismissal from service. The order of dismissal from service was set aside by the Administrative Tribunal and thereafter,

[86] See above, note 56, section 4 (2), First proviso.

[87] See, Ibid, section 4 (2), Second proviso. Second proviso to section 4 states that "where the higher administrative authority has not taken a decision on an application or appeal within the period of two months from the date on which an application or an appeal was preferred, it shall, on the expiry of such period, be deemed that such higher authority has disallowed the application or appeal".

[88] Government of Bangladesh, represented by the Secretary, Ministry of Shipping, Bangladesh Secretariat, Dhaka and Others vs Dr. Md. Tofajjal Hossain, (2012) 17 MLR (AD) 59-61.

Administrative Appellate Tribunal Appeal No. 43 of 1990 was filed. Appeal was allowed as the case was not maintainable before the Administrative Tribunal due to non-fulfillment of the second proviso to sub-section 2 of section 4 of the Administrative Tribunals Act. Afterwards, Appeal No. 584 of 2001 was filed before the Appellate Division of the Supreme Court and the petition was dismissed on 10.11.2003 as the case was maintainable. Actually the second proviso to sub-section 2 of section 4 of the Administrative Tribunals Act came into force on 19.11.1997 whereas the case was filed by the respondent before the Administrative Tribunal on 28.09.1997. So the question that the case was barred because the respondent did not file any review before the President in respect of the order of his dismissal from service does not arise. It is obvious that the President was the appointing authority and the order of appointment was issued by the Secretary of the Ministry concerned in accordance with the provisions of article 55 (4) of the Constitution. It is true that the respondent was dismissed in a departmental proceeding under provisions of the Government Servants (Discipline and Appeal) Rules, 1985. Under rule 23 of these Rules, review lies to the President but the bar that was imposed by the second proviso to sub-section 2 of section 4 of the Administrative Tribunals Act was not there when the respondent filed the case. Furthermore, in *Government of the People's Republic of Bangladesh and Others vs Syed Sakhawat Hossain*, it was held:

> When order of removal from service is passed on the approval of the President, it is optional for the aggrieved Government servant either to file application for review or he can straight way file an application before the Administrative Tribunal within the statutory period of limitation.[89]

Thus it appears that the person affected can avail of the scope of an application for review before the President or approach directly Administrative Tribunals after the end of maximum two months spent for the purpose of inquiry proceedings held in concerned department.

[89] (1997) 2 MLR (AD) 387-389.

3.3.3.3 Setting an Application in Motion and Limitation Period

The law relating to limitation of suits is expedient in proceedings before Administrative Tribunals, though little has been found about it in literature review, as depicted in chapter two. The Administrative Tribunals Act of 1980 and case law have remedied this lack of materials a bit. Applicant is entitled, in computing the period of limitation, to six months under the 3rd proviso to section 4 (2) of the Act of 1980 from the date of making or taking of the decision by the higher administrative authority. No excuse of delay is allowed and the suit to be dismissed for default. There is no controversy and it was emphasized and affirmed:

> An Administrative Tribunal has exclusive jurisdiction to hear and determine any application made by any person in the service of the Republic or of any statutory authority in respect of the terms and conditions of his service or in respect of any action taken in relation to him as a person in such service but such an application shall have to be made within six months of the making or taking the impugned order or action.[90]

When the application is not filed within the statutory period, such an application is barred by limitation, and so no illegality or wrong was committed by the Tribunals below in allowing the application filed within time limit.[91] Besides, no amendment as to impleading party to an application after expiry of six months is possible. It was observed: "In an application filed under section 4 (2), the employer of the petitioner in the Sonali Bank is a necessary party and without impleading it, the proceeding is not maintainable. Such an application must be made within six months from the passing of the order in departmental appeal. The Act is a special law and as such no amendment application can also be made after expiry of six months."[92] The delay in making assessment, even if true, does not entitle a party to file a second application in order to

[90] Sonali Bank vs Ruhul Amin Khan, (1994) 14 BLD (AD) 17.

[91] Abu Kashem vs The Secretary, Ministry of Agriculture and Others, (1997) 2 MLR (AD) 51; (1997) 17 BLD (AD) 306.

[92] Ziul Karim Faraji and Others vs Govt. of Bangladesh, represented by the Secretary, Ministry of Finance and Others, (1996) 1 MLR (AD) 106; (1996) 1 BLC (AD) 80.

enable him to take advantage of starting fresh period of calculation to meet bar of limitation. The Limitation Act of 1908 is not applicable to proceedings before Administrative Tribunals. It was held: "Although the petitioner filed various cases before filing the present Tribunal case but section 14 of the Limitation Act is not applicable to proceedings before the Tribunal."[93] Therefore, no right will be accrued to the litigant and no judicial discretion as contemplated under the Limitation Act has been given to the Tribunal under the Act of 1980 to condone delay for not making the application within the period fixed by statute.

3.3.4 Featuring Devices of Power and Procedure

Administrative Tribunals are a combination or mixture of formal court system and Alternative Dispute Resolution mechanism and this blend is visible in procedures followed by the Tribunal. Administrative Tribunals are seen to represent multitier court house, though not a court, and this representation pushes the Tribunal to rely on the Code of Civil Procedure, 1908 (The CPC, 1908) as well as on the devices introduced by it. The device used under the CPC and the devices used under the Constitution are fundamentally much different, so far as procedure of Administrative Tribunals are concerned. It is worth noting that the Act of 1980 was enacted to set article 117 in motion and under section 12 of the Act, the Administrative Tribunals Rules, 1982 was framed,[94] for regulating matters gathered from clause a to g of section 12 (2).

The only difference between the two devices, namely, the CPC on the one hand, and article 117, the Act of 1980 and the Rules of 1982 on the other hand, is that the latter one is emphasized; the former one is marginally recognized, not totally sidelined. Provisions applicable to procedures of

[93] Abul Basher vs Investment Corporation of Bangladesh and Another, (1997) 2 BLC (AD) 118; (2000) 20 BLD (AD) 294.

[94] Notification No. S. R. O. 123-L/93-JIV/3M-6/93. It came into force on the 4th July, 1993

Administrative Tribunals are found in sections 7, 7A, 7B, 7C and in rules 3 to 7. All the provisions are very clear and specific in determining the matters to which the CPC applies and the matters to which the rest applies. If concentration is put forward to section 7, it appears that any proceeding before a Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Penal Code.[95] This means that whoever intentionally gives false evidence in any stage of its proceedings, especially in respect of the matters referred to in section 7 (1), shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. The provision further points out that the Tribunal shall exercise all the powers of a civil court under the CPC, 1908 for those matters gathered from clause (a) to (f) of section 7 (1).

While focusing on procedure, the first question which concerns us is the jurisprudential concept of *Locus Standi*. Under this jurisprudential domain, the right to move the Tribunal is only available to those, who are in service of the Republic or of any statutory public authority.[96] At present, the concept of *Locus Standi* has been extended by insertion of section 7A,[97] and after the death of the applicant, his heirs are entitled to sue, if the services of the deceased applicant are pensionable.[98] If death happens during the continuance of proceedings, application for substitution of the legal representative of the deceased applicant is to be made within 60 days from the date of the death of the applicant.[99] Legal representatives are entitled to all pensionery

[95] See above, note 56, section 7 (2).

[96] See, Ibid, sections 4 (1) and 4 (2).

[97] See, the Administrative Tribunals (Amendment) Act, 1997 (Act No. XXIV, 1997).

[98] See above, note 56, section 7A (1).

[99] See, Ibid, section 7A (2).

benefit subject to the declaration of the order of dismissal or removal, as the case may be, as illegal or void.[100]

It is not a matter of argument and debate rather well established that a suit is to be started by the presentation of a plaint, as pointed out in section 26 of the CPC. Nevertheless, litigation is initiated in our Administrative Tribunals by the presentation of an application, made in writing by the applicant in person, or by a person authorized by him in that behalf, or by registered post.[101] Only a fee of taka 100 is required to file a suit but additional fees of tk. 10 for each copy of the application and some postal charges have to be paid for the issue of summons.[102] The Tribunal shall admit or reject an application if it is or is not made in accordance with the provisions of sub-rules 1, 2, 3, 4, 5 of rule 3 and is not or is barred by limitation.[103] Before rejecting the application, the applicant may be given the opportunity to make it according to sub-rules 1, 2, 3, 4, 5 of rule 3.[104] In fact, the Tribunal may, at any stage of proceedings, allow the applicant to alter or amend his application in such manner and on such terms as it thinks fit.[105] All applications admitted by the Tribunal shall be registered in the register of applications,[106] one of the registers among many preserved by the Tribunal.[107] After the application is admitted under rule 3 (6), the Tribunal is under the duty to inform the opposite party under rule 5 by serving

[100] See, Ibid, section 7A (3).

[101] See, the Administrative Tribunals Rules, 1982, rule 3 (1).

[102] See, Ibid, rule 3 (4).

[103] See, Ibid, rules 3 (6) and 3 (8).

[104] See, Ibid, rule 3 (8), proviso.

[105] See above, note 56, section 7B.

[106] See above, note 101, rule 4 (2).

[107] See, Ibid, rule 9 (1).

notice.[108] Thereafter opposite party will reply by submitting written statement and he will be guided for this purpose according to provisions mentioned in rule 5.

Once the pleading is complete, the next stage of the proceeding, namely, hearing the application, has to be conducted for adjudication of disputes. Emphasis is drawn to this end on section 7 (8) along with rule 6 of the Act of 1980 and the Rules of 1982. It is a matter of no doubt that the Act of 1980 does not prescribe any procedure rather than lays down general principles necessary to the technique followed in its proceedings, from the beginning to the end, whereas rule 6 deals with the procedure for disposal of application. Accordingly, a Tribunal shall, for the purpose of hearing an application or appeal, as the case may be, follow such procedure as may be prescribed; and in respect of any matter no procedure has been prescribed by this Act or by the Rules made there under, a Tribunal shall follow the procedure as may be laid down by the Administrative Appellate Tribunal.[109] The latter part of the preceding sentence creates no headache, as it displays that the founding pillars of techniques are rested on case laws made in the hands of the Administrative Appellate Tribunal in absence of provisions covering procedure and the former part, with what rule 6 is relevant, needs elaboration here.

After fifteen days of the expiry of the date fixed for submission of written statement by the opposite party, the Tribunal shall fix a date for hearing of the application and shall issue a notice to both the parties, directing them to appear in person or by persons authorized by them in that behalf before the Tribunal on that date with all relevant papers and documents.[110] It is an accepted rule of judicial procedure that the court shall decide a civil action in presence of the

[108] The term 'notice' is used in rule 5 instead of 'summons'.

[109] See above, note 56, section 7 (8).

[110] See above, note 101, rule 6 (1, 3).

parties concerned.[111] Provisions of sub-rules 4, 5, 6 of rule 6 have been enacted to give effect to this rule of judicial procedure. If the parties remain absent, the Tribunal has discretion to dismiss the application subject to a condition that the notices have been served on the parties or adjourn it to some other date.[112] Where on the day so fixed, the applicant appears and the opposite party does not appear, the Tribunal may, if it is found that the notice to appear has been served, hear the application *ex-parte*.[113]

Conversely, when the opposite party appears, but the applicant is found absent on call for hearing, the Tribunal shall dismiss the application, unless the opposite party admits the claim of the applicant, in which case the Tribunal shall make an order granting the relief to such extent as it deems fit.[114] It is clear that an application may be dismissed only when the applicant does not appear on the date of hearing; an appeal could not be dismissed for default for non-filing of paper book and that too on the verbal instructions of the Appellate Tribunal.[115] As said earlier, the Appellate Tribunal can very well prescribe a procedure to be followed by itself or by the Tribunal, which has not been provided in the Act and the Rules but not contrary to the provisions of the Act, 1980 or the Rules, 1982.[116] The procedure so prescribed must be made in public in writing so that the litigant people can know the consequence of non-compliance of such procedure, but in no case can make a provision for dismissal of a case or appeal for non-compliance of a procedure prescribed by it.[117] Therefore, the order passed by the Appellate

[111] Islam, M., *The Law of Civil Procedure* (Dhaka: Mullick Brothers, 2013), 656.

[112] See above, note 101, rule 6 (4).

[113] See, Ibid, rule 6 (5).

[114] See, Ibid, rule 6 (6).

[115] Government of Bangladesh and Others vs Md. Nurul Alam, (2013) 18 MLR (AD) 97-108.

[116] See above, note 56, section 7 (8).

[117] See above, note 115.

Tribunal in dismissing the appeal for non-filing of the paper book also appears contrary to the Rules, 1982.[118] However, the provision allows one more chance to the applicant or opposite party to revive the litigation by applying for setting aside the order of dismissal or *ex-parte*.[119] Whereas the parties remain absent, the Tribunal is at liberty to postpone the hearing of an application to a future day to be fixed by it,[120] and whatever the Tribunal decides, it has to be given in writing with reasons there for.[121] Besides, subject to section 8, the decision or order once given or made shall not be altered or modified but the Tribunal is authorized to correct a clerical or arithmetical mistake or any error arising from any accidental slip or omission.[122]

After the end of proceeding in Administrative Tribunals, appeal can be availed of as a matter of right to the Administrative Appellate Tribunal and for this appeal, whatever is mentioned in the Rules of 1982 for the purpose of application shall also apply to appeal, subject to the Act of 1980 and necessary changes.[123] The Act of 1980, while letting the adjudicators decide, puts on the Administrative Appellate Tribunal two mandatory duties, violation of which would lead the order or decision to be void. One, among the two, tells that in the event of any difference of opinion among the Members of the Administrative Appellate Tribunal, the opinion of the majority shall prevail.[124] The other one adds that if in the course of hearing any Member of the Administrative Appellate Tribunal is, for any reason, absent or unable to attend any sitting thereof, the Chairman and the other Member present may dispose of appeals, provided they are

[118] Ibid.

[119] See above, note 101, rule 6 (7).

[120] See, Ibid, rule 6 (8).

[121] See, Ibid, rule 6 (9).

[122] See, Ibid, rule 6 (10).

[123] See, Ibid, rule 11.

[124] See, Ibid, rule 7 (3A).

unanimous in their decision.[125] In respect of *Shahida Khatun vs Bangladesh,*[126] the Court observed that "the Administrative Appellate Tribunal was not constituted properly when the impugned judgment was delivered, in as much as, it was signed by two Members", and therefore, a question arose as to whether the decision of the Appellate Tribunal was *coram non judice*. The Court held in *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others* that "the Tribunal was properly constituted and in the midst of the hearing, one Member departed temporarily and in his absence two other Members signed the judgment and thereby it has committed no illegality."[127] No provision outlining the procedure is inserted in the Act of 1980 and the Rules of 1982 for the second appeal to the Appellate Division of the Supreme Court and it is guided by the Appellate Division Rules, 1988 read with section 6A of the Act of 1980.

After all the stages discussed above, A.T. Execution cases are filed under rule 7 of the Administrative Tribunals Rules, 1982 and under rules 32, 37 and 38 of Order XXI of the Code of Civil Procedure, 1908, if government authorities, against whose actions government servants are suffered, do not obey or execute the decision. It is necessary to mention here that the Tribunal shall have the power to impose penalty for making obstruction in the performance of its functions without lawful excuse.[128] However, an execution case is started by submitting an application or filling up the prescribed form of the High Court Division; and after the initiation of A.T. execution suit, the Tribunals send a show cause notice to the concerned department as to why the decision is not being executed. Here they can also demand personal appearance, which is an effective tool of execution, of the Head of the department concerned asking him as to why

[125] See, Ibid, rule 7 (3B).

[126] (1998) 3 BLC (AD) 155.

[127] See above, note 57.

[128] See above, note 56, section 9.

the decision is not being executed. In response to the show cause notice, the concerned authorities reply. Execution proceedings continue unless the decision is executed and the application is withdrawn on the basis of satisfaction of both the parties. Sometimes execution cases are withdrawn before execution, if the authorities make sure the victim of the execution.

Administrative Tribunals have gained absolute authority in limited areas, got restricted powers and control over different stages of proceedings from the beginning to the end. Their works are inspected by the Administrative Appellate Tribunal.[129] Moreover, a party to a dispute may, with the permission of the Tribunal, inspect any record or document in the custody of the Tribunal, other than a record or document with respect to which privilege may be claimed on behalf of the State.[130] Any such inspection shall be in the presence of such officer of the Tribunal as it may specify.[131] However, except the matters discussed above, other provisions concerning sittings of Tribunals,[132] administrative arrangements for the performance of its functions,[133] transfer of a case from one Tribunal to another,[134] amendment of application,[135] inspection,[136] Act to override other laws,[137] power to make rules,[138] statements,[139] have made legislation covering

[129] See, Ibid, section 7 (C).

[130] See above, note 101, rule 8 (1).

[131] See, Ibid, rule 8 (2).

[132] See above, note 56, section 7 (3).

[133] See, Ibid, section 7 (6).

[134] See, Ibid, section 7 (7).

[135] See, Ibid, section 7B.

[136] See, Ibid, section 7C; see above, note 101, rule 8.

[137] See above, note 56, section 11.

[138] See, Ibid, section 12.

[139] See above, note 101, rule 10.

Administrative Tribunals rich; though, due to limitations noted in chapters four, five and six, the laws fail to attain the status of a complete Code.

3.4 Dissatisfaction against the Decisions of Administrative Tribunals: Further Options

It follows in line with the preceding section 3.3.4 that no proceedings, order or decision of a Tribunal shall be liable to be challenged, reviewed, quashed or called in question in any court.[140] The present issue demands further the reference along with elaboration of section 8 (2) of the Act of 1980. It denotes the binding effect of Tribunals' decisions, which is subject to decisions and orders of the Appellate Division or the Administrative Appellate Tribunal.[141] The provision makes it specific that there is more than one level of appellate forums in our country against decisions of Administrative Tribunals. The first appeal is allowed to the forum, namely, the Administrative Appellate Tribunal, which is created specifically under the statute to hear appeals coming from the decisions of Administrative Tribunals.

Decisions of the Administrative Appellate Tribunal bind both the parties, subject to decisions and orders of the Appellate Division of the Supreme Court.[142] Accordingly, Tribunal decisions can further be appealed to the forum of general jurisdiction, that is, the Appellate Division of the Supreme Court. In the Common Law tradition, appeals cannot be used to re-examine the facts only, and it is often at the discretion of the courts whether to grant permission of appeal.[143] The Administrative Appellate Tribunal in our country is authorized to re-examine the facts and if thinks fit, can replace the Tribunals' decisions. It allows appeals in all cases. On the other hand,

[140] See above, note 56, section 10.

[141] See, Ibid, section 8 (2).

[142] See, Ibid, section 8 (1).

[143] Bobek, M., "Quantity or Quality? Reassessing the Role of Supreme Jurisdictions in Central Europe", *American Journal of Comparative Law* 57, no. 1 (2009): 36, 42.

the typical feature of the Common Law is followed in the Appellate Division of the Supreme Court, which fosters uniformity of law without the need to allow appeals in all but exceptional cases.

3.4.1 Invoking First Appeal as a Matter of Right

As mentioned in section 3.1, the Administrative Appellate Tribunal was set up by a notification dated the 22nd August, 1983.[144] Later on, the establishment of the appellate forum under section 5 of the Act of 1980 was challenged from the viewpoint of the clause 'provide for appeals' under article 117 (2) of the Constitution, as noted earlier in this chapter, in a case,[145] and finally it was settled; and supporting the existence of the forum of appeal, Justice Mustafa Kamal opined: "A proviso is traditionally an exception to the main clause. There is nothing in article 117 as a whole to suggest that the appellate forum can't be another Tribunal at all."[146] Before drawing a conclusion, he expressed that "the proviso to article 117 (2) relieves the Tribunal from the assumption of finality and attaches the finality to the appellate forum, be it a court or a Tribunal".[147] He concluded by saying:

> There was thus no compelling Constitutional requirement that an appellate forum must of necessity be either Division of the Supreme Court. The Parliament could not possibly have provided for a first appeal to the Appellate Division, because under article 103 (2) of the Constitution a right of appeal lies to the Appellate Division only on three specified matters and if persons in the service of the Republic were given by a statute an automatic right of appeal to the Appellate Division both on facts and law, they would have enjoyed a right not even constitutionally enjoyed by other litigants.[148]

[144] Notification No. S.R.O. 329-L/83/502-JIV/IT-1/83.

[145] Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 111-136.

[146] Ibid, 113, Kamal, M. J.

[147] Ibid.

[148] Ibid.

The Administrative Tribunals Act of 1980 confers original jurisdiction on Administrative Appellate Tribunal only in contempt proceedings, as if the AAT were the High Court Division of the Supreme Court,[149] and appellate jurisdiction in all other cases from orders or decisions of Administrative Tribunals.[150] It was held in *Bangladesh represented by the Secretary, Ministry of Home Affairs, Dhaka vs Member, Administrative Tribunal, Dhaka and Others*:

> Section 6 of the Administrative Tribunals Act, 1980 provides for appeal before the Administrative Appellate Tribunal and in such matter the writ jurisdiction of the High Court Division is clearly ousted as envisaged under article 117 of the Constitution.[151]

The said provision imposes a duty on the Appellate Tribunal to decide the question of limitation in every appeal, irrespective of whether a question of limitation is raised. The right of the Appellate Tribunal to admit the appeal sustains unless and until it is made within the period of three months from the date of making of the order or decision.[152] There is an extension of a further period of maximum three months on the satisfaction of reasonable grounds.[153] In exercising appellate jurisdiction within this statutory limit, the Administrative Appellate Tribunal (AAT) is authorized to do three things. Confirmation, setting aside or modification of any order or decision of an Administrative Tribunal are the three powers, as demonstrated in the provision, entrusted to the AAT and the decision of it is final subject to the decision of the Appellate Division of the Supreme Court.[154] Section 6A has been inserted in the Act by the Administrative Tribunals (Amendment) Act, 1991,[155] and the effect of the amendment is that persons aggrieved

[149] See, the Administrative Tribunals Act, 1980, section 10A.

[150] See, the Administrative Tribunals Act, 1980, section 6.

[151] (2001) 6 MLR 181-183; (2001) 53 DLR 112-113.

[152] See above, note 56, section 6 (2).

[153] See, Ibid, section 6 (2A).

[154] See, Ibid, section 6 (3).

[155] Act No. XXIII, 1991.

by the decision of the Administrative Appellate Tribunal can now prefer a petition for leave to appeal to the Appellate Division.

In line with the preceding paragraph, relevant cases regarding the modification of the judgment of Administrative Tribunals done by the Administrative Appellate Tribunal need to be studied and emphasized. A recent case of *Md. Mominul Islam vs Government of the People's Republic of Bangladesh, represented by the secretary, Ministry of Agriculture, Bangladesh Secretariat, Ramna, Dhaka* has been studied,[156] whereby it is found that the case is related to dismissal from service on the ground of misconduct and corruption. The proceeding was started at first by the Administrative Tribunal Dhaka, case No. 18 of 2003, where the learned Tribunal ordered reinstatement of the petitioner declaring that the order of dismissal was illegal. Administrative Appellate Tribunal Appeal No. 60 of 2005 was filed against the order of the Administrative Tribunal and the Appellate Tribunal set aside the judgment in part and converted the order of dismissal from service into one of compulsory retirement with all pensionary benefit on 05.07.2009. Though Civil Petition for Leave to Appeal No. 1956 of 2009 was filed, but it was dismissed on 01. 08.2010 as the appellant admitted his guilt as abettor and as there was no procedural illegality in enquiry proceedings. The fact reveals that the Administrative Appellate Tribunal has modified the judgment of the Administrative Tribunal under section 6 (3) of the Administrative Tribunals Act, 1980 and the modified judgment of the AAT has been confirmed by the Appellate Division. The Appellate Division of the Supreme Court held:

> When the accused admitted his guilt and took the plea that he committed the offence under the order of his superior, such a defence is not permissible in law. An employee is not bound to

[156] (2010) 15 MLR 474-477.

> comply with the illegal order of his superior officer. He will be personally liable for the wrong, no matter it is done in compliance with the illegal order of his superior officer.[157]

Furthermore, in *Managing Director, Bangladesh Krishi Bank, Head Office, 83-85, Motijheel Commercial Area, Dhaka-1000 and Another vs Gopal Chandra Nath and Others*,[158] Administrative Tribunal Khulna Case No. 02 of 2005 was started against the decision of the higher authority, which was dismissal from service on the allegation of inefficiency, negligence, corruption and also for misappropriation of money, and by judgment and order dated 15.03.2004, the petitioner was directed by the Tribunal to reinstate the respondent in service. Thereafter, Administrative Appellate Tribunal Appeal No. 89 of 2007 was filed and accordingly, the judgment of the Tribunal was set aside in part and the order of dismissal from service was converted into one of compulsory retirement with all pensionary benefits by a judgment declared on 09.07.2009. Last of all, Civil Petition for Leave to Appeal No. 2055 of 2009 was filed as a last measure. The petition was dismissed on 04.07.2010 as the judgment of the Administrative Appellate Tribunal suffers from no error of law. The Appellate Division of the Supreme Court also held that "under section 6 (3) of the Administrative Tribunals Act of 1980, the Administrative Appellate Tribunal can modify the order of dismissal from service into one of compulsory retirement".

3.4.2 Invoking Second Appeal not as a Matter of Right and Availability of Writ

One of the noticeable advancements made after the establishment of Administrative Tribunals under the Act of 1980 is the exclusion of the power of the High Court Division to review decisions of higher administrative authority or Administrative Tribunals or the Administrative Appellate Tribunal. What is of significance here is that the Constitution excludes from the

[157] Ibid.

[158] (2010) 15 MLR 494-496.

purview of judicial review a court or Tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a Tribunal to which article 117 applies.[159]

For the purpose of the relevant issue, at first the case of *Mujibur Rahman vs Bangladesh* has been studied.[160] The fact of the case reveals that three certificated appeals, namely, *Mujibur Rahman vs Govt. of Bangladesh and Others*;[161] *Nazmul Hasan and Others vs the Administrative Appellate Tribunal and Others*;[162] and *Bangladesh Bank and Another vs the Administrative Appellate Tribunal and Others*,[163] called for determination of a common question as to whether a writ petition is maintainable in view of clause 5 of article 102 of the Constitution against the judgment and order of the Administrative Appellate Tribunal established under section 5 of the Administrative Tribunals Act, 1980.[164] The question may be rephrased in a simpler form: 'Whether article 117 of the Constitution applies to the Appellate Tribunal?'[165] Prior to the above noted appeals, the High Court Division in a writ filed between the same parties answered the question in the negative. Afterwards, some new points including the exclusion of the power of judicial review were argued in the above noted certificated appeals on a broader and wider

[159] See, the Constitution of the People's Republic of Bangladesh, article 102 (5). It is recognized that judicial review is the power of the High Court Division under article 102 of the Constitution to issue certain orders, directions, etc. upon a person performing any function with the affairs of the Republic or of a local authority. While the right to move the High Court Division in accordance with article 102 (1) for the enforcement of the fundamental rights conferred by part III is itself a fundamental right and is guaranteed by article 44 (1), the right of judicial review under article 102 (1) is neither a fundamental right nor a guaranteed one. Nevertheless, all the available literature depict that the right of judicial review is neither a well weather remedy nor a remedy for all wrongs and it is available only when no other equally efficacious remedy is provided by law. It needs to be added that delay will defeat this remedy. Besides, the remedy lies neither to enforce mere technicalities nor to substitute a money relief and all wrongs cannot be remedied by judicial review.

[160] See above, note 45, 111-136.

[161] Civil Appeal No. 35/87.

[162] Civil Appeal No. 1/91.

[163] Civil Appeal No. 4/91.

[164] See above, note 45, 114.

[165] Ibid.

canvass, points which were never raised before the High Court Division. The opinion of Justice MH Rahman has an abiding influence to the present issue of ousting the jurisdiction of the High Court Division on selective service disputes. He observed:

> The background of the making of the Constitution may be of considerable help in understanding the minds of the makers of the Constitution as it will reveal what was intended and what was not intended, what was intended to be retained or modified, and what innovations were intended to be introduced. With regard to the history of jurisdiction of the High Court, exercised before 1972, let there be no confusion that the High Court never had any exclusive jurisdiction in service matters. Numerous reported decisions on service matters, to name the two leading cases, namely, the *High Commissioner for India vs IM Lall* on the question of second show cause notice,[166] and *Pakistan vs Mrs. AV Issacs* on the question whether the theory of bounty is applicable to a civil servant's right to arrear salary,[167] originated in a suit and not in a proceeding of original jurisdiction in the High Court. In the instant matters, the past history can hardly be used against the Constitutionality of the law, Parliament is empowered by the Constitution to make. Rather, it will sustain the presumption of the Constitutionality of the Act for the simple reason that the makers of the Constitution knowing the state of things obtaining before the framing of the Constitution deliberately chose to provide what is provided in article 117.[168]

Opinion of Justice Mustafa Kamal has made the position bold and added a new dimension to the jurisprudential domain of Administrative Tribunals. He opined:

> It really does not matter whether the bar of judicial review over service matters in our Constitution is absolute or qualified. It is a bar nevertheless. The High Court Division's power of judicial review over service matters can at best be termed as 'ad hoc'. It comes and goes, according as the Tribunal exists or not. Service matters, in the original scheme of our Constitution, do not have their normal, ordinary and permanent habitat in the power of judicial review of the High Court Division. Chapter III of part VI of the Constitution builds a special habitat for them and in its absence or abolition, the judicial review remains only a tentative remedy. Chapter III of part VI of the Constitution can not be viewed as a sleeping volcano, erupting from time to time. The Administrative Tribunal has not stepped into the shoes of the HCD and it was not established at the cost of the HCD as in India. The HCD did not lose anything which was constitutionally its own. The Administrative Tribunal is not exercising the jurisdiction of the HCD as its Constitutional successor. It is exercising a jurisdiction of its own in its own right, not by taking away of the High Court's pre-existing jurisdiction by a Constitutional amendment. Its jurisdiction is laid down in the original Constitution itself. It does not possess the power of judicial review at all. It has no powers analogous to article 102 of the Constitution. The non-obstante clause in the beginning of article 117 emancipates the parliament from the restrictions, if any, contained in the earlier articles of Part VI. The parliament is not fettered in its choice of persons to man the Administrative Tribunal. It is emancipated from all considerations which limit the choice of judges of the Supreme Court to persons of a certain qualification and experience. The parliament is also not obliged to provide the incumbent with a security of tenure. Its hands have been released from the binding knots of articles 94 to article 116A and it has to act without the compulsion of

[166] (1948) AIR (PC) 121.

[167] (1970) 22 DLR (SC) 371.

[168] See above, note 45, 121.

> establishing either a substitute HCD or a body co-ordinate to or as effective as the HCD. Chapter III is supplemental to chapters I and II, unlike article 323A of the Indian Constitution which is a substitute of articles 226 and 227. The parliament is required to create a body supplemental to the SC and the subordinate courts and unless its choice of personnel is devoid of all rationale or is wholly unsuited to a judicial dispute-resolving mechanism, the court will not interfere.[169]

Principles established in the case of *Mujibur Rahman vs Bangladesh* were revisited and reconsidered in *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others*,[170] in as much as, those are inconsistent with article 44 of the Constitution elaborately mentioned in chapter five of the thesis. The fact shows that several appeals and leave petitions were disposed of by the judgment delivered on the 15th December, 2015, although they arose from different judgments of the HCD and the parties were also distinct. They arose from common questions of law and were grouped together for analogous disposal in order to avoid conflicting decisions. However, Administrative Tribunals can now exercise the power of judicial review of administrative actions and this is settled by a principle underlying the decision of the *Sontosh Kumar Shaha*. It becomes clear after taking into consideration articles 117 (2) along with 44 (2) of the Constitution that an effective alternative institutional mechanism for judicial review in respect of service matters has been created by Parliament. This principle is based on sound reasoning followed in *Kasavananda Bharati vs State of Kerala*,[171] and it is that "Parliament can confer upon Administrative Tribunals in exercise of its legislative power the power of judicial review of administrative actions and nothing more and it cannot in exercise of its legislative power curtail the Constitutional jurisdiction conferred on the High Courts".

Quite clearly, no writ petition is allowed on those matters mentioned in clauses a, b and c of article 117 but the High Court Division can accept any involving the Constitutionality of law.

[169] See above, note 45, 131.

[170] See above, note 57.

[171] (1997) AIR (SC) 1461.

Though writ petition is not allowed, the Appellate Division of the Supreme Court has the last say over the decision of the Administrative Appellate Tribunal. Prior to 1991, there was no such scope, as is prevalent in section 6A of the Act of 1980.[172] After the Act of 1980, the entire bundle of service jurisprudence was parceled out between the Tribunal and the Appellate Tribunal. Before 1-2-82, when the Act came into operation, the Superior Courts of undivided India, later Pakistan and Bangladesh, developed an impressive bunch of case-laws in that branch of law and after the enactment, nobody knew how the law was developing in the hands of the Tribunal and the Appellate Tribunal.

Realizing the above reasons, it was forcefully argued that "in our scheme of the Constitution, the ultimate law on any matter must come from one source, that is, the Supreme Court, which is the repository of judicial power of the state. It is only the Supreme Court which is constitutionally vested with the jurisdiction of pronouncing upon the ultimate law on any subject."[173] In response to it, the litigants have been given the right to prefer second appeal to the Appellate Division of the Supreme Court under section 6A, the amended provision, of the Act of 1980. The effect of the amendment is that persons aggrieved by the decision of the Administrative Appellate Tribunal can now prefer a petition for leave to appeal before the Appellate Division. Section 6 (3) of the Act was also amended so as to make the decision of the Administrative Appellate Tribunal, subject to section 6A, final.[174] It was opined:

[172] On 22.7.91, when judgment stood reserved in three appeals, namely, Mujibur Rahman vs Govt. of Bangladesh (Civil Appeal No. 35/87), Nazmul Hasan and Others vs Administrative Appellate Tribunal and Others (Civil Appeal NO. 1/91) and Bangladesh Bank and Another vs Administrative Appellate Tribunal and Others (Civil Appeal No. 4/91), came the Administrative Tribunals (Amendment) Act, 1991, Act No. XXIII, 1991.

[173] See above, note 45, 136, submission by Ahmed, S. I.

[174] The Administrative Tribunals (Amendment) Act, 1991, Act No. XXIII, 1991.

> In the proviso to article 117 (2), the Constitution provided that 'Parliament may, by law, provide for appeals from, or the review of, decisions of any such Tribunal'. Note the use of the words 'appeals' and 'decisions' is plural and the use of the word 'review' is singular and note also that the said words do not refer to a plurality of Tribunals, but to 'any such Tribunal' that is, to a single Tribunal. These words, in my opinion, enable the Parliament to provide by law for more than one appeal from and for one review only of decisions of a tribunal. This is now provided by section 6A of the Act and that answers the correct submission from the Bar that if there is to be an ultimate in the pronouncement of law, that can only be vested in the Supreme Court which exercises the judicial power of the state.[175]

It becomes evident that two appeals are allowed and Constitutionally sound under its article 117 (2) for the reason that the word 'appeals' which is plural, is used; and it shows the indication of permitting the present position.

3.5 Superintendence over and control of Tribunals

The superintendence and control over all courts and Tribunals subordinate to it is upon the High Court Division as per article 109 of the Constitution. The Supreme Court has its own system and machinery to evaluate the conduct, discipline and performance of all judicial officers working in subordinate courts and Tribunals. Firstly, through the judgments pronounced by them which ultimately come to the High Court Division for judicial review. Secondly, from the annual confidential reports (ACR) being prepared in accordance with Rules. Finally, through inspections made from time to time by the Judges of the High Court Division as per direction of the Chief Justice. This system is being followed right from 1861 when the High Courts were established in this sub-continent under the High Courts Act, 1861.

Whenever any recommendation, proposal or opinion regarding the terms and conditions of service of any judicial officer is made by the Supreme Court, this recommendation is being honored by the executive government without further inquiry because the executive does not have such machinery or system to evaluate the conduct and performance of judicial officers,

[175] See above, note 45, Kamal, M. J.

whether placed in courts or Tribunals. So far as the first mechanism of controlling Tribunals as noted above is concerned, the power of the HCD is limited to judicial review of legislative actions and does not cover judicial review of administrative actions done by Administrative Tribunals as depicted in chapter five. Therefore, there is no check of the HCD over the Tribunals with respect to matters which come under the pursuit of the Act of 1980. Rest of the two techniques of supervision over the Tribunals, namely, preparing ACR and inspection remain with the HCD.

3.6 Summary and Assessment

In sum, it is found that Administrative Tribunals are not new inception in the country; rather it has its roots from France. Long period, from 1799 to 1980, was being consumed to let the Tribunals begin in the country, though some of the Tribunals covering administrative affairs functioned in a scattered way prior to 1980. Besides, the terms 'Tribunals' and 'Administrative Tribunals' have been clarified. In line with independence of Tribunals, institutional and functional aspects have been elaborated with special emphasis on specialization, in terms of non-legal skills. Moreover, it appears that ADR mechanism is designed to address into the conduct and resolution of litigation in Administrative Tribunals. Judicial powers of the state are not being exercised by them, but in all cases, compliance must be had with the due process of law. Composition, jurisdiction, limitation period, procedure, appeal and others incidental to the Tribunals have been gathered; and also before approaching the Tribunals, proceedings which are initiated and disposed of in the department have also been displayed. After all, critical examination of the next three chapters will be made on the basis of this chapter.

Chapter Four

Efficacy of Administrative Tribunals of Bangladesh: Assessing Structural Issues and Formulating Strategies

Structural, jurisdictional and procedural issues of Administrative Tribunals are mentioned in chapters four, five and six consecutively and therefore, this chapter begins in its section 4.1 with the detailed methodology of the whole research, which will spread over the next two chapters including this one. Finally, in chapter seven titled 'conclusion', chapters four, five and six are combined in an examination of the place of Administrative Tribunals of Bangladesh and are conceived the idea of innovating probable solutions. This chapter displays that Administrative Tribunals functioning in Bangladesh, which form the subject of this thesis, are one instance of the tendency to overrun the strict bounds set in former times for the three branches of government as rigid separation of governmental functions has proved impracticable and these Tribunals exercise encroachment upon the functions of the Executive, if they do not adhere to the principle of 'Natural Justice' and violate organic service rules.

The greatest blow to judiciary is to appoint a civil servant in the position of one of the Members of the Administrative Appellate Tribunal as it has caused alarm and the fear of a possible return to government by arbitrary action. Nevertheless, the thesis acknowledges the necessity of retaining this system with some modifications. The research further discusses here the way by which judges are currently being appointed as well as considers a number of alternate approaches. It includes an assessment of the extent to which other options for appointment secure the requirements of independence and accountability essential to the operation of Administrative Tribunals of the specific domain.

4.1 Planning and Preparation

The whole thesis is based on qualitative and quantitative research designs. For the purpose of jurisdictional, procedural and structural issues, remedial measures were observed from different angles or viewpoints. This process, called triangulation, was used by quantitative and qualitative research designs.[1] However, theoretical analyses including literature review also aided to the development of this thesis. Qualitative and Quantitative research methods in the thesis included two, namely, a) content analysis by reviewing of scholarly literature, published writings and survey of four years cases of three Administrative Tribunals, namely, Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 and b) face to face in-depth individual interviews on the basis of structured and unstructured questionnaire.

The research was relied on both primary and secondary data. For the purpose of primary data, all the reported cases of the Appellate Division of the Supreme Court were consulted. An alphabetical list of these judgments appears in Appendix A. From this Appendix A, it is evident that many cases are reported in more than one law report. Though an Administrative Tribunal was established on the 1st February 1982 for the first time in Bangladesh, the Appellate Division of the Supreme Court was not then empowered to provide its last say over service disputes. The Appellate Division of the Supreme Court was given this power by way of an amendment in 1991.[2] After that, several appeals of different nature related to terms and conditions of service were instituted over there against the decisions of the Appellate Tribunal. The span of years is 24

[1] Neuman, W. L., *Social Research Methods-Quantitative and Qualitative Approaches* (New Delhi: Pearson Education Inc., 2006), 149.

[2] See for details, the Administrative Tribunals Act, 1980, section 6A. Section 6A states that "the provisions of article 103 of the Constitution shall apply in relation to the Administrative Appellate Tribunal as they apply in relation to the High Court Division of the Supreme Court". Section 6A was inserted by section 3 of the Administrative Tribunals (Amendment) Act, 1991, Act No. XXIII, 1991.

starting from 1991 to 2015. By presenting appeals, it was shown as to what extent Administrative Tribunals and the Administrative Appellate Tribunal could exercise their powers and what are the functional mechanisms and shortcomings of Tribunals. Endeavour was made by these reported cases to highlight principles which have been established in absence of statutory provisions or in case of ambiguity. Besides, case laws of the High Court Division of the Supreme Court highlighting principles relevant to the thesis, which spread over in chapters two, three, four, five and six, were encompassed in the same Appendix A.

Again, all cases of three Administrative Tribunals, namely, Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 of four years starting from 2009 to 2012 were examined. Date of institution of suits worked as a parameter in choosing data during the period. A list of these cases showing consumption of time, which was studied specifically for the purpose of chapter six, appears in Appendix B. By this raw material collected directly from the registry book of the aforementioned Tribunals, it was exhibited in chapter six as to how much period Tribunals took to dispose of suits and findings were provided in chapter seven taking into consideration the duration of suits. Furthermore, all other judicial pronouncements outside the country helping enriching the thesis are accommodated in Appendix C. Besides, for primary data, a formal interview based on qualitative-open ended questions was conducted. Experts, namely, the Chairman, Members, Registrars and Senior Division Officers, who have close connection with proceedings of Administrative Tribunals, were chosen to get their views through interview. The purpose of this interview obviously is to collect opinion regarding the efficiency of Administrative Tribunals from the context of jurisdictional, procedural and structural issues and to find out solutions. All the population of three Administrative Tribunals was selected in interview. It was observed that most of them engaged in offices of those Tribunals were

unwilling to give exact information concerning its proceedings. Some of them tell without any hesitation that they are government service holders, can't give any information which makes the government liable indirectly and can be harassed by the government because of leaked information supplied by them. These opinions of concerned stakeholders were elaborated in specific cases and it was revealed accordingly on what points Administrative Tribunals need improvements to make it a place of public confidence, esteem and respect comparable to that of courts functioning in the country. However, the study covered a period of one year starting from the 1st January 2015 to 31st December 2015.

Therefore, for jurisdictional issues, the thesis was relied on all reported cases of the Appellate Division of the Supreme Court taking into consideration of article 117 of the Constitution of Bangladesh, relevant provisions of the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982 as well as literature review elaborated in chapter two. In line with these, it was depended further on experts' opinion to remove discrimination among service holders standing on similar footing and to eliminate mistrust towards Administrative Tribunals as well as to provide access to justice by giving appropriate remedies suitable to cases and thereby, to enlarge the jurisdiction of Tribunals. The dissertation was guided for procedural issues by plain data of aforementioned three Tribunals during the period of 2009 to 2012 including the method applicable to jurisdictional issues. In consonance with relevant laws and jurisprudence of the Supreme Court, reliance was placed for structural issues on experts' opinion as well as on literature review gathered in chapter two.

4.1.1 Collection of Data

The thesis was depended for primary data on the Constitution, Bare Acts, Rules and precedents. Besides, all reported cases of the Appellate Division of the Supreme Court of Bangladesh as well as all cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 during the period of 2009 to 2012 were added. With a view of gathering further primary data in the thesis, interview with certain stakeholders was taken. Side by side to reach to a satisfactory result, secondary data, like, books, articles, newspaper, annual reports, internet surfing, government's documents and reports, historical evidence, research publications, presentation papers were reviewed.

4.1.2 Population

The population is the Chairman of the Administrative Appellate Tribunal, Members of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3. Besides, Registrar, Upper Division Assistant, Bench Assistant etc., whatever be the name of the post, are also working over there. They are also the population of this research.

4.1.3 Sampling Method/Size and Interviewing

Interviewing the Chairman, Members, Registrars and officers of aforementioned three Tribunals concerning the matter was included. Since the subject is known to a small group of people, sample size was small and so sampling was undertaken taking representatives from aforementioned groups.

4.2 Screening the use of the term 'Members' instead of 'Judges'

While dealing with Administrative Tribunals, it is required to put emphasis on the term 'Members', as quite naturally a question comes to mind as to why adjudicators entrusted with the

duty of resolving the disputes are termed as Members. The answer of the question will enable us to know the reasons of exclusion of the term 'administrative judge'. To use this term of administrative judge is misleading, so far as Administrative Tribunals are concerned, as it opens a phase of counting even those persons who are primary reviewers (administrative authorities) of administrative acts. The research is not concerned with primary reviewers of administrative actions rather concerned with their secondary reviewers (Administrative Tribunals). However, not a single literature is found illustrating the reasons of using the term 'Members' and avoiding the term 'Judges' with regard to Administrative Tribunals. The reasons that we put forward in the following have consciously considered all relevant factors to make clear this disparity and to indicate how paradoxical the reliance of the term on those reasons can be.

Examining the reasons of using the term 'Members', chapter four looks at first to the history and exposes one of the reasons based on it. As mentioned in chapter three, the creation, in year VII (1799), of the *Councils of prefecture* and the Council of State, heir of the king's council, completed the birth of French administrative justice.[3] From that period, they were termed as such. Members of administrative courts traditionally do not have the capacity of magistrates in the meaning of the French Constitution, a status reserved for Members of judiciary order.[4] In fact, they come under the general status of public service. This is why, texts applicable to administrative court Members did not include any original rule in comparison to those applicable to other civil servant bodies for a long time. However, in the eighties, this situation saw an evolution which reinforced the statutory independence of administrative court Members, such that the primary trend today is to liken them to magistrates; this, incidentally, is how they are

[3] See for details, 'Administrative Justice in Europe', available at: <www.juradmin.eu/en/eurtour/i/countries.france/france-en.pdf>, last visited on 04.03.2016.

[4] Ibid.

referred to in certain texts and all the rules governing their career's development ensure them, de facto, complete independence. However, it becomes evident that adjudicators of administrative courts of France were and still now are considered Members for the simple reason that they were and are deemed to be public servants and the reason led the French model to avoid the term 'Judges' and accept the term 'Members'. As the country has modeled its Administrative Tribunals following that of France, lawmakers have inserted the term 'Members' without much thinking. Pursuant to this aspect, the model of the country is different from that of France. Adjudicators working in Administrative Tribunals of the country are judicial officers and not in the service of the Republic,[5] as mentioned in section 3.3.2, whereas bureaucrats recruited for the position of a Member in the Appellate Tribunal are executive appointees.

In this regard, attention can be rested upon Labour Court as it acts purely as a statutory tribunal with all the trappings of a court but not a court proper.[6] Membership is one of the central features of the models of Labour Courts and the Labour Appellate Tribunal functioning in the country and this concerns us over here. Persons discharging the functions of Labour Court are termed as the Chairman and Members,[7] and minimum qualifications do not require Members to be legally expert. On the other hand, the Labour Appellate Tribunal adjudicates disputes through the Chairman along with Members who must have expertise in the field of law.[8] An examination of provisions from the purview of the Bangladesh Labour Act, 2006 could not discover the reasons of using the term 'Members' but substantiate the assertion that the term 'Members' is different

[5] Masder Hossain (Md.) and 440 Others (Petitioners) vs Govt. of Bangladesh and Others (Respondents), (1997) 2 BLC (HCD) 444; (1999) 52 DLR (AD) 82.

[6] Pubali Bank vs Chairman, Labour Court, (1992) 44 DLR (AD) 40.

[7] See, the Bangladesh Labour Act, 2006, section 214.

[8] See, Ibid, section 218.

from the term 'Judges'. Tribunal Members who make decisions (adjudicators) usually have special knowledge about the topic they are asked to consider. Judges, however, are expected to have general knowledge about many areas of law, not particular expertise about the law in the case they are hearing.

Furthermore, the analysis of the purpose of review of administrative acts and authority reflects indirectly another cause of using the term 'Members'. A judge, irrespective of any territory, is authorized to ask questions and decide disputes on the appropriateness of actions and is duty bound to find out the truth or falsity of the case. Enormous powers are entrusted to judges, whereas powers imposed on Members are narrower. Members engaged in resolving disputes do not pronounce on the appropriateness of the actions made by the administration. In this sense, they do not exercise control over the administration's 'good working order'. However, they check that the operation is in compliance with the law, meaning that the administration acted in compliance with all written standards imposed upon it according to the hierarchy of the standards established by public law.

Despite reasons noted above for introducing the term 'Members', it appears that adjudicators in the name of Members, the statutory designation, need not be appointed on the basis of legal qualifications. Though adjudicators in Administrative Tribunals of Bangladesh have enough legal expertise and it is assumed that they are able to inject that expertise into the decision-making process, a fraction of this model is different in the Administrative Appellate Tribunal, which will be discussed in this chapter later on, wherein one Member does not require qualification in the field of law. It is evident that legal knowledge as well as expertise is necessary to place a person in the position of adjudicators of Administrative Tribunals in the name of Members whereas one third portion of the Administrative Appellate Tribunal allows

non-legal adjudicators having considerable period of experience in service matters. Therefore, law-makers of the country intended to keep legal and non-legal experts under the same model by choosing the term 'Members' and avoiding the term 'Judges' which force to choose only legal experts without having any special knowledge in service jurisprudence.

Another precarious role performed by Administrative Tribunals led legislators choosing the term 'Members'. Besides decision-making function, adjudicators contribute knowledge, information and normative points of view (which we might, purely for convenience, collectively called 'data') to the decision making process.[9] Adjudicators of Administrative Tribunals irrespective of any territory, whether or not they are appointed on the basis of legal qualifications, are expected to 'act like lawyers' when they perform their decision making function. In adjudicatory contexts, three main sources of data are available: parties to proceedings, adjudicators, and third parties in the guise either of witnesses called by the parties to proceedings or persons solicited or allowed by adjudicators to provide data.[10] In traditional adversarial model of adjudication, parties to proceedings and their witnesses are the main providers of data.[11] In this model, the main task of the adjudicator is to make a decision and in doing this, he plays a limited role in contributing data to the decision-making process. From this perspective, the significant difference, in terms of provision of data, between the traditional adversarial model of adjudication and the model exemplified by Tribunals with expert and lay members lies in the sources of data for the adjudicatory decision-making process. Under the latter model adjudicators (especially non-legal experts and lay-persons) are allowed and, indeed, expected to contribute non-legal data to the decision-making process to a much greater extent than is allowed to legally-qualified

[9] Cane, P., *Administrative Tribunals and Adjudication* (Oxford: Hart Publishing, 2009), 97.

[10] Ibid.

[11] Ibid.

adjudicators under the former model. One reason for allowing adjudicators to provide more data may be to increase the total amount of available data. A more likely and significant goal is to shift the burden of providing data from the parties and their witnesses to the adjudicators and to relieve the parties of appointing a lawyer. The performance of an adjudicator by providing data also puts significant effects on the cost of adjudication. In Administrative Tribunals of Bangladesh, there is a scope for the parties to appear before the Tribunal without representation and this puts a burden on adjudicators to provide data as far as possible. This jurisdictional specialization led law-makers of the country choosing the term 'Members'.

Furthermore, Administrative Tribunals are antagonistic to the principle of 'Separation of Powers'. If the term 'judges' were chosen, it would infringe the principle mentioned above as judges were empowered thereby to interfere in the activities of administration. By choosing the term 'Members', it is possible to prevent violation of the principle of 'Separation of Powers' at least theoretically. It is noteworthy that the court is the legal institution and the judge is the legal official. In Bangladesh Administrative Tribunals fall under Part VI, titled 'Judiciary', of the Constitution but they do not exercise the judicial power of the state. As powers exercised by Tribunals do not resemble judicial one, how adjudicators will be termed as judges, so far as Administrative Tribunals of the country are concerned. Therefore, picking the term 'Members' is a right one.

4.3 Deficiencies in Structural Issues: Focusing on Decision Providers

The paradigm Administrative Tribunal is a 'specialist' adjudicatory body.[12] In this context, specialization has two aspects. One is the Tribunal jurisdiction, which was discussed in chapter

[12] See above, note 9, 91.

five, and the other aspect, the subject of this chapter, is the membership of Tribunals among others. Significant issues concerning Members of Tribunals have been accommodated in this section.

4.3.1 Identifying People Best Suited for Providing Decisions

Tribunal Members can be divided into three categories: those appointed on the basis of legal qualifications; those appointed on the basis of qualifications in some branch of knowledge other than law (often referred to as 'experts'); and those appointed on some other basis (often referred to as 'lay' members).[13] In the country Administrative Tribunals are consisted of only one Member who is appointed on the basis of legal qualification under section 3 of the Administrative Tribunals Act, 1980.[14] As appointment of Members in Administrative Tribunals is made depending on the first category, it is unnecessary to go ahead of the next two. Last two categories will be focused later on while dealing with the Administrative Appellate Tribunal. However, there is no difference in the country between Members of the traditional judiciary ('court judges') who sit as Members of Tribunals and legally qualified Members of Tribunals ('tribunal judges'), though there are terminological differences as discussed in the preceding section.

4.3.1.1 Scrutinizing Recruitment Procedure of Members of Administrative Tribunals

Unsurprisingly, the appointment procedure of Members of Administrative Tribunals solely rests in the hands of executives and therefore, this creates a chance of manipulation as the present

[13] See above, note 9, 91-92.

[14] See, the Administrative Tribunals Act, 1980, section 3 (3). Section 3 (3) reads as follows: "an Administrative Tribunal shall consist of one Member who shall be appointed by the government from among persons who are or have been District Judges".

recruitment method permits executive encroachment upon the functions of Tribunals, which are Alternative Institutional Mechanisms for judicial review in respect of service maters.[15] They can send those District Judges over there on deputation who can satisfy their want and this is not inspirational. Though the senior most District Judges, who are profoundly and precisely able to dispose of multiple complicated cases, are empowered with the duty to dispose of selective service disputes, they are not as much serious as expected due to their stop-gap duty. The scenario remains alarming as District Judges, who are entrusted with this duty at the end of their career, usually lose their patience and energy to learn new disputes faced by them. Needless to mention here that the function over here is not stressful, but the Tribunals are governed by principles and laws distinct and separate from laws which exist within the framework of courts. The present procedure for appointment, on the one hand, is not sufficiently open or participative and on the other hand, there is the concern that the selection of judges on the basis of criteria other than capability for the work of Tribunal are contributing to a decline in the quality of and respect for Administrative Tribunals.

Undoubtedly, one glaring omission from the list of categories of Tribunal Members is that of persons having insufficient knowledge of bureaucracy and of the context, problems and practicalities of administrative decision-making. For admirers of the French system of administrative courts, one of the secrets of its success is that Members of the *Conseil d' Etat*, in particular, have training in and experience of public administration.[16] It may seem surprising, therefore, that experts in public administration do not, as such, find a place on the Tribunal

[15] Government of Bangladesh and Others vs Sontosh Kumar Shaha and Others, unreported (AD) date of judgment 15.12.2015.

[16] Allison, J., *A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law* (Oxford: Clarendon Press, 1996), 146-149.

bench.[17] Therefore, any of the two ways needs to be adopted to make Administrative Tribunals of the country efficient, accountable as well as a body blended of tradition and progress. It has to be governed either by lawyers having considerable period of experience in service law and principles with reputation or by the young District Judges having patience and knowledge seeking tendency. Choosing Members from practicing advocates renders the task of appointment a difficult one especially because the legal system of the country is not at all used to it. The latter one appears to be feasible. In this regard, they have to be trained and learned in service jurisprudence and intimately contacted with intrinsic disputes before resuming office; and some bounty in the nature of encouraging or motivating award has to be given to enhance its prestige and honour as well as to attract the efficient and skilled judges. The issue of merit, so far as District Judges as Members of Administrative Tribunals are concerned, is unquestionable. But their capability of work requires to be tested and this calls for rethinking the mode of recruitment blended of merit and capacity to work.

A common criticism which further concerns is not the issue of legal versus other kinds of expertise as discussed above but the role of executives in appointing adjudicators as Members.[18] The issue pushes us to look to appointment procedure available in lower judiciary. It is found that lower judiciary is not free from the executive interference and it is visible after reading of article 115 of the Constitution of Bangladesh, wherein it is mentioned that "appointments of persons to offices in the judicial service or as magistrates exercising judicial functions shall be made by the President in accordance with rules made by him in that behalf". Powers in relation to appointments of persons to subordinate courts have been taken away clearly by way of the

[17] Ibid.

[18] Section 3 (3) of the Administrative Tribunals Act, 1980 states that "an Administrative Tribunal shall consist of one Member who shall be appointed by the government from among persons who are or have been District Judges".

Constitution (Fourth Amendment) Act, 1975 concentrating the same to the President himself. The same trend like lower courts is found in Administrative Tribunals and the Administrative Appellate Tribunal; and this is contradictory to the doctrine of 'Separation of Powers' as propounded by the French jurist Montesquieu in his *L' Esprit des Lois* (The Spirit of Laws).[19]

The procedure of appointing Members in Tribunals is initiated by the Ministry of Law, Justice and Parliamentary Affairs. The Ministry, after choosing persons, sends the list to the High Court Division for approval. When the High Court Division approves it, it has to be sent to the President for further approval. The procedure comes to an end, when it reaches again the Ministry via the President. Previously, whoever the Ministry picked, that was final and the High Court Division never interfered. At present, after the landmark decision of *Secretary, Ministry of Finance vs Masdar Hossain*,[20] the High Court Division has now begun to change the name the Ministry proposes following the unequivocal mandate for the independence of the judiciary under articles 109, 115, 116 and 116A of the Constitution.[21] Though article 117 of the Constitution contains a *non-obstante* clause,[22] the HCD, after the virtual journey to the separation of judiciary from the executive from the 1st November, 2007, is now purporting to

[19] Though he has been greatly inspired by Locke's political philosophy wherein he examined the concept of Separation of Powers flexibly and thought that Natural Law could exist even where multiple institutions share the same power.

[20] See above, note 5, 444.

[21] The High Court Division is authorized by article 109 to administer, control, and supervise all subordinate courts. Articles 115 and 116 mandate the President to establish subordinate courts and appoint their judges and magistrates in consultation with the Supreme Court and pursuant to appropriate rules. Article 116A affords independent competence to all subordinate court judges in the exercise of their judicial functions. These Constitutional provisions purport to establish an orderly system of judicial hierarchy in which subordinate courts remain accountable to the Supreme Court and not to the executive. All these Constitutional mandates are yet to be implemented in full swing even after the separation of the judiciary from the executive on the 1st November, 2007 based on 12 directive points coming from historic judgment of Masder Hossain case on the 7th May, 1997.

[22] *Non-obstante* clause means the provision is exempted from the previous all.

monitor the posting of judges in Administrative Tribunals to prevent government interference and political posting in Tribunals.

To make the present technique of recruitment more fair and transparent, the power of appointing the Chairman as well as Members both in Tribunals as well as in the Administrative Appellate Tribunal has to be rested in the hands of a newly created independent council, namely, 'Superior Council of Administrative Tribunals and the Administrative Appellate Tribunal', acting under the authority of the Chief Justice of the Supreme Court as he knows best as to who are the District Judges of high caliber. The Council requires being responsible for all aspects of their functioning, staff recruitment, training etc. and it has to be placed under the management of the Supreme Court. This mechanism will so far ensure transparency in the matter of appointment. At least a provision like 'no appointment of a Chairman and of a Member in Administrative Tribunals or the Administrative Appellate Tribunal shall be made except after consultation with the Chief Justice' needs to be inserted right now and the provision is to be made in the way so that it would be mandatory for the Ministry to receive advises of the Chief Justice of the country.

So far as Administrative Tribunals are concerned, the proposed model will give full effect to judicial independence as enshrined in *Secretary, Ministry of Finance vs Masdar Hossain*,[23] from the perspective of recruiting Members. As observed in chapter two, in France there is a separate academic institution from where judges of Tribunals are being recruited and they have built up this for centuries. This is not easier in the country as it requires long struggle and revolution, not only in the structure of Tribunals, but also in the overall set-up of the society. Furthermore, in the

[23] See above, note 5.

Common Law world including Bangladesh administrative courts are not completely separated from courts as is observed in Civil Law system of France.

4.3.1.2 Debates over the Present Adjudicators in the Administrative Appellate Tribunal

The Administrative Appellate Tribunal is next to Administrative Tribunals and the quality of disposing of suits depends to a considerable extent on the composition of the Administrative Appellate Tribunal. Appointment of adjudicators in the Administrative Appellate Tribunal is not unlike that of recruitment of Administrative Tribunals. Nevertheless, the earlier one has less transparency than the latter one from the viewpoint of recruiting its adjudicators. It is beyond doubt that fair procedure of appointment is required to maintain impartiality of adjudicators and their complete submission to law. The power rests in the hands of the Ministry of Law, Justice and Parliamentary Affairs, the executive, by virtue of section 5 of the Administrative Tribunals Act of 1980. There is no foreign check in it alike Administrative Tribunals. As recommended in the preceding section 4.3.1.1, the 'Superior Council of Administrative Tribunals and the Administrative Appellate Tribunal' acting under the authority of the Chief Justice needs to be immediately established and it will oversee the appointment. Therefore, complete change has to be brought in section 5 of the Act of 1980. Side by side a complete legislation, namely, the Chairman and Members (the Administrative Appellate Tribunal and Administrative Tribunals) Recruitment Rules, has to be framed.

Whatever was presented till the preceding paragraph, that was the examination and the endeavor to providing solutions accordingly for the entire recruitment method of adjudicators in the Administrative Appellate Tribunal. It was tried to focus on the question as to who should conduct the procedure of recruiting adjudicators. It needs to scrutinize each individual

adjudicator now functioning in the Administrative Appellate Tribunal and to provide guidelines to the proposed Council so that they could remove incongruities. It is found during primary data collection that a retired judge of the High Court Division works as a Chairman in the Administrative Appellate Tribunal on a contractual basis. In this regard, the Registrar of the Administrative Appellate Tribunal opined that the Chairman normally holds his office for a period of two years. But one year contractual period was granted for the period of 2014-2015. This existing system concerns us from different angles and the chief one is that of a retired judge.

Judicial challenges to appointments of various judges of the Supreme Court both during their continuance of service and retirement there from are not uncommon in Bangladesh.[24] Frequent questions are raised by the enlightened sections of the society about these controversial appointments in different offices having political implications as well as financial gain. While disposing of challenges on different occasions, the Supreme Court faced questions as to what the 'office of profit' in the service of the Republic and 'quasi-judicial office' mean. It is necessary to mention here that these questions arise because of two articles, namely, article 99 and article 147 (3). Articles 147 (3) and 99 were included in the original Constitution disqualifying the Supreme court judges from holding any office or post whatsoever both during the continuance of their service and after their retirement or removal there from. These two tier prohibitions were

[24] Original article 99 put a total ban on appointment of a retired judge to any public office whatever. In 1976 and 1977, article 99 was amended by the Martial Law Proclamations permitting appointment of the judges in a judicial or quasi-judicial office after retirement or termination of service and permitting a Judge of the High Court Division to practice in the Appellate Division after retirement or termination of service. These amendments were validated by the Fifth Amendment. However, the declaration of unconstitutionality of the Fifth Amendment has not changed the position as Parliament by the Fifth Amendment of the Constitution re-introduced the amendments of article 99 previously made by the relevant Martial Law Proclamations.

intended to immune the judges from all sorts of allurement for possible future gains. Later on article 99 has been amended.[25]

After going through of both of these present articles, it appears that a judge of the Supreme Court can now be appointed in any post after his retirement, provided first, it is a judicial or quasi-judicial office and second, it is not an office of profit in the service of the Republic. It is beyond doubt that the office of the Administrative Appellate Tribunal is a judicial office. It was observed in *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others* that "the Tribunal is an alternative forum of the High Court Division in respect of matters mentioned in the Act of 1980 as the power of judicial review of administrative actions has rightly conferred on them".[26] But there is confusion with regard to the term 'office of profit'. Though the expression 'office of profit' is not defined in the Constitution, it has a pretty sound backing of the doctrine of 'Separation of Power'. However, the question is as to whether the office of the Chairman of the Administrative Appellate Tribunal is an office of profit. The answer of this question is not directly found in any case law, but in *Ruhul Quddus vs Justice M. A. Aziz*, a Division Bench of the High Court Division held that "the posts specified in article 147 (4), e.g., the posts of President, Prime Minister or Chief Adviser; Speaker or Deputy Speaker, Minister, Adviser, Minister of State or Deputy Minister, Judge of the Supreme Court, Comptroller and Auditor General, Election Commissioner and Member of Public Service Commission are posts in the service of the Republic and therefore, a judge of the Supreme Court cannot, whether continuing or ceasing to be a judge of the Supreme Court, hold any office of profit".[27] It becomes evident after examining article 147 (4) of the Constitution and the case law just noted in the preceding

[25] The Second Proclamation (Fifteenth Amendment) Order, 1978, Second Proclamation Order No. IV, 1978.

[26] See above, note 15.

[27] (2008) 59 DLR (HCD) 511.

sentence within our judicial discourse that the Chairman of the Administrative Appellate Tribunal is not holding office of profit. By introducing the office of profit criteria in place of any office or post, we are getting chance to appoint a retired judge in the position of the Chairman of the Administrative Appellate Tribunal. In this way, the executive can favor an acceptable judge of the Supreme Court in the same degree it can favor a Member of Parliament, a party man and instead of it, the selected judge can award favorable judgment for the executives.

Judges being the servant of the Republic serve the nation and not the executive. Hence, section 5 of the Administrative Tribunals Act, 1980, which opens a space of political favoritism for the judges as well as make them subservient to rather than watchdog of the executive, has to be amended to rule out the possibility of retired judges getting chance to hold an office involving financial gain. In bringing changes accordingly in section 5 and to activate it, articles 147 (3) and 99 require to be amended and this will disqualify the Supreme Court Judges from holding any office or post whatsoever after the retirement or removal there from. Alternatively, article 99 (1) can be amended to provide a cooling period of at least five years after the retirement of a judge from the Supreme Court to the following effect: *A person who has held an office as a judge otherwise than as an Additional judge shall not, after his retirement or removal there from, plead or act before any court or authority or be eligible for any appointment in the service of the Republic before the expiration of five years after he has ceased to hold that office.*[28] This five years cooling period shall make all the allurements and future calculations too distant to foresee. Moreover, since the term of a political government is five years, it shall be in a very difficult position to offer any persuasive assurance of favor to a particular judge.

[28] Italic for emphasis.

The political uses of judges are rampant in the country and persons taking undue advantage of it never wished and still now wish to bring any changes prohibiting judges to engage in any public office whatever after retirement. Polluted political practices and environment need to be changed. As noted above, in absence of detailed provisions, retired judges are getting the chance to be appointed on a contractual basis of one year or two years. Consequently, insecurity feeling of the Chairman let them not to give any decision for which the government would be annoyed. Agreed with this, one of the Members opined that if the government is not satisfied with him, he will not get further extension of his service period. Furthermore, provisions of the Constitution, so far as the tenure of judges in the HCD is concerned, provide security whereas this is not so for the judges of the High Court Division who are placed in the Administrative Appellate Tribunal for contractual period. Moreover, appointment of the Chairman for tenure of one or two years is a sheer adhocism and such incumbents are hardly interested to discharge their duties with sense of dedication. Undeniably, if some steps are taken beforehand and amendments are made, then execution proceedings which, in fact, linger the whole proceedings of Administrative Tribunals may not be filed. This requires us to look to different stages between A.T. suits and A.T. execution applications. At first, an application is filed to the AT, against it to the AAT, then to the Appellate Division, further for executing it an application is filed to the AT. The problems could be solved finally in the AAT if the Chairman of it would be strong.

When quarries were made, so far as the Chairman of the Administrative Appellate Tribunal is concerned, the respondents shared similar opinion and suggested for an acting judge of the High Court Division in the position of the Chairman underlying the reason that a judge in service feels secured in his service, can take strong steps with regard to A.T. suits. It is a hope that several worries concerning personal appearance of the concerned high officials even the secretaries of

the Ministries would be removed due to the weight of the post of the acting judge of the High Court Division. The proposal will have several consequences. First of all, it would put pressure and threat on the departments to comply with the decisions of the Administrative Appellate Tribunal. Secondly, it is expected that not enough appeal would lie against the decision of the AAT and no application for execution would also be filed, it would be finished in the AAT. Indeed, the stakeholders agreed that the above recommendation is a solution but a judge with strong personality and morally and ethically strong and sound can take any steps, irrelevant of his position or power, whereas the suggestion can be fruitless if the acting judge of the High Court Division behaves otherwise.

The Chairman performs his functions in co-operation with two other Members. The discussion on one of its Members, whose status resembles Members in Administrative Tribunals, was left aside for the reason that the assessment concerning Members of Administrative Tribunals is applicable to this Member of the AAT. The left out Member is a matter of concern here. Section 5 of the Administrative Tribunals Act, 1980 allows a person, who is or has been an officer in the service of the Republic not below the rank of Joint Secretary, to work as a Member of the Administrative Appellate Tribunal is greatly objectionable as it contributes to a decline in the quality of and respect for the Appellate Tribunal as well as destroys the concept of 'Separation of Powers'. Besides, the presence of bureaucrats as Members creates at least the appearance of conflict of interest and lack of independence. The ex-bureaucrats might sit on Administrative Tribunals but this will give birth to same problems of insecurity about job tenure, expectation of further extension of service period and want of dedication. Hence, the appointment of ex-bureaucrats is not advisable.

It is undeniable that two aspects of specialization, namely, membership and jurisdiction are obviously related, so far as Administrative Tribunals are concerned. The fact that such Tribunals specialize in reviewing decisions concerning terms and conditions of service is thought a reason and a justification for including bureaucrats as Members. Agreeing with these reasonings SK Sinha CJ opined in a case:

> The composition of the appellate authority by including a high level administrative officer with specialized knowledge be better equipped besides the judicial officers to dispense with prompt justice. And it is expected that a judicious mix of judicial members and an experienced grass-root officer will serve the purpose effectively and speedily.[29]

Non-legal expertise is particularly relevant to matters with which Tribunals deal. Non-legal expertise is more relevant to some areas of law than to others. As the Tribunals' jurisdiction is more specialized, it is required to identify areas of non-legal expertise that are likely to be relevant to a significant proportion of the Tribunals' caseload and accordingly, to involve relevant non-legal experts in the decision making process directly rather than indirectly as witnesses. Therefore, with a view of preventing the violation of the principle of 'Separation of Powers' as well as ensuring non-legal expertise, the appointment of the Member, who is now being chosen from amongst the civil servants not below the rank of Joint Secretary, must be made strictly on merits from amongst the lawyers and experts having at least ten years experience in relevant field while avoiding the appointments of bureaucrats. The persons who will be selected to work here must be allowed to work at least for a decade with an assurance of pension and other retiral benefits. The minimum tenure of ten years will definitely attract a busy lawyer and an expert in the field to accept such assignments. The assurance of pension and other retiral benefits will also provide a sense of security. Lawyers and experts selected for the post of this Member of the AAT are required to be allowed handsome pay packages so that they can be

[29] See above, note 15.

persuaded to join the posts by leaving lucrative practice at the bar and handsome packages in the public and private sectors. These innovations, definitely should not be neglected, have to be followed gradually as the changes, which need remarkable institutional development, cannot be made overnight.

The deep concern concerning the functioning of a civil servant in the position of one of the Members of the Administrative Appellate Tribunal, as discussed above, seems to be relaxed and a matter of hope after critical examination of sections 3A and 3B. That civil servant being the Member of the AAT cannot take decision singly as the opinion of the majority shall prevail in the event of any difference of opinion among Members of the Administrative Appellate Tribunal.[30] Further, if any Member of the Appellate Tribunal is, for any reason, absent or unable to attend any sitting thereof, the Chairman and the other Member present are allowed to dispose of appeals but they have to be unanimous in their decision.[31] Whatever arguments in favour of retention of present model supporting the existence of bureaucrats to work have, it needs to be changed following the above recommendations to make its working environment healthy and free from biasness. It is surprising that whereas proceedings involve government, there one of the Members of the AAT is from government body; and this becomes evident that the rule of biasness, one of the principles of 'Natural Justice', is being violated.

4.3.2 Assessing Ironic Provisions Concerning Terms and Conditions of Service

The standard for the terms and conditions of judicial service and the 'independence of the judiciary' is that set by the Act of Settlement, 1701, namely, appointment for life or until a fixed

[30] See, the Administrative Tribunals Act, 1980, section 3A.

[31] Ibid.

retiring age, removal only at the behest of the legislature and only on very limited grounds of incapacity or misbehavior, and immunity from salary reduction.[32] However, unless such terms and conditions are constitutionally entrenched, legislatures have a certain leeway in defining the terms and conditions of judicial service subject only to some minimum concept of independence.[33] A *fortiori*, such leeway exists in defining the terms and conditions of service of non-court administrative adjudicators.[34] Members of Tribunals who enjoy such terms and conditions by virtue of their appointment to the traditional judiciary will not necessarily enjoy them in relation to their Tribunal appointment.

Regarding the terms and conditions of service of the Chairman and Members of Administrative Tribunals and the Administrative Appellate Tribunal, the power rests with the government and it is not clear as to how much period they will hold office and on what terms.[35] Their job tenure over there is not secured and this is a major obstacle to the concept of independence of judiciary. Members of Administrative Tribunals and the Administrative Appellate Tribunal can be shifted from the Tribunals to District courts at any moment, as there is no mention of their duration of work over there. Normally, Members of Administrative Tribunals hold their office for a period of maximum three years until they retire earlier or are transferred to District Courts. Nothing is dealt with by the Act of 1980 about the extension of service. The findings reveal the same picture showing that no further extension of this service period has been granted to any Member till now.

[32] See above, note 9, 101.

[33] Ibid.

[34] Ibid.

[35] See above, note 30, sections 3 (4) and 5 (4).

This period of three years is not adequate for Members to gain experience and to put full concentration on the respective job. The thought pushes us to differentiate judges engaged in courts from Members employed in Tribunals. Judges enjoy security of tenure, whereas Tribunal membership is unattractive, as adjudicators here do not enjoy effective security of tenure. Dissatisfaction and grievance, which was traced out on the basis of data, is found present among Members, so far as treatment with them is concerned. Judges of courts and Tribunal Members carry equivalent status, which is the post of District Judge. Indeed, the total set up of Tribunals is not encouraging; insufficiency of supporting staff, lack of web services and law reports, inappropriate Tribunal house and chambers are all painted as discouraging elements. Besides removing all the obstacles noted in the preceding sentence, tenure of service needs to be increased. Granting life tenure or long tenure for judges, which ideally frees them to decide cases and make rulings according to 'Rule of Law' and judicial discretion may be thought to be introduced, even if those decisions are politically unpopular or opposed by powerful interests. Life tenure for the Chairman and Members of Administrative Tribunals and the Administrative Appellate Tribunal is almost impossible from the context of our legal system. Long tenure for them requires to be granted to make them free from the interference of the Executive; make them independent; and let them gain expertise and use knowledge over there. Therefore, the Chairman and Members of the Administrative Appellate Tribunal and Administrative Tribunals are no doubt qualified but their period of service needs to be extended; and they have to be given compulsory training before resuming office as the cases which they deal with here are totally different.

Furthermore, the Administrative Tribunals Act, 1980 contains nothing, so far as resignation and removal of the Chairman and Members of the Administrative Appellate Tribunal and

Administrative Tribunals are concerned. About the quarries regarding the matter, the key personnel opined that till today, no one has been removed or resigned. Even then the vacuum in legislation needs to be filled up. Before addressing future strategies concerning resignation and removal, it is essential to go through it from the perspective of higher and subordinate courts. So far as resignation of judges in superior courts is concerned, the Constitution travelled a dramatic history. The original Constitution of 1972 had empowered Parliament to remove Supreme Court (SC) judges. But the fourth amendment brought to the Constitution in January 1975 bestowed the authority on the president by abolishing the Parliament's power. During the first martial law regime, the then military ruler General Ziaur Rahman introduced the Supreme Judicial Council (SJC) in 1978 by amending the Constitution through a Martial Law Proclamation. In 2010, the SC scrapped the fifth constitutional amendment that validated all activities of the first martial law regime. It, however, condoned the introduction of the SJC mentioned in article 96.[36] The then Awami League (AL) led government retained the SJC and included the same provisions in the Constitution through the 15th amendment in 2011.

AL changed its mind after returning to power through the one-sided January 5 parliamentary polls in 2014. It moved to amend the Constitution again and the House passed the 16th amendment to the Constitution in September 2014. The Constitution (Sixteenth Amendment) Act, 2014 dealing with removal of judges replaced article 96.[37] To attract this article, two-thirds of the total number of members of Parliament is required for a resolution of Parliament, concerning proved misbehavior or incapacity of a Supreme Court judge, ordered by the

[36] Prior to the 16th amendment of the Bangladesh Constitution, the Supreme Judicial Council, which would consist of the Chief Justice of Bangladesh and the two next senior Judges, was empowered to remove a judge on the ground of proved misbehavior or incapacity; and its function was also to prescribe a Code of Conduct to be observed by the judges.

[37] Act No XIII, 2014.

President.[38] Parliament may by law regulate the procedure of removal of a Supreme Court judge in relation to a resolution under clause (2) and for investigation and proof of the misbehavior or incapacity of a Judge.[39]

It appears that to make article 96 active, Parliament was under a duty to frame law detailing the procedure. In *Khandker Delwar Hossain vs Bangladesh Italian Marble works Ltd.*,[40] popularly known as 'Constitution 5th Amendment case' it was observed: "However we are of the view that the words, 'but we find no provision in the Constitution which curtails, demolishes or otherwise abridges this independence' do not depict the actual picture because unless articles 115 and 116 are restored to their original position, independence of judiciary will not be fully achieved." Despite such observation, the government has not restored original article 116. It is hoped that the original article 116 will be restored with a view of avoiding any controversy in future. In line with this, the cabinet on May 2, 2016 approved the draft of 'the Supreme Court Judges (Investigation) Bill, 2016' having provisions to investigate the allegation of misconduct by the judges of the High Court and the Appellate Division of the Supreme Court and to impeach them by parliament.

However, on November 5, 2014, nine Supreme Court lawyers including Asaduzzaman Siddique, Akhlas Uddin Bhuiyan and Sarwar Ahad Chowdhury filed the writ petition saying that the amendment might have been motivated from a malafide intention and the judges might feel at risk before passing an order against a lawmaker. Considering the Constitutionality of the matter, the HCD on May 5, 2016 scrapped the 16th amendment to the Constitution terming it illegal and

[38] See, the Constitution of the People's Republic of Bangladesh, 1972, article 96 (2).

[39] Ibid, article 96 (3).

[40] (2010) 29 BLD (AD) 1.

unconstitutional and against the principles of the 'Separation of Powers'. The cancellation of the 16th amendment has raised a question as to whether it would automatically reinstate the SJC in the Constitution. According to Shadeen Malik, a jurist, "The Supreme Judicial Council will not be restored automatically in the Constitution. An amendment to the Constitution is needed for that. There would be a vacuum until the re-introduction of a system for removal of Supreme Court judges."[41]

Article 96 is attracted only for Supreme Court judges. Again, the control (including the power of posting, promotion and grant of leave) and discipline of persons employed in judicial service and magistrates exercising judicial functions shall vest in the President and shall be exercised by him in consultation with the Supreme Court.[42] Article 116 covers the lower judiciary concerning the matter. The fact that as Administrative Tribunals mentioned in article 117 is exempted from preceding articles gathered in Part VI of the Constitution; articles 96 and 116 have no application here from the point of view of the task of interpretation. All of these discussions dictate to the necessity of introducing a complete Code enumerating the procedure for resignation and removal. Provisions have to be made in a way so that opportunity would be opened to remove adjudicators only after a hearing and only for 'good cause' as established by an independent Council or Agency. Inability, misbehavior, undisclosed conflicts of interest, unapproved absence from work, bankruptcy etc. may rightly be included within the non-exhaustive list of good causes necessary for the removal of a judge. All the stages must be completed without the involvement of Parliament and under the supervision of the Chief Justice. It is expected that they would not be

[41] See, the Daily Star, 06.05.16; also available at: <http://www.dhakatribune.com/bangladesh/2016/may/06/hc-rules-16th-amendment-illegal>, last visited on 19.06.16.

[42] See above, note 38, article 116.

dismissed or otherwise disciplined by reason of political considerations. To the extent that Tribunal appointees do not enjoy this standard, their independence is widely thought to be compromised. However, the opinion does not usually lead to the conclusion that Tribunal appointments should adhere to the standard. Rather it is said that the independence of Tribunal appointees can be protected in other ways that can make up for the deficit produced by departure from the standard. This surely partly explains the emphasis on appointment processes and criteria noted in the preceding sections.

4.4 Introducing Tools for Enhancing Specialization and Building an Independent Institution

About the quarries of the loopholes of existing laws, so far as adjudicators of Administrative Tribunals are concerned, as scrutinized in the preceding two sub-sections, one of the Members of Administrative Tribunals opined that Administrative Tribunals are required to be divided into different sections to enhance expertise and skill among the Members. Each of these sections has to be specialized in certain fields of law on service matters. Though this suggestion, if implemented, would mark a significant breakthrough, it fails to provide categorically any effective solution right now as it needs changing existing set-up and will compel to keep more than one Member in Tribunals. For improving efficiency of Tribunals right now, the findings as a whole speak of compulsory training programme for the Chairman and Members and even for the officers, which will perform a genuinely creative task and establish bases for legal thought.

Inevitably, our Administrative Tribunals are different, to a greater extent and fundamentally, from that of the French Council of State, are not empowered to interpret laws but they may contribute to the development of administrative law by skillful interpretation of texts. To

enhance its efficient activity and creative task as well as to place it in a place of extraordinary prestige, it is a high time to keep them away from the concept of stop-gap duty as well as scattered thinking of being here for short period rather enrich the Members with all sorts of training, books, web services, well equipped record rooms. Simultaneously there is no separate budget for Tribunals letting them apparently depend for financial matters on Ministry of Law, Justice and Parliamentary Affairs. A separate budget has to be allocated for them just like the Council of State, which is considered as a kind of small ministry, free and independent, in terms of budget and funding. The law-makers are silent on different levels of shortcomings, as analyzed above; and this point to the view that the legislature has restricted itself not to bring any changes and this mind-set requires to be changed to make it a place of confidence.

4.5 Institutional Design vs Independence of Administrative Tribunals

Chapter two was begun with a discussion of theories including 'Separation of Powers' closely associated with Administrative Tribunals. Montesquie along with other jurists' thoughts have been gathered over there. A close association between independence of judiciary and 'Separation of Powers', as mentioned in chapter two, can be traced back at least to Blackstone's domestication of Montesquieu for an English audience in the late 18th century.[43] Independence here appears to be understood as a function of institutional design that promotes, but is not synonymous with, impartiality, which is a characteristic of reasoning processes or a frame of mind. Also relevant to independence is the relationship between adjudicatory institutions and other organs of government. As traditionally understood and noted in chapter two, 'Separation of

[43] Allison, J. W. F., *The English Historical Constitution-Continuity, Change and European Effects* (Cambridge: Cambridge University Press, 2001), 75.

Powers' has both institutional and functional elements.[44] These two elements are observed from the viewpoint of Administrative Tribunals; and to what extent institutional and functional separation have become practically feasible are mentioned in this present chapter and five respectively.

The most basic requirement of institutional separation of executive from judiciary is that officials should be prohibited from serving in both branches simultaneously. Avoidance of shared membership is primarily concerned with preventing an appearance of executive influence or control over the decision of individual cases. This is considered important, so far as our Administrative Tribunals are concerned, as the government directly has an interest. Other aspects of the relationship between the executive and the legislature on the one hand, and the judiciary including Administrative Tribunals on the other, such as, the management and funding of Tribunals and the location of Tribunal buildings, relate to the independence and the appearance of independence of Tribunals and judges in a more general or systemic way. There is obviously no mechanical formula for determining when the potential for influence and control inherent in the relationship between the executive and the legislature on the one side, and the Tribunals on the other, is so great as to pose an unacceptable threat to the independence of thought and action of judges and Tribunals. It appears that institutional aspect of 'Separation of Powers' is being maintained in our Administrative Tribunals as no bureaucrat is allowed to work here and only judicial officers are allowed to adjudicate. The picture is, to some extent, different in the Administrative Appellate Tribunal. Location of Tribunal building, which is completely in a different space, also shows the visibility of 'Separation of Powers'. Nonetheless, this Separation appears to be deteriorated because of management and funding of Tribunals.

[44] See above, note 9, 105.

4.6 Examining Recruitment Method of Officials Working in Administrative Tribunals

The existing recruitment method for the post of Registrars, officers and staff made them reluctant to deal with the affairs of Administrative Tribunals. It is found that Senior Assistant Judges from the Bangladesh Judicial Service Cadre work as Registrars of Tribunals. They come here on deputation and normally deal with suits and cases of courts which are almost entirely different from the nature of suits of Administrative Tribunals as the laws which are applied here are also different. Legal knowledge and expertise for the post of Registrars are not required due to nature of jobs which are general or office administration. As Tribunals are legal institutions and follow judicial proceedings,[45] legal expertise contributes a bit to its performance. This leads us to depart ourselves from scrutinizing the ability to work.

The objection of the existing model lacks commitment on the part of Registrars. Stop-gap duty is being reflected as a reason behind the non-commitment of the post. As the term of office is for 2 or maximum three years after being engaged as a Registrar, time arises to shift from here to court again and hence the duty is analogous to stop-gap duty. Lack of commitment leads to lack of promptness undermining the prestige for which Tribunals are valued. Registrars must be chosen only by promotion from amongst the existing staff. This automatic promotion from the existing staff will promote sincerity helping them to gain more practical experience concerning service matters and this will further act as a tonic to let the officials believe that commitment and sincerity will not go unrewarded.

Leaving aside the above discussed issue just for now, let us move to the prevailing law, which is the Schedule of the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985

[45] See above, note 30, section 7 (2).

covering the method of recruitment of Registrars and their qualifications. The Rules of 1985 opens the option of choosing Registrars either by promotion or transfer on deputation and the legislation ignores entirely the appointment by direct recruitment to the specified post.[46] Since both options are available in the Rules of 1985, overlooking the method of recruitment of Registrars by way of promotion from amongst Section Assistants and Bench Assistants is not a violation of the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985. Government relies on recruitment by transfer on deputation without much thinking. It is advisable that provisions allowing Senior Assistants Judges to work in the position of the Registrar require to be omitted from the Schedule to the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985 with a view of beginning the practice of choosing Registrars from amongst existing staff by promotion.

4.7 Review of Tribunals Panels, Manpower, Reporting Procedure and Preservation of Documents

It is seen all over the globe that individual cases can be heard either by single member or multi-member panels; appellate courts are typically constituted by more than one judge; and first instance courts by a single judge. At the appellate level, the use of multi-member courts is understood as a technique for resolving substantive disagreement by the procedural device of

[46] See, the Schedule of the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985. The Schedule of the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985 provides that "Registrars can be recruited by promotion from amongst the Section Assistants, Bench Assistants and Stenographers and, if no suitable candidate is available for promotion, by transfer on deputation of an officer of the lowest hierarchy of the Bangladesh Civil Service (Judicial) Cadre having at least three years service in that Cadre". It further mentions that "Section Assistants or Bench Assistants can be promoted to Registrars if they have at least five years service in a feeder post and LLB Degree from a recognized University or at least ten years service in a feeder post without such Degree: Provided that persons with LLB Degree shall be given preference over those who have no such Degree."

majority voting.[47] Commonly, the principle of collegiality offers precious guarantees to achieve a perfect quality of judgements, but it is not always compatible with the objective of reducing the duration of procedure. Judgments in our Administrative Tribunals are not pronounced by collegial panels rather Members sit and decide alone. The law makers deliberately did this insertion to promote speedy disposal and it is, therefore, no wonder that qualitative judgments would be ensured by the Administrative Appellate Tribunal if there is any miscarriage of justice done in Administrative Tribunals.

The present formula for the single level of Tribunal session is perfect enough as the Tribunals are working in limited arena. Several different levels of Tribunal sessions, namely, plenary sessions, sessions made up of three Members or sessions consist of five Members or more than that, do not exist here for the simple reason that its jurisdiction is confined in selective service disputes. However, the Appellate Tribunal above Administrative Tribunals occupies the principle of collegiality which guarantees qualitative judgments to a considerable extent. This collegiality is essential in this appellate level comprising one Chairman and two Members due to the importance, legal difficulty and mistakes of the case, if done in Tribunals. The hardship caused due to delivery of erroneous decision in A. T. suits can be avoided by recourse to appeal provided by law. Therefore, the present position permitting single panel in Tribunals and collegial panels in the Appellate Tribunal is right as it on the one hand, provides precious guarantee to achieve a perfect quality of judgments through rectifying mistakes done in A. T. suits and on the other hand, reduces the duration of procedure promoting quick justice.

[47] Cane, P., "Taking Disagreement Seriously: Courts, Legislatures and the Reform of Tort Law", *Oxford Journal of Legal studies* 25, 3 (2005): 393.

Furthermore, non-lawyers are more prone than lawyers to 'idiosyncrasy and biases',[48] against which Members of a multi-member body can check each other. So far as disposal of appeals are concerned, debate arose in a case as to whether judgments in the AAT could be delivered by two Members in absence of the one. It was held:

> Although hearing may be continued by two other Members, if any Member is unable to attend any of its sitting, the judgment in the case must be delivered by three Members. Judgment delivered by two Members is a nullity being *coram non-judice*. Besides, the Administrative Appellate Tribunal cannot sit over the judgment of the High Court Division. The High Court Division is vested with Constitutional jurisdiction to interpret the law and its judgment is binding upon the Administrative Appellate Tribunal as well.[49]

The above decision now ceases its binding effect. An amendment in 2011 incorporated a provision saying that the Chairman along with the other Member present may dispose of appeals because of absence or inability of any Member to attend any sitting thereof but in this situation unanimous decision must be reached.[50] However, in terms of budgetary allocations, the judiciary is one of the lowest priority sectors with the result that in addition to small number of courts, these are constrained by lack of resources in terms of administrative and other relevant personnel and facilities.[51] Administrative Tribunals are no exception of it. Interviews of officials, who are helping to run general administration below the post of Registrars, were conducted. The core issues to be investigated with are sufficiency of manpower in invoking standards equivalent to court of District Judges. Below the post of Registrars, officials engaged are known as Section Assistants or Upper Division Assistants (UDA) as per provisions of the Ministries and Divisions (Upper Division Assistant and Section Assistant) Recruitment Rules, 1984. In addition to manpower, the interviews and personal visit focused on the factual situation regarding overall

[48] Fulbrook, J., *Administrative Law and the Unemployed* (London: Mansell, 1978), 208.

[49] Miss Shaheda Khatun vs Administrative Appellate Tribunal, Dhaka and Others, (1998) 3 MLR (AD) 201-207.

[50] See above, note 30, section 7 (3B).

[51] Ara, R., "Normative and Institutional Responses to Torture in Bangladesh" (Unpublished Ph.D. thesis, University of Dhaka, 2015), 238.

environment of Administrative Tribunals; and the obstacles and the suggested propositions were also revealed based on these.

During personal visit at Administrative Tribunal Bogra, only 11 people are found engaged there. They are Member-1, Registrar-1, Senior Division Officer-1, Steneographer-1, Bench Assitant-1, Typist-1, MLSS-4 and Driver-1. The participants working at A. T. Bogra expressed their deep concern of insufficiency of manpower as the Tribunal covers highest number of districts which is 16 in number. Equivalent scenario is found when quarries were put forward to the Acting Registrar, Administrative Tribunal 1, Dhaka. They are Member-1, Registrar-1, Section Assistant-1, Bench Assistant-1, Steneographer-1, LDA Cum Typist-1, Process Server-1, Driver-1, Orderly-1, MLSS-1 and Swiper-1. Though Administrative Tribunal 1, Dhaka incorporates lesser number of districts, enormous numbers of suits are filed there and so the present manpower needs to be raised. On the other hand, it is opined by the Upper Division Assistant of Administrative Tribunal 3 that there is no Registrar and Process Server in there as well as no Personal Assistant for the Member. Total permanent manpower over there is four in number and they are Steneographer-1, Bench Assistant-1, Driver-1 and MLSS-1. Two, of them one is Swiper and the other is Cleaner, are also working on daily basis and they are not eager to continue this job as payment, which is taka 120, is too poor. Besides, personal visit in the aforementioned three Administrative Tribunals explored that proceedings are now being continued in buildings which were made temporarily to meet the necessities of that moment; and at the end of 33 years of establishment of Administrative Tribunals, no permanent development of this infrastructure was found in two Tribunals functioning in Dhaka. In line with this, it appears that Chamber of Members is separated from Tribunal house which needs to be attached. Furthermore, there is no technical support. It is considered an alternative forum for judicial review of selective service

matters in place of the HCD but the environment does not support this status rather portrays a different picture. That is why, their status and privileges have to be ensured not only in theory but also in practice to make this legal institution more efficient than now.

Besides, series of successive decisions establishing basic legal concepts by the Administrative Appellate Tribunal have to be referred and cited in law reports with a view of making this forum creative, dynamic, bold, prudent and fundamentally evolutionary institution. The decisions provided by the Administrative Appellate Tribunal, though these will be followed according to section 8 of the Administrative Tribunals Act, 1980, require to establish basic legal concepts not only by the skillful interpretation of texts, but also by creative construction when the texts are silent. District Judges, who are engaged here as Members, are not familiar with A.T. suits; they need to receive guidelines and principles from law reports. They are facing hurdles due to want of law reports and this alternatively puts an impact on qualitative judgments of Administrative Tribunals. Furthermore, it is strikingly difficult to maintain uniformity among the decisions of Administrative Tribunals because of this lack of reporting. Alternatively, maintaining uniformity is essential to mitigate the grievances and to ensure equal justice among the justice seekers. If resemble cases solve differently, it may appear more alarming leading the total loss of confidence of applicants over Tribunals. No well equipped record room for future reference is seen; the existing one inspires an undue accumulation without giving any importance on preservation of essential papers; leading the concerned stakeholders confronts the applications, when reference is required. The Administrative Tribunals Act, 1980 and the Administrative Tribunal Rules, 1982 have to incorporate provisions for preservation and destruction of documents like chapter 22 of the Civil Rules and Orders (CRO) of 1935.

4.8 Summary and Assessment

A final note is advisable before the discussion is ended up. Full enthusiasm was tried to be given in outlining the methodology spread over the next two chapters, namely, five and six including the present one. Reasons behind the use of the term 'Members' in place of 'Judges' and consequential outcomes were considered. The chapter was surrounded by analysis emphasizing on adjudicators both at the Tribunal of first instance and at the appellate forum. As appeal is treated as continuation of a civil suit; that is why, while focusing on decision providers engaged in Tribunals, the AAT comes into the consideration. Whatever be the standards of recruitment of Members and their terms and conditions of service, these ultimately remain a matter of colonial and historical legacy of Bangladesh. It is undeniable that appointment of judges by the executive, the most important recruitment control mechanism, has the potential to be a repressive tool at the hands of the executive, and a means to promote and reflect dominance of the executives over the judiciary. It would be wrong to be unmindful of the fact that appointment by executive is a popular and powerful mechanism if made in consultation with the Chief Justice. To render this institution powerful will not only demand the modification of recruitment procedure for the Chairman, Members and officials but also, and more importantly, ask for other structural changes which are till date unaddressed. Lack of training of adjudicators, books, web services, well equipped record rooms; insufficient manpower, want of provisions for preservation and destruction of papers call for refinement. Indeed, challenges need to be controlled cautiously and with a balanced parameter. Apart from the lapses noted above, one formula which attracts all of us and demands praise is the single level of Tribunal session, of which the overwhelming evidence is found from section 3 (3) of the Act of 1980.

Chapter Five

Efficacy of Administrative Tribunals of Bangladesh: An Analysis of Jurisdictional Issues

All over the world the whole administrative justice system is based on the permanent goal to maintain two fundamental balances, namely, first, a balance between the respect for the specific requirements of administrative action and the protection of citizens' rights; and, secondly, a balance between the concern to ensure the efficiency of the administrative judge and the respect for procedural guarantees of the parties. The necessity to keep equilibrium between the specific requirements of administrative action and the protection of citizens' rights affects both the definition of the powers of the judge and the extent of judicial review.

Keeping these in mind, the present chapter interrogates the position of our Administrative Tribunals. To that end, it briefly narrates as to what extent jurisdiction of Administrative Tribunals spread as well as the reasons behind the elimination of High Court Division’s power over selective service disputes. The analysis is supplemented to provide a constitutionally based theoretical discussion of the role of Tribunals and to explore some aspects of the relationship between their practical operations and theoretical importance. This is followed by a critical analysis of powers, which are conferred on Administrative Tribunals, which increase gradually the irresponsibility of the government towards its employees and thereby to demonstrate as to whether it has become a formalist facade or pragmatic institution.

5.1 Analyzing the Clauses 'Service of the Republic' and 'Statutory Public Authority'

Neither the Administrative Tribunals Act, 1980 nor the Administrative Tribunals Rules, 1982 define the clause 'Service of the Republic', though this clause 'service of the Republic' is of great and significant importance. It is mentioned in article 117 of the Constitution of the People's Republic of Bangladesh as well as in the Administrative Tribunals Act, 1980 along with the Administrative Tribunals Rules, 1982 that Administrative Tribunals will have exclusive jurisdiction over the matters relating to or arising out of the terms and conditions of persons in the service of the Republic or statutory public authority. The definition of 'Service of the Republic' is found only from the interpretation clause of the Constitution,[1] as the role of Tribunals as dispensers of 'administrative justice' receive relatively little scholarly attention.

Furthermore, there are provisions in the Constitution devoted to Services of Bangladesh in Part IX which consists of two chapters, one relating to Services and the other to Public Service Commissions. The former Chapter is relevant to our discussion. It consists of four articles starting from article 133 to 136. According to the Constitution, the appointment and conditions of service may be regulated by Parliament subject to the Constitution, and until such provisions are made by Parliament, the President can make rules regulating the appointment and conditions of service of such persons in the service of the Republic.[2] It is also expressed that except as otherwise provided by the Constitution, every person in the service of the Republic shall hold office during the pleasure of the President.[3] The 'Pleasure' doctrine has a connotation; and it and

[1] It defines the clause 'the Service of the Republic' meaning any service, post or office whether in a civil or military capacity, in respect of the Government of Bangladesh, and any other service declared by law to be a service of the Republic.

[2] See for details, the Constitution of the People's Republic of Bangladesh, 1972, article 133.

[3] See, Ibid, article 134.

its historical development from the earliest periods till date should be clearly understood to analyze the clause 'Service of the Republic'. The doctrine has been explained by the Privy Council in the case of *Venkata Rao vs Secy of State*.[4] After review of a number of decisions with reference to section 96-B of the Government of India Act, 1919 and the Rules framed there under, it has been held that "unless in special cases, where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown, not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service".[5]

The words subject to the rules appearing in the section are not therefore superfluous and ineffective since the section contains a statutory and solemn assurance that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down. Redress in such cases is not obtainable from the court by action and it is so even where there has been serious and complete failure to adhere to important and fundamental rules, as for instance, in the case of a person who has been dismissed from service without any investigation into the charge as per rule 14 under section 96-B. The remedy of the person aggrieved does not lie by a suit in court but by way of appeal of an administrative kind. It has been further observed that "if the service under the Crown would not have been at the pleasure of the Crown, the remedy by suit against the Secretary of State in Council for a breach of contract of service would have been available to the person owing to his wrongful dismissal from service".[6]

[4] (1937) AIR (P.C.) 31.

[5] Ibid.

[6] Ibid.

Therefore, the position is that if a person holds an office during the pleasure of the President and the Constitution does not restrict the authority of the President, he will not be entitled to any Constitutional guarantee or statutory right to be enforced in a court of law and so will be debarred from invoking the remedial benefit of writ jurisdiction under article 102 of the Constitution, but the statutory rules governing his service conditions will be available to him for getting departmental redress. Moreover, the 'Pleasure' doctrine contained in article 134 is limited precisely by article 135. A person coming within the ambit of article 135 immediately gets the Constitutional guarantee, which is an exception to and controls the 'Pleasure' doctrine. According to article 135, a person who holds any civil post in the service of the Republic shall not be dismissed or removed or reduced in rank by an authority subordinate to that by which he was appointed, and that a person shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause why that action should not be taken. Any violation of this provision will give the person aggrieved for his redress by access to a court of law as the nature of the grievance will be. The remedy available will be either in a civil court or the High Court Division under article 102 or both.[7] Reading articles 134 and 135 together, it is found that a person in the service of the Republic holds his office during the pleasure of the President, and if he holds a post in civil capacity, the 'Pleasure' doctrine is restricted on two broad counts; one, as to the authority to take action, and the other, the procedure by which action is to be taken. The Constitutional guarantee to the person holding a civil post is that he shall be dismissed, removed or reduced in rank by an authority subordinate to one by whom he was appointed, and secondly, no such action could be taken against him unless he has been given a reasonable opportunity of showing cause why that action should not be taken.

[7] High Commissioner for India vs I.M. Lall, (1948) AIR (P.C.) 121.

So it appears that a person who holds office not in civil capacity during the pleasure of the President does not get the Constitutional protection of article 135. Though his entire terms and conditions of service are governed by statutory rules at the pleasure of the President, but his remedy for the breach of any of these rules will be through official or departmental channel and not in a court of law. Whereas a person holding a civil post gets a Constitutional guarantee under article 135; and any violation of these protections mentioned in article 135 can be redressed in a civil court and also in the writ jurisdiction of the High Court Division. At present, the function of redressing grievances of persons holding civil post in the service of the Republic is assigned to our Administrative Tribunals, if there is any violation of Constitutional guarantee incorporated in article 135; and the High Court Division's writ jurisdiction as well as the civil courts' original jurisdiction are excluded under articles 117 (2) and 102 (5) of the Constitution respectively.

Case laws need to be referred with a view of widening as well as of pursuing a wide-ranging analysis of the clause 'Service of the Republic'. The most authoritative pronouncement on this point is *Bangladesh vs A. K. M. Zahangir Hossain*,[8] which has arisen and has been discussed prior to the coming into operation of Administrative Tribunals. The most striking question involved in the suit was to enquire into the maintainability or non-maintainability of writs filed by persons serving in the police department. The provisions of our Constitution chiefly for the discussion on the question are articles 45, 102 (5), 134, 135, the definition given in article 152 and Chapter III, Part VI. The Constitution has given an inclusive definition in interpretation clause by saying that 'disciplined force' means, a) the army, navy or air force; b) the police force; c) any other force declared by law to be a disciplined force within the meaning of this

[8] (1982) 34 DLR (AD) 173-207.

definition.[9] The article presents boldly that a person serving in police department is not serving in 'defence service' and is not holding a post in military capacity; and the provision has to be read along with articles 45 and 102 (5) of the Constitution. Principles set in this case apply to Administrative Tribunals, as, after the establishment of Administrative Tribunals, the jurisdiction of the High Court Division over selective service disputes has been ousted. Accordingly, persons holding office in civil capacity during the pleasure of the President can seek Constitutional protection under article 135 and any breach of these protections will give rise to departmental action. Afterwards, they can resort to Administrative Tribunals. On the other hand, those holding office not in civil capacity during the pleasure of the President cannot get a Constitutional guarantee under article 135 and so they cannot get remedy under Administrative Tribunals. Their redress is limited to departmental or official channel only. So, persons serving in the Police Department are entitled to seek remedy in Administrative Tribunals.[10] Again, for legal remedies in service matters, civilian employees in Defence Services can invoke the jurisdiction of Administrative Tribunals.[11]

It is required to put emphasis on another clause 'statutory public authority' which led me to sharpen analysis and refine understanding of Tribunals' jurisdiction. Statutory public authority is meant any authority, corporation or body the activities or the principal activities of which are authorized by any Act, Ordinance, Order or instrument having the force of law in Bangladesh.[12] The provision creates no absurdity or ambiguity but the clause deserves careful analysis and is

[9] See above, note 2, article 152.

[10] See, Ibid.

[11] Serajul Islam Takhur vs Bangladesh, (1994) 46 DLR (HCD) 318; Ishaquddin Ahmed (a) Md. Ishaquddin Ahmed vs Government, School of Armour and Centre Bogra Cantonment, Bogra and Others, (1998) 3 MLR 114-115; (1999) 51 DLR 144-145.

[12] See above, note 9.

not beyond criticism for the reason that only listed authorities incorporated in the Schedule to the Act of 1980 are within the ambit of Administrative Tribunals. Scheduled authorities, one of the centers and main subjects of attention, indicate different types of institutions, pointed out in section 5.4.1, fail to let us realize the implicit promise of law makers in framing legislation.

5.2 Maintainability of Application and Writ before Administrative Tribunals and the High Court Division Respectively

Paradoxically the habitual preference of administrative law scholars has long been to devote their energies principally to the analysis of judicial review of administrative actions and to overlook Tribunals.[13] In the context of administrative justice, it is stated quite simply that judicial review, which provides the paradigm of formal, expensive, adversarial resolution of disputes between citizen and government, should be a last resort; and that whenever appropriate less formal, expensive, and adversarial accountability mechanisms should be used.[14] Prior to *Government of Bangladesh and Others vs Sontosh Kumar Shaha and Others*,[15] the highest Court did not endorse the view that Administrative Tribunals exercise the power of judicial review of administrative actions. Principles enunciated over and noticed from *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others* merit consideration. In our present judicial discourse, the Tribunals or the Appellate Tribunal are exercising powers of a civil court and disposing of civil disputes determining the terms and conditions of service, that is to say, the right to his office, privileges, promotion including pension rights.[16] Furthermore, the decision has established that the Tribunal

[13] Cane, P., *Administrative Tribunals and Adjudication* (Oxford: Hart Publishing, 2009), 274.

[14] Cane, P., *Administrative Law* (New York: Oxford University Press, 2011), 397.

[15] Unreported (AD) date of judgment 15.12.2015.

[16] Ibid.

is an alternative forum of the High Court Division in respect of matters mentioned in the Act of 1980 and the power of judicial review of administrative actions has rightly conferred on them.

5.2.1 Exercise the Power of Judicial Review of Administrative Actions

Over a span of time after the creation of Administrative Tribunals, there is no doubt that service jurisprudence has been developed in this country to the satisfaction of the litigants. Initially there was confusion in the minds of some as to whether the Tribunal will be able to address and adjudicate upon the problems properly since the Tribunal is manned by the District Judge who has no expertise in those fields. There is now no serious infirmity on the question of judicial review of administrative actions by the Tribunal.[17] Prior to this judicial pronouncement, it was boldly expressed and unanimously agreed:

> The Administrative Tribunal has not stepped into the shoes of the High Court Division and it was not established at the cost of the High Court Division, as in India. The High Court Division did not lose anything which was Constitutionally its own. Administrative Tribunal is not exercising the jurisdiction of the High Court Division as its Constitutional successor. It is exercising a jurisdiction of its own in its own right, not by taking away of the High Court's pre-existing jurisdiction by a Constitutional amendment. Its jurisdiction is laid down in the original Constitution itself. And it does not possess the power of judicial review at all. It has no powers analogous to article 102 of the Constitution.[18]

The views taken by the Appellate Division of the Supreme Court in *Mujibur Rahman vs Bangladesh* were reviewed in *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others,*[19] since some of the findings gathered from the former one are inconsistent with article 44 of the Constitution. It was held in the latter one that "Administrative Tribunals have the power of

[17] Ibid.

[18] Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 131, Kamal, M. J.

[19] See above, note 15.

judicial review of administrative actions",[20] which ultimately overrule the former judicial pronouncement held in *Mujibur Rahman vs Bangladesh*.[21]

Clause (2) of article 44 provides that Parliament may empower any other court to exercise 'all or any of those powers', that is, for enforcement of the rights conferred by Part III, but this power cannot be so conferred affecting the powers of the High Court Division. The power of judicial review given to the High Court Division is a Constitutional power, which can be exercised by it on the basis of an application moved by a citizen and this power has been specifically preserved for a citizen to invoke such right or privilege to the High Court Division under article 102 (1). Judicial review vested in the High Court Division under article 102 (1) is one of the basic structures of the Constitution and it cannot be taken away by the Parliament. The Parliament in exercise of its legislative power cannot curtail the Constitutional jurisdiction conferred on the High Court Division. It was held: "The Parliament can confer upon the Administrative Tribunal in exercise of its legislative power the power of judicial review of administrative actions and nothing more".[22] The Appellate Division of the Supreme Court has endorsed the view adopted in *Kesavananda Bharati* case.[23] The Court has noticed in *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others* that article 44 (1) was totally ignored in *Mujibur Rahman's* case. It is found from *Sontosh Kumar's case* that by creation of Tribunals the Parliament cannot curtail the powers of the High Court Division given under article 102 (1) to issue writs, directions and orders. The High Court Division's power is Constitutional while the power of the Tribunal is legislative and the Tribunal has been created by a subordinate legislation.

[20] Ibid.

[21] See above, note 18, 111.

[22] Kesavananda Bharati vs State of Kerala, (1997) AIR (SC) 1461.

[23] Ibid.

5.2.2 Status of Tribunals: Empowering with Alternative Powers

In relation to judicial review of administrative actions, two stances are found,[24] one ceased to exist because of the latter one. MH Rahman J. expressed in *Mujibur Rahman's* case:

> Administrative Tribunals are not like the High Court Division or the subordinate court over which the High Court Division exercises both judicial review and superintendence. They are set apart, as sui generis, in a separate chapter. Parliament can make more Tribunals for matters relating to or arising out of sub-clause (a) of article 117 (1).[25]

The Constitution guaranteed the High Court Division not to become mere appendages to the administration. The basic human freedoms including freedom of religion and the rights of all minorities, namely, religious, cultural, linguistic will not cease to exist because these are guaranteed rights and will be enforceable on the application of a citizen in the High Court Division. These powers cannot be exercised by a Tribunal created under article 117 (2). After the creation of Administrative Tribunal, the jurisdictions of the High Court Division in service matters and its propriety which it had exercised have to be exercised by the Tribunal established under article 117 (2). It was held:

> If this provision is taken into consideration with article 44 (2), there will be no confusion in coming to the conclusion that an effective alternative institutional mechanism for judicial review in respect of service matters has been created by the Parliament.[26]

Again it was held:

> Under our constitutional dispensation particularly articles 44 (2) and 117 (2), it is possible to set up an alternative mechanism in place of the High Court Division for providing judicial review in respect of the terms and conditions of service of the Republic and other public organizations.[27]

Therefore, the views expressed in *Mujibur Rahman's* case are not sound. It was observed:

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[24] One is Administrative Tribunals and the other is the HCD.

[25] See above, note 18, 121, Rahman, M. H. J.

[26] See above, note 15.

[27] Ibid.

> The opinion that it is not a forum substitute is true but it is not correct to assume that it is not a forum 'alternate' in as much as, the court made the observation in *Mujibur Rahman's* case ignoring the language used in article 44 (2).[28] In this connection it is necessary to expound the Constitutional back up of the creation of the Tribunal.[29]

Taking the language used in article 44 (2), SK Sinha CJ is of the view that "if the original Constitution empowers the Parliament to give power to a Court or Tribunal all (of course subject to limitations) or any of the powers of the High Court Division, why not it can empower 'alternative power' to the Tribunal as opposed to 'substitutional' as observed by the Supreme Court of India. But in no case, it can be treated as co-equal to the High Court Division to deal with all matters in respect of the terms and conditions of persons in the service of the Republic, including the matters provided in Part IX, that is to say, the services of Bangladesh." However, the superior Court of this country was unable to endorse the views taken by the Supreme Court of India in L. Chandra Kumar that "the Tribunals are competent to hear matters where vires of statutory provisions are questioned".[30] Therefore, there is no Constitutional prohibition against their performing a supplemental as opposed to a substitutional role. Rather, judicial pronouncement has declared this forum an effective alternative institutional mechanism for judicial review in respect of service matters.

5.2.3 Judicial Review by Administrative Tribunals and Limitations

Of the two kinds of judicial review, namely, judicial review of administrative actions and judicial review of legislative actions, the former one comes under the purview of article 117 and the latter one under article 102 of the Constitution. The matters concerning terms and conditions of

[28] See, the Constitution of the People's Republic of Bangladesh, article 44 (2). Article 44(2) reads as follows: "Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers".

[29] See above, note 15.

[30] L. Chandra Kumar vs Union of India, (1997) 3 JT (SC) 589.

service are fully cognizable by Administrative Tribunals and the writ petition is not maintainable. Judicial pronouncement is also found present supporting the statement. In *Junnur Rahman vs BSRS*, the High Court Division rejected the writ petition as was not maintainable.[31] The Court maintained the judgment of the High Court Division on the view that "the writ petitioner did not seek to enforce any fundamental rights, and therefore, it was within the competence of the Tribunal to entertain the grievance of the writ petitioner".[32] In *Delwar Hossain Mia vs Bangladesh*, it was held that "a person in the service of the Republic who intends to invoke fundamental rights for challenging the vires of a law will seek his remedy under article 102 (1) but in all other cases, he will be required to seek remedy under article 117."[33]

It was observed in G*overnment of Bangladesh vs Abdul Halim Mia* that the right of judicial review under article 102 (2) of the Constitution is neither a fundamental right nor a guaranteed right.[34] It was further observed that "the judicial review of an administrative action is neither an all weather remedy nor a remedy for all wrongs but is available only when there is no other equally efficacious remedy."[35] The question of enforcement of fundamental rights is not available in the case as the question involved in the decision was mere clarifications of the Rules for giving effect thereto, and therefore, the assumption of jurisdiction under article 102 (2) of the Constitution for ventilating certain grievances regarding terms and conditions of service of the writ petitioner has never been contemplated. It, however, found no fundamental rights involved in the case. This case does not help the appellants. In *Secretary, Ministry of Establishment vs*

[31] (1999) 51 DLR (AD) 166.

[32] Junnur Rahman vs BSRS, (1999) 51 DLR (AD) 166.

[33] (2000) 52 DLR (AD) 120.

[34] (2004) 9 MLR (AD) 105.

[35] Ibid.

Shafi Uddin Ahmed, the Court further held that "the writ petitioners invoked article 44 (1) of the Constitution and the petition was filed for enforcement of fundamental rights; and that the Administrative Tribunal has no power to strike down an order for infringement of fundamental rights or any other law and that the right to move the High Court Division under article 102 (1) for enforcement of fundamental rights is a fundamental right itself and is guaranteed by article 44 (1)."[36] In *Shamsun Nahar Begum vs Secretary, Ministry of Health and Family Welfare*, the writ petition was barred under article 117 (2).[37] The views taken by the Court was based on sound principle. No writ petition is maintainable challenging any action of the authority transferring a government servant from one station to other station, in as much as, it being an administrative action for the purpose of proper administration of the department, this relates to the terms and conditions of the service and the remedy, if there be any, lies with the Administrative Tribunal.

It was observed in *Bangladesh vs Mahabubuddin Ahmed* that "the matter being one relating to the terms and conditions of service, the jurisdiction of the High Court Division was excluded and that the grounds taken in the order of dismissal were such as fully cognizable by the Administrative Tribunal."[38] The High Court Division was of the view in *Government of Bangladesh vs Member, Administrative Tribunal* that "the writ petition was not maintainable in view of clause (2) of article 117 of the Constitution."[39] The Appellate Division of the Supreme Court maintained the judgment of the High Court Division holding that "there was hardly any

[36] (1997) 2 MLR (AD) 257.

[37] (1998) 3 MLR (AD) 68.

[38] (1998) 3 MLR (AD) 121.

[39] (2001) 6 MLR (AD) 181.

ground to saying the correctness of the views taken by the High Court Division."[40] It was opined in *Bangladesh vs A.K.M. Enayet Ullah* that "the order of retirement was in violation of the terms and conditions of service, and therefore, the writ petition was not maintainable as his remedy was available before the Administrative Tribunal."[41] In *Government of Bangladesh vs Md. Salauddin Talukder*, the Court held that "the respondent's fundamental rights have not been violated or infringed and the writ petition was not maintainable in view of article 117 (2) of the Constitution."[42] It was further held that "the right to move the High Court Division under article 102 (1) of the Constitution is guaranteed under article 44 (1) but a right of judicial review under article 102 (2) is neither a fundamental right nor a guaranteed right one."[43]

Again, the High Court Division discharged the rule in *Delwar Hossain Mollah vs Bangladesh.*[44] The writ petition filed by the appellant was found not maintainable in *Md. Shamsul Islam Khan vs Secretary*.[45] In *TNT Board vs Md. Shafiul Alam*, the Court rejected the respondent's prayer for doing complete justice on the reasoning that "such prayer cannot be upheld because the High Court Division which lacks jurisdiction in the matter cannot give him such relief."[46] In *Government of Bangladesh vs Abdul Halim*, the Court held that "the judicial review of an administrative action is neither an all weather remedy nor a remedy for all wrongs but is only available when there is no other efficacious remedy and that *since* there was no infringement of fundamental rights guaranteed under articles 27 and 29 of the Constitution, the writ petition was

[40] Ibid.

[41] (2006) 11 BLC (AD) 2001.

[42] (2007) 15 BLT (AD) 60.

[43] Ibid.

[44] (2007) 15 BLT (AD) 124.

[45] (2000) 8 BLT (AD) 64.

[46] (2000) 8 BLT (AD) 225.

not maintainable."[47] Hence, issues of law, that means, the matters which challenge the vires of a law on the ground of its Constitutionality and issues concerning fundamental rights enumerated in Part III of the Constitution cannot be settled by the Tribunals as these are within the jurisdiction of the High Court Division. It was upheld:

> The Tribunal in its jurisdiction can strike down an order for violation of principle of 'Natural Justice' as well as for infringement of fundamental rights, guaranteed by the Constitution or by any other law relating to sub-clause a, but such Tribunal cannot, like the Indian Administrative Tribunals, in exercise of a more comprehensive jurisdiction under article 323A, strike down any law or rule on the ground of its Constitutionality. A person, who intends to invoke fundamental right for challenging the vires of a law, will seek his remedy under article 102 (1), but in all other cases he will be required to seek remedy under article 117 (2). The court is, however, to be on guard so that the great value of the right given under article 102 (1) is not frittered away or misused as a substitute for more appropriate remedy available for an unlawful action involving no infringement of any fundamental right.[48]

It was reiterated in *Bangladesh, represented by the Secretary, Ministry of Establishment vs Shafiuddin Ahmed and Others*:

> Administrative Tribunals have exclusive jurisdiction to decide disputes relating to the terms and conditions of service including seniority and promotion of the person in the service of the Republic. When the dispute involves determination of the Constitutionality of any law or any notification, the jurisdiction of the Tribunal is ousted. In such a case this mixed question of dispute can well be decided by the High Court Division in its writ jurisdiction under article 102 of the Constitution.[49]

So if any matter which requires interpretation of the Constitution comes before the Tribunal, it has to be sent to the High Court Division. But Administrative Tribunals in deciding service disputes has to interpret articles 133, 134 and 135 of the Constitution.[50] Nevertheless, it is commonly said that judicial review from the decisions of Administrative Tribunals again to the HCD, which provide the paradigm of formal, expensive, adversarial resolution of disputes

[47] (2005) 13 BLT (AD) 120.

[48] See above, note 18, Rahman, M. H. J.

[49] See above, note 36, 257-281.

[50] See above, note 18, 111; see for details, Islam, M., *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010), 678.

between citizen and government, should be a last resort. My perception is totally different as the present structure concerning this point is right avoiding complications. Administrative Tribunals are now exercising judicial review of administrative actions. There is no necessity of entertaining further review against their decisions to the HCD. Nevertheless, if judicial review were allowed even after the establishment of Administrative Tribunals, it would lengthen the judicial process and its existence would be questionable. Whatever limitations Administrative Tribunals occupy, these Tribunals still have a position that is qualitatively distinct and quantitatively dominant in this branch of state activity; it is vital to keep in mind the hybrid and dualistic nature of this legal regime which should by no means be under the umbrella of judicial review of the High Court Division.

Tribunals are not fully supplementary to civil courts as equity courts were supplementary to Common Law courts. Pursuant to section 9 of the Code of Civil Procedure, 1908, Tribunals do not come under the umbrella of civil courts but the former will come under the definition of civil courts in three cases and will be questioned by the High Court Division: (a) if the Tribunal violates its own law, (b) if the fundamental rights of parties are violated due to *mala fide* decision of Administrative Tribunals, and (c) if Tribunals do anything *ultra vires*. Supporting this, it was opined:

> The Appellate Tribunal seems to be totally unaware of the settled law that notwithstanding the ouster of jurisdiction of the High Court Division by any legislative provision or even under article 102 itself, the High Court Division is yet entitled to exercise its power of judicial review under article 102 if the action complained of before the High Court Division is found to be *coram non judice*, without jurisdiction or taken *malafide*.[51]

[51] Shaheda Khatun vs Administrative Appellate Tribunal Dhaka and Others, (1998) 3 BLC (AD) 155.

Later on the AD of the SC did not endorse the observations made in *Shaheda Khatun* that if the action complained of is found to be *coram non judice,*[52] without jurisdiction or *malafide*, the judicial review is available are based on decisions on different premises and the said views cannot be applicable in service matters in presence of an alternative forum, and this forum is created as per provisions of the Constitution.[53] It is to be borne in mind that no case can be an authority on facts. The Tribunal is created as an 'alternative' forum of the High Court Division in respect of specific purposes. If any administrative action is found without jurisdiction or *coram non judice* or *malafide*, the Tribunal is competent to deal with the same and adjudicate these issues satisfactorily. These issues are within its constituents.

In *Sontosh Kumar's* case, the Court cited three examples elaborating the issue. These are: a) if the order complained of was passed by an officer who is not competent to make such order, the order would be without jurisdiction; b) if the Rules provide for the constitution of a domestic tribunal with designated persons but the tribunal was constituted by persons not authorized by the Rules, the action would be *coram non judice*; c) if the decision is taken *malafide* out of vengeance or with motive to take revenge, in all those cases the Tribunal can strike down the action taken against the applicant. Article 117 (1) (a) specifically provides the jurisdiction as to subject matter of Administrative Tribunals. Section 4 (1) of the Act of 1980 is also couched with the similar language. The language used in those provisions is wide enough to come to the conclusion that the Tribunal is competent to deal with those issues. It was held: "The Tribunal has been given all powers relating to the terms and conditions of service and therefore, there is

[52] *Coram non Judice* is a Latin phrase which means 'not in the presence of a judge'. It is a legal term typically used to indicate a legal proceeding held without a judge, with improper venue such as before a court which lacks the authority to hear and decide a case in question, or without proper jurisdiction.

[53] See above, note 15.

no reason to restrict the powers of the Tribunal by judicial pronouncement. These matters are within the powers of the Tribunal and therefore, if a public servant wants to challenge the actions as above under article 102 (1), it will be barred under clause (2) of article 117."[54] Therefore, if an order is said to be without jurisdiction or is contrary to law, the appropriate course open to the applicant is to plead to the Tribunal with such plea and ask for vacating the order or action. It is altogether within the tenor of the Tribunal.

Though an exclusive jurisdiction has been invested upon the Tribunal, it has no power to nullifying any law, rules or regulations. The Tribunal has been given limited power in the relation to those mentioned in sub-section (1) of section 4. Therefore, the Court has rightly held in *Mujibur Rahman* that "the Tribunal cannot strike down any law or rule on the ground of its Constitutionality."[55] Except on the limited scope challenging the vires of law or if there is violation of fundamental rights,[56] the power of the High Court Division is totally ousted under clause (5) of article 102 read with article 117 (2). To invoke the fundamental rights conferred by Part III of the Constitution, any person aggrieved by the order, action or direction of any person performing the functions in connection with the affairs of the Republic, the forum is preserved to the High Court Division. The conferment of this power cannot be curtailed by any subordinate legislation, it being the inalienable right of a citizen. This power cannot be conferred upon any Tribunal by the Parliament in exercise of legislative power or by the High Court Division or the Appellate Division in exercise of its power of judicial review.

[54] Ibid
[55] See above, note 18, 113.

[56] This point has totally been over looked by the AD of the SC in Khalilur Rahman vs Md. Kamrul Ahsan, (2006) 11 MLR (AD) 5. Here the court observed that "a public servant may out of desperation or just for taking a sportive chance in the summary writ jurisdiction alleged contravention of some fundamental rights which may turn out to be frivolous or vexatious or not even remotely attracted in the case".

Therefore, if a public servant or an employee of statutory corporation wants to invoke his fundamental rights in connection with his terms and conditions of service, he must lay foundation in the petition of the violation of fundamental rights by sufficient pleadings in support of the claim. It will not suffice if he makes evasive statement of violation of his fundamental rights or that by making stray statements that the order is discriminatory or *malafide*. A *malafide* action or act is a disputed question of fact and law, and the Tribunal is, therefore, competent enough to decide the question of *malafide* or collusion or arbitrariness in taking the decision.[57] Mere superficial pleadings on the point of fundamental rights will not confer any power on the High Court Division in respect of the terms and conditions of service. Besides, mere differentiation in equality or treatment or inequality or burden does not amount to discrimination within the inhibition of the equal protection clause under articles 27 and 29 of the Constitution. In the absence of proper pleadings and laying foundation, the writ petition is barred under clause (2) of article 117.

5.2.4 Removing the HCD's Jurisdiction over Service Matters

The most obvious results of the establishment of Administrative Tribunals are to exclude the power of the High Court Division to review the decisions of the Administrative Appellate Tribunal and Administrative Tribunals under article 102.[58] It was held: "The decision of the

[57] The expression '*malafide*' has a definite significance in the legal phraseology and the same cannot emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise *bonafide*, however, by themselves would not amount to be *malafide* unless the same is accompanied with some other facts which would depict a bad motive or intent on the part of the authority and the same cannot be decided in summarily proceedings in writ jurisdiction.

[58] Bangladesh Bank and Another vs the Administrative Appellate Tribunal, represented by its Chairman, Supreme Court Premises, Ramna, Dhaka and Others, Civil Petition No. 291/91; Nazmul Hasan and Others vs the Administrative Appellate Tribunal and Others, Civil Petition No. 308/1991; Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 118.

Appellate Tribunal like that of the Tribunal is immune from any review under article 102 because article 117 also applies to the Appellate Tribunal."[59] Nevertheless, the effects of this change or restructuring put a bar, under article 117, of jurisdiction of three kinds, namely, a) institution wise the bar is against a court; b) section wise no proceedings can be entertained and no order can be made; and c) subject matter wise the bar is in respect of any matter falling within the jurisdiction of the Tribunal, that is, those mentioned in clauses a, b, and c of article 117. Therefore, issues of fact concerning terms and conditions of persons in the service of the Republic or statutory public authority are vested in the exclusive jurisdiction of Administrative Tribunals. It was affirmed and held in *Abul Bashar vs Bangladesh through the Secretary, Banking Division, Ministry of Finance and Others*:

> Jurisdiction of other courts including the High Court Division is completely barred when the matter is exclusively or apparently related with the terms and conditions of any person in the service of the Republic or any other statutory body including pension rights, even when the impugned decision or order etc. of the authority concerned is *ex facie* illegal or *prima facie* violative of any laws of Bangladesh.[60]

Again, in *Bangladesh Retired Government Employees Welfare Association and Others vs Bangladesh represented by the Secretary Ministry of Finance and Another*;[61] *Bangladesh represented by the Secretary, Ministry of Finance and Another vs Bangladesh Retired Government Employees Welfare Association represented by its President Mr. Kafiluddin Mahmood and Others*;[62] *Bangladesh Retired Government Employees Welfare Association and*

[59] See above, note 18, 122.

[60] (1996) 1 BLC (AD) 77.

[61] Civil Appeal No. 50/93.

[62] Civil Petition No. 244/93.

Others vs Bangladesh represented by the Secretary, Ministry of Finance and Another,[63] it was held:

> Pension is one of the terms and conditions of service of a person in the service of the Republic or statutory bodies included in the Schedule of the Administrative Tribunals Act, 1980. Administrative Tribunals have been vested with exclusive jurisdiction to hear and decide dispute relating to pension with the exclusion of the jurisdiction of all other courts as envisaged by article 117 of the Constitution.[64]

There is thus no gainsaying the fact that if the vires of any law is challenged notwithstanding ouster of the jurisdiction of the High Court Division by an Act of Parliament, the High Court Division has power of judicial review to examine the Constitutionality of the law. In this connection the Court in *Shaheda Khatun vs Administrative Appellate Tribunal*,[65] modified the dictum in *Mujibur Rahman* observing that "*Mujibur Rahman's* case is not only case which defines the writ jurisdiction of the High Court Division. We regret to say that the Appellate Tribunal seems to be totally unaware of settled law that notwithstanding ouster of the jurisdiction of the High Court Division by any legislative provision or even under article 102 itself, the High Court Division is yet entitled to exercise its power of judicial review under article 102, if the action complained of before the High Court Division is found to be *coram non judice,* without jurisdiction or taken *malafide*." This view was taken in the case following *Ehtesham Uddin vs Bangladesh,*[66] *Ismail Hoque vs Bangladesh,*[67] *Mostaque Ahmed vs Bangladesh*,[68] and *Helal Uddin Ahmed vs Bangladesh*.[69] The views taken in *Shaheda Khatun* were not endorsed latter on

[63] Civil Appeal No. 71/93.

[64] (1999) 4 MLR (AD) 89-106.

[65] See above, note 51.

[66] (1981) 33 DLR (AD) 154.

[67] (1982) 34 DLR (AD) 125.

[68] (1982) 34 DLR (AD) 222.

[69] (1993) 45 DLR (AD) 1.

in the case of *Sontosh kumar* because the cases in *Ehtesham Uddin*, *Ismail Hoque*, *Mostaque Ahmed* and *Helal Uddin Ahmed* were decided on different premises and contexts. The principle of law propounded in those cases cannot be applicable in respect of service matters.[70]

It is apt to observe here that the Court in *Shaheda Khatun* unconsciously approved the views taken in those cases while deciding an issue as to whether in presence of an Administrative Tribunal created under article 117 (2) read with article 44 (2), the decision of the Administrative Appellate Tribunal is amenable to the writ jurisdiction. The jurisdiction of the High Court Division has been ousted by clause (5) of article 102 read with article 117 (2) and the Tribunal has been created in exercise of powers under article 117 (2) with powers that are exercisable by it in accordance with article 44 (2) read with article 117 (1) of the Constitution. How then the High Court Division can exercise its power of judicial review of the administrative actions. That's too, in presence of appellate forum and the Appellate Division's power to examine the

[70] In those cases, the issues were whether despite specific bar to challenge the orders and conviction by the Tribunals created under the Martial Law Proclamations, Martial Law Regulations and Martial Law Orders, the High Court Division can examine the legality of the decisions or in the alternative, judicial review is available against decisions of Tribunals created under the Martial Law Proclamations. The writ petitions were filed in the nature of writ of certiorari to quash the judgments. Even there was specific bar ousting the jurisdiction of the High Court Division, it was observed in Helaluddin Ahmed that "under three eventualities, that is to say, even in the purported exercise of those powers do not have the effect of validating acts done *corum non judice* or without jurisdiction or *malafide*, the High Court Division can examine the legality of the judgment". In Ehteshamuddin, the question was in spite of ouster of jurisdiction, in a writ of certiorari, the High Court Division can examine the legality of the order. It was observed that in appropriate cases "the Court's power to examine the proceedings has not been taken away. Since it has been conceded by the learned Attorney General that when a proceeding or an action taken under Martial Law Regulation is challenged on the ground of want of jurisdiction or *malafide*, the Superior Court in exercise of its writ jurisdiction is competent to make it necessary to discuss this question at length." In Ismail Huq, this Court by majority while considering the power of judicial review of the High Court Division observed that "the writ jurisdiction will be attracted if the proceedings are *coram non judice* or *malafide*. If the court is constituted properly and the offence is cognizable, then the proceedings of such court cannot be interfered with on the ground of procedural irregularities". In that case, the writ petitioner was convicted by the Court Martial on the charge of mutiny under the Army Act, 1952. In Mostaque Ahmed, he was convicted by the Special Martial Law Court. He challenged his conviction unsuccessfully in the High Court Division. This Court in the context observed that the earlier views taken in such cases are that "the *malafide* or *coram non judice* proceedings are not immune from the scrutiny of the Supreme Court notwithstanding any ouster clause by Martial Law Proclamations".

legality of the Appellate Tribunal's decision under article 103. These points have not been considered and addressed in *Shaheda Khatun* and unconsciously the court made those observations.

All the observations quite clearly reveal that the High Court Division has no power to review decisions of Administrative Tribunals and the Administrative Appellate Tribunal on the ground of *coram non judice,* without jurisdiction or taken *malafide*. But the powers of the Administrative Appellate Tribunal are subject to checks by the Appellate Division of the Supreme Court. On the eve of evolution of Administrative Tribunals in the domain and just after its emergence, these Tribunals faced almost insurmountable difficulties regarding the disputes coming before it and this paved the way for the development of jurisprudence of Tribunals. It was settled in one case that remedy against the transfer of a class III employee from one station to another being relatable to the terms and conditions of service, lies in the jurisdiction of Administrative Tribunals and not in the writ jurisdiction of the High Court Division under article 102 of the Constitution.[71]

5.2.5 Reasons of Ousting the Jurisdiction of the HCD

In our country prior to the establishment of Administrative Tribunals in 1982, the High Court Division had the original plenary jurisdiction of judicial review under article 102 in service matters with a right of appeal to the Appellate Division; and that the civil court's original jurisdiction under the Civil Procedure Code was subject to appellate and revisional jurisdiction of the High Court Division; and the Appellate Division had an appellate jurisdiction against the decision of the High Court Division. Administrative Tribunals have been established all over the

[71] Government of Bangladesh and Others vs Mohammad Faruque, (1999) 4 MLR (AD) 12-16.

Common Law countries including Bangladesh primarily to relieve the High Court Division from the congestion of cases. It was opined:

> Delay in formal court proceedings has recently given rise to a new concept of multitiered court-house consisting of the formal court system as well as the Alternative Dispute Resolution mechanisms like conciliation, arbitration and mediation boards. This recent trend apart, all other ideas referred to above that were advanced, considered or criticized were known to the draftsmen of our Constitution. The Constitution made provisions in article 117 for conferring state's judicial powers on some Tribunals and enabled the Parliament to make necessary legislation for evolving a system that may in future cumulate some of the attributions which are divided between the formal court system and the growing practice of adjudication of disputes by Tribunals.[72]

The most decisive and worthy legislative action concerning the establishment of Administrative Tribunals is to oust the jurisdiction of courts including the High Court Division following article 102 (5) and at the same time place these actions of the government beyond the reach of judicial powers. The exclusion of the jurisdiction of the High Court Division has been upheld in several cases including *Bangladesh vs Abdur Rab*,[73] *Jamil Huq and Eleven Others vs Bangladesh*,[74] and *Serajul Islam vs The Director of Food*.[75] In support of their contention that the Constitution is to be strictly construed, reliance has to be placed on *Nawab Sir K. G. M. Farooqui vs Province of East Bengal and Another*.[76] However, decreasing the number of stockpile of cases and easing the burden of the High Court Division are the significant reasons for the introduction of the present set-up and behind the insertion of article 102 (5) of the Constitution. In acknowledging the said cause, Justice Mustafa Kamal expressed: "An appeal to the High Court Division on both facts and law would have meant an welcome addition to the High Court Division's stockpile of cases from which articles 102 (5) and 117 (2) devised a riddance. Shedding a lighter burden of judicial

[72] See above, note 18, 120, Rahman, M. H. J.

[73] (1981) 33 DLR (AD) 143.

[74] (1982) 34 DLR (AD) 125.

[75] (1990) 42 DLR (AD) 199.

[76] (1957) 9 DLR (AD) 174-182.

review and then overburdening the High Court Division with appeal on facts and law would have been a curious intention of the Constitution indeed. Administrative Tribunals have been established all over the Common law countries primarily to relieve the High Court's from the congestion of cases."[77] It was held:

> There cannot be any doubt in holding the view that the jurisdiction and powers conferred upon an Administrative Tribunal is an 'alternative' forum with the object to relieve the High Court Division from the huge backlog and the Parliament has been given the power to establish such Tribunal subject to certain limitations without affecting the fundamental rights of a citizen.[78]

It was reiterated again:

> It is a forum created by the Parliament providing for judicial review with an object to relieve the High Court Division of the burden of huge backlog of cases and ensuring quick disposal of service related matters in an Alternative Dispute Resolution mechanism. The Constitution has empowered the Parliament to give such power of judicial review upon a Tribunal under article 117 in respect of (a) the terms and conditions of persons in the service of the Republic, including the matters provided for in Part IX and the award of penalties or punishments; (b) . . .

Keeping the High Court Division's limited power of judicial review under article 102 (1) only in respect of violation of fundamental rights and legislative actions, we have reason to believe that unless the High Court Division is not determined to allow the Tribunal to perform the power of judicial review in its respective field and if it does not usurp its powers, one day it will be seen that a service jurisprudence in the Tribunal level has been developed. By this time, it may be legitimately said that the Tribunals have been functioning to the satisfaction of the litigants, in general. This will augment the High Court Division's control and supervision over other courts subordinate to it and the people's confidence over the judiciary will be strengthened.

If the Judges of the High Court Division are overburdened with cases, how can they supervise and control its subordinate courts and Tribunals? Therefore, while the power of judicial review

[77] See above, note 18, 135.

[78] See above, note 15.

of legislative action is vested in the High Court Division along with violation of fundamental rights, it should ensure that frivolous claims are filtered out through the process of adjudication of the Tribunal. It is hoped that the High Court Division shall be guard in exercising its power of judicial review and avoid interfering with those matters which are cognizable under article 117 (1) of the Constitution. This is necessary for the interest of justice and in that case, it can properly supervise and administer justice. Furthermore, the High Court Division has over the years accumulated case load almost four hundred thousand. As the population is increasing, the backlog problem is becoming acute. The bar of jurisdiction to entertain a writ petition on any of the above matters is a measure for effective, expeditious and satisfactory disposal relating to service disputes of public servants and the power of judicial review in respect of those matters by the High Court Division has been debarred by clause (5) of article 102 read with clause (2) of article 117. There is thus a forum where matters of importance and grave injustice over service matters can be brought for determination.

5.2.6 Nature of Jurisdiction of a Tribunal Barring the Judicial Review of the High Court Division

One may pose a question as to what nature of jurisdiction a Tribunal has been barring the judicial review of the High Court Division. The Tribunal has all the powers and jurisdiction relating to the terms and conditions of persons in the service of the Republic that were being exercised by the High Court Division. This is a new Alternative Dispute Resolution mechanism. Under the prevailing laws in the country, both the High Court Division and Administrative Tribunals composed of District Judges exercise powers over service disputes, though the jurisdiction is not concurrent. The Parliament in exercise of its legislative power has given concurrent jurisdictions to the High Court Division and the Sessions Judges under section 498 of the Code of Criminal

Procedure. This power has been given upon a court subordinate to the High Court Division with a view to enabling the litigants to avail of prompt and less expensive criminal justice from the lower tier of the judiciary. The difference between these two enactments is that under the Code of Criminal Procedure the power of judicial review has been given to the High Court Division from the judgment of the sessions Judges, but in respect of service matters, the appellate power of judicial review has been given upon the Administrative Appellate Tribunal and then to the Appellate Division of the Supreme Court. The final power of judicial review has been given upon the AD of the Supreme Court on limited matters only on the question of law.

It is revealed from the aforementioned critical analysis that Administrative Tribunals of the country have achieved a remarkable progress, which is going on quite undisturbed by the writ jurisdiction of the High Court Division, not diminishing the position of the High Court Division under the force of circumstances within the framework of existing laws.

5.2.7 Judicial Review of legislative actions

Administrative Tribunals are not invested with the power of judicial review of legislative actions to the exclusion of the HCD, even if there is violation of any of the provisions of fundamental rights. But there is no Constitutional prohibition against their performing a supplemental as opposed to a substitutional role. It is because of article 44 (1). The Court in *Mujibur Rahman's* case overlooked article 44 (2) of the Constitution which has conferred legislative power to promulgate law empowering a court to exercise all or any of the powers of fundamental rights. Though the Parliament has such power, this clause is to be read not in isolation. Parliament's power is limited to the extent of giving powers of judicial review of administrative actions only and not more than that. There is no dispute that there is provision in the Constitution in article

117 (2) conferring upon the Parliament the power to establish Administrative Tribunal to exercise judicial functions relating to the terms and conditions of service of the Republic including the matters provided in Part IX.

Under our Constitutional scheme, the power of judicial review in respect of legislative action has not been conferred upon the Tribunal by subordinate legislation. It is the High Court Division which has been given the power under articles 7 (2), 26, 44 (1), 101 and 102 (1) of the Constitution. Moreover, the Parliament has given the legislative power under article 65 to promulgate law but this power is circumscribed by limitations; and if it exercises any power which is inconsistent with the Constitution, it is the Supreme Court, which being the custodian of the Constitution and is manned by the Judges who are oath bound to protect the law, to examine in this regard.[79] The Supreme Court is the only organ of the state to see that any law is in consonance with the Constitution. It was held:

> Where the Constitution confers the power upon the Supreme Court to strike down laws, if found inconsistent, such power cannot be delegated to a Tribunal created under subordinate legislation. In the alternative, the Supreme Court cannot delegate its power of judicial review of legislative action to a Tribunal. It is only on the principle that the donee of a limited power cannot, by the exercise of that very power, convert the limited power into an unlimited one or in the alternative a delegatee cannot exercise same or more power than the delegator.[80]

[79] The Judges are under obligation to subscribe an oath as per provisions of article 148 in accordance with the 'Third Schedule' of the Constitution. Article 148 speaks of subscribing an oath by all Constitutional office holders as soon as he enters upon the office. In accordance with this provision the President, the Prime Minister, the Speaker, the Members of Parliament, the Election Commissioners and other Constitutional holders of office have to subscribe oaths. But the oath of a Judge is somewhat different from other Constitutional office holders. Judges have to subscribe an oath to 'Preserve, protect and defend the Constitution and the laws of Bangladesh'. In respect of other holders of Constitutional posts they are not required to subscribe an oath to defend 'the laws'. They have to subscribe oath to 'preserve, protect and defend the Constitution'. So, the Judges of the highest Court are defenders of the 'law' and the 'Constitution'. 'Law' according to article 152 of the Constitution means 'any Act, Ordinance, Order, Rule, Regulation, Bye law, Notification or other legal instruments, and any customs or usage, having the force of law'.

[80] See above, note 15.

The power of judicial review in respect of legislative actions has been assigned to the Supreme Court by the Constitution but it has not given to District Courts and Tribunals created by subordinate legislations. It is, therefore, not fair and permissible to equate Judges of the Supreme Court with Judges of District Courts or Tribunals, although all of them are part of judiciary. More so, the power of judicial review is given to the Supreme Court of Bangladesh by the Constitution but the said power to the lower judiciary is given by subordinate legislation. In *Mujibur Rahman*, it is observed that "the right of judicial review under article 102 (1) is neither a fundamental right nor a guaranteed one. And the right of judicial review is neither an all remedy nor a remedy for all wrongs. It is available only when no other equally efficacious remedy is provided by law."[81] These observations were not approved in the case of *Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others*.[82] It was held: "The right of judicial review under article 102 (1) is a guaranteed one which is embodied in the Constitution itself; but if that right is not guaranteed, even if a citizen's fundamental right is infringed, he will be left with no remedy at all. True, article 102 (1) has not been retained in the fundamental rights chapter as has been kept in India but in view of article 44 (1), it is akin to fundamental right."[83] It was also observed:

> The observation that the enforcement of fundamental right is available only when 'no other equally efficacious remedy is provided by law' is also not a correct view, in as much as, whenever there is infringement of fundamental rights, any person can move the High Court Division for judicial review of administrative action under article 102 (1). The question of equally efficacious remedy arises only when it will exercise power under article 102 (2) i.e. writ of certiorari and other writs mentioned in sub-clauses (a) and (b) of clause (2). If there is an alternative remedy, the High Court Division's power is debarred. It is only in exceptional cases, it can exercise this power.[84]

[81] See above, note 18, 121.

[82] See above, note 15.

[83] Ibid.

[84] Ibid.

Under clause (2) of article 102, a citizen cannot invoke judicial review of legislative action. Judicial review under this clause is not available if there is 'any other equally efficacious remedy' is provided by law. SK Sinha CJ supported the observation made by Mostafa Kamal J. in the last sentence in paragraph 77 of the *Mujibur Rahman's* case that the power of judicial review of legislative action is exclusively preserved to the High Court Division under article 102 (1).

Let us look now to the powers that are conferred upon the Supreme Court to make clear restrictions in delegating powers of judicial review of legislative actions to the Tribunal. Article 101 states that the High Court Division shall have the original, appellate and other jurisdictions and powers as are conferred on it by the Constitution or any other law. So, apart from the Constitution, the Parliament can confer any other power upon the High Court Division by subordinate legislation. Similarly as to the powers of the Appellate Division, sub-clause (c) of clause (2) of article 103 provides that if the High Court Division 'has imposed punishment of a person for contempt of that Division; and in such other cases as may be provided by Act of Parliament' an appeal shall lie as of right. SK Sinha CJ is of the view that "the Framers ought to have included the latter part of sub-clause (c), such as, 'and in such other cases as may be provided for by Act of Parliament' by a separate sub-clause because the empowerment of these two powers conflict each other. The first part of the clause says about the power of contempt and the other part relates to the conferment of powers by Parliament upon this Court. So, there is no nexus between these two."[85] Under our provisions, the President has power to promulgate any Ordinance under article 93 if the Parliament is dissolved or is not in session. Apart from this legislative power, the Parliament can delegate its power under the proviso to clause (1) of article

[85] Ibid.

65 by Act of Parliament, to make Orders, Rules, Regulations, Bye-laws or other instruments having legislative effect. At any event, the Parliament has the power to invest the power from time to time upon both the Divisions of the Supreme Court by subordinate legislation but this conferment of power cannot supersede the Constitutional powers conferred upon this Court. Similarly, the Parliament by this legislative power cannot take away the powers of both the Divisions of the Supreme Court which are invested on it by the Constitution.

Under article 44, the Parliament may empower any court other than the High Court Division within its local limits of jurisdiction 'to exercise all or any of those powers' i.e. the powers that are being exercisable by the High Court Division under the fundamental rights Part. Though the Parliament has been given wide power to invest upon any court of those powers of the High Court Division, it cannot give all powers to any Court or Tribunal similar to those given by the Constitution upon the High Court Division over which it has been discussed above. It can be done by a Constitutional amendment but then also, the question will arise as to whether the right to move the High Court Division being one of the basic features of the Constitution, Parliament cannot delegate such power by setting up a parallel Tribunal with powers equal to those of the High Court Division. This will be hit by 'basic feature' doctrine and it will be beyond the amending powers of the Parliament under article 142 of the Constitution.

5.3 Functional Design vs Independence of Administrative Tribunals

Like institutional aspect of 'Separation of Powers', as displayed in section 4.5, implications of functional aspect of 'Separation of Powers' for judicial independence are equally complex and the aspect requires that no particular function be performed by more than one type of institution. Adjudication is one mode of activity of identifying relevant general norms and applying them to

individual cases. This is the core activity of courts as well as Tribunals and undoubtedly, one of the core activities of the executive. When courts engage in administrative adjudication, they review decisions of the executive and they do so by engaging themselves in essentially the same activity as the primary executive decision-maker. From this perspective, there is no 'Separation of Powers'; 'checks and balances' is not a version of 'Separation of Powers' but its negation.

Adjudication of disputes of private rights (citizen and citizen) is considered to be a core judicial function normally to be undertaken only by courts, whereas adjudication of disputes about public rights can appropriately be allocated to non-judicial administrative adjudicators. From this perspective, the functional aspect of 'Separation of Powers' would require that adjudication and implementation respectively be undertaken by different types of institutions and it opposes to allowing ministers to review decisions made in the first instance by other officials of the executive branch. In the country disputes about specific public rights are allocated to judicial administrative adjudicators, namely, Administrative Tribunals. Primary decision making function or adjudication is entrusted to the executive, whereas review of primary decisions and implementation are allocated to Administrative Tribunals, which do not exercise the judicial power of the state.[86] In this way, functional 'Separation of Powers' is being protected in Administrative Tribunals of Bangladesh.

5.4 Subtle Analysis on Jurisdictional Issues and Uncovering Deficiencies

Wider insights about the nature of powers, judicial, *quasi*-judicial, administrative conferred on Administrative Tribunals is not found from the Constitution, the Administrative Tribunals Act, 1980 as well as the Administrative Tribunals Rules, 1982. It is drawn from *Mujibur Rahman vs*

[86] See above, note 18, 128.

Bangladesh,[87] whereby it appears that Administrative Tribunals do not exercise the judicial power of the state, but this creates subtle blend of different types of analysis. The power to make a binding or conclusive decision is a judicial power, and that the power to decide a controversy can only be given to administrative officers where the final determination is left to the court, that is, that the power to make a binding decision is a judicial power.[88] Indeed, the power to make a binding decision enforceable without the aid of the courts is mainly confined to cases in which public interest is affected.[89]

Therefore, it seems clear that specific administrative decisions of the country, which are going to refer in the following paras, are subject to interference of Tribunals as these do not affect public interest rather private interests. Moreover, Administrative Tribunals all over the world have a special jurisdiction. Sometimes this is provided by a statute but very often there is no special statute and Administrative Tribunals have jurisdiction by reason of the administrative aspect of the case.[90] In Bangladesh the functions have been assigned to Administrative Tribunals under statute and they are not allowed to exercise jurisdiction beyond statute.

It is obvious that administrative law is merely a branch of the ordinary law of the land; it is not anything antagonistic to it and as for the organization of separate administrative courts, it is merely a matter of convenience.[91] Administrative Tribunals of Bangladesh are not at all, though

[87] See above, note 18, 111-136.

[88] Muskrat vs United States, (1911) 219 U.S. 346; Western Mental Supply Co. vs Pillsbury, (1916) 172 Cal. 407; Underwood vs Mc Duffee, (1867) 15 Mich. 361; Shea vs North Butte Mining Co., (1919) 55 Mont. 522; see for details, Pillsbury, W. H., "Administrative Tribunals", *Harvard Law Review* 36, no. 4 (2007): 412.

[89] Pillsbury, W. H., "Administrative Tribunals", *Harvard Law Review* 36, no. 4 (2007): 415.

[90] Colliard, C. A., "Comparison between English and French Administrative Law", *Cambridge University Press* 25 (1939): 121.

[91] Chand, B., "Administrative Courts in England", *The Indian Journal of Political Science* 2, no. 2 (1940): 207.

not parallel, in conflict with courts, though these Tribunals have been vested with exclusive jurisdiction pursuant to section 4 of the Administrative Tribunals Act to decide all disputes relating to the terms and conditions of service of a person in the service of the Republic or statutory public authority to the exclusion of the jurisdiction of all other courts by article 117 of the Constitution.[92]

It is well known that our Tribunals and courts are distinguished on two grounds. On the one hand, statutory laws fix boundaries as to jurisdiction of Administrative Tribunals and courts whereby persons standing on similar footing either go to Administrative Tribunals or courts. On the other hand, the intrinsic nature of the operation of courts is that it is equipped with all sorts of available and expected remedies. Accordingly, under the jurisdiction of civil courts, victims are entitled to more reliefs than those who take resort to Tribunals. Since our Tribunals lack full jurisdictional powers, applicants do not have access to all kinds of remedies. Despite these limitations, it has achieved remarkable degree of progress within its border in establishing justice. Faced with different realities, the present section deals with several issues concerning jurisdiction questioning exercise of powers performed by Administrative Tribunals and to appraise how and to what extent the jurisdiction and powers need restructuring.

5.4.1 Extent of Jurisdiction as to Subject matter

It is a natural consequence of the definition of administrative law that it exists in every country.[93] The regulations as to duties and limits of individual freedom in meetings, on the highways, sanitary orders regarding the erection of buildings or the selling of certain goods, the granting of

[92] See above, note 71.

[93] See above, note 90, 119.

licenses for carrying passengers or goods, all these things are parts of administrative law.[94] Further, it is a truism that Administrative Tribunals determine a vastly greater number of legal challenges against governmental decisions than do the courts.[95] Perhaps, the most important of Administrative Tribunals all over the globe today are those that regulate public utilities, though in Bangladesh this is not so. It is noteworthy that our administrative jurisprudence is hybrid or dualistic in nature and it is found after going through its history or its existing law, though it is hardly noted anywhere. Our Administrative Tribunals by no means monopolize litigation involving the administration. For the relationships of the administration are governed partly by administrative law and partly by private law; hence lawsuits which arise with respect to them belong partly to Members, and partly to civil or penal judges. There is a growing number of administrative operations to which civil law now applies and which are accordingly under the jurisdiction of civil courts. Again, litigations concerning accidents done by vehicles belonging to administration are entirely under the dominance of criminal court. Since nothing in the intrinsic nature of these operations calls for a separate legal system, administrative law does not apply to them and this is why, there is no administrative legal framework for dealing with all administrative activities.

Jurisdiction of Administrative Tribunals of the country elaborately mentioned in chapter three of this thesis is very limited under the Act of 1980 in line with article 117 of the Constitution as the cornerstone of jurisdiction is concentrated to the terms and conditions of service of persons who are in the service of the Republic or statutory public authority. After observing cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 for 4

[94] Ibid.

[95] See above, note 13, 274.

years starting from 2009 to 2012, it is found that matters concerning reinstate in service, cancellation or setting aside of departmental order, censure, compulsory retirement order, monthly salary, reduction of salary, Black Mark, voluntary retirement, forfeiture of seniority, suspension of promotion, order of demotion, departmental order of retrospective effect, revision of pay scale, order of posting, promotion and selection grade scale, salary and allowances, circular of recruitment, pension, fixation of seniority, suspension of salary, suspension of increments, reduction of a lower time scale, dismissal from service etc. are assigned to Administrative Tribunals. This device does not render all the public authorities liable when they cause injury to somebody rather makes specific government departments liable towards its employees in precisely and extremely limited arena of terms and conditions of service. It has failed to encounter hardships caused by the growing intervention and participation, in modern times, of the state in social and economic life of the community. Our Tribunals work as a more or less impartial adjustor of bureaucratic accountability and selected service holders' interest or individual interest. The jurisdiction of Administrative Tribunals is confined to narrow limits by legislative action and therefore, has to be extended.

It is revealed from chapter three as well as the aforementioned discussions that all administrative litigations are not vested in Administrative Tribunals because of the lack of a Common law covering all administrative matters. Judicial interference in the workings of the executive apparatus is permitted in respect of the terms and conditions of service of persons who are in the service of the Republic or statutory public authority. Administrative Tribunals have exclusive jurisdiction over there, if the departments breach organic service rules and act not in consonance with the Principles of 'Natural Justice'. While dealing with the jurisdiction as to subject matter of Administrative Tribunals, two clauses, namely, (a) service of the Republic or (b) statutory public

authority, capture attention and require clarification, mentioned in section 5.1 of this chapter, for making its function specific.

When the Administrative Tribunals Act, 1980 was enacted, the clause 'or of any statutory public authority' was not in it. At that time only applications could be brought by those persons who were in the service of the Republic and persons in the service of the statutory public authorities were beyond the purview of Tribunals. Subsequently, the clause 'or of any statutory public authority' has been inserted in 1984,[96] and jurisdictions of Administrative tribunals have been extended to 13 statutory public authorities mentioned in the Schedule to the Act of 1980. The authorities included in the Schedule are Sonali Bank, Agrani Bank, Janata Bank, Bangladesh Bank, Bangladesh Development Bank, Bangladesh House Building Finance Corporation, Bangladesh Krishi Bank, Investment Corporation of Bangladesh, Grameen Bank, Civil Aviation Authority, Karmashangsthan Bank, Rajshahi Krishi Unnayan Bank and Probashi Kallyan Bank. Surprisingly, all statutory bodies are not within the reach of powers of Administrative Tribunals.

In this regard, when queries were put forward before the concerned respondents, it was revealed that a) a considerable amount of service disputes is beyond its jurisdiction and this is fatal to the existence of Administrative Tribunals, though it was done with a view of reducing work load or volume of work; b) there was no clear-cut policy in determining jurisdiction as to subject matter of Administrative Tribunals and was subject to 'pick and choose' method; c) those who approached before Law Ministry was included in the Schedule to the Act of 1980 and d) those who were thought by the Law Ministry as important were incorporated. The Chairman of the

[96] The Administrative Tribunals (Amendment) Ordinance, 1984, Ordinance No. LX, 1984.

Administrative Appellate Tribunal agreed with the above and added that the method of 'pick and choose' has been used in selecting statutory public authorities.

It is a peculiarity that all statutory bodies are not included within the jurisdiction of Administrative Tribunals. Important statutory public authorities, such as Bangladesh Water Development Board, Bangladesh Shilpa Rin Sangstha, Bangladesh shilpa Bank, Bangladesh Inland Water Transport Authorities, Bangladesh Power Development Board, Bangladesh Rural Development Board, Municipal Authorities, City Corporations, Rupali Bank, Basic Bank etc. are among others which are not governed by the Act of 1980. Besides, there are 2 government owned insurance companies, namely, Jiban Bima Corporation and Sadharan Bima Corporation,[97] and these are also out of the apparatus of Administrative Tribunals as the Act of 1980 makes no mention of it. Furthermore, there are 49 scheduled banks now in our country and out of 49 banks, four are Nationalized Commercial Banks (NCBs), 28 local private commercial banks, 12 foreign banks and the rest five are Development Financial Institutions (DFIs).[98] In this regard, serious concern is that except some of them mentioned in the Schedule all are excluded from the operation of the Act of 1980.

One must not be misled by the above discussion assuming that only government banks are included within the powers of this alternative forum. Though Grameen Bank is not a government bank, even then it has been mentioned in the Schedule. But it has to be admitted without denial

[97] See for details, 'Insurance Company in Bangladesh', available at: <http://C:/Users/User/Desktop/Insurance%20Company%20in%20Bangladesh,%20list%20of%20insurance%20companies%20in%20bangladesh,%20life%20insurance%20company%20in%20bangladsh,%20general%20insurance%20company%20in%20bangladesh.htm>, last visited on 31.10.15.

[98] See for details, 'List of Scheduled Banks in Bangladesh (Part 2)', available at: <http://www.reportbd.com/articles/1429/1/List-of-Scheduled-Banks-in-Bangladesh-Part-2/Page1.html>, last visited on 31.10.15.

that except Grameen Bank, all are government institutions and after all, in this way government has made little differentiation in choosing statutory authorities. Those who are not subject to the control of Administrative Tribunals can either go to the High Court Division in the way of writ petition or file damage suit in civil courts guided by the Master and Servant relationship with a view of getting legal redresses. This is discrimination with respect to getting legal redresses by persons standing on similar footing as well as violating articles 27 and 31 of the Bangladesh Constitution.

The principle of non-responsibility of public authority in so far as, it is an attribute of national sovereignty, has been progressively abolished in almost all the countries including Bangladesh and replaced by the novel principle of administrative responsibility at all levels of government, national, departmental, and communal toward individuals injured by administrative action or neglect. Our Tribunals are trying to ensure bureaucratic responsibility in matters of terms and conditions of service of persons coming under its operation. Indeed, these Tribunals are not authorized to assure the consumer of public services of a network of efficient legal protection against arbitrary acts, Tribunals which do not lead to the total annulment of an illegal administrative act. It becomes clear that the dualistic nature of judicial hierarchy is followed in our country for ensuring bureaucratic accountability.

To enhance administrative responsibility, its jurisdiction requires to be extended and this extension of jurisdiction needs drastic changes of internal and external structure of Administrative Tribunals. This will consume time, we can go forward to ensuring all sorts of bureaucratic accountability slowly and this is why, what we can do instantly is to bring all service matters, government or non-government, which are beyond the definition of labor, within its jurisdiction. It is beyond doubt that functions with regard to authorities who are beyond the

ambit of this mechanism are not non-existent; they exist and are actually exercised by the High Court Division and lower courts in the nature of writ petition and damage suit respectively guided by the Master and Servant relationship. What is ask for is merely the institutionalization of these already existing judicial functions into a distinct and separate scheme of courts, as the subject matter jurisdiction assigned to Administrative Tribunals is unsuited to the modern administrative justice system. It is urgently necessary to put all service matters within the boundary of Tribunals as writs today are too expensive and in certain cases archaic, cumbersome, and too inelastic. Needless to mention here that most of the petitions are filed in the High Court Division in the nature of writ of certiorari and if any direction is provided over the writ of certiorari, then writ of certiorari with mandamous comes up; and if a point questioning the validity of an office arises, then quo warranto is filed, though this is not a service matter. Furthermore, SK Sinha observed:

> We have almost four hundred thousand cases pending in the High Court Division. The docket is increasing day by day. If this trend continues one day it will not be exaggerated to say that the number will exceed one million in ten years. If this process is allowed, the administration of justice is bound to collapse and the peoples perception towards the judiciary will erode. This is not healthy for the administration of justice in a democratic country like ours. There may be excesses in the administration and politics and the Tribunal is set up to maintain equilibrium and check the excesses. To meet the above eventuality, it is high time to think over the matter and reduce the docket by decentralizing the power of the High Court Division and Tribunal's power of Alternative Dispute Resolution should be expanded through subordinate legislations.[99]

Hence, its arena has to be extended to reduce the burden of the HCD as well.

5.4.2 Nature of Powers within Jurisdictional Boundaries as to Subject Matter

Sufficient legal heritage have not yet enriched our Administrative Tribunals and it is still in the stage of development. Before appraising powers within jurisdictional boundaries as to subject matter, it was endeavored to accumulate some complexities of its activity. According to section 4

[99] See above, note 15.

of the Administrative Tribunals Act, 1980 and rule 7 of the Administrative Tribunals Rules, 1982, order passed by the Tribunal is declaratory in nature and there was no direction for reinstatement of the petitioner and as such order passed by the Tribunal is not executable.[100] In *Md. Hafizuddin (Petitioner) in C.P. 109/96; SK. Mawla Baksha (Petitioner) in C.P. 136/96, Nirmal Chandra Biswas (Petitioner) in C.P. 137/96, Abdul Kader Patwari (Petitioner) in C.P. 138/96 vs Bangladesh Bank, represented by Governor and Others (Respondents in all the petitions)* it was held:

> The petitioners have not been given any right under the Administrative Tribunals Act, 1980 to move the Administrative Tribunal to implement the judgment and order of the Appellate Division. Besides, an applicant cannot invoke the jurisdiction of the Administrative Tribunal unless he approached his departmental higher authority and such higher authority has given a decision on the dispute. In a case of seniority, other persons likely to be affected by the decision must be made parties to the proceedings. The applicant cannot seek relief by way of enforcement of an order of the court in which he was not a party.[101]

Administrative Tribunals are not allowed to interfere in the decision of the department when it is properly given and punishment is imposed following all the requirements of the concept of 'Natural Justice'. Supporting this statement, among many references, in *Secretary, Ministry of Food and Others vs Md. Nuruzzaman* it was held:

> Article 135 (2) of the Constitution requires an authority to consider the conduct of the government servant that led to his conviction for criminal charge while passing the dismissal order. Non-consideration of the conduct of the government servant that led to his conviction by the authority renders the dismissal from service not maintainable in law. Again persons of similar footing shall be treated equally. Discrimination offends the fundamental rights guaranteed under article 27 of the Constitution.[102]

Administrative action may be put in question and Administrative Tribunals do interfere if unreasonableness is found present in decision which has been adopted by administrative authority exercising their discretionary power. The principle of reasonableness is used in testing

[100] AKM Ali Imam vs DG, Bangladesh Agricultural Research Institute and Another, (2002) 54 DLR (AD) 5-6.

[101] (1997) 5 BLT (AD) 179; (1997) 2 MLR (AD) 89-93; (1997) 49 DLR (AD) 147-152.

[102] (2005) 10 MLR (AD) 97-99.

the validity of all administrative actions and this has now come to be known as 'Wednesbury' unreasonableness,[103] as discussed in chapter two. Its contribution to administrative law on the substantive side is equal to that of the principles of 'Natural Justice' on the procedural side.[104] While going through as far as possible all reported cases within a specific timeline, any single case calling 'Wednesbury' principles was not found but it really was. Administrative action affecting the terms and conditions of persons in the service of the Republic or statutory public authority is tested by the Tribunals as a secondary reviewer based on 'Wednesbury' principle when the action is arbitrary or capricious or irrational.[105] Necessary to mention here that in the country, so far as terms and conditions of service of persons are involved, the primary judgment as to reasonableness remains with the executive or administrative authority. However, if the decision provided by the administrative authority is capricious or absurd or any discrimination is found established, it is within the jurisdiction of the Tribunals to make the order set aside or to declare it *ultra vires* by applying the Principle of 'Wednesbury'. My normative argument here is to acknowledge 'Wednesbury' approach to bring an administrative decision concerning the terms

[103] Associated Provincial Picture House Ltd. vs Wednesbury Corporation, (1948) 1 KB 223. The fact of this case is that the local authority had power to grant licence for the opening of cinema houses subject to such conditions as the authority may think fit. The authority granted sunday licence subject to the condition that no children under the age of 15 years should be admitted. The condition was challenged as unreasonable and void. While rejecting the plea, Lord Greene observed that an action of an authority is unreasonable when it is so unreasonable that no man acting reasonably could have taken it.

[104] Wade, H. W. R., *Administrative Law* (Oxford: Oxford University Press, 2009), 398.

[105] While dealing with Wednesbury unreasonableness, Professor Hilaire Barnett observed, "'Irrationality' is a concept which takes the courts further from reviewing the procedures by which a decision has been made and testing its legality, and closer to substituting the court's own view of the merits of the decision. The terms 'irrationality' and 'Wednesbury unreasonableness' appear to be used at the judge's own preference. Alternative expressions, such as, 'arbitrary and capricious', 'frivolous or vexatious' and 'capricious and vexatious' are used on occasions to express the same concept. 'Acting perversely' has also been used to judiciously express the idea of unreasonableness. The term 'unreasonableness' may thus be seen as an 'umbrella concept' which covers most of the major headings of review". See for details, Barnett, H., *Constitutional and Administrative law* (Florence: Routledge, 2010), 658-659.

and conditions of service of persons within the legitimate scope of judicial invalidation as well as to maintain a correct balance between judicial intervention and administrative autonomy.

It is displayed in chapter two that our supreme judiciary did not recognize the doctrine of 'Proportionality',[106] one of the limitations to the 'Wednesbury unreasonableness'. In jurisprudence of Administrative Tribunals, conflicting decisions are found. In *Sonali Bank vs Ruhul Amin Khan,*[107] the Appellate Division, having regard to facts and circumstances of the case, reduced the punishment from dismissal to compulsory retirement and it cannot be said that the court refused to accept the doctrine of 'Proportionality'. Following the judgment, it was further held that "it is within the jurisdiction as provided under section 4 (1) of the Administrative Tribunals Act, 1980 that the Tribunals can see the proportionality of punishment and in appropriate case alter the same from major to minor punishment as warranted by ends of justice in view of the nature of the offence the accused is charged with."[108] Totally opponent stance was adopted later on. While dealing with reduction of the punishment by the Administrative Appellate Tribunal in respect of a disciplinary proceeding, it was observed and held in *Agrani Bank, represented by the Chairman, Board of Directors, Agrani Bank, Head Office, Motijheel C/A Dhaka and Others vs Khandaker Badrudduza*:

> In domestic proceedings the authority is competent to impose penalty upon its employee as it considers appropriate in the facts and circumstances of the nature of allegations in the interest of the organization which is service oriented. In administrative justice the doctrine of 'Proportionality' is non-existent. Administrative Tribunal cannot substitute punishment in place of the one imposed by the employer in exercise of the principle of 'Proportionality'. But the Tribunal can interfere only when a punishment is so unreasonable that no reasonable man would inflict it.[109]

[106] Ekushey Television vs Dr. Chowdhury Mahmood Hasan, (2003) 55 DLR (AD) 26.

[107] (1994) 46 DLR (AD) 85.

[108] Government of Bangladesh, represented by the Secretary, Ministry of Defence, Ganabhaban Complex, Sher-E-Bangla Nagar, Dhaka and Others vs Md. Afzal Hossain Ansari, (2003) 8 MLR (AD) 131-136.

[109] (2004) 9 MLR (AD) 281-284; (2004) 56 DLR (AD) 136.

It was also opined:

> In our view, the Administrative Appellate Tribunal was in serious error in modifying the order of dismissal in the manner as stated hereinbefore upon importing the concept of 'Proportionality' which has no application in the instant case in the background of the decision reported in 46 DLR (AD) 85,[110] and further, while the said concept is non-existent in the field of administration of justice in Bangladesh.[111]

It is an open question as to what the Appellate Division would have decided in *Agrani Bank's* case if the employee involved therein had brought on record materials to show the harshness of the decision.[112] A diverse picture is found showing the presence and application of this doctrine. It was held in *Managing Director, Bangladesh Krishi Bank, Head Office, 83-85, Motijheel Commercial Area, Dhaka-1000 and Another vs Gopal Chandra Nath and Others* that "under section 6 (3) of the Administrative Tribunals Act, 1980, the Administrative Appellate Tribunal can modify the order of dismissal from service into one of compulsory retirement".[113] In line with it, it was held in *Bangladesh, represented by the Secretary, Ministry of Health and Family Welfare and Others vs Md. Idrish Miah* that "the Administrative Appellate Tribunal took into consideration all aspects of the matter and in view of the provisions of section 6 (3), it was within the jurisdiction of the Appellate Tribunal to altering the major penalty of dismissal from service to reduction in rank".[114]

The doctrine of 'Proportionality' should not be rejected in a straitjacket formula and needs to be statutorily adopted in our domain of jurisprudence concerning Administrative Tribunals for upholding the 'Rule of Law', recognizing the vulnerability of the applicant faced with coercive

[110] See above, note 107.

[111] See above, note 109.

[112] Islam, M., *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2012), 716.

[113] (2010) 15 MLR (AD) 494-496.

[114] (2006) 58 DLR (AD) 55-57.

state power and to curtail government intrusion where it excessively impinges on individual rights and autonomy. It is beyond doubt that if adequate and reasonable grounds exist for the action taken, no other question needs to be looked into. But in built mechanism, so far as terms and conditions of service are involved, requires to be satisfied so that the quantum of punishment commensurate with the proved charges. In applying the doctrine of 'Proportionality' the court will look objectively at the reasonableness of the questioned administrative action and must decide whether the challenged action is excessive and disproportionate to the blameworthiness of an applicant subject to punishment. The doctrine must be exercised in most exceptional cases.

Administrative Tribunals cannot interfere with the findings of inquiry proceedings, if there is nothing wrong. It was held in Government of Bangladesh, represented by *Secretary, Ministry of Establishment and other vs M.A. Malek*:

> Since there is no illegality committed when minor penalty is imposed by the Secretary as designated authority upon a class I government servant without the approval of the President in a proceeding drawn up calling for major penalty, the Administrative Tribunal cannot interfere with such an order of penalty.[115]

However, according to section 4 (1) of the Administrative Tribunals Act, 1980, when the accused admitted his guilt and took the plea that he committed the offence under the order of his superior, such a defense is not permissible in law.[116] An employee is not bound to comply with the illegal order of his superior officer.[117] He will be personally liable for the wrong; no matter it is done in compliance with the illegal order of his superior officer.[118] Administrative Tribunals

[115] (1997) 2 MLR (AD) 48-50.

[116] Md. Mominul Islam vs Government of the People's Republic of Bangladesh, represented by the secretary, Ministry of Agriculture, Bangladesh Secretariat, Ramna, Dhaka, (2010) 15 MLR (AD) 474-477.

[117] Ibid.

[118] Ibid.

are allowed to interfere if there is discrimination among the employees. It was acknowledged and held in *Bangladesh Shilpa Bank vs Md. Anwarul Haque* that "when panel of employees or officers is prepared for promotion on the basis of promotion test and criteria and some of them are promoted to higher position on certain date and others on subsequent date, the seniority of the employees or officers inter-se shall be maintained with those promoted earlier".[119] Furthermore, there is confusion in case of absorption and wrongful retirement as to how the employee will be treated and the Tribunals need to rely on decisions of the Appellate Division of the Supreme Court with a view of encountering this question. It was stressed in *Govt. of Bangladesh, represented by the principal Secretary to Prime Minister's Office, Tejgaon, Dhaka and Another vs Md. Sultan Ahmed* that "it is well settled that a public servant on his absorption in equivalent post is entitled to the benefit of his past service under the government towards counting his seniority and fixation of pay. But he is not entitled to such benefit when he is absorbed in higher post than the one he held previously".[120] In addition to this, in *Secretary, Ministry of Establishment vs A.M. Nurunnabi*, it was substantiated that "the employees are entitled to pay and allowances for the period of absence on reinstatement after setting aside wrongful retirement from service".[121] Apart from these, in *Md. Mokbul Hossain vs Govt. of Bangladesh and Others,* it was endorsed:

> Martial law is an extra-Constitutional scheme. Disqualification on ground of conviction and sentence does not include conviction by military court but by ordinary court. After the lifting of Martial law, the conviction and sentence passed by Military court has no consequence. Moreover, when the conviction and sentence were subsequently remitted, the appellant was certainly entitled to arrear salary on his reinstatement in service.[122]

[119] (2005) 10 MLR (AD) 14-17.

[120] (2006) 10 MLR (AD) 378-380.

[121] (2001) 6 MLR (AD) 81-84.

[122] (2007) 12 MLR (AD) 69-72; (2007) 59 DLR (AD) 215-216.

Moreover, if a person ceases to be a civil servant, he cannot come under the jurisdiction of Administrative Tribunals. Indeed, as soon as an employee goes on invalid retirement he ceases to be in service.[123] Subsequently, on recovery of health his case of re-employment is a case of fresh employment which is absolutely in the discretion of the authority.[124] Since re-employment does not relate to any terms of the person in the service, the jurisdiction of the Tribunal cannot be invoked in such matter'.[125]

5.4.3 Powers vs Limitations: Revealing Grim Reality

Administrative Tribunals have lack of jurisdictional powers in some respects as these do not enjoy full recognition of the prestige and honor of the courts. The limitations on the powers require to be noted first, though the accumulation of possible future expansion of powers in the thesis demand complex structural and procedural arrangements and call for a very high intellectual and professional level on the part of its Members.

5.4.3.1 Eligibility to pass Interim Order

Administrative Tribunals do not possess the power of granting interim relief in respect of a case pending before it for final adjudication under the Administrative Tribunals Act of 1980.[126] It is noteworthy that the term 'interim order' refers to an order passed by a court during the pendency of the litigation and is generally passed by the court to ensure *status quo*.[127] The court is

[123] General Manager, Janata Bank vs Md. Shah Alam Sarkar, (1998) 3 MLR (AD) 105-107; (1999) 51 DLR (AD) 138-139.

[124] Ibid.

[125] Ibid.

[126] Kamrul Hasan vs Bangladesh and Others, (1997) 49 DLR (AD) 44-46.

[127] The rationale for such orders to be passed by the courts lie are best explained by Latin legal maxim *actus curiae neminem gravabit* which translated to (English) stand for 'an act of the court shall prejudice no one'.

permitted to pass an interim order to ensure that none of the interests of the parties to the litigation are harmed. However, the question as to whether Administrative Tribunals can grant interim relief was first raised in a case.[128] It was held that "they had no power to do that".[129] He again made an appeal before the Administrative Appellate Tribunal. It was expressed: "it is to be remembered that Administrative Tribunals are the creation of Parliament, its power is limited and the Administrative Tribunals Act, 1980 does not equip these Tribunals with interim relief."[130] It was precisely and boldly held:

> Although the Administrative Tribunal has all the trappings of a court and the Code of Civil Procedure has been made applicable for a specified purpose to proceedings before it, yet it is not a court proper and it does not possess all the powers of a court provided under the Code of Civil Procedure. It is not entitled to grant interim relief in regard to a suit pending before it for final adjudication.[131]

In Bangladesh, interim orders are passed by civil courts in matters before them either under the Specific Relief Act or in terms of section 151 of the Civil Procedure Code of 1908, which recognizes and retains inherent powers with civil courts. The latter provision is usually seldom exercised. In terms of the Specific Relief Act, an interim order may be passed by the court only if the conditions, namely, (a) where there is a prima facie case in favor of the party seeking the order; (b) irreparable damage may be caused to the party if the order is not passed and such

[128] See above, note 126. The fact of the case is that Md. Kamrul Hasan was a Director (Finance) of the Freedom Fighters' Welfare Trust. In 1994 he joined as an Economic Councilor at Stockholm by a Presidents' Order of 1994, was given taka 4, 73, 360 for travel and other expenses on 24.06.94, spent something out of it and bought some furniture for the new department. The appointment order was cancelled on 18.08.94 and an order was issued on 20.08.94 to deposit the entire amount in the Government treasury. Accordingly, he deposited taka 1, 97,780 and prayed to the president for remission of the rest of the amount, though it was also failed. Afterwards, he instituted the present suit claiming stay order of the declared order as well as cancellation of the order for the deposit of money.

[129] See above, note 126.

[130] Ibid.

[131] See above, note 21; Quazi Nazrul Islam vs Bangladesh House Building Finance Corporation, Civil Appeal No. 28/92; Bangladesh House Building Finance Corporation vs Quazi Nazrul Islam, Civil Appeal No. 29/92; See also (1993) 45 DLR (AD) 106; AKM Mohsin vs Bangladesh, Civil Petition No. 573/95.

damage may not be ascertained in terms of money and payable as damages; and (c) where the balance of convenience lies with the party requesting for the order are satisfied. Indeed, interim order being an equitable relief and desires to give to each man his dues according to Natural Law is based on good conscience, fair dealing and justice but it does not interfere when law provides adequate relief. As the concept of equity covers the doctrine of reasonableness, the concept of striking down *mala fide* action and also the rules of 'Natural Justice', so the Administrative Tribunals Act and the Administrative Tribunals Rules are not reasonable with respect to power of interim order.

It is quite clear that there was full resistance to the use of interim order in respect of proceedings of Administrative Tribunals under the Code of Civil Procedure and this was under close scrutiny of the Appellate Division of the Supreme Court of Bangladesh in several decisions. In one case it was held that "though Administrative Tribunals have all the trappings of a court but these are not court proper and are not vested with all the powers of the court under the Code of Civil Procedure. Sections 4 and 6 of the Administrative Tribunals Act, 1980 do not confer any jurisdiction upon Administrative Tribunals and the Administrative Appellate Tribunal to grant interim relief".[132] In another case it was held:

> As provided under section 4 of the Administrative Tribunals Act, 1980, the Administrative Tribunals have been vested with exclusive jurisdiction to decide all disputes relating to the terms and conditions of a person in the service of the republic or of the statutory authority. The jurisdiction of the High Court Division in such matters is ousted as contemplated under article 117 (2) of the Constitution. However, the High Court Division can exercise limited jurisdiction only when such matters involve question of determination of *vires* or Constitutionality of any law or rules connected therewith. Merely because the Administrative Tribunal has no power to grant injunction or ad-interim order, that does not confer jurisdiction upon the High Court Division to entertain writ petition in such matters.[133]

[132] Project Director, Tejgaon, Dhaka and Others vs Ratankumar Das and Others, (2009) 14 MLR (AD) 157-158.

[133] Khalilur Rahman, A.S.P.S.B., Dhaka vs Md. Kamrul Ahsan and Others, (2006) 10 MLR (AD) 5-10.

Further, in *Government of Bangladesh and Others vs Md. Anwarul Islam*, it was held that "the Tribunal can't grant gratuitous relief and if such a relief is granted, the same should be construed as relief granted in excess of jurisdiction".[134] Apart from these, in *Quazi Nazrul Islam vs Bangladesh House Building Finance Corporation*,[135] and *Bangladesh House Building Finance Corporation vs Quazi Nazrul Islam*,[136] it was held that "the Administrative Tribunal and the Administrative Appellate Tribunal have been established with limited jurisdictions and limited powers under sections 4 and 6 of the Act of 1980. The Tribunal gratuitously granting relief acts in excess of its jurisdiction". Therefore, the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules of 1982 failed in case of promotion and transfer not only to prevent irreparable damage which could not be ascertained in money but also to ensure appropriately bureaucratic accountability due to the absence of the power of granting interim relief. Again, the laws were not framed with the intent to order the government by Administrative Tribunals to continue to pay a dismissed applicant until the final disposal of suits.

No statutory recognition is found prevalent empowering the Tribunals with interim order. Recent judicial pronouncement has changed the scenario and told that "Administrative Tribunals can pass interim order or an order of *status quo* under circumstances in exercise of its inherent powers".[137] It was held:

> Despite the absence of any provision empowering the Tribunal to pass any interim order, the Tribunal is not powerless since it has all the powers of a civil court and in proper cases, it may invoke its inherent power and pass interim order with a view to preventing abuse of the process of

[134] (2009) 14 MLR (AD) 283-290; (2010) 62 DLR (AD) 273-277.

[135] Civil Appeal No. 28/92.

[136] Civil Appeal No. 29/92.

[137] See above, note 15.

> court or the mischief being caused to the applicant affecting his right to promotion or other benefit.[138]

But the Tribunal shall not pass any such interim order without affording the opposite party affected by the order an opportunity of being heard. It was opined:

> In cases of emergency, which requires an interim order in order to prevent the abuse of the process and in the event of not passing such order preventing such loss, which cannot be compensated by money, the Tribunal can pass interim order as an exceptional measure for a limited period not exceeding fifteen days from the date of the order unless the said requirements have been complied with before the expiry of the period, and the Tribunal shall pass any further order upon hearing the parties.[139]

It is required to mention here that before reaching to the conclusion of the question 'whether the Tribunals are eligible to pass interim order?' the Appellate Division of the Supreme Court tries to settle after thorough examination of its constitution and other provisions of the other legislation that it is a civil court.[140] Utmost reliance has to be rested on section 3 (3) which provides that "the Member of the Tribunal is from amongst persons who are or have been District Judges". In line with this section 5 has been considered. It provides the constitution of the Appellate Tribunal with one Chairman and two Members and the Chairman shall be a person who is, or has been or is qualified to be a Judge of the Supreme Court, and of two other Members. . . the other person who is or has been a District Judge.

The expression 'District Judge' calls for critical examination here, so far as the question of possessing the power of the Tribunal of granting interim relief and the status of Administrative Tribunals as civil courts or not are concerned. The term 'District Judge' has been described in the Civil Courts Act, 1887 as a senior most judicial officer of civil courts. In the classification of 'courts' under the Civil Courts Act, clause (a) of section 3 provides, 'the Court of the District

[138] Ibid.

[139] Ibid.

[140] Ibid.

Judge' as a civil court. Section 18 provides the ordinary jurisdiction of the District Judge which says: "Save as otherwise provided by an enactment for the time being in force, the jurisdiction of the District Judge . . ." Here also the expression 'District Judge' is used. Again under section 21, it has been provided: "(1) Save as aforesaid, an appeal from a decree or order of a Joint District Judge shall lie – (a) to a District Judge where the value of the original suit in which . . ." So, according to the Civil Courts Act, the office of the 'District Judge' is a civil court and not a *persona designata*. Similar question arose in *Ruhul Amin vs District Judge*.[141] In that case the question was whether a revision or a writ petition will lie in the High Court Division against a judgment passed by an Election Tribunal constituted under the Local Government (Union Parishad) Ordinance, 1983. In sub-section (3) of section 29, it is provided that "the decision of the Election Tribunal on an election petition shall be final and shall not be called in question in or before any court". Under the law the Election Tribunal was composed of by a judicial officer. By an amendment of the Ordinance, an appellate forum was created by the Ordinance XLIV of 1984. By this amendment, there is a provision to prefer an appeal to the 'District Judge' within whose jurisdiction the election petition in dispute was held and the decision of the 'District Judge' on such appeal shall be final.

It was held further in *Ruhul Amin* that "the conclusion depends upon the decision regarding the nature of District Judge's function, that is, whether the 'District Judge', in passing the impugned order, was exercising powers of a court or acting as *persona designata*? . . . if he was exercising the powers of a court in deciding a dispute, he was found to be subordinate to the High Court; but if he was acting in his personal capacity, that is, as a *persona designata*, he was not amenable to the jurisdiction of the High Court. Judicial officers who decide civil disputes have been

[141] (1986) 38 DLR (AD) 172.

empowered to decide election disputes. Procedure for holding the trial of such disputes is the same as that of an ordinary civil court being constituted by munsifs and empowered to decide election disputes relating to right to office, after taking evidence and hearing arguments, both on facts and law, are definitely exercising judicial powers, and not administrative powers, though it may be that they are constituted by the Election Commission, an executive authority."[142] Besides, the discussion on section 7 of the Act of 1980 has been put forward to reveal the Tribunals in the nature of civil courts.[143]

In all practical purposes under sections 3 (3), 5, 7 (1) and 7 (2) of the Act of 1980, the Tribunal or the Appellate Tribunal are exercising powers of civil courts and disposing of civil disputes determining the terms and conditions of service, that is to say, the right to his office, privileges, promotion including pension rights. The Tribunal has power to substitute the heirs in case of death of the applicant. The Tribunal has been given the power under section 7B to amend the pleadings. Again in section 8 (2), it is provided that "the decision of the Administrative Tribunal is binding upon the parties, that is, the government". Again, it is mentioned in section 10A that "the Administrative Appellate Tribunal has power to punish for contempt of its authority or that of the Administrative Tribunal, as if it were the High Court Division of the Supreme Court". It was held:

> The language used in section 10A is self explanatory that the Tribunal has been created as an 'alternative' forum of the High Court Division in respect of matters mentioned above. It can also

[142] Ibid.

[143] See, the Administrative Tribunals Act, 1980, section 7. Section 7 provides for the powers and procedure of the Tribunal. According to sub-section (1) of section 7, "the Tribunal shall have 'all powers of a civil Court, while trying a suit under the Code of Civil Procedure". Sub-section (2) of the same section says "any proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Penal Code".

> initiate execution proceeding for enforcement of the judgment. Therefore, the Tribunal or the Appellate Tribunal has all the trappings of a civil court.[144]

As observed above, a Tribunal is constituted with a judicial officer in the rank of a 'District Judge' and therefore, he is a 'civil court' and not 'persona designata'. While prescribing the powers of the Tribunal, it is specifically provided that 'a Tribunal shall have all the powers of a civil court'.[145] Our Constitutional and statutory provisions are not comprehensive so far as it relates to making of interim orders by the Administrative Tribunal in urgent cases with a view to preserving the subject matter of the litigation in *status-quo* for the time being. Such power is granted by judicial pronouncement which treats Tribunals as civil courts; and the power is necessary for equitable considerations and it is an extraordinary relief, which is normally granted in accordance with reasons and sound judicial principles. It is not a grace or on default of any person. It is passed in the interest of justice and necessary in order to prevent the abuse of process of law, or to prevent wastage, or to maintain the situation as on date or from recurrence of certain incident which were existing as on the date presenting such application.

Supporting the exercise of powers of granting interim orders, the Appellate Division in the case of *Sontosh Kumar* has presented two situations as examples. First of all, it has exhibited that a gradation list may be published by any department of the government for promotion to the next higher post. The aggrieved employee may file objection to the authority for correction of the gradation list. The authority may overlook the objection and proceed with the promotion process of some junior officers and proceed with filling up all posts superseding the senior officer. He may file a petition to the Administrative Tribunal after complying with all formalities. The AD queried itself "could it be said that the Tribunal will be powerless to pass any interim order even

[144] See above, note 15.

[145] See above, note 143, secton 7 (1).

in such blatant violation of the law?" In that event, the junior officer would become senior to him and will get all benefits, if the promotion is acted upon. The disposal of the case before the Tribunal, the appeal, and then a leave petition will take years together. In the meantime, the aggrieved officer may attain superannuation. He will be deprived of his promotion, financial benefits and status. At the end of his career, the authority will say, since he has attained superannuation, the cause of action for filing the case does not exist. The AD asked itself further "would the Tribunal in such eventuality be a silent spectator for technical reason and avoid its responsibility for doing justice to the aggrieved officer?"

Secondly, the AD has added that "in some departments of the government, Rules have been framed for promotion, transfer, deputation etc. providing the criteria of transfer of an officer who is technically skilled and fit for promotion to a higher post. If any junior officer without fulfilling the criteria and technical expertise is filled up or promoted to such post, would the Tribunal shirk its responsibility on the plea of having no power?" In both the specimen bearing several questions, the AD observed strongly: "if events change during the pendency of the proceedings, the Tribunal will not be powerless to pass an interim order or an order of *status quo-ante* under such circumstances in exercise of its inherent powers".[146]

An alternative question, which is, 'is judicial review of administrative actions available because the Tribunal lacks powers in granting interim relief?', to the former one, which is 'whether the Tribunals are eligible to pass interim order?' has been attracted here. For the clarification, it has been depended not on legislation but on case laws. In *Khalilur Rahman vs Md. Kamrul Ahsan*,[147] the question arose as to whether the High Court Division is competent to entertain a writ petition

[146] See above, note 15.

[147] (2007) 11 MLR (AD) 5.

since the Administrative Tribunal does not possess the power of granting ad-interim relief and since the disposal of the case and the appeal will take long time, by which time, the mischief will be done. The Court taking consideration of sub-section (1) of section 4 of the Administrative Tribunals Act held that "the Administrative Tribunals Act does not authorize the Administrative Tribunal or the Administrative Appellate Tribunal to pass any ad-interim order restraining the government or other functionaries from taking any action relating to the terms and conditions of service of the Republic or any statutory authority while the case has been filed by a person".[148] It further took the view that "since the Administrative Tribunal or the Administrative Appellate Tribunal has no power to pass any interim order relating to terms and conditions of a person in the service of the Republic or of any statutory public authority, in the absence of any power to pass any interim order, though the Tribunal refused the prayer for interim order, the applicant ought to have preferred an appeal, if so advised, but instead, he moved the High Court Division in its writ jurisdiction, which is not maintainable".[149] What we find from the above observations that the court impliedly said the Tribunal has power to make such order in appropriate cases but the applicant has chosen the wrong forum. So far the observation as to the interference of the judgment of the High Court Division is correct view but the AD refused to subscribe the view that the Tribunal cannot pass any interim order.[150]

Certainly powers of Administrative Tribunals under statutory laws are in this respect conservative and unreflective of diversified suits. Recent judicial decision has broadened the power of the Tribunal and a right to stay the proceedings has been given to Administrative Tribunal of first instance, allowing it to prevent illegal action from taking place but the power

[148] Ibid.

[149] Ibid.

[150] See above, note 15.

must be remained exceptional. The decision has considered Tribunals as civil courts. Indeed, it is well established thereby that it can grant interim order under the exercise of inherent power pursuant to section 151 of the Code of Civil Procedure, 1908.

5.4.3.2 Promoting Access to Justice by Empowering Tribunals with Powers of Awarding and Imposing Damages and Penalty Respectively

In an unfair dismissal case, Administrative Tribunals can order the concerned department to reinstate the aggrieved in the old job. In this case, the person would also receive backdated wages and other employment benefits, such as; membership of the employer's pension scheme would be restored as if the employee had not been dismissed. Sufficient mechanisms are absent in the country to cope up with the situations wherein the employer refuses to re-employ the employee in accordance with the Tribunal's order; he cannot be compelled to do so. The Tribunals need to be entrusted with the power of awarding damages and the power will work as a technique of compulsion on employers to comply with the decision of the Tribunal.

Therefore, besides proceeding contempt proceedings against the defaulter under section 10A, the Tribunals need to be given the power to award compensation and in suitable cases to increase it, that it has already awarded him, if the employer denies employing the person. Then the Tribunal could award financial compensation which would be divided into a basic award and a compensatory award. Basic award has to be calculated by a formula that would take account of the age, length of service and the pay, up to a maximum figure per month. When making a compensatory award, the Tribunal has to consider what is just and equitable. Here the Head of the concerned department will be personally liable for the compensation. In discrimination cases the Tribunal requires to be given the power also to award compensation for injury to feelings,

that is, a sum of money paid to compensate for the upset and distress caused by discrimination. The amount awarded will vary depending on how badly a person has been affected and evidence will be needed, so the Tribunal can assess this. In extreme cases, if there is evidence that a person has become ill because of discrimination, then compensation has to be awarded for personal injury. However, in cases like this, the Tribunal will require medical evidence which explains what illness has developed and how it is linked to discrimination. Again, damages need to be awarded especially, if the pension is postponed illegally. Hence, discretionary power requires to be granted to the Tribunal under the statutory law so that they could consider circumstances as to what is just and equitable. Though this inherent power does not achieve the legislative recognition, it is judiciously recognized.[151] There is no statutory prohibition against their powers of awarding damages. Damages can be awarded in exercise of its inherent power if its exercise is not inconsistent with or come into conflict with any of the powers expressly or by necessary implication conferred by the procedural law.

In addition to limitations cited above, Administrative Tribunals cannot impose financial penalty on the concerned departments for negligence or for violation of the principle of 'Natural Justice' or for breaches of service laws, though the Heads of the Departments in the country act negligently or violate principle of 'Natural Justice' during inquiry or departmental proceedings and this is frequently happening. The Administrative Tribunals Act, 1980 deals with the penalty for obstruction,[152] whereby the forum gets powers to punish a person who, without lawful excuse, obstructs it in the performance of its functions with simple imprisonment which may extend to one month, or with fine which may extend to five hundred taka, or with both. It is

[151] Ibid

[152] See above, note 143, section 9.

meant that our Administrative Tribunals can impose imprisonment as well as fine as punitive measures only if the performance of its functions are obstructed, but no penalty can be imposed on the employer for breaching service laws or for negligence or not conforming to the principles of 'Natural Justice'. Besides, the amount of fine mentioned in the Act of 1980 being inadequate and small needs to be increased. The Tribunals have to be statutorily empowered with discretionary power to impose financial penalty of a higher amount on the departments who will be in default and before imposing penalty, it requires to be satisfied that the department did it with malice.

To bring it into operation, a non-exhaustive list of aggravating features requires to be inserted in the Administrative Tribunals Act, 1980. Accordingly, if the application falls under the aggravating features, penalty of a higher amount could be imposed taking into consideration the behavior of the department and the applicant and the duration of the breach. The penalty must be 50% of the amount of the compensation awarded, with a 50% discount for departments who pay within a stipulated period of the Tribunals' decision. This movement in service law would become as a bit of surprise to the profession as the majority of reforms are somewhat government friendly. This speculative formula will place additional burdens on departments as the possible threshold for 'aggravating features' could be used somewhat liberally by the Tribunal, and the penalty would high enough to hit departments hard, especially when on top of compensation. This model would give claimants an upper footing to apply pressure on Heads of departments to settle claims and or attempt to raise the settlement figures in 'without prejudice' negotiations. By the recent judicial pronouncement, the Tribunal can use its inherent powers in imposing penalty for negligence or for violation of the principle of 'Natural Justice' or for

breaches of service laws to fill up the lacuna left by the legislature while enacting law or where the legislature is unable to foresee any circumstance which may arise in a particular case.[153]

The legislatures, apart from the above loopholes, did not intend to equip our Administrative Tribunals with powers of awarding compensation and imposition of penalty to prevent vexatious proceeding as nothing is present in the Administrative Tribunals Act, 1980 to stop vexatious litigation from happening. Necessary provisions have to be inserted. Under the formula, if a person habitually and without reasonable excuse brings vexatious proceedings in the Tribunals, a especially engaged government law officer must apply to the Administrative Appellate Tribunal for an Order declaring that person to be a vexatious litigant, which will have the effect of barring that person from bringing further proceedings in Tribunals without the consent of the AAT.

5.5 Responses of the Administrative Appellate Tribunal and the Appellate Division of the Supreme Court against the Orders of Tribunals

In the efficient performance of functions of Administrative Tribunals, some other issues concern us and it appears essential to focus as to what extent the Administrative Appellate Tribunal or the Appellate Division of the Supreme Court is authorized to interfere in decisions of Tribunals. The matter is based upon judicial decisions. It was held in *Director (Establishment and Administration) T and T Board, Tele Communication Building, Dhaka and other vs Hasan Ahmed Bhuiyan and Another* that "if the findings of Administrative Tribunals are correct, then the Administrative Appellate Tribunal is bound to base its judgment on it. If the findings of Tribunals are set aside, though correct, it shows that the Administrative Appellate Tribunal

[153] See above, note 15.

exceeds its authority".[154] Besides, it was held in *Government of Bangladesh and Others vs Mirza Giasuddin* that "in the event when the Constitutional guarantee of equality is violated by treating differently the persons on the same footing, the Administrative Appellate Tribunal is quite competent to interfere with the penalty of removal of the respondent from service into one of retirement".[155] It was decided in another case:

> Charge in a departmental proceeding was framed upon the direction of the competent authority. Whether or not the charge was framed by the competent authority is a question of fact. When the Administrative Appellate Tribunal decided the said issue on proper appreciation of the evidence on record and in reference to the record of the proceedings, there was practically no reason for the Appellate Division to interfere with such decision.[156]

Though there is no scope of judicial review against the decision of the AAT, but a civil servant still have a scope to go to the Appellate Division of the Supreme Court due to section 6A of the Act of 1980. It was held that "under the new dispensation that article 103 of the Constitution shall apply in relation to the Administrative Appellate Tribunal, the petitioners have only the right to seek leave for appeal. The Court's power under clause 3 of article 103 is very wide. Question of retrospectivity or prospectivity of section 6A of the Act of 1980 has got no relevance".[157] It was also held in *Shajahan Khondoker vs Grameen Bank, represented by its M.D. and Others* that "if the decision of the Administrative Appellate Tribunal is not based on proper appreciation of laws and facts, the same calls for interference".[158] Indeed, the conferment of right to make an appeal to the Appellate Division of the Supreme Court against the decision of

[154] (1996) 4 BLT (AD) 25.

[155] (2001) 6 MLR (AD) 110-111.

[156] Md. Anwar Hossain Chowdhury vs Bangladesh, represented by the Secretary, Ministry of Home Affairs and Others, (1997) 2 MLR (AD) 382-383.

[157] Bangladesh Bank and Another vs the Administrative Appellate Tribunal, represented by its Chairman, Supreme Court Premises, Ramna, Dhaka and Others, Civil Petition No. 291 of 1991; Nazmul Hasan and Others vs the Administrative Appellate Tribunal and Others, Civil Petition No. 308 of 1991; Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 239-241.

[158] (2014) 34 BLD (AD) 12-14.

the Administrative Appellate Tribunal is kept not to upset the decision of the Administrative Appellate Tribunal but for the benefit of the respondents.

The Court's power under clause (3) of article 103 to interfere in suitable cases where miscarriage of justice has occurred is very wide. It is neither possible nor would be expedient to lay down any general rule, but where there is some substantial question of law of public importance which deserves to be decided by the Court, where grave miscarriage of justice has resulted from illegality or from misreading of evidence or from excluding or illegally admitting material evidence or when a person has been dealt with arbitrarily or that a court or Tribunal has not given a fair deal to a litigant, the Court will not be deterred by any technical hurdles, even by its own rule of limitation as under Order XIII, rule 1, because it is the duty of the Court to see that an injustice is not perpetrated. And in view of that the question of retrospectivity or prospectivity of section 6A is to be considered on its merit. The Court will neither refuse leave in a case of grave injustice nor grant leave on technical or insubstantial ground to upset the decision of the Appellate Tribunal otherwise validly made for the benefit of the respondents and the petitioner accepted or acted on it for some considerable time.

One more matter requires to be stressed that appeal in all cases against the decisions of Administrative Tribunals to the Administrative Appellate Tribunal hinders in providing prompt relief in service disputes. But it is undeniably praiseworthy that this option or choice, on the other hand, shuts the door of review and revision. It is found from section 6 (1) of the Act of 1980, the Administrative Appellate Tribunal shall have jurisdiction to hear and determine appeals from any order or decision of an Administrative Tribunal. The clause 'appeals from any order or decision of an Administrative Tribunal' is very wide and it allows appeals in all cases and thereby is reducing the burden of the High Court Division in entertaining revision. However,

an Administrative Tribunal can re-call its own orders under rule 6 (10) of the Rules of 1982 for the purpose of correcting a clerical or arithmetical mistake or any error arising from any accidental slip or omission. The decision cannot be re-opened and the matter cannot be re-heard by the same Member or his successor due to discovery of new or important matter or because of mistake or error apparent on the face of the record or for any other sufficient cause. It has no power of review outside the purview of rule 6 (10) as well as no power to rectify the wrong caused by the mistake of the court or when an order has been obtained by practicing fraud on the court. It is mentioned neither in the Administrative Tribunals Act nor in the Administrative Tribunal Rules regarding appealable and non-appealable orders.

It is quite clear that the adjudication of Administrative Tribunals are in the nature of orders because a decree can only originate from a suit, that is, a proceeding commenced by a plaint and an order may originate from a suit as well as from any other proceedings commenced by an application. So decisions of Tribunals are orders as the proceedings here are started with an application and by reading above clause it appears that all these orders are appealable. Order XLIII of the Code of Civil Procedure discusses as to which orders are appealable and which are not. Non-appeal ability is the rule and appeal ability is the exception in the case of an order. These are not applicable to Administrative Tribunals as the Code of Civil Procedure has limited application with regard to Tribunals as well as the Appellate Tribunal under section 7 of the Act of 1980. Appeal in all cases is justified as Administrative Tribunals are not empowered to review its own orders except under rule 6 (10) of the Rules of 1982 for avoiding grave miscarriage of justice done by them.

5.6 Summary and Assessment

It is, at last, worth considering for a moment how important in consequence the Act is for service disputes. Much enthusiasm was tried to be spent for analyzing two clauses 'Service of the Republic' or 'Statutory Public Authority' on the interpretation of which the jurisdiction of Tribunals certainly rests upon. Furthermore, some of the matters, namely, binding effect of Tribunals' decisions, appeal ability, non-appeal ability, which are required for the proper understanding of functions of Tribunals, have been clarified depending on case laws. On the whole, it is evident by this chapter that our Administrative Tribunals lag behind the jurisdiction as to subject matter and powers required for the full access to justice. Drawbacks, namely, not to grant interim order, damages, lack of exercise of imposing penalty etc. demand varying amounts of reforms in the Act of 1980 depending on the nature of loopholes, ultimately leading to easy access to justice. It is no doubt that service jurisprudence has been developed to a remarkable degree because of a recent decision in *Government of Bangladesh and Others vs Sontosh Kumar Shaha and Others* empowering the Tribunal with inherent power and the power will eventually equip them with those powers not exercised by them before. More importantly, there are inconsistencies in choosing statutory public authorities. Alternatively, the oust of jurisdiction of the High Court Division over service disputes is so much praiseworthy and consistent with the principle of closing double standard and opening space for exclusive domain of Administrative Tribunals subject to decisions of the Administrative Appellate Tribunal and the Appellate Division of the Supreme Court.

Chapter Six

Efficacy of Administrative Tribunals of Bangladesh: Exploring Procedural Deficiencies and Alternative Tactics

Administrative Tribunals all over the world are now exercising neither judicial nor administrative power rather they are exercising *quasi*-judicial power. Despite the existence of the 'Rule of Law' and the theory of 'Separation of Powers', the *quasi*-judicial power is now being handed over to Administrative Tribunals distinct and separate from courts. The dividing line between an administrative power and *quasi*-judicial power is quite thin and is being gradually obliterated.[1] In recent years the concept of *quasi*-judicial power has been undergoing a radical change.[2] What was considered an administrative power some years back is now being considered *quasi*-judicial power.[3] A *quasi*-judicial function stands mid-way between a judicial function and an administrative function. A *quasi*-judicial decision is nearer the administrative decision in terms of its discretionary element and nearer the judicial decision in terms of procedure and objectivity of its end.[4]

The authority exercising quasi-judicial power has all the trappings of a court but not all of them; nevertheless there is an obligation to act judicially. Again, a *lis inter partes* is not an essential characteristic of *quasi*-judicial function. Besides, the authority exercising the powers is neither bound by the rules of evidence nor precedents. However, Administrative Tribunals and the Administrative Appellate Tribunal of our Country are exercising powers of a civil court in

[1] Thakker, C. K., *Lectures on Administrative Law* (Lucknow: Eastern Book Company, 1998), 40.

[2] See above, note 1.

[3] Ibid.

[4] Griffith, J. A. G. and Street, H., *Principles of Administrative Law* (London: Pitman Publishing, 1973), 141.

respect of terms and conditions of selective services.[5] Again, it is an alternative institutional mechanism in place of the High Court Division for providing judicial review in respect of the terms and conditions of service of the Republic and other public organizations.[6] Nonetheless, any proceeding before a Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Penal Code.[7]

All the discussions reveal that judicial powers are exercised by the Tribunal and the procedure observed by it is also judicial in nature; but they are not required or charged to be followed by all rules of evidence or all procedures of civil suits to challenge the validity of an administrative act. Selective service disputes, which are within the tenor of Tribunals, are not decided by normal jurisprudential techniques. A person in the service of the Republic or statutory public authority knocks at its door and obtains the annulment of an illegal administrative act by resorting to summary procedure. The research, on the one hand, has rejected the non-application of the Code of Civil Procedure associated with the proliferating Administrative Tribunals in many respects; on the other hand, it has praised its development and proposed its refinement depending on the Code of Civil Procedure, 1908, which is no longer foreign to our Administrative Tribunals. In the consolidation of procedure, mechanisms followed by Administrative Tribunals in its functioning together with loopholes or deficiencies faced by them as well as innovative approaches of overcoming the loopholes have been interrogated. It does not envisage the rules of practice and procedure followed by administrative agency rather concentrates on the use of procedure and machinery resembling that employed by courts.

[5] Government of Bangladesh and Others vs Sontosh Kumar Shaha and Others, unreported (AD) date of judgment 15.12.2015.

[6] Ibid.

[7] See, the Administrative Tribunals Act, 1980, section 7 (2).

6.1 Scrutinizing Procedural Technicalities and Impediments

Ways and methods of procedure have to be prescribed with express guidance to act justly and to reach just ends by just means. In this regard, our Administrative Tribunals are passing through a critical phase as these failed to weather many storms. Faced with different realities, the present section deals with several issues concerning procedural complications without questioning the authority of administration. Methods of Administrative Tribunals do not meet the criteria traditionally employed and the need for standards of procedure let me put emphasis on alternatives.

6.1.1 Pre-conditions concerning Application to Administrative Tribunals

In interrogating procedural technicalities and obstacles, the research in this part begins with preconditions regarding application to Administrative Tribunals mentioned in section 4 of the Administrative Tribunals Act, 1980. The first aspect, among many, which needs to be concentrated, is the issue of standing before Tribunals. Litigation is initiated and continued by individuals usually addressing their own grievances or problems. Certainly it has to be added here that the initiation or continuance of litigation can be made in the High Court Division by the injured person or the aggrieved party and this opens the door of Public Interest Litigation. This picture is altogether foreign to Administrative Tribunals of Bangladesh as the right to move the Tribunals is only available to those whose terms and conditions of service are infringed and the persons approaching the Tribunals must be in service.[8] The Act depicts that no person other than a person who is in the service of the Republic or of any statutory public authority and a person who is or has retired, or is dismissed, removed or discharged, can make an application. Even

[8] See, Ibid, section 4 (2). Section 4 (2) reads as follows: "Only a person in service of the Republic and scheduled public authorities may make an application to an Administrative Tribunal".

their heirs could not make applications. In this context, the High Court Division in a case observed: "The Administrative Tribunal has no jurisdiction to entertain any application filed by a person who is not or has not been in the service of the Republic or of any statutory authority specified in the Schedule of the Act".[9]

The term 'person aggrieved' as used in the Administrative Tribunals Act, 1980 has narrower connotation. Prior to 19-11-1997, legal heirs of the deceased servant could not maintain an application before the Administrative Tribunal; and hence, legal heirs of the deceased servant, who were legally entitled to pensionary benefits, could seek their remedies in writ jurisdiction of the High Court Division.[10] The legal and statutory position as to whether heirs of persons in the service of the Republic or of any statutory authority, as scheduled in the Act, have changed since then. The Administrative Tribunals (Amendment) Act, 1997,[11] which received assent of the President on the 19th November, 1997, has provided for, and inserted by way of an amendment to the Administrative Tribunals Act, 1980, among others, a provision bearing the marginal heading 'Death of the applicant' wherein it is said that only heirs of the applicants before the Tribunal whose services are pensionable shall have the right to sue before the Tribunal.[12]

The provision has now been extended to a little bit, though it does not open the phase of Public Interest Litigation due to lack of a clause 'application by any person aggrieved'. Besides, if the service is not pensionable, the law does not allow the heirs of the deceased service holder to move Administrative Tribunals. The present position is right from the context of jurisdictional

[9] Kazi Shamsunnahar and Others vs Commandant PRF Khulna and Others, (1997) 2 BLC (AD) 569.

[10] (1997) 2 MLR (HC) 83.

[11] Act No. XXIV, 1997.

[12] See above, note 7, section 7A.

boundaries; all administrative cases, for example, those related to the application of economic or social regulations, taxation, town-planning, building permits, public works, public service procurement, environmental projects, hospital liability, immigration permits, civil servants' career and pensions, local government elections etc. are not within the domain of Tribunals; Tribunals handle only selective service disputes. Hence, the jurisdictional limits do not necessitate arising Public Interest Litigation, cases filed by any person.

Another predominant aspect concerning procedural pre-condition regarding application to Administrative Tribunals is that applicants have to wait 2 months to file applications before Administrative Tribunals as law in this regard depends on the clause 'deemed to be'.[13] The Government Servants (Discipline and Appeal) Rules, 1985 provided in its rules 6 and 7 fixed period for the completion of departmental proceeding but this was omitted later on due to pressure of civil servants.[14] The provisions imposing the duty to finish departmental proceedings within fixed period has to be reverted back and this will enable the Administrative Tribunals Act of 1980 to make itself free from the clause 'deemed to be'. The clause 'deemed to be' has been inserted later on in 1997 due to uncertainty as to when the departmental proceeding would end and afterwards door would open to approach Administrative Tribunals.[15] After the omission of fixed period required for the ending up of departmental proceeding from the Rules of 1985, if the clause 'deemed to be' were not inserted in the Act of 1980, the sorry state of affair, that is, 'delay defeats equity' would destroy completely the rights of civil servants to approach the Tribunals.

[13] Section 4 of the Administrative Tribunals Act, 1980 asserts that "where no decision on an appeal or application for review has been taken by the higher administrative authority within a period of two months following the appeal or application, it shall, on the expiry of such period, be deemed that such higher authority has disallowed the appeal or the application".

[14] Notification No. SRO 304-Law/89/(Rule 5) ID/88 dated 13-9-89.

[15] The Administrative Tribunals (Amendment) Act, 1997, Act No. XXIV, 1997.

In this regard, one must not miss the legislative intention, which is to stop spending unlimited period in inquiry proceeding occurred at a truly alarming rate and to prevent the employee from waiting for the decision of the competent authority and to relieve them from suffering unnecessary tension and mental agony; but it is also beyond doubt that a law can't be dependant on the term 'deemed to be' which shapes the Act of 1980 as unusual and peculiar. Therefore, it is a matter of time to bring back the earlier provisions in the Government Servants (Discipline and Appeal) Rules, 1985 so that Administrative Tribunals would not rely on the messy clause 'deemed to be'.

The apparatus for the maintenance of justice requires the Members to condone delay in filing application on the satisfaction of reasonable excuses. Condonation of dealy is not possible by showing sufficient cause in our legal heritage concerning Administrative Tribunals and this is another lapse, apart from the above mentioned, concerning procedural pre-condition in making application before Administrative Tribunals. Delay Defeats Equity is a famous maxim of the law of equity and the maxim discourages the laches, that is, unreasonable delay of a suit in asserting or conforming the right, holding that it would be unjust to allow a claim to be asserted after an undue lapse of time. The maxim refuses to give relief when the party seeking relief has delayed for a long time without attempting to enforce his right.[16] The plaintiff seeking the equitable remedy has to explain even a short period of delay.[17] Lord Camden in *Smith vs Clay*,[18] said that "a Court of Equity has always refused its aid to stale demands, where a party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this Court into activity but conscience, good faith and reasonable diligence; when these are wanting, the court is passive and

[16] Ahmad, A., *Equity, Trust, Fiduciary Relations and Specific Relief* (Allahabad: Central Law Agency, 2008), 62.

[17] Ibid.

[18] (1767) 3 Brpo. C.C. 640.

does nothing". What constitutes reasonable diligence can be established by no reasonable rule, since the question must be determined upon the circumstances of each case. What may be inexcusable delay in one case will not be inconsistent with diligence in another.

It is observed that delay will be fatal to a cliam for equitable relief but there can be no abandonment of a right without reasons and lack of knowledge, disability or undue influence are the satisfactory excuses of delay. The maxim pushes also administrative jurisprudence to condone delay, though this is not reflected in the Act of 1980. The Administrative Tribunals Act of 1980 does not provide for any period of limitation for filing departmental appeals from departmental orders as these are provided for in the relevant service regulations of various statutory authorities.[19] It provides the period of making an application to Administrative Tribunals and accordingly, no application shall be entertained by Administrative Tribunals unless it is made within six months from the date of making or taking of the order, decision or action concerned or making of the decision on the matter by the higher administrative authority, as the case may be.[20] Here the term 'shall' is used, so the Tribunals are very rigid of not granting applications beyond the period of six months. This is no doubt a very good provision. In this regard, a question arises as to what will happen when a civil servant makes an application for review to the President. In a case it has been discussed elaborately.[21] In the case Mustafa Kamal J opined:

> A government servant, who has no right of appeal but a remedy of review, cannot be asked to forego his remedy of review before he avails of the forum provided by the Administrative

[19] Md. Nurul Huq vs Governor, Bangladesh Bank, (1994) 14 BLD (AD) 5.

[20] See above, note 7, section 4 (2), the 2nd proviso.

[21] AKM Nurul Alam vs Bangladesh, Civil Appeal No. 24/1992; Mohammad Jahangir Kabir vs Government of Bangladesh and Others, Civil Appeal No. 82/1992; Upendra Nath Talukder vs Secretary Ministry of Communication Roads and High Ways and Others, Civil Petition No. 346/1992; (1994) 46 DLR (AD) 113-121.

> Tribunal. His remedy of review, although optional, is a right nevertheless, and his right to go to the Administrative Tribunal is also a right implicit in article 117 (1) (a) of the Constitution. Both must co-exist at the same time and no single right can be excluded for enjoyment of the other. A government servant can make an application to the Administrative Tribunal if he wishes not to exercise his right of review. In the first case, he must come within six months of the date of the order, decision or action concerned and in the second case, he must come within six months of the order passed on review.[22]

On the same point Justice Latifur Rahman said:

> The higher administrative authority is the President who sits at the apex and he is capable of giving full relief to the appellants. If an aggrieved person can get relief from the President on review, then he will have no cause of action to move the Administrative Tribunal for the same relief. The Administrative Tribunal was set up by the government to exercise exclusive jurisdiction in respect of matters relating to or arising out of the terms and conditions of service of persons in the service of the Republic or any statutory public authority. Reading the Government Servants (Discipline and Appeal) Rules, 1985 and the Administrative Tribunals Act, 1980, it is clear that the procedure of review must be followed by an aggrieved person before going to the Tribunal. The word 'final' has not been used in section 4 of the Act, but reading sub-section 2 of section 4 of the Act, it is found that all normal and available remedies guiding the departmental procedure must be followed before attracting jurisdiction of Administrative Tribunal. Both the provisions of the Statutes must be construed harmoniously and beneficial construction must be given as there is no apparent inconsistency in these provisions of law. It may be stated here that the Administrative Tribunals Act is a special Act providing special period of limitation for six months from the date of making or taking of the order, decision or action concerned or making of the decision on the matter by the higher administrative authority. There being nothing to extend the period of limitation within the Act itself is to be strictly followed.[23]

Therefore, time spent on review before the President under the Government Servants (Discipline and Appeal) Rules, 1985 was to be excluded in the computation of the period of limitation.[24] However, the period of limitation is six months and no excuse of delay is allowed under our laws regarding service matters. The Administrative Tribunal has no power to entertain an application unless it is filed within six months of making a decision by the higher administrative authority,[25] and if not filed within the statutory period, such an application is barred by limitation.[26] The

[22] Ibid.

[23] Ibid.

[24] Jahangir Kabir vs Bangladesh, represented by the Secretary, Ministry of Home Affairs, (1996) 48 DLR (AD) 156-158.

[25] Government of Bangladesh represented by the Secretary, Ministry of Food, Bangladesh Sachibalaya, Dhaka and Others vs A.B.M. Siddique Mia, (2010) 30 BLD (AD) 274-276; (2010) 15 MLR (AD) 460-465; (2011) 63 DLR (AD)15-17.

[26] Abul Kashem vs The Secretary, Ministry of Agriculture and Others, (1997) 2 MLR (AD) 51-52.

petitioner cannot have the benefit of section 14 of the Limitation Act while computing the period of limitation in filing application before the Tribunal.[27] On the other hand, to condone delay in admitting appeal after the period of three months and not later than six months is a discretionary power of the Administrative Appellate Tribunal.[28] The Appellate Division is slow to interfere with the decision when exercised judiciously.[29] Sub-section 2 of section 6 prescribes the limitation of three months normally for preferring appeal against the judgment and order of the Administrative Tribunal. But when sufficient cause of delay is shown to the satisfaction of the Appellate Tribunal, an appeal may be admitted if filed within six months as provided under sub-section 2A.

Limitation period of six months starts from the date of the impugned judgment or order and not from the date after the expiry of three months.[30] Administrative Appellate Tribunal is debarred from entertaining any appeal which is not filed within the period of limitation as contemplated under section 6 (2A) of the Administrative Tribunals Act.[31] Section 5 of the Limitation Act 1908 has no manner of application to the limitation in matters as provided under the Administrative Tribunals Act, 1980.[32] This alternative forum is facing troubles to avoid deadlock because of their inability to accept application after the end of six months and hence, sometimes an application but not an appeal requires to be allowed after the expiry of six months on the basis of satisfaction of reasonable causes for the proper dispensation of justice taking into account section

[27] Abul Bashar vs Investment Corporation of Bangladesh and Another, (2000) 52 DLR (AD) 178-184.

[28] Government of Bangladesh and Others vs Ansarul Huq, (2011) 16 MLR (AD) 252-254.

[29] Ibid.

[30] Bangladesh vs Md. Abdur Razzak and Others, (2007) 12 MLR (AD) 176-180; (2007) 59 DLR (AD) 94-97.

[31] Bangladesh represented by the Secretary, Ministry of Home Affairs and Others vs Md. Waziullah, (2008) 113 MLR (AD) 161-163.

[32] Md. Giasuddin Ahmed and Others vs Md. Sirajul Islam and Others, (2001) 6 MLR (AD) 173-175.

14 of the Limitation Act, 1908 subject to some conditions. If a suit is instituted in a wrong forum due to a bona fide mistake, the High Court Division or civil courts excuse delay in computing the period of limitation. Just like this provision of section 14 of the Limitation Act, delay for making an application needs to be excused to avoid deadlock. When queries regarding period of limitation were put forward before the respondents, they opined in support of the insertion of section 14 of the Limitation Act in the Act of 1980 subject to satisfaction of reasonable grounds. Nevertheless, the judicial recognition of the inherent power, which has been endorsed in a case so far as Administrative Tribunals in the country are concerned,[33] empowers the Tribunals to condone delay in extreme cases with a view of mitigating the sufferings of the victim and for ends of justice.

6.1.2 Dilemma for Restoration of a Case or for Setting Aside an *Ex parte* Order

The Administrative Tribunals Act of 1980 did not prescribe consciously or not period for filing an application for setting aside an order of dismissal or an *ex parte* order. Administrative Tribunals are in a dilemma on the ground of limitation when an application is filed for setting aside an order of dismissal or an *ex parte* order. It is worth noting here that the procedure as to the hearing of an appeal by the Administrative Appellate Tribunal is same as that of a case by an Administrative Tribunal. Pursuant to section 12 of the Administrative Tribunals Act, 1980, government made the Administrative Tribunals Rules, 1982. In the Rules, 1982, detailed provisions have been made as to how an application shall be filed before Administrative Tribunals, registered and disposed of by it including the provisions for restoration in case an application is dismissed for default and to set aside an order made ex-parte.

[33] See above, note 5.

In the Rules, 1982, no separate procedure has been provided for in respect of filing of an appeal before the Appellate Tribunal, its registration and disposal. Provisions of the Rules, 1982 shall, *mutatis mutandis*, apply to an appeal to the Administrative Appellate Tribunal,[34] and rule 6 of the Rules, 1982 has clearly provided the procedure for disposal of an application. As per sub rules 4, 5 and 6 of rule 6 of the Rules, 1982 an application (both for the case as well as appeal) can be dismissed for default only if on the date fixed for hearing, the applicant does not appear. So, under rule 6 (7) of the Administrative Tribunals Rules, 1982, any party aggrieved by an order made under sub-rules 4, 5, 6 of rule 5 of the Administrative Tribunals Rules, 1982, may apply to the Tribunal for an order to set aside the dismissal or the order made *ex-parte*, and, if the Tribunal is satisfied with sufficient excuses shown by the party, it shall make an order setting aside the dismissal or the order made *ex-parte* on such conditions as it deems fit.[35] After scrutinizing relevant provisions of the Act as well as the Rules, it appears that no period has been prescribed for filing an application for setting aside an order of dismissal or an *ex parte* order, so

[34] See, the Administrative Tribunals Rules, 1982, rule 11.

[35] Government of Bangladesh and Another vs Md. Abdul Karim, (2011) 16 MLR (AD) 361-368; (2011) 63 DLR (AD) 143-148. The case is related to the imposition of a major penalty upon the respondent by degrading him to the time scale, that is, below his salary scale for two years under rule (4) (3) (a) of the Government Servants (Discipline and Appeal) Rules, 1985. Administrative Tribunal No. 3, Dhaka Case No. 295 of 1999 was filed against the departmental orders and later on the case was renumbered as Administrative Tribunal Case No. 161 of 2003. The Administrative Tribunal by order dated 22.09.2005 allowed the case in part by imposing minor penalty, that is, withholding the annual increment of the petitioner for two years under rule 4(2) (b) of the Rules, 1985, instead of major penalty awarded by the department. Administrative Appellate Tribunal Appeal No. 230 of 2005 was filed against the decision of the Administrative Tribunal and 11.06.2006 was fixed in the appeal for filing paper book. It was not filed and the appeal was dismissed for such default. Thereafter, an application was filed by the petitioners on 05.01.2009, after about six months of the said order of dismissal for restoration of the appeal. The application was registered as Administrative Appellate Tribunal Miscellaneous Case No. 01 of 2009 and the appeal was dismissed on 28.01.2009 on the ground of limitation. Civil Petition for Leave to Appeal No. 665 of 2009 was filed against the decision of the Administrative Appellate Tribunal. The impugned order dated 28.01.2009 passed by the Administrative Appellate Tribunal in A.A.T. Miscellaneous Case No. 1 of 2009 was set aside and the case was sent back on remand to the Appellate Tribunal for hearing afresh and to dispose of the same on merit in light of the observations made by it. The judgment was declared on 29.04.2012.

the question of rejection of an application on the ground of limitation does not arise at all. This question has been raised subsequently in a case.[36] It was held:

> An Administrative Tribunal or the Administrative Appellate Tribunal, as the case may be, may reject an application for setting aside an order of dismissal or an *ex parte* order even if the same is filed within the shortest possible period, if the applicant or the appellant fails to give sufficient cause to the satisfaction of the concerned Tribunal for failure to appear when the case, or appeal was taken up for hearing.[37]

That means, an application for restoration of an administrative tribunal case or an administrative appellate tribunal appeal or for setting aside an *ex parte* order made by the Tribunals, as the case may be, may be filed even after long gap, but fate of such application would depend upon the satisfaction of the Tribunals as to the sufficiency of the cause filed for such purposes.[38] Therefore, the period needs to be prescribed for filing an application for setting aside an order of dismissal or an ex parte order made by Administrative Tribunals or the Administrative Appellate Tribunal. In this regard, the provisions of the Civil Procedure Code, 1908 requires to be followed to remove difficulties. An application for setting aside an ex parte order has to be filed within 30 days from the date of the *ex parte* order or where the summons would not be duly served, 30 days from the date when the defendant would come to know about the *ex parte* order, but the bar of limitation will not be applicable when some elements of fraud in obtaining the *ex parte* order would be found.[39] On the other hand, if the case is dismissed due to non-appearance of both the parties, the applicant is allowed to bring a fresh suit; but the scope must be availed of within the period of 30 days of the order of dismissal. If the case is dismissed due to non-appearance of the plaintiff, then he is not entitled to bring a fresh suit but is allowed to bring an application for

[36] Government of Bangladesh and Others vs Md. Nurul Alam, (2013) 18 MLR (AD) 97-108; (2013) 65 DLR (AD) 77-81.

[37] Ibid.

[38] Ibid.

[39] Bangladesh vs Mashiur Rahman, (1998) 50 DLR (AD) 250.

setting aside the order of dismissal. Here the limitation period must also be 30 days from the date of the order of dismissal. If he satisfies the Tribunal that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Tribunal shall make an order setting aside the dismissal;[40] but before such order is passed by the Tribunal, notice must be served to the opposite party according to rule 6 (9) of the Rules of 1982.

Of course, the Administrative Tribunals Act of 1980 has to be exhaustive for the non-application of the Code of Civil Procedure, though this was not done somewhat mysteriously. It is discovered that the Act of 1980 does not lengthen the hands of the Tribunal to pass any order like section 151 of the Code of Civil Procedure to do justice when there is no other remedy open to the aggrieved party. Inherent power of the Tribunal is now acknowledged by a recent judicial pronouncement,[41] and the power can fill up the vacuum as stated above.

6.1.3 Lack of a Full-fledged Procedure and Section 151 of the Code of Civil Procedure

Procedures of Administrative Tribunals are simple and are easily understood by a layman. The fact on which the research puts its utmost attention is that both the legislations did not mention strangely with full description, as found in the Code of Civil Procedure, 1908 for civil suits, as to what procedure have to be followed. Simply it is mentioned in the Act that for the purpose of hearing an application or appeal, as the case may be, a Tribunal shall have all powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 in respect of matters

[40] In order to have an order restoring the suit, the applicant must show sufficient cause to the satisfaction of the Tribunal for not appearing in Tribunal on the date fixed. What is sufficient cause is not defined anywhere and therefore; it will depend upon the facts and circumstances of each case.

[41] See above, note 5.

mentioned therein.[42] Besides, a Tribunal shall, for the purpose of execution of its decisions and orders, follow, as far as practicable, the provisions of the Code of Civil Procedure, 1908, relating to execution of a decree.[43] Full elaboration in matters of procedure including the dismissal for default in the Act of 1980 is required to address the situations without undue delay.

It is undoubtedly true that it is not possible on the part of the legislature to contemplate all the possible circumstances which may arise in future litigation and to face those emergencies, there comes into play the inherent power guided by equity, justice and good conscience. It is a matter of deep concern that the Act of 1980, on the one hand, is not devoted to fully fledged procedures for matters covered by its section 4 and on the other hand, is not giving Administrative Tribunals inherent power like section 151 of the Code of Civil Procedure, 1908. Rather the applicability of the Code of Civil Procedure to Administrative Tribunals has been excluded in many respects which fail to cope up with a large variety of functions. The Act of 1980 has to be exhaustive providing for all varieties of available circumstances and otherwise the application of the Code of Civil Procedure has to be extended like section 216 of the Bangladesh Labour Act, 2006 covering procedures for civil matters in Labour Court, which is another statutory Tribunal. A very recent judicial decision recognizing the inherent power of the Tribunal will work greatly on techniques deployed to resolve disputes. It was held:

> All tribunals, whether civil or criminal, possess this power in the absence of any provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle, namely, *quando lex aliquid alique, concedit, conceditor, it sine quo resipsa eshe non potest*, i.e., when the law gives a person anything it gives him that also without which the thing itself cannot exist.[44]

[42] See above, note 7, section 7.

[43] See above, note 34, rule 7.

[44] See above, note 5.

Considering two references, the Appellate Division of the Supreme Court has supported the vesting of inherent powers in the Tribunal so that it does not find itself helpless for administering justice. The first reference was cited from an Indian case law.[45] The second reference was cited from a Criminal Review Petition.[46] In regard to this Criminal Review Petition, elaboration is required. Under the International Crimes (Tribunals) Act, 1973 there was no provision for review. The condemned prisoner filed a review petition. Learned Attorney General raised a preliminary objection about the maintainability of the review petition on the ground that in view of article 47A (2) of the Constitution, the review petition is not maintainable, in as much as, the Act of 1973 is protected by article 47A of the Constitution. According to him, a judgment which has attained finality cannot be challenged by resorting to the Constitutional provisions which has been totally ousted by the Constitution (Fifteenth Amendment) Act, 2011 and the Constitution (First Amendment) Act, 1972 respectively. This court repelled the objection and held that "the review petition was maintainable, in as much as, apart from article 105 of the Constitution, this court can invoke its inherent power if it finds necessary to meet the ends of justice or to prevent the abuse the process of the court. There is inherent right to a litigant to a judicial proceeding and it requires no authority of law." Taking into consideration the references cited above, the AD of the Supreme Court has tried to present reasons behind the conferment of this inherent power to the Tribunal. It was observed:

> We cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If the primary function of the court is to do justice in respect of causes brought before it, then on principle, it is difficult to accede to the proposition that in the absence of specific provision the court will shut its eyes even if a wrong or an error is detected in its judgment. To say otherwise, courts are meant for doing justice and must be deemed to possess as a necessary corollary as inherent in their constitution all the powers to achieve the

[45] Shipping Corporation of India vs Machadeo Brothers, (2004) AIR (SC) 2093.

[46] The review petition was filed on the 17th august, 2013 by Mollah, A. Q..

> end and undo the wrong. It does not confer any additional jurisdiction on the court; it only recognizes the inherent power which it already possesses.[47]

Inherent power is an old power of courts, civil or criminal; and endorsing this, it was opined:

> The inherent powers of a Tribunal reminds the Judges of what they ought to know already, namely, that if the ordinary rules of procedure results in injustice in any case and there is no other remedy, it can be broken for the ends of justice. This power furnishes the legislative recognition of the old age and well established principle that every Tribunal has inherent power to act *ex debito justitiae*, i.e., to do that real and substantial justice and administration of which alone it exists to prevent abuse of the process of the court.[48]

The Appellate Division of the Supreme Court has set criteria before resorting to inherent power of the Tribunal. These are: 1. the power can be exercised when no other power is available under the procedural law; 2. nothing can limit or affect the inherent power of a Tribunal to meet the ends of justice since it is not possible to foresee all possible circumstances that may arise to provide appropriate procedure to meet all those situations; 3. it is a power of a Tribunal in addition to and complementary to the powers expressly conferred under the procedural law; 4. the power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the procedural law; 5. it cannot be exercised capriciously or arbitrarily; 6. they are not intended to enable the Tribunal to create rights for the parties, but they are meant to enable the Tribunal to pass such orders for ends of justice as may be necessary; 7. If the law contains no specific provisions to meet the necessity of the case, the inherent power of a court merely saves by expressly preserving to the court which is both a court of equity and law, to act according to justice, equity and good conscience; and 8. It is an enabling provision by virtue of which inherent powers have been vested in a court so that it does not find itself helpless for administering justice.

[47] See above, note 5.

[48] Ibid.

6.1.4 Non-Recognition of the Principle of 'Natural Justice'

After establishment, there is a slow rise in the number of suits lodged with Administrative Tribunals. Many of them stem from the violation of the principle of 'Natural Justice', one of the techniques closely affiliated with Administrative Tribunals, as depicted and discussed in chapter two. Administrative Tribunals are duty bound to see as to whether departmental proceedings are as per law or not, that means, whether they have given the parties sufficient opportunities to be heard or not. A number of cases is always filed in Administrative Tribunals claiming that they were not given the right to a fair hearing or there was a violation of the rule against bias, while awarding punishments, minor or major. These disciplinary cases are in the nature of dismissal, removal, termination, compulsory retirement, demotion, censure, warning, extra ordinary leave without pay etc. It is surprising that where most of the cases are with regard to disciplinary proceedings, there the Administrative Tribunals Act, 1980 and the Administrative Tribunals Rules, 1982 did not recognize the principle of 'Natural Justice'. Not only the statutory recognition and complete elaboration of the principle of 'Natural Justice' will enable the adjudicators to understand the procedure fully but also co-operate in providing speedy and inexpensive justice as it will prevent loss of unnecessary time in realizing techniques accrued from the principle of 'Natural Justice'.

Though in Bangladesh this principle is not statutorily recognized,[49] but the Tribunals feel pressurized to grab it and operate the processes of this legal action accordingly. The principle has enormous significance undoubtedly for service disputes and its violation affects the root of the

[49] 'Natural Justice' enjoys no express Constitutional status. The Appellate Division of the Supreme Court of Bangladesh in Abdul Latif Mirza vs Government of Bangladesh noted in (1979) 31 DLR (AD) 1 had observed: "It is now well- recognized that the principle of 'Natural Justice' is a part of the law of the country".

inquiry conducted by the department. Here the operation of the Tribunal comes into play. It was held in *Mujibur Rahman vs Bangladesh* that "it can strike down an order for violation of 'Natural Justice'".[50] Several decisions are found supporting the assertion.[51] It is worth considering as to how important in consequence the principle is. The Act and the Rules were framed without keeping it in mind, eventually the legislation fails to be a complete Code. The Code of Civil Procedure, 1908 has limited application to proceedings in Tribunals; this non-application of the CPC creates necessity of adding a non-exhaustive list of factors constituting violation of principles of 'Natural Justice' during departmental inquiry. Though essence of 'Natural Justice' are found present in the Public Servants (Inquiries) Act, 1950 and the Government Servants (Discipline and Appeal) Rules, 1985, as discussed in chapter two, an integrated and complete Code enshrining principles of 'Natural Justice' and showing violation of it is required for its functioning. With that end in view, necessary amendments have to be made in the Administrative Tribunals Act, 1980 with a view of giving statutory recognition of the principle, making it more specific, providing guidelines to adjudicators, getting solid pictures of it. Thereby independent status of Tribunals has to be achieved in consolidating all the scattered cases laws, some of them, among many, have been depicted in chapter two.

[50] (1992) 44 DLR (AD) 123.

[51] See for details, Bangladesh Public Service Commission represented by its Chairman, Public Service Commission Secretariat and Another vs Maloti Rani Mondol, (2012) 17 MLR (AD) 104-108; Sonali Bank vs Md. Zalaluddin and Others, (2009) 14 MLR (AD) 70-75; Janata Bank, represented by its Chairman and Another vs Fazlul Huq and Another, (2009) 14 MLR (AD) 217- 218; Director-Cum-Professor, Pabna, Mental Hospital and Others vs Tossadek Hossain and Others, (2005) 10 MLR (AD) 110-115; Director General of Prisoners of Bangladesh, Nazimuddin Road, Dhaka and Others vs Md. Nasim Uddin, (2001) 6 MLR (AD) 149-151; Bangladesh Krishi Bank and Others vs Mohammed Hossain Bhuiyan, (1999) 7 BLT (AD) 308; Government of Bangladesh, represented by the Secretary, Ministry of Post, Telegraph and telecommunication and Others vs Mr. Abul Khair, (2004) 9 MLR (AD) 221-224, (2004) 56 DLR (AD) 183-185; Md. Shahinur Alam vs People's Republic of Bangladesh and Others, (1998) 3 MLR(AD) 20-22, (1998) 50 DLR (AD) 211-212; Bangladesh, represented by the Secretary, Establishment Division and Others vs Mahbubuddin Ahmed, (1998) 3 MLR (AD) 121-129; Abdul Aziz vs the Chairman, Board of Directors, Sonali Bank and Others, (1999) 4 MLR (AD) 401-402.

6.1.5 Re-calling the Decision and Order Re-hearing

Administrative Tribunals and the Administrative Appellate Tribunal have the power to make an order for rehearing but not for review,[52] though the question of rehearing was not answered in the Act of 1980 as well as in the Rules of 1982. Therefore, the research relies on case law; [53] wherein rehearing is allowed or not has been elaborately discussed. Here it elaborated the idea of rehearing meaning hearing again. Accordingly, it becomes clear that a rehearing is a new proceeding and it implies the hearing by the same Tribunal which heard the matter before.

An accepted principle of procedure demands that prior notice for rehearing is to be given to the parties who were present at the time of hearing of the matter earlier. This principle is in consonance with justice and is to be extended to the constitution of the adjudicating body when it comprises of more than one person. When the matter was heard earlier by all the Members of the Tribunal, rehearing ought to have been done by all of them, more so, when the decision announced earlier was reversed on rehearing. So, decision given by the Appellate Tribunal having not been made as per rule 6 (9) of the Administrative Tribunals Rules, 1982 it did not reach finality and the Tribunal did not become *functus officio*; it had jurisdiction as an

[52] According to James A Ballentine's Law Dictionary, "a 'rehearing' is simply a new hearing and a new consideration of the case by the court in which the suit was originally held, and upon the pleadings and depositions already in the case". Again, in Stroud's Judicial Dictionary (1974) it is stated that "a 'rehearing' is a new trial, and is not satisfied by merely reading the transcript of the first trial".

[53] See, Abu Taleb vs Government of Bangladesh and Others, (1993) 45 DLR (AD) 45-47. The case is with regard to compulsory retirement under the Ordinance No. LI of 1985 and it arises from Administrative Tribunal Case No. 22 of 1988 and accordingly the order of the authority leading the appellant to compulsory retirement was upheld. Administrative Appellate Tribunal Appeal No. 34 of 1988 was filed against the decision of the Administrative Tribunal. The appeal was allowed on 12.06.1989 and it was signed by the Chairman and the two Members but it was noted in the order sheet that the judgment would be in a separate sheet. The decision was recalled on 15.06.1989. On the date of rehearing dated 19.06.1989 the Chairman was absent and the appeal was heard by two Members of the Appellate Tribunal. At this stage appeal was dismissed. An appeal was filed to the Appellate Division of the Supreme Court against the decision of the Administrative Appellate Tribunal. The appeal was allowed on 31.01.1993 and the matter is sent back to the Administrative Appellate Tribunal for rehearing by its Chairman and two Members.

adjudicating body to recall the decision and order rehearing.[54] It is now a settled principle that decision has to be given according to rule 6 (9) of the Administrative Tribunals Rules, 1982. If not made accordingly, it will not reach finality and the Tribunal will not become *functus officio*. It will have jurisdiction as an adjudicating body to recall the decision and order rehearing.

6.1.6 Cost of Proceedings

In Bangladesh proceedings of Administrative Tribunals require no court fees, whereas filing fee is taka 100, wakalatnama taka 10,[55] process fee taka 10 for each defendant and some postal charges along with these. Laws in relation to Administrative Tribunals sufficiently incorporate provisions enhancing cheaper justice but ancillary laws fail to promote the goal of establishing justice. It is revealed that proceedings of the Tribunal are not cheaper as per expectation in practice, though it is generally said and accepted on the basis of law that administrative justice ensures cheap and quick justice. Indeed, procedure in law courts is long and cumbersome; and litigation is costly; and it involves payment of huge court fees, engagement of lawyers and meeting of other incidental charges. In response to the query that whether Administrative Tribunals provide cheap justice to aggrieved civil servants and whether costs and fee in Administrative Tribunals is much lower than costs involved in proceedings of ordinary law courts, mixed opinion was found. One, among three Members, showed his agreement with the statement of cheap justice and the other two were neutral but the opinion of these experts did not get support of Senior Division Officers of these three Tribunals. Senior Division Officer of Bogra opined that the low amount of fee and nominal charges of witnesses in Administrative Tribunals do not give them much support or benefit, as a good number of applicants belong to

[54] Ibid.

[55] This is not required if the applicant represents himself.

areas that are located on a distance of one to three hundred kilometers from the places where Administrative Tribunal Bogra works. This problem mostly happens in Bogra Administrative Tribunal as 16 administrative districts are within its territorial jurisdiction. He expressed his deep concern that applicants are spending thousands of money on traveling and boarding on each date of appearance before the Tribunal. Alternatively, Senior Division Officer, who is now an Acting Registrar, of Administrative Tribunal 1 pointed out another problem of poor aggrieved civil servants, that is, the high rates of lawyer's fee. It is a fact that in big cities lawyers charge is much higher than the lawyers of small cities. The same picture, which was explored from Administrative Tribunal 1, is applicable to Administrative Tribunal 3.

Moreover, Members who have neutral responses about the provision of cheap justice considered Administrative Tribunals a forum that neither provides cheap justice in all cases nor is expensive, but mostly depends upon the nature of a case. They added that if the aggrieved person or litigant lives in the same city where the Administrative Tribunal works, then he gets cheap justice but in a situation where the aggrieved party lives in a long distance away from the place of the Tribunal, then the aggrieved party does not get cheap justice. Besides, it was revealed during primary data collection that sometimes frivolous grounds addressed in Administrative Tribunals consume unnecessary time and raise costs; and hence, frivolous grounds raised by the parties require to be avoided to prevent consumption of unnecessary time and to make the procedure cheaper. At the time of giving a judgment, a record has to be kept of the time spent in addressing frivolous grounds raised by the parties as well as related costs and subsequently the parties be held liable for these costs irrespective of the result of the litigation.

6.2 Disposal Rate of Cases in Administrative Tribunals: Assessing Administrative Tribunal Cases and Sharing Experiences

Justice is much delayed in Common Law courts. Indeed, Bangladesh is no exception of it. According to the US State Department Country Report on Human Rights Practices, 2008, released on the 25th February 2009, corruption, judicial inefficiency, lack of resources, and a large case backlog remained serious problems in Bangladesh.[56] Limited number of courts, delays in disposal of cases along with the lack of any state facilities for legal aid, has virtually made the judicial system inaccessible for the vast majority of the poor and the disadvantaged.[57] In Bangladesh a civil suit on average takes more than five years to conclude, although the statutory timeline for concluding a trial is 340 days and the author has opined it after observing cases of 12 or 13 years starting from 1999/2000 to 2011.[58] Another author has agreed with it and expressed that a civil suit usually takes about ten to twenty years to be disposed of.[59] Support was obtained from elsewhere.[60] All the analyses, as stated above, are not applicable to our Administrative Tribunals and no doubt, proceedings of Administrative Tribunals are speedier in comparison to

[56] See for details, UNHCR, 'Country of Origin Information Report-Bangladesh, 2009', available at: <http://www.unhcr.org/refworld/docid/4a8d005b2.html>, last visited on 08.07.2014.

[57] Raushan Ara, "Normative and Institutional Responses to Torture in Bangladesh" (Unpublished Ph.D. Thesis, University of Dhaka, 2015), 237-238.

[58] See for details, 'Courts and Adjudication in Bangladesh', available at: <https://books.google.com.bd/books?id=Yk1sBQAAQBAJ&pg=PA481&lpg=PA481&dq=time+spent+in+civil+suits+in+Bangladesh&source=bl&ots=gck-SOgS7a&sig=Yo5TFqKwA8hpfUrOeXmAwP9aImA&hl=en&sa=X&redir_esc=y#v=onepage&q=time%20spent%20in%20civil%20suits%20in%20Bangladesh&f=false>, last visited on 03.09.15.

[59] Chowdhury, M. M. R., "A Study on Delay in the Disposal of Civil Litigation", *International Journal of Social Sciences* 14, no. 1 (2013): 28.

[60] See for details, 'Delay in Disposal of Civil Suits: Bangladesh Perspective', available at: <http://www.assignmentpoint.com/arts/law/delay-in-the-disposal-civil-suits-bangladesh-perspective.html>, last visited on 03.09.15.

that of civil courts. The findings of four years cases starting from 2009 to 2012 of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 are exhibited consecutively in tables: 1, 2 and 3.

Table: 1

Disposal rate of cases from the year of 2009 to 2012 in Administrative Tribunal 1

Period spent	2009 Percentage (%)	2010 Percentage (%)	2011 Percentage (%)	2012 Percentage (%)
Up to six months	22.03%	20(%)	12.09%	24.14%
More than six months to one year	8.47%	6.15(%)	10.99%	9.19%
More than one year to one year and Six months	18.64%	9.23(%)	14.29%	8.04%
More than one year and six months to two years	25.42%	23.07(%)	7.69%	19.54%
More than two years to two years and six months	16.95%	15.38(%)	8.79%	21.84%
More than two years and six months to three years		6.15%	14.29%	16.09%
More than three years to three years and six months	5.08%	4.62%	16.48%	1.15%
More than three years and six months to four years		1.54%	10.99%	
More than four years to four years and six months	1.69%	12.31%	4.39%	
More than four years and six months to five years		1.54%		
More than five years/ Not disposed of	1.69% (Disposed), 11.94% (Pending)	14.47% (Pending)	19.78% (Pending)	40% (Pending)

The results spread over Administrative Tribunal 1, as shown in the above table: 1, demonstrate that total 215 cases were instituted in Administrative Tribunal 1, Dhaka in 2009. Out of those cases, 59 were disposed of. The table did not mention about the result of 156 cases. After scrutinizing primary data it is found that a total of 148 cases were transferred either to

Administrative Tribunal 2 or Administrative Tribunal 3 and in fact, 8 in number were pending and its percentage was 11.94%. But to neglect the earlier part of the table in discussion is sure to deprive us of getting a full picture of how Administrative Tribunals are positioned in administrative justice system of Bangladesh. This is because from a practical point of view the earlier not only supplements but also in many cases supersedes the latter and thereby enables Administrative Tribunals to deserve honor for prompt disposal of suits. However, it is found that 22.03% cases were decided within the period of six months and this is in tune with the purpose of its establishment. Comparatively lower number of cases, which means, only 8.47%, as shown in the above table was disposed of from the period of more than six months to one year. On the other hand, 18.64% cases were decided from the period of more than one year to one year and six months and 25.42% cases were settled from the period of more than one year and six months to two years. During the time of more than two years to two years and six months, judgment had been delivered for 16.95% cases. The rows prepared for the rest of the period incorporates either few cases or nothing.

To what extent Administrative Tribunals play their role in prompt disposal of suits is certainly not easy to ascertain. While examining the column grabbing data of 2010, it is seen that total 199 cases were initiated in Administrative Tribunal 1, Dhaka and 65 were disposed of. A considerable number of cases were settled during the period of six months and this is 20% as shown in the first row of the above table. 23.07% cases were decided from the period of more than one year and six months to two years and 15.38% cases were disposed of from the period of more than two years to two years and six months. Judgment was delivered for 12.31% cases from the period of four years to four and half years which is noteworthy. Besides these, very few cases shown in the above table had been decided. Except the decided cases, the rest of the cases

were 134 in number. A total of 123 cases were transferred either to Administrative Tribunal 2, Dhaka or to Administrative Tribunal 3, Dhaka and only 11 were pending and percentage for it was 14.47%.

The results incorporated in the above table: 1 further reveal that 91 cases had been disposed of out of total 177 instituted cases in Administrative Tribunal 1, Dhaka in the year of 2011. Except the last two, all the rows show almost the same number of cases. 12.09% were decided within the period of six months, 10.99% within the period of six months to one year, 14.29% within the span of one year to one and half years, 7.69% within the period of one and half years to two years, 8.79% within the span of two years to two and half years, 14.29% within two and half years to three years time span, 16.48% within the period of three years to three and half years, 10.99% within the span of three and half years to four years, 4.39% within the period of four to four and half years. It appears that the highest number of judgments was delivered during the period of three years to three and half years and thereby the finding portrays significant limits in disposing of suits promptly. The results indicate that a total of 86 cases were undecided. Just like the two years, 68 cases out of 86 were transferred either to Administrative Tribunal 2, Dhaka or to Administrative Tribunal 3, Dhaka; and only 18 were pending and its percentage was 19.78%.

The findings mentioned in the column which spread over the year of 2012 necessitate an enquiry to determine promptness in disposing of suits. It is observed that 87 cases out of total 227 cases were decided in 2012 in Administrative Tribunal 1, Dhaka. No case was shown in the above table which took more than three and half years. It is astonishing and illuminating and the Tribunal deserves praise as the highest number of cases was decided within the period of six months. This is 24.14% and this is the largest percentage among the four years of Administrative Tribunal 1, Dhaka. The column also shows that most of the cases were settled from the period of

one and half years to three years. 19.54% cases were decided from the period of one and half years to two years, 21.84% cases were settled from the period of two years to two and half years, 16.09% were disposed of within the span of two and half years to three years. Considering factor here is that 140 cases are yet to be decided. Consequences of these cases are also same like the other three columns for the year of 2009, 2010 and 2011. A total of 82 cases were transferred either to Administrative Tribunal 2, Dhaka or to Administrative Tribunal 3, Dhaka; and 58 were still pending which constituted average 40% of the total number of cases instituted therein and not transferred later on.

Table: 2

Disposal rate of cases from the year of 2009 to 2012 in Administrative Tribunal Bogra

Period spent	2009 Percentage (%)	2010 Percentage (%)	2011 Percentage (%)	2012 Percentage (%)
Up to six months	1.49 %	8.82 (%)	25.48 (%)	13.25 (%)
More than six months to one year	13.43 %	25 (%)	49.04 (%)	25.30 (%)
More than one year to one year and Six months	26.87 %	41.18 (%)	5.73 (%)	31.32 (%)
More than one year and six months to two years	25.37 %	13.24 (%)	8.28 (%)	21.69 (%)
More than two years to two years and six months	16.42 %	10.29 (%)	3.82 (%)	6.02 (%)
More than two years and six months to three years	8.96 %		1.27 (%)	2.41 (%)
More than three years to three years and six months	2.99 %		2.55 (%)	
More than three years and six months to four years	2.99 %			
More than four years to four years and six months		1.47 (%)		
More than four years and six months to five years	1.49 %			
More than five years/ Not disposed of	6.94% (Pending)	2.86% (Pending)	90.75% (pending)	72.17% (Pending)

It is observed from table: 2 that 72 suits were instituted in Bogra Administrative Tribunal in 2009 and 67 suits were disposed of. It is worth mentioning that 26.87% cases were decided from the period of more than one year to one year and six months which is no doubt satisfactory. Besides, 25.37% suits were settled from the period of more than one year and six months to two years. 26.87%+25.37% = 52.24% of the total number of cases are decided from one year to two years. Only one case out of 72, that means, 1.49% case was disposed of in a period of six months. Cases which took more than two years are fewer in number. Only one case, shown in the above table in the way of percentage, took more than four years and six months to five years to be finally disposed of. Besides, 5 cases, which mean 6.94%, were pending and had not been decided till the collection of data and these are hampering the status of Tribunals on the question of quick disposal.

Turning the focus away from the year of 2009, we can now interrogate the data gathered in column 2010. It was found that 70 suits were instituted in Bogra Administrative Tribunal and 68 were decided in 2010. 41.18% cases were settled from the period of more than one year to one year and Six months and 25% were decided from the period of more than six months to one year. It is worth considering that 41.18%+25% = 66.18% were disposed of from the period of six months to one year and six months. Two years and six months was spent over the Tribunal for the disposal of most of the cases. Only one case was found which took more than four years to be finally disposed of. The results also show that two cases were pending and its percentage was 2.86 %.

In contrast, 157 cases were decided in 2011 out of total 173 instituted cases in Administrative Tribunal Bogra. One considering and praiseworthy factor found from the above table is that 25.48% cases were decided within a period of six months. 49.04% cases were settled from the

period of six months to one year. 5.73% and 8.28% cases were disposed of from the period of one year to two years. No case is found during the span of four years. It is noteworthy that 16 cases were hanging and percentage for it was 90.75 %. This last data of non-disposed suits confirms that the Tribunal is far from consistency with prompt disposal.

To explain data accumulated in column 2012, emphasis was placed like others to show rate of disposal of cases. It appears that 83 cases were disposed of out of total 115 instituted cases in the Tribunal in 2012. 13.25% cases were decided within the span of six months. From the period of more than one year to one year and Six months was required for the disposal of 31.32% cases; and from more than six months to one year was being taken for 25.30% cases. Large number of cases, that means, 31.32%+25.30% = 56.62% cases were settled within the period of one to two years and this is praiseworthy. It is to be noted that 21.69% cases were decided from the period of one and half years to two years. The rows dealing with the period of more than three years did not incorporate any case. But it is a serious concern that 32 cases were pending and this is not consistent with the data found from 2009, 2010 and 2011.

Table: 3

Disposal rate of cases from the year of 2009 to 2012 in Administrative Tribunal 3

Period spent	2009 Percentage (%)	2010 Percentage (%)	2011 Percentage (%)	2012 Percentage (%)
Up to six months	20.83%	13.04%	6.25%	37.5%
More than six months to one year	8.33%	13.04%	31.25%	12.5%
More than one year to one year and Six months	4.17%	13.04%	16.67%	16.67%
More than one year and six months to two years	8.33%	20.29%	12.5%	8.33%
More than two years to two years and six months	4.17%	10.14%	10.41%	12.5%

More than two years and six months to three years	12.5%	10.14%	4.17%	12.5%
More than three years to three years and six months		8.70%	8.33%	%
More than three years and six months to four years	12.5%	2.90%	8.33%	
More than four years to four years and six months	8.33%		%	
More than four years and six months to five years		1.45%		
More than five years/Not disposed of	20.83% (Disposed), 6.97% (Pending)	4.35% (Disposed), 13.25% (Pending)	21.31% (Pending)	37.5% (Pending)

As depicted in the above table: 3 covering Administrative Tribunal 3, 40 suits were settled in 2009 out of 43 filed suits and it indicates that only 3 were pending, the percentage of it was 6.97%. It is sound to call its performance satisfactory as well as praiseworthy as considerable number of suits, that means, 20.83% cases were settled within the period of six months. Conversely, appreciation for performance is destroyed when we look to the last down row. 20.83% cases consume more than five years to be finally disposed of and 6.97% cases were pending. The data extracted from this table is not only unique amongst the three aforementioned Tribunals for the cases to be disposed of within the period of six months, but also open to serious questions on the ground of prompt disposal. Whereas the highest number of suits were settled within six months as specified in the first row for the year of 2009 or the highest number of suits were decided or are undecided after the end of five years as specified in the last row, fewer suits were found settled in rest of the rows. To conclude, it can be said that where the Tribunal deals with transferred cases mostly, its performance in disposal of suits is not beyond criticism.

The next column dealing with the year of 2010 presents that Administrative Tribunal 3 settled 72 cases out of total 83 filed cases. It is observed that the first three rows include similar percentage

and consecutively this was 13.04%, 13.04% and 13.04% and totally it was 39.12%. Fourth row within the column of 2010 specifies that the Tribunal disposed of 20.29% cases within two years starting from one year and six months. It is certainly a praiseworthy achievement for the Tribunal to settle most of the suits, which is 59.41%, within the period of two years. Apart from these settled suits within the period of two years, ups and downs are visible in different rows so far as percentages of decided and pending suits are concerned. Indeed, it is difficult to put the Tribunal in a prestigious position from the context of prompt disposal when we look to the down row displaying those suits which consumed more than five years or still unsettled and consecutively their percentage was 4.35% and 13.25%.

Turning the focus away from the year of 2010, we can now analyse the data depicted in the above table: 3 highlighting the year of 2011. Better consistency with prompt disposal of suits has been ensured here during this year of 2011 when we look to first, second and third rows. Greater number of suits, that means, 31.25% cases were disposed of within the period of more than six months to one year and this number of disposed suits is really not insufficient. Though the number of suits, which was 6.25%, to be disposed of within the period of six months is not satisfactory, the suits settled within the span of more than one year to one year and six months, which is 16.67%, can make our grievance lenient. Other two rows which also need noting here and the rows depict that 12.5% and 10.41% cases consecutively consumed more than one year and six months to two years and more than two years to two years and six months. But the situation remains alarming when we look to the down row. A larger number of suits, which was 21.31%, were hanging and this makes us to believe that the Tribunal fails to maintain any consistent standard so far as prompt disposal of suits is concerned.

The last column presenting the data of 2012 explores the same percentage, which was 37.5%, for suits to be disposed of within the period of six months and for suits which were pending. It becomes clear that Administrative Tribunals on the one hand, did better performance and on the other hand, failed to face difficulty in disposing of suits promptly. Other rows depicting different ratios are not beyond the stage of importance. Noteworthy factor is that except 37.5%, all the suits were settled within this institutional atmosphere during the period of three years. Without questioning the role of Administrative Tribunals one row after another, it becomes apparent that its performance in this particular year is better than any other year noted above except the pending cases.

Adhering to prompt disposal, it was found that three Tribunals performed differently in settling suits. Undoubtedly, each case has to be decided on its own facts and circumstances. One suit may take one month to be disposed of while the other may consume five years to be finally settled. To substantiate the position, I discussed and analyzed varying reasons of delay encompassed in section 6.3 of this chapter. So far as quick disposal of suits is concerned, minimum coherence has to be maintained among all the Tribunals. However, how long Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 required disposing of suits within the period of 2009 to 2012, which is depicted in the following table: 4 with a purpose of making a comparative analysis.

Table: 4

Average time spent by Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 from the period of 2009 to 2012

Year	Administrative Tribunal 1	Administrative Tribunal Bogra	AdministrativeTribunal 3
2009	One year, five months and more than twenty seven days	One year and more than nine months	Two years, two months and more than thirteen days
2010	One year, ten months and more than twenty four days	One year, three months and more than eight days	One year, eleven months and more than two days
2011	Two years, one month and more than nine days	One year, one month and more than nine days	One year, seven months and more than eighteen days
2012	One year, six months and more than eleven days	One year, two months and more than four days	One year, one month and more than twenty nine days
Average Time spent for the above four years	One year, nine months and more than four days	One year, three months and more than ten days	One year, ten months and more than nineteenth days

After making a comparative analysis of consumption of average timing of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 during the period of four years, as displayed in the above table: 4, it is revealed that the former one spent average one year, nine months and more than four days for the disposal of each suit per year; one year, ten months and more than nineteenth days was required for the middle one; and the last one took average one year, three months and more than ten days for the disposal of each suit per year. The data shows that the performance of Bogra Administrative Tribunal is better than that of Administrative Tribunal 1 and Administrative Tribunal 3 from this point of speedy disposal, though the former one covers 16 districts within its territorial jurisdiction. Enormous number of cases has been transferred from Administrative Tribunal 1 to other two Tribunals situated in Dhaka and even then the challenge of quick disposal of suits remains the same. However, to get

the approximate percentage of decided and pending cases of these three Tribunals, the following table: 5 will be worth considering.

Table: 5

Decided and Pending Cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 from the year of 2009 to 2012

Year	Administrative Tribunal 1, Dhaka, Percentage (%) of decided cases	Administrative Tribunal 1, Dhaka, Percentage (%) of pending cases	Administrative Tribunal Bogra, Percentage (%) of decided cases	Administrative Tribunal Bogra, Percentage (%) of pending cases	Administrative Tribunal 3, Dhaka, Percentage (%) of decided cases	Administrative Tribunal 3, Dhaka, Percentage (%) of pending cases
2009	88.06%	11.94%	93.06%	6.94%	93.02%	6.97%
2010	85.53%	14.47%	97.14%	2.86%	86.75%	13.25%
2011	83.48%	16.51%	90.75%	9.24%	78.69%	21.31%
2012	60%	40%	72.17%	27.83%	62.5%	37.5%

The above table: 5 exhibits clearly that Administrative Tribunal Bogra is in a better position than that of the other two from the view point of decided and pending cases. Percentage of decided and pending cases of Administrative Tribunal 1 and Administrative Tribunal 3 has been made without counting the transferred and execution cases for the purpose of accuracy. It was further strengthened by taking interviews of Members of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 as they are directly involved in deciding cases. The respondents were asked at first about the primary objectives of Administrative Tribunals, that is, the provision of speedy justice to aggrieved civil servants. The aforementioned three experts strongly agree that Administrative Tribunals are the forums that provide speedy justice to aggrieved civil servants, as compared to civil courts. Two experts agreed with the statement that Administrative Tribunals in Bangladesh fail to provide speedier justice and the other was neutral.

So the received responses are neither completely in favour of the statement nor totally against it. During personal interaction with the expert who was neutral told that the time limit in Common Law courts is not less than five years, so the period of two years or at the most three years is a reasonable time for the disposal of a suit. On the other hand, the experts, who told that Administrative Tribunals in Bangladesh fail to provide speedier justice, argued that it being a special forum, the provision of speedy justice must not take years in the disposal of a case. He who opted for the neutral opinion argues that Administrative Tribunals are neither providing speedy justice in all cases, nor the justice is always delayed. If the case is of a serious nature and the respondent official or authority is interested in delaying the case, the same may take years in disposal, but in dissimilar situation suits may be disposed of in a period of one year or two years at the most.

6.3 Examining Causes of Delay: Content Analysis and the Critics

Assimilating initial administrative decision-making with implementation and Tribunals with adjudication tend to overlook the fact that by adjudicating upon disputes between individuals and administrative agencies, Tribunals are one amongst many ways of implementing policy.[61] If so, then it has to be simplistic, as implementation tends to favour the promotion of social objectives whereas adjudication tends to favour the promotion of individual interests.[62] Therefore, Cane sees implementation and adjudication as the essentially same function performed to different ends and with a different point. Though this statement made by Cane creates huge debate, but there is no doubt on the importance of its speedy justice as to get speedy justice is a human right.

[61] Cane, P., *Administrative Tribunals and Adjudication* (Oxford: Hart Publishing, 2009), 275.

[62] Ibid, 276.

This speedy disposal is hampered to some extent due to drawbacks or shortcomings which were discussed in the following.

6.3.1 Varying Reasons of Delay: Focusing on Relevant Legislations

The Administrative Tribunals Act as well as the Administrative Tribunals Rules did not mention as to within how much period suits of Administrative Tribunals have to be finished. But Tribunals were established with a view of mitigating the sufferings of the victim by providing quick relief. Due to lack of this period, all suits are not disposed of finally very quickly as shown in tables 1, 2, 3, 4 and 5. Overall, because of this lacuna, the government is not getting service from the person against whom the proceeding is drawn, the family of the victim is falling into trouble and the department is suffering loss. Maximum period compelling Administrative Tribunals to end up proceedings has to be laid down in the Act of 1980 and the Rules of 1982 whereby the purpose of prompt disposal of suits will be promoted. The introduction or addition, whatever it is, can be derived from section 216 of the Bangladesh Labour Act, 2006, wherein time limit not more than sixty days following the date of filing the case has been prescribed for final disposal of suits relying on the Code of Civil Procedure, 1908. Accordingly, maximum six months following the date of filing the application needs insertion in the Act of 1980.

It is undeniable that after finishing Administrative Tribunal suits, appeal lies to the Administrative Appellate Tribunal, then to the Appellate Division and two successive appeals consume unnecessary and unexpected period. It is noteworthy that Administrative Tribunals all over the world including our own do not allow appeals just to promote individual interests rather they are trying to make correct decisions concerning appellants' eligibility under government programmes which implement the underlying administrative policy. After finishing all these

steps, the conflict can be resolved with or without resort to execution suits. Execution suits have to be filed for the same matters for the purpose of execution as Administrative Tribunals of Bangladesh are not granted the power ordering the administration to take such measures as the Tribunal deems necessary to execute its judgments. After observing cases of four years starting from 2009 to 2012 of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3, the data concerning the number of execution suits filed in those Tribunals were depicted in the following table: 6.

Table: 6

Number of execution suits filed in Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3

Year	Administrative Tribunal 1 (AT 1)	Percentage for execution suits of AT 1	Administrative Tribunal Bogra (AT Bogra)	Percentage for execution suits of AT Bogra	Administrative Tribunal 3 (AT 3)	Percentage for execution suits of AT 3
2009	23	34.33 %	6	8.33 %	6	13.96 %
2010	14	18.42 %	4	5.71 %	5	6.02 %
2011	2	2.19 %	7	4.05 %	1	1.64 %
2012	4	2.76 %	34	29.57 %	5	12.5 %

Though the number is at a moderate level, the existing system opens the door for the concerned departments to lengthen proceedings by taking advantage of limitations mentioned in the Act of 1980 as well as the Rules of 1982. Lethargy shown by employers is a daily concern for every case including execution suits filed in Administrative Tribunals; and the lawmakers fail to keep this in mind, while making relevant laws, so far as execution suits are concerned. Whereas the Code of Civil Procedure, 1908 is not applicable in many respects except those recognized by section 7 of the Act of 1980, execution suits are run purely, as far as practicable, by the

provisions of the Code of Civil Procedure, 1908.[63] Accordingly, rules 32, 37 and 38 of Order XXI under the CPC, 1908 covering execution proceedings, which are not simple, have to be addressed as these provisions apply to A.T. execution suits. Some steps are required to be added with a view of defending resistance to quick disposal concerning execution suits. A reconciliation between the Code of Civil Procedure, 1908, which provides lengthy procedure as generally and mostly said, and the prompt disposal has to be introduced relying on an acceptable way. Rule 7 of the Administrative Tribunals Rules of 1982 has to be modified. Simple procedure for execution needs to be adopted. It should be like if steps of execution were not implemented within a period of 60 or maximum 90 days, then contempt proceeding would have been started against the head of the department concerned and this provision needs insertion in section 10A of the Administrative Tribunals Act, 1980. Under this section victim would apply. Administrative Appellate Tribunal requires to be given the power to deal with these contempt proceedings. The practitioners have to exercise these proceedings reasonably and not to exercise these in circumstances where the parties have not been given sufficient notice or time to comply with the Tribunals' orders.

Besides, the Administrative Appellate Tribunal has the power of inspection,[64] but it has no supervisory power. As the Administrative Appellate Tribunal has no supervisory power, it fails to pay special attention to the dispatch section wherefrom summons and notices are sent to the parties and cannot make Administrative Tribunals answerable for unnecessary delay. Whatever limitations engulf the Administrative Appellate Tribunal, it is neither recommended nor deserved Constitutionally to hand over the supervisory jurisdiction of the High Court Division to the

[63] See above, note 34, rule 7.

[64] See above, note 7, section 7C.

Appellate Tribunal. In this regard, when queries were sought from the respondents, it was expressed that Administrative Tribunals sometimes allow the lawyers for unnecessary adjournments. During hearing of suit and appeal, the dates for next hearing in some cases exceeds one month. Surprisingly, the Act of 1980 as well as the Rules of 1982 ignore mentioning the maximum number of days for adjournment which is visible in section 216 (6) of the Bangladesh Labour Act, 2006 allowing adjournment of the hearing on the prayer of any party for not more than seven days in all and on the prayer of both the parties for not more than ten days in all. The omission of this type of provision exhibits the spirits and mindsets of legislatures which is divorced from prompt disposal of applications. Hence, provisions allowing adjournments and not allowing adjournments beyond prescribed number of days like section 216 (6) of the Bangladesh Labour Act, 2006 require to be inserted in rule 6 of the Rules, 1982 to make it consistent with the concept of speedy disposal of applications for which Administrative Tribunals have been established. The insertion will, quite clearly, oust the necessity of giving supervisory jurisdiction to the Administrative Appellate Tribunal and alongside this mission, reduce unnecessary delay. Furthermore, the Act is equipped with the provision for inspecting works of Administrative Tribunals. This paves the way for inspection done by three persons who compose the Administrative Appellate Tribunal. This is explicitly and practically challenging and not feasible on the part of three persons to go together especially outside Dhaka as four Tribunals is working beyond Dhaka. This power requires to be given only to the Chairman to make the provision active and running.

Prompt disposal is also challenged due to existing system as it did not work properly, keeping a space for unnecessary delay. Problem does not lie in the provision permitting transfer of applications from one Tribunal to another, whenever such transfer is considered as just and

convenient for the proper dispensation of justice.[65] All the plain data of Administrative Tribunal 3 extracted from its registry book was gone through and findings were displayed in the following table: 7 within a specific time span.

Table: 7

Number of originally filed and transferred cases of Administrative Tribunal 3 and their percentage

Year	Originally instituted cases	Percentage of originally filed cases	Transferred cases	Percentage of transferred cases
2009	14	33.56 %	29	67.44 %
2010	11	13.25 %	72	86.75 %
2011	8	13.11 %	53	86.89 %
2012	10	25 %	30	75 %

Once the data, as shown in the above table: 7, is seen in specific Administrative Tribunal 3, it appears that transfer of cases permitted under section 7 (7) is a serious concern. Most of the cases dealt with by the Tribunal 3 are transferred. The Administrative Appellate Tribunal is authorized to transfer it when miss cases are filed over there. It is undeniable that when the cases are transferred from one Tribunal to another, the cases are renumbered in the registry book of the concerned Tribunal and started from the beginning. It would not be proper to be unmindful of the consumption of lots of unnecessary time and one of the major impediments to quick disposal of suits. However, provisions for transfer and withdrawal of suits, appeals and other proceedings are enumerated in section 24 of the Code of Civil Procedure, 1908 and accordingly, the High Court Division and the District Judge is authorized to exercise powers. Whatever mentioned in section 7 (7) of the Act of 1980 is sound and it reveals the intention of legislators implicated in the said provision which is to bring justice in all respects.

[65] Ibid, section 7(7).

Both the provisions under two different laws resemble each other. Nonetheless, the two provisions are, in practice, responding differently. Transfer of cases in civil suits from one court to another is a serious matter because it indirectly casts doubt on the integrity or competence of the judge from whom the matter is transferred. Balance of convenience of the parties,[66] bias or embarrassment of the court,[67] intricate and complicated question of law of general public importance and any other cogent ground can only justify such transfer ensuring equal justice to both the parties.[68] Whereas in the arena concerning our Administrative Tribunals, it was found practiced to reduce burden of the Tribunal from where it was transferred. Under both the provisions, a transfer cannot be made from one forum to another unless the suit has been brought in a first instance forum having jurisdiction to try it.

That is why, re-structure of the territorial jurisdiction of Administrative Tribunal 1 and Administrative Tribunal 3 needs to be emphasized as these are the forums of first instance. Only two or three districts are required to be kept under the jurisdiction of Administrative Tribunal 1 with a view of reducing its workload and the rest to be included within the territorial jurisdiction of Administrative Tribunal 3. This will enhance speediness of justice as suits then will be automatically filed over there and no unnecessary time will be spent for the purpose of transfer. On the other hand, the problem does not exist in Administrative Tribunal Bogra, which covers more districts than other Tribunals existing in our country, but it is astonishing that lesser number of suits is filed here in comparison to Administrative Tribunal 1. The fact is that no case is transferred from this Tribunal to others and all suits initiated in Bogra Administrative Tribunal are disposed of over there and number of suits is higher from this context. Disposal rate of cases

[66] Deepti Bhandari vs Nitin Bhandari, (2012) AIR (SC) 326.

[67] Islam, M., *The Law of Civil Procedure* (Dhaka: Mullick Brothers, 2015), 207.

[68] Tambia vs Rouf, (1994) DLR (HCD) 521; Sadrul Amin vs Asaduzzaman, (1999) BLC (HCD) 340.

in this Tribunal is not dissatisfactory as very few cases were pending, as displayed in table: 5. All the examinations, as discussed so far, reveal that no change with regard to this issue of speedy disposal is required for Administrative Tribunal Bogra.

Furthermore, it is found that there is a procedural delay. Applications consume lesser time to be disposed of in comparison to civil suits, as displayed in tables: 1 to 4, as the Tribunals follow summary procedure. Long time is spent when leave to appeal is made before the Appellate Division of the Supreme Court. Then A.T. suits fall under the normal procedure which basically takes long time to settle the disputes. Here it is necessary to mention that limitation period for making an appeal to the Appellate Division is 30 days according to Order 12, rule 3 of the Appellate Division Rules, 1988 read with section 6A of the Administrative Tribunals Act, 1980. It is a serious concern that after long period when execution suits are filed or appeal of the Administrative Appellate Tribunal is disposed of, then appeal to the Appellate Division is possible to be made after bar of limitation as the law does not restrict the right to file leave petition after bar of limitation; and this is responsible for prolonging the sufferings of the victim. Rigid rules require to be inserted and followed for the appeal to the Appellate Division so that no appeal could be filed after bar of limitation.

Another point which further concerns us is that when appeal is made to the Appellate Division of the Supreme Court during the pendency of A.T. execution suits, execution proceedings are stayed until receives decision of the AD which ultimately spoils the mission of establishment of Administrative Tribunals. Provision like section 31 of the Money Loan Court Act, 2003 has to be inserted so that proceedings of Tribunals will be continued until the higher court gives stay order. Like the Money Loan Court, this is a special Tribunal. If this provision were inserted, it would reduce wastage of time in unnecessary appeals.

In addressing varying reasons of delay, it was found that Administrative Tribunals fail to use one of the tactics, which is related so far with jurisdiction of Tribunals, to make its proceedings faster. Providing compensation to the victim by the government may put considerable impact on this issue of quick disposal of suits. Government departments will then be shaken and think twice before harassing the victims and this will reduce sufferings of the victim and make the proceedings quicker. A perusal of the Act of 1980 reveals that there is no such provision. The provision of providing compensation to the victim (in most of the cases the service holder who is deprived of his service benefits) by the government (Department concerned) requires to be inserted. Furthermore, as mentioned in chapter five, Administrative Tribunals are not authorized to impose penalty on the departments for breaching service laws; and this lacuna hinders speedy disposal as the authorities do not feel threatened of the danger of imposition of fine.

Having realized the importance of ensuring prompt disposal of suits, the nature of proceedings followed in Administrative Tribunals was gone through. It was found that the procedure followed by Administrative Tribunals is inquisitorial and it is known to all that a party under the inquisitorial system does not suffer because of the inability to engage a good lawyer to plead the case. The procedural simplicity of the Act is appreciated from the fact that the aggrieved person can also appear before it personally and the Government can present its case through its departmental officers or legal practitioners.[69] The practice is totally opponent to the provision and it is to engage a good lawyer. This reason led the proceedings to be expensive for the party who is against the government. The Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972 outlining the Code of Conduct has to be enforced strictly to eliminate the problem.

[69] Rule 6 (3) of the Administrative Tribunals Rules, 1982 states that "on the day fixed for hearing of the application, the parties to the dispute shall appear before the Tribunal in person or by persons authorized by them in that behalf".

Furthermore, the lawyers working on government side prolong A.T. suits with a view of taking money because for each date they receive a fixed amount of taka 300. This payment as daily allowance is given to all lawyers, who are working as panel advocates on government side and practicing in all Tribunals according to Rules of Solicitor Wing. The fee or allowance noted just in the preceding sentence to lawyers requires to be raised or it should be package money for a single dispute to mitigate the sufferings of the victim as well as to make the proceedings cheaper. Nevertheless, it is also true that sometimes the parties fail or late to give fee and this also works as a ground of prolonging the process.

Sometimes frivolous grounds addressed in Administrative Tribunals lead the procedure to be time consuming and expensive. To prevent consumption of unnecessary time and to make the procedure cheaper, frivolous grounds raised by the parties have to be avoided. At the time of giving a judgment, a record requires to be kept of the time spent in addressing frivolous grounds raised by the parties as well as the related costs and subsequently the parties be held liable for these costs, irrespective of the result of the litigation.

The greatest advantages of the procedure followed in Administrative Tribunals is that the control of proceedings is taken away from the parties and given to the judge who ceases to be a mere spectator of a duel going on between the parties counsel, who do not seek so much to through light on the case as to establish the correctness of their version. The role of a Judge in the Administrative Tribunal is to find out the truth and the system of written procedure affords a guarantee against surprise and ensures that the case will be seriously studied by the judge before decision. No decisive argument is saved under this procedure for the opportune moment to win the case by surprise. As the judges in the name of Members play a vital role in Tribunals, that is why, they need to be strong and this will eventually work for the promotion of prompt disposal

of disputes. Indeed, the petition which is liable to be rejected has to be rejected outright and in achieving this quality, the concerned Members have to keep themselves away from lack of knowledge and boldness. Otherwise he will be subject to strong personality of lawyers and permit unnecessary adjournments which will lead to delay disposal.

In whatever way we look at a famous maxim, namely, 'ignorance of law is not an excuse', it has a great value. But the government did not take the responsibility of making people educated regarding law. Most of the administrative officers are not aware of their duties and responsibilities towards their subordinates and these are liable for the creation of discrimination, injustice which lead to departmental proceedings and last of all to litigation in Administrative Tribunals. During all these stages their enmity, jealousy and harassing mentality subsist.[70] It is a matter of regret that government is getting involved in a suit because of ignorance and incapacity of administrative officers. Moreover, it is a Constitutional obligation of every public servant to serve the people.[71] In conformity with this Constitutional provision, Bangladesh Public Administration Training Centre (BPATC) was established in 1984. As government recognized training as an effective means of human resource development, that is why, BPATC has its firm commitment to gearing up and orienting training activities in order to enhance administrative and management capacity of different levels of people engaged in government or semi government institutions. This institution operating in the public sector will devise need based, results-oriented and market responsive training programmes aimed at building professionalism of public servants at different levels.[72] Therefore, administrative officers are trained on different issues including

[70] Sikder, J. U., *the Rules on Service and Related 1500 Cases* (Dhaka: Book Syndicate, 2015), 39.

[71] See, the Constitution of the People's Republic of Bangladesh, article 21.

[72] See also, 'Public Administration Training Policy', available at: <http://www.bpatc.org.bd/images/document/39_ProshikkhanNitimala.pdf>, last visited on 10.02.16.

Administrative Tribunals but more emphasis is required to be placed on their obligations towards departmental proceedings as well as to proceedings of Administrative Tribunals as well on basic requirements of Natural Justice. Progressive friendly attitude towards subordinates requires to be emphasized to assume greater enabling and facilitating role in the performance of their duties during inquiry proceedings and during continuance of suits in Administrative Tribunals. They have also to be trained on their rights and remedies which they can get through the help of Administrative Tribunals. This training will reduce, if conducted properly, on the one hand, administrative complications, grievances among the government servants, institution of suits in Administrative Tribunals and on the other hand, make the functioning of Tribunals speedier. In this regard government can play a pioneer role to foster awareness about the rights and duties among the government servants through BPATC from the very beginning of their service.

After all, if the government would response according to section 80 of the Code of Civil Procedure, 1908, many suits would not arise. It is worth mentioning that government did not respond even if legal notice was served by senior advocate Dr. Rafiqur Rahman.[73] Therefore, prompt response on the part of the government is required not only in departmental proceedings but also during the pendency of suits in Administrative Tribunals for quick disposal of litigations.

6.3.2 Opinion of Experts: Categorizing Problems of Prompt Disposal of Suits

The findings of research underlined causes of delay. The core issues to be investigated with are their opinions on reasons of delay and possible recommendations for overcoming the lapses. In this regard concentration was put on practical and implementation barriers. While a query was

[73] 8 ATC 567.

putting forward during the course of interview and primary data collection, most of the respondents documented more than one response in tracing out the causes of delay; hence the number of responses is more than the number of respondents.

One of the respondents expressed that though the main problem of Administrative Tribunals is with regard to its execution proceedings, but reasons of this problem depend on total scenario of the country. So the problem can be overcome by changing total scenario of entire court structure. He identified reluctance of government as one of the reasons of delay of executing the decrees passed by Administrative Tribunals. He expressed concern in lack of good intention of government and thought that if the officers of the concerned department would have been sincere, most of the problems would overcome. Sometimes, government departments after wasting long time execute the decree because of show cause notice sent by Administrative Tribunals. Sometimes, they do not execute the decree in the same way as the judges direct. For them, lack of sincerity leads to want of promptness. This want of promptness exists even when the decision is awarded by the Appellate Division of the Supreme Court. That means, it is routinely honored more in violation than in compliance. It is to be remembered that they are duty bound to obey the decision when the verdict comes from the Appellate Division. He further put emphasis on another point and that is the litigants who are mainly higher rank officials can get justice easily because of lobbying, whereas those who are not in the positions, their applications remain pending years after years due to lack of lobbying. This attitude is inconsistent with prompt disposal of suits and needs modification.

Besides, another respondent blamed procedural delay, as discussed above, which rests upon leave petition wasting unnecessary time and prolonging the sufferings of the victim. The view appears to be endorsed by lots of cases and appeals which are made after bar of limitation. So far

as causes of delay are concerned, he shared and identified the technique of stay of proceeding during the pendency of A.T. execution suits, as noted in the preceding section. Moreover, one of the stakeholders expressed concern in the application for restoration of leave petition which is dismissed and this was placing the Tribunals in the status of courts from the point of view of delay disposal, thus jeopardizing the guarantees provided by law to safeguard the rights of parties and simultaneously opening the door for the Head of the departments from the amenability of Administrative Tribunals for long time.

Discussing causes of delay, the Chairman of the Administrative Appellate Tribunal recommended for the exercise of contempt proceeding as a measure to put pressure on the departments to comply with the decision of Tribunals. Without questioning this recommendation, I tried to gather as to how many contempt proceedings within specific time span was filed. Surprisingly, no contempt proceeding was filed in successive three years starting from 2009 to 2011. Only one contempt proceeding was initiated in 2012 but the data found was no longer illuminating as the case was discharged, even a show cause notice was not served.[74] So far as possible initiatives preventing delay disposal is concerned, all the experts unanimously emphasized the need for insertion of time period for the disposal of execution proceedings. They argued that the person against whom the decision is awarded may be dishonest, disobedient but he comes with competitive exam, so time period for the disposal of execution proceedings has to be inserted to give justice to the victim as this is a matter of his bread and butter.

The issue further requires me to look into service of summons and notices. On this question the experts were of the opinion that the procedure of Administrative Tribunals causes delays, that is,

[74] Rafiqul Haider vs Ministry of Food, Miscase No. 01/12.

summons and notices are not sent in a proper way. The Chairman of the Administrative Appellate Tribunal frankly acknowledged that there is not sufficient Process Server in all Administrative Tribunals and no Process Server and Registrar at all in Administrative Tribunal 3. This is also responsible for increasing the gravity of the problem. Furthermore, it was opined that the petition which is liable to be rejected outright continues in several dates due to lack of strictness of judges and afterwards is rejected and this consumes unnecessary time. In analyzing the statement he pointed out that judges are not strict due to lack of knowledge, lack of honesty and alternatively due to strong personality of lawyers. At the end of the query, in response to 'any other' cause, it was told that in most of the cases the lawyers are responsible for delay because they request for unnecessary adjournments disobeying the Code of Conduct under the Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972 with a view of taking money which ultimately causes harassment of the parties. In some cases the applicant himself is liable for delay disposal as he is not interested to continue proceedings.

6.4 Summary and Assessment

The present chapter as a whole has demonstrated that troublesome reality is now being faced by Administrative Tribunals, leaving a room highlighting problems which were unaddressed since its inception. Before summarizing hassles, it is worth noting that jurisprudential concept of *locus standi*, so far as Administrative Tribunals are concerned, is not wide and comprehensive, even then it need not be extended due to its short domain of jurisdiction as to subject matter. It is a matter of no doubt that necessary change has to be brought in the Government Servants (Discipline and Appeal) Rules, 1985 to keep the Tribunals away from relying on the messy clause 'deemed to be'. Alongside, there is no scope to condone delay pursuant to relevant provisions, as depicted in section 6.1.1. Furthermore, the Act of 1980 does not mysteriously fix

period for restoration of a case or setting aside an *ex parte* order. Whereas most of the litigations in Tribunals are concerning lack of procedural fairness in departmental proceedings, therein the principle of 'Natural Justice' is not recognized. These lapses seriously endangered the future of this justice system but neither the legislature nor the judiciary has so far taken any serious step to check these realities. Therefore, scattered procedural complexities have been accommodated in this chapter based on the Act of 1980 as well as the Rules of 1982; and cases and interviewing have been used as the point of reference, but at the same time earnest effort has been spent for finding out solutions, guided by expediency and tradition.

Chapter Seven
Conclusion

The main rationale of undertaking the thesis is to do a comprehensive account of efficacy of Administrative Tribunals from the view point of jurisdictional, procedural and structural issues. In historical examination, it was attempted to go beyond the border of Bangladesh as Administrative Tribunals are not an original invention of Bangladeshi political system. Such Tribunals are now well established in all democratic countries of Europe as well as the United States of America and Britain, which, until a few decades ago, looked upon Administrative Tribunals with suspicion has, in recent times, recognized their beneficial role and therefore, has set up many of them. It is admitted herein that the experience of Bangladesh during the past three decades and more has demonstrated that Administrative Tribunals have an effective role to play in the country which has embarked upon a programme of rapid socioeconomic change. Besides, it appears that these Tribunals are now developing into independent institutions endowed with prestige and are gradually gaining the confidence of the public and the instinctively distrustful of lawyers. Nevertheless, improving or developing is a never ending function and that is why, it was purported to speculate possible future developments to keep these Tribunals away from critical phases and to weather many storms described and analyzed in chapters four, five and six with a view of making these Tribunals more stable than now.

Before summarizing the findings of substantive chapters, it is required to recapitulate that the clause ‘efficacy of Administrative Tribunals of Bangladesh’ was chosen purposefully. Whether Administrative Tribunals are efficient or not depends on the achievement of advantages for which these were established. These Tribunals have distinct advantages over courts and ensure

economy, accessibility, freedom from technicalities and expedition in proceedings. However, the summary assessment of all chapters and observations has been displayed in the following.

It was critically examined in chapter two theories relevant to Administrative Tribunals and with that end in view, focused on 'Rule of Law', 'Separation of Powers', *Ultra Vires*, 'Natural Justice', and 'Legitimate Expectation' as modes of controlling administrative discretion, though in some states these were not properly channelized. It is admitted that the Tribunals have become independent protectors in different countries of the respect of 'Rule of Law' by public entities. With that focus in mind, the picture of Administrative Tribunals from the viewpoint of four countries, namely, France, India, England and Pakistan was portrayed and earnest effort was spent in order of importance on discussion of structural, jurisdictional and procedural issues. Afterwards, an observation was developed on the basis of literature review and accordingly standards were set that have to be maintained for the protection of justice seekers against the arbitrary administrative discretion of state.

It is a hope that the standards accommodated in chapter two would ensure minimum guarantees for preserving the interests of the concerned group; and so, if an Administrative Tribunal of a country does not cope up with the standards, the country would fail to provide an effective Administrative Tribunal. Theoretical scholarship and literature review, in the discussed chapter, contributed for framing standards, which were based on the question whether the prevailing Administrative Tribunals should be rethought, since the scenario of Bangladesh that justifies the present set-up might not be unique only for Bangladesh. It was further as a whole demonstrated and argued in chapter two that efficacy of Administrative Tribunals of Bangladesh regarding jurisdictional, procedural and structural issues remains an ever-present problem requiring

context-specific solutions. There is no magic-bullet standards, as context blind analyses of many dominant theories ask us to believe, for these problems.

The next chapter three was started with the development of Administrative Tribunals and in doing this, the historical background from the French Constitution of 1799 till the Administrative Tribunals Act, 1980 was taken into consideration. It is evident from chapter three that prior to its establishment, people working in the service of the Republic or statutory public authority were being regulated according to their respective service laws and had to approach courts for redressal of their grievances. Huge time was required to dispose of those cases as courts were already overburdened and the procedure followed over there was extremely cumbersome and time consuming. The cost of getting justice was also too high and hence remedy was beyond the capacity of lower level employees. However, the analysis shows that the institution of Tribunals is a by-product of the history. The concept of welfare state had emerged due to expansion of state activities in various fields and these had rendered inevitable to create Tribunals for the disposal of disputes between the government on the one hand, and persons in the service of the Republic or statutory public authority on the other. Administrative disputes are, of course, distinct from regular disputes and that is why, some sort of extra machinery is required to settle these. This thinking led our parliamentarians to create the Administrative Tribunals Act, 1980.

It is revealed that persons in the service of the Republic or statutory public authority did not welcome these Tribunals at first, as they were used to the Constitutional protection of writ. Again, our people have less faith on the political parties and so persons serving for the Republic or statutory public authority thought its creation as a political trick and a mechanism of overpowering the bureaucracy to his arbitrary will. Because of this tendency, lots of writ petitions were filed even after its establishment, as displayed in section 5.2.3, and this distrust

has now been reduced almost completely. Now if a writ petition is filed, the High Court Division rejects the writ as is not maintainable and pronounces that Administrative Tribunals have exclusive jurisdiction in deciding the matter coming under section 4 of the Administrative Tribunals Act, 1980. Beside this historical development, the clauses 'Tribunals' and 'Administrative Tribunals' were clarified. The chapter was ended up with the critical examination of laws concerning powers, composition, jurisdiction, procedure including departmental proceedings. Further measures, namely, first and second appeal, review, writ, in line with A. T. suits, were also analyzed. Apart from the discussions noted above for controlling administrative authorities through the forum of Administrative Tribunals and not to allow authorities to act arbitrarily, two techniques of supervision, namely, preparing ACR and inspection made from time to time by the judges of the HCD as per direction of the Chief Justice, over Tribunals are employed. This supervision over this alternative forum conducted by the HCD under article 109 of the Constitution is required to ensure justice.

Before the thesis embarks on a detailed discussion of suggestions, it is expedient to recall at the threshold the findings of next three substantive chapters, namely, four, five and six, that will guide in providing solutions. It was demonstrated in those chapters taken together, as to how Administrative Tribunals responded to standards set in chapter two. It was admitted over three chapters that to make Administrative Tribunals efficient in all respect is a continuous process, though some immediate actions need to be taken. In chapter four, detailed methodology, that spread over the next two chapters, namely, five and six including the present one, was contained under the heading titled 'Planning and Preparation'. It was attempted in the chapter to find out and display several reasons of adopting the term 'Members' instead of 'Judges'. It scrutinizes the office of everyone, from top to bottom, from the Chairman to Swiper. Emphasis was drawn on

identifying adjudicators best suited for providing decision, their terms and conditions of service, devices for increasing its specialization, insufficiency of manpower, Tribunals panels, reporting procedure and preservation of documents. Surely, in choosing best suited adjudicators, concentration was put on individuals who will have the inclination to become well-versed in the field of 'service jurisprudence' unless they were already familiar with the same. Furthermore, the chapter was designed to capture and elaborate institutional aspect of 'Separation of Powers' from the context of Administrative Tribunals of this domain. As understood accordingly, whether this aspect is being maintained or not was critically evaluated. Nevertheless, it is difficult to determine the practical significance of this institutional aspect of 'Separation of Powers'. No single aspect, institutional and functional, of the relationship, between the executive and the legislature on the one side, and the Tribunals on the other, is critical on its own, and the way the various aspects are handled may vary significantly as between systems in all of which the Tribunals as part of the judiciary are perceived of to be sufficiently independent. Not only structural deficiencies but also strategies and alternatives for compromising and overcoming obstacles were prioritized. It was revealed thereby that Administrative Tribunals are more independent rather than efficient, though these two are inter-related.

The clauses 'Service of the Republic' and 'Statutory Public Authority' were explained and clarified in chapter five at its beginning to make the jurisdiction as to subject matter of Tribunals specific and in doing this, doctrine of 'Pleasure' was highlighted. Furthermore, seven sub-sections under a single section, titled, 'Maintainability of Application and Writ before Administrative Tribunals and the High Court Division Respectively' were encompassed revealing that the Tribunals now exercise the power of judicial review of administrative actions. In respect of service matters, the Tribunals exercise this power of judicial review as a forum of

first instance; the appellate power of judicial review has been given upon the Administrative Appellate Tribunal; and the final power of judicial review has been given upon the Appellate Division of the Supreme Court on limited matters only on the question of law. Indeed, it is not a civil court; neither is it co-equal to the HCD. These Tribunals are now explored as alternative mechanisms under article 44 (2) of the Constitution in place of the HCD for providing judicial review in respect of the terms and conditions of service of the Republic and other selective public organizations. Constitutional and statutory provisions neither support nor prohibit their performing a supplemental role. Surely, nature of jurisdiction of a Tribunal has been barring the judicial review of the HCD. In line with this, justification for removing the HCD's jurisdiction over service disputes was revisited. The power of judicial review in respect of legislative action has been given to the HCD under articles 7 (2), 26, 44 (1), 101 and 102 (1) of the Constitution and has not been conferred upon the Tribunal by subordinate legislation. The Tribunal has its limitations in exercising powers of judicial review. Issues of law, that means, the matters which challenge the *vires* of a law on the ground of its Constitutionality and issues concerning fundamental rights mentioned in Part III of the Constitution cannot be determined by the Tribunals as these are within the jurisdiction of the High Court Division. If a public servant or an employee of a statutory corporation wants to invoke his fundamental rights in connection with his terms and conditions of service, he must lay foundation in the petition of the violation of the fundamental rights by sufficient pleadings in support of the claim.

As a supplement to the institutional aspect of the 'Separation of Powers', demonstrated in chapter four, chapter five draws attention to functional design of 'Separation of Powers'. The existing framework becomes a recipe for inconsistent jurisdiction as to subject matter and this finding was substantiated by case study exposing in some detail that jurisdiction of

Administrative Tribunals has been far from exclusivity and has become out of harmony with the rapidly changing society. It is tempting to mention here that Tribunals, with their separate laws and procedures often made by themselves, put a serious limitation upon the celebrated principles of 'Rule of Law'. This is more violative in the country because the Tribunals are formed for a specific group of people and are making a classification within a classification. So far as jurisdiction over specific service disputes is concerned, several reasons were discovered. Aim of reducing work-load, following 'pick and choose' method, offerings by selective authorities and considering authorities by the Law Ministry as important led the legislators bring only 13 statutory authorities within its boundary; and this is not in consonance with articles 27 and 31 of the Constitution and not coherent with bureaucratic accountability. It became further evident by the discussed chapter that dual forums are prevalent for service disputes. Those who are eligible to seek remedies through Administrative Tribunals are getting speedier justice in comparison to persons who are not allowed to approach there. The remedy of persons not eligible to take resort to Tribunals lies in damage suits, which is time consuming and not free from complications, or writ of certiorari or writ of certiorari with mandamous, if any direction is given on the writ of certiorari, which are expensive and cumbersome.

It was by the said chapter five not only explored that the Tribunals fail to address all service disputes, government or non-government but also uncovered a mountain of palpable examples wherein they are not responsive to the demands of justice seekers. In this sense, powers exercised by Tribunals are subject to limitations of awarding damages or of imposing penalty or of exercising advisory powers or of devices of preventing vexatious litigations and inspection. More precisely, jurisprudential domain of Administrative Tribunals fail to uphold the 'Rule of Law' but it is successful in recognizing the vulnerability of the employee faced with coercive

state power by the use of the doctrine of 'Proportionality', a new phase initiated by the *Sonali Bank's* case. Though the decision of the *Agrani Bank's* case, as discussed briefly in chapter five, closed the door of checking the challenged action on the basis of the doctrine of 'Proportionality', the *ratio decidendi* of *Agrani Bank* has been superseded by the later cases.[1] Besides, the adjudicators working in the Administrative Appellate Tribunal are duty bound to allow appeals in all cases under existing laws and this ultimately leads to delay disposal. It was even then argued justification for appeal in all instances as Administrative Tribunals are not empowered to review its own orders for avoiding grave miscarriage of justice done by them.

The findings of one dimension, which are procedural issues, on the basis of research agenda of the present thesis was come up through chapter six. It was showed that a considerable period was passed after the establishment of Administrative Tribunals but successive regimes in independent Bangladesh did not move towards improving the institution. Moreover, thus, they are not only prioritizing existing system but also using them as convenient alternatives to damage suits and writ petitions. While examining procedural technicalities and impediments, emphasis was drawn, first of all, on three aspects under the heading titled 'Pre-conditions Concerning Application to Administrative Tribunals'. Issue of standing before Tribunals, waiting period of two months to file applications before Administrative Tribunals and no condonation of delay are the three aspects which remain under the single heading noted just in the preceding sentence. Looking at the first aspect, it was found that jurisprudential concept of *locus standi*, so far as Administrative Tribunals in the country are concerned, is quite fit to the present model. The existing position does not deserve of originating the concept of Public Interest Litigation in the domain and is

[1] Bangladesh, Represented by the Secretary, Ministry of Health and Family Welfare and Others vs Md. Idrish Mia, (2006) 58 DLR (AD) 55-57; Managing Director, Bangladesh Krishi Bank, Head Office, 83-85, Motijheel Commercial Areas, Dhaka-1000 and Another vs Gopal Chandra Nath and Others, (2010) 15 MLR (AD) 494-496.

coherent with jurisprudential boundaries as to subject matter. Whether the second aspect of waiting period of two months should be a deciding factor is not open to doubt. Awaiting two months before filing application to Administrative Tribunals without fixing period for the completion of departmental proceeding by the Government Servants (Discipline and Appeal) Rules, 1985 is not reasonable. Excepting the two, another barrier, namely, no condonation of delay, grabs roughly Administrative Tribunals leading them to face hassles to avoid dead lock. Repeated decisions of the Appellate Division of the Supreme Court are found, as gathered in chapter six, pronouncing on this limitation and it comes out that the Act contains faulty device. Further, it is not quite logical to keep vacuum in prescribing period for filing an application for setting aside an order of dismissal or an *ex-parte* order. This non-insertion for filing an application for setting aside an order of dismissal or an *ex-parte* order shows incompetence and carelessness on the part of legislators, leading the Act to be incompatible to disputes of this regime. Furthermore, lack of a full-fledged procedure based on the principles of 'Natural Justice' helps aggravating the faulty procedure. Nevertheless, it is a matter of hope that Members have now discretion to face extenuating circumstances because section 151 of the CPC, the age old and well established principle of Inherent Power, has a judicial recognition, though it has no legislative recognition.

It is straightforward from chapter six that proceedings of Tribunals are not cheaper as expected due to several practical reasons. Legislation covering Administrative Tribunals is a means to promote cheap justice and reflect positive attitudes of law makers. The mission enhancing cheap justice through legislation is not helping much in many respects due to four practical barriers, namely, long distance from the place of Administrative Tribunals, high rate of lawyers' fee or parties' failure to give fee, low amount of lawyers' fee on the part of government side and

frivolous grounds raised by the parties. Afterwards, disposal rate of cases of Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 was demonstrated consecutively in tables: 1, 2 and 3 and then data of time spent in those Tribunals was kept in table: 4 side by side to make a comparative analysis. In line with this, table: 5 exhibited percentage of decided and pending cases of aforementioned three Tribunals. Soon afterwards, lack of specific timeline of disposing of suits; unnecessary adjournments; inspection done by all adjudicators in the AAT; random transfer of suits, as shown in table: 7; scope of making an appeal to the Appellate Division after bar of limitation; want of provisions stopping stay of execution proceedings until receives decision of the Appellate Division; greediness of lawyers or low amount of fee whatever we say; frivolous grounds raised by the parties; lack of knowledge and boldness of Members; lack of training and ignorance, and incapacity of administrative officers; non-responsiveness of the government and several deep concerns in execution proceedings were identified as causes in hampering prompt disposal. Within this discourse, so far as reasons of delay disposal are concerned, lapses were discovered both from law and practice.

To strengthen analysis, data of execution suits filed in Administrative Tribunal 1, Administrative Tribunal Bogra and Administrative Tribunal 3 were presented alongside future formula and strategies of overcoming lacuna in execution suits. Furthermore, importance was placed on opinion of experts' disclosing several practical and implementation barriers with proposed recommendations. It is commonly noticed and found from this chapter six that orders of Tribunals, when they are to the disgust of any of the government departments or their functionaries, remain unimplemented for years together; and the prestige, authority and public confidence in Administrative Tribunals are now being greatly damaged due to this reason. It is

known to all that the basic objective of this legal institution is to take out of the purview of courts of law certain matters of dispute between the citizen and government agencies; and to make this judicial process quick and less expensive. This objective was checked out through the chapter. In sum, it can be said that procedures in Tribunals was tried to be evaluated by chapter six.

The overall findings of chapters' four to six lead certain disputes irresistibly from courts of law to Administrative Tribunals, which are trying to maintain a balance between bureaucratic accountability and service rights. Obviously, deeper and more comprehensive analysis reaches us to three points. Firstly, the efficacy of Administrative Tribunals is challenged because of its structural issues, especially the issue of recruiting adjudicators is always perceived of within this domain as being carried on within the political institutions of the executive. It is just this natural tendency to bury the hidden differences between executive and judiciary, which ultimately lead to the violation of the principle of 'Separation of Powers'. But the Tribunals are capable of avoiding an unacceptable threat to the independence of thought and action of its Members from the viewpoint of institutional aspect of 'Separation of Powers'. No bureaucrat is eligible to be a Member of Administrative Tribunals and this is pursuant to institutional 'Separation of Powers'. The scenario is not same in the Administrative Appellate Tribunal. The Act of 1980 opens a space of recruiting one Member in the AAT among civil servants, which is antagonistic to the aspect noted above. Nevertheless, Tribunal buildings are located in a different place not occupied by the administrative body and it shows the existence of the theory of 'Separation of Powers'. Furthermore, Members have the status of judges as it is not prohibited anywhere and actually they are chosen from District Judges. Principles established in *Masder Hossain's* case apply to its Members. Whatever hopes are created about the preservation of the theory; these are lost

whenever it is found that the domain relies entirely on the executive for management and funding.

Leaving aside analysis of institutional 'Separation of Powers' within the domain of Administrative Tribunals, let us move now other structural issues dominating the research. Stop gap duty, lack of knowledge and training of adjudicators, want of attractive and motivating provisions regarding terms and conditions of their service, absence of well equipped record rooms and web services, insufficiency of manpower, chamber of adjudicators, appointment of officials and their further promotion, want of reporting procedure and vacuum in provisions for preservation and destruction of documents are never serious indications of their practicability. Efficiency of Administrative Tribunals are far-reaching from the point of view of and not coherent with the 1st aspect of the Delhi Declaration, extended version of the 'Rule of Law', as depicted in chapter two. While looking to the matter, it appears that the functions of Parliament, so far as the Administrative Tribunals Act and the Rules are concerned, fail to create environment which leads to the enhancement of dignity of man as an individual.

Secondly, Administrative Tribunals are not shaped with reasonable jurisdiction as to subject matter and context-specific solutions, the need for which is highlighted in chapter five. It was amply provided in the chapter the much-needed justification for ousting the jurisdiction of the High Court Division and herein lays the devotion of Administrative Tribunals, which is praiseworthy. In this respect, the mission of setting up the Tribunals is successful because at present no suits and writ petitions concerning the matters are filed in civil courts and the High Court Division respectively; the position becomes clear, as depicted in section 5.2.3. This forum now exercises the power of judicial review of administrative actions. It is neither a civil court nor the High Court Division; rather it is playing a supplemental role and cannot curtail the

jurisdiction of the HCD which is its own. One more thing which claims appreciation is the non-violation of functional 'Separation of Powers', as the Tribunals are working as reviewers of primary decisions and body of implementation, whereas the executive is working as the primary decision maker. This fulfils the requirement of the aspect which demands the existence of different institutions for adjudication and implementation. Apart from this, in this regard, two-fold factors, namely, extent of jurisdiction as to subject matter and access to all sorts of remedies, influence each other. A crucial issue here is whether the jurisdiction entrusted to Tribunals is effective to uphold justice to specific class. Quite clearly, it fails to do that, as it bypassed lots of government authorities and all non-government authorities. On the other hand, so far as accesses to all sorts of remedies are concerned, it sometimes remains part of the problem rather than part of the solution as the remedy available in the system is not in tune with adequate justice and the much needed relief afforded to courts of law. As mentioned in chapter five and in this paragraph above, functional aspect of 'Separation of Powers' is not being infringed but 'establishing and maintaining conditions so that the dignity of man as an individual can be uphold by the functions of the legislature', one of the ideals of 'Rule of Law' as established in the Delhi Declaration, is not being ensured. The legislation covering Administrative Tribunals is itself faulty and does not effectively guard against all service disputes and all remedies the justice-seekers demand.

Thirdly, procedural issues are undermining the level of efficiency. Though different factors are responsible for this sorry state of affairs, it is the procedural laws that can pave the avenue through which these factors could be removed to a great extent. Questions of promptness, cheapness, using obscure provisions, waiting period of two months, non-existence of provisions for setting aside an order of dismissal or an *ex-parte* order, non-recognition of the principle of 'Natural Justice', and after all, a fully developed procedure the present thesis contends, deserve

serious consideration. All these aspects pose serious challenges to the efficiency of Administrative Tribunals of Bangladesh. This is, however, not meant to suggest with confidence that the Tribunals should be abolished. Rather, it is contended that the present form cannot legitimately co-exist with these troublesome realities; serious attention has to be given to investigate in detail as to how these troublesome factors can be removed.

Based on the findings of the thesis, suggestions regarding efficiency of Administrative Tribunals of Bangladesh are offered, though it is not an easy task to suggest a way out. A critical examination with ways out has been made at first from the view point of structural issues, as narrated and assessed in chapter four of the thesis. It is beyond doubt that the success of this alternative forum depends on the availability of really intelligent, experienced and independent Members, so it has to be ensured. It is tempting to note here that the principle of 'Separation of Powers' is neither Constitutionally recognized nor practically utilized in the set up of the country. Courts and Tribunals are not entirely different from each other from the bottom to the top and the earlier one is allowed to interfere in the activities of the latter as the Supreme Court is the guardian over all courts and Tribunals including Administrative Tribunals. Without bringing changes in the existing set up, it is recommended in sections 4.3.1.2 and 4.3.1.1 to bring modifications for the recruitment of the Chairman and Members of the Administrative Appellate Tribunal and Administrative Tribunals.

The mode of recruiting the Chairman as well as Members, their promotions, transfers, removal etc., that means, everything regarding their terms and conditions of service has to be entrusted in the hands of a 'Superior Council of Administrative Tribunals and the Administrative Appellate Tribunal' headed by the Chief Justice of Bangladesh. Otherwise, a provision like 'no appointment of a Chairman and of a Member in Administrative Tribunals or the Administrative

Appellate Tribunal shall be made except after consultation with the Chief Justice' has to be inserted and the framing of a complete legislation, namely, the Chairman and Members (the Administrative Appellate Tribunal and Administrative Tribunals) Recruitment Rules, can enhance this purpose. In line with this, mandatory provisions require to be incorporated in the proposed legislation to put compulsion on the Ministry to receive advises of the Chief Justice of the country. If this formula were adopted, it would give full effect to judicial independence as enshrined in *Secretary, Ministry of Finance vs Masdar Hossain*,[2] and would reduce executive interference and pressure which is ultimately expected for establishing the principle of 'Separation of Powers', as it is one of the facets of the principle of 'Rule of Law'. The challenge of the mode of appointment for the statutorily recognized post of Members had been faced and the next question is 'who is to be appointed?' While concentrating on adjudicators' best fitted to Administrative Tribunals, the foremost importance has to be rested on choosing young District Judges considering his capacity to work and knowledge seeking attitudes. Open or participative mechanism paving the way of recruiting adjudicators from amongst lawyers is not deserved within the legal domain of Bangladesh. Therefore, in choosing Members, merit and capability for work would stand together leading the present mode to be changed.

Nevertheless, an acting judge of the High Court Division has to be placed in the position of a Chairman of the Administrative Appellate Tribunal because a judge in service feels secured in service persuading to take strong steps in A.T. suits. The tenure of judges of the Supreme Court is secured under the Constitution, whereas the tenure of judges of the High Court Division, who are placed in the AAT, is for contractual period. The service for contractual period gives rise to lack of security and restrains the Chairman from providing any decision in appeal for which the

[2] (1999) 52 DLR (AD) 82.

government would be annoyed. Satisfaction of the government helps him to get further extension of his service period and dissatisfaction leads the otherwise. Considering these, it is recommended for an acting judge of the High Court Division for the post of the Chairman. Besides, it will ease the Chairman due to his post to cause personal appearance of the concerned high officials even the Secretaries of the Ministries. This will indirectly work as a pressure for government departments and force them to obey the decision of the AAT. Then no appeal would lie against the decision of the AAT and no application for execution would also be filed, it would be finished in the AAT. It is true that the above recommendation is a solution but a judge with strong personality and morally and ethically strong and sound can take any steps, irrelevant of his position or power. Even the recommendation can be fruitless, if an acting judge of the High Court Division does not match to the criteria noted in the preceding sentence. However, section 5 of the Administrative Tribunals Act, 1980, which violated to some extent the institutional aspect of 'Separation of Powers', needs to be amended to rule out the possibility of the retired judges of the High Court Division getting chance to hold an office involving financial gain.

The above proposed modification in section 5 begs the necessity of amending articles 147 (3) and 99 of the Constitution. Another option claims that article 99 (1) be amended to provide a cooling period of at least five years after the retirement of a judge from the Supreme Court to the following effect: 'A person who has held an office as a judge otherwise than as an Additional Judge shall not, after his retirement or removal there from, plead or act before any court or authority or be eligible for any appointment in the service of the Republic before the expiration of five years after he has ceased to hold that office.' All the future calculations shall surely be passed away after the expiry of this five years cooling period. Moreover, the duration of a political government being five years, it is difficult on the part of a particular judge to get any

persuasive assurance of favor. In the Administrative Appellate Tribunal, except the Chairman, among two Members, one of them holding the post of District Judge is appointed in the same way parallel to Members of Administrative Tribunals. Suggestions offered for reshaping the post of Members in ATs also apply to equivalent post of the Member in the AAT. On the contrary, section 5 of the Administrative Tribunals Act, 1980, allowing a civil servant not below the rank of Joint Secretary to work as a Member of the Administrative Appellate Tribunal, needs immediate amendment to prevent infringement of the rule of biasness. Provision of choosing one Member from amongst the practicing lawyers having at least ten years experience in service disputes has to be inserted. Job security for a decade, an assurance of pension and other retiral benefits must attract a busy lawyer and an expert in the field to accept such assignments.

As mentioned earlier, not only Members of Administrative Tribunals are required to train themselves in service jurisprudence but also the introduction of compulsory training programme is necessary for the Chairman and Members of the AAT and even for the officers before resumption of office for improving its efficiency. The nucleus of a corps of trained and experienced judges and lawyers has to be made by providing them a thorough comparative knowledge of Administrative Tribunals of some countries; and this endeavor is not only to juxtapose one system with another, but constantly to compare approaches, solutions, and methods with reference to social, political, and legal background. This effort will certainly give to concerned stakeholders a far better insight into the liability of the state and its public officers, the nature, character and remedies available to victims over the countries; and thereby it must be endeavored to improve its behavior as well as national laws regarding Administrative Tribunals. In this regard, preparation of different modules for different sorts of persons, one for the

Chairman and Members and another for the Registrars and staffs working over there, can surely enhance its advancement.

Regarding terms and conditions of service of the Chairman and Members of Administrative Tribunals and the Administrative Appellate Tribunal, the power rests with the government and it is not clear as to how much period they will hold office and on what terms. Their job tenure over there is not secured and this is also a major obstacle to the concept of independence of judiciary. Long tenure for them has to be granted to make them free from the interference of the executive; to make them independent and to let them gain expertise and use knowledge over there. Nevertheless, provisions regarding resignation and removal of the chairman and Members of Administrative Tribunals and the Administrative Appellate Tribunal have to be inserted. Furthermore, Registrars, whose functions are office or general administration and do not require legal expertise, have to be chosen from the existing staff by promotion and therefore, provisions allowing Assistant Judges to work in the position of the Registrar require to be omitted from the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985 to provide more elasticity and steadiness in its functioning and remove the practice of stop gap duty. Besides, infrastructural development, technical support, sufficient staff including the Registrar require to be ensured; chamber of Members needs to be attached to Tribunal house. Furthermore, the Tribunal demands a well equipped record room to prevent an undue accumulation and the destruction of papers that is needed for future reference. It is recommended for the insertion of provisions for scientific method of preservation of essential documents and destruction of old documents like the Civil Rules and Orders. Again, cases require to be reported to maintain uniformity among the decisions delivered by 7 Administrative Tribunals.

It was explored that jurisdiction as to subject matter of Administrative Tribunals of Bangladesh is not consistent with the modern administrative justice system as the dualistic nature of judicial hierarchy is being followed in the country for ensuring bureaucratic accountability. Subject matter jurisdiction of Tribunals needs extension for all types of service holders, government or non-government, who are standing on similar footing and are beyond the definition of labour, aiming at enhancing administrative responsibility, ensuring equal justice and preventing violation of articles 27 and 31 of the Bangladesh Constitution. A provision in the name of section 4A requires to be inserted in the Administrative Tribunals Act, 1980 to enlarge the jurisdiction of Administrative Tribunals and to institutionalize the existing judicial functions into a distinct and separate scheme of courts as the present system is unsuited to the principle of responsibility of public authorities. The principle of Master and Servant should cease to apply to employees of all kinds of corporations, bodies or authorities, government, non-government or semi government so that these employees, regardless of their status as permanent or temporary, contractual or on daily basis, excluding workmen, could approach the Tribunals for redressal of their grievances. As depicted in chapter five, Administrative Tribunals lack full jurisdictional powers. Applicants have fewer reliefs than those who approach courts.

Apart from drawing contempt proceedings against the defaulter under section 10A, the power of awarding damages may work as a technique of compulsion on defaulter departments, if they refuse to re-employ the applicant in accordance with the Tribunal's order; this necessity lets us recommend for the insertion of a provision allowing the Tribunals to award damages and to increase it in suitable cases. The whole liability will go to the Head of the department concerned. The legal world, so far as Administrative Tribunals are concerned, has to be developed in a way so that it would be feasible to compensate for injury to feelings, that means, for the upset and

distress caused by discrimination, as it is vital to discrimination cases. The determination of the amount of compensation will depend on evidence, on pain he suffered. In extreme cases, in cases of discrimination and of the postponement of pension illegally, compensation has to be awarded for personal injury on the basis of medical evidence, which explains what illness has developed and how it is linked to cases.

Another barrier, as highlighted in chapter five, to adequately promoting access to justice is section 9. The section dealing with penalty only for obstruction in the performance of its functions has to be amended opening door of imposing penalty for breaching service laws or for negligence or for non-conforming with the principle of 'Natural Justice'. It is a legal requirement to empower the Tribunals with powers of imposing penalty of a higher amount on the departments who will be in default and to increase it considering the gravity of the case. Necessary amendments have to be brought. Definitely the power has to be a discretionary one. Before imposing penalty, the Tribunal has to be satisfied that the department did it with malice. In the Administrative Tribunals Act, 1980, there has to be a non-exhaustive list of aggravating features as to when this punitive punishment could be imposed. If the application before the Tribunal falls under the aggravating features, then penalty of a higher amount could be imposed. Scopes of providing sufficient remedies relying on reasonable foreseeable consequences and on evidence can only make this domain employee friendly. Nevertheless, the Administrative Tribunals Act, 1980 does not contain anything to prevent vexatious litigation. Provisions need to be inserted so that the Tribunals could inform the Administrative Appellate Tribunal of the vexatious proceeding which will have the effect of barring that person from bringing further proceedings without the consent of the Administrative Appellate Tribunal. Eligibility of

awarding two powers, namely, compensation and penalty may effectively work in eradicating vexatious proceeding.

The concerns arising out of procedural issues are clear, as depicted in chapter six. After serious investigations into several technical issues and exploring the questions in brief, the findings of the present thesis give me confidence to offer brief suggestions to carve out a way forward. The first aspect which seriously concerns us is the presence of the clause 'deemed to be' in the Act of 1980. An Act would never be expected to rely on this type of provision and, therefore, earlier provisions mentioning fixed period for the ending up of departmental proceeding has to be reverted back in the Government Servants (Discipline and Appeal) Rules, 1985 to make the Act of 1980 free from this messy clause. It was further portrayed in chapter six that the Tribunals are very rigid of not granting applications beyond the period of six months. Section 14 of the Limitation Act, which excuses delay in instituting a suit in a wrong forum due to a bona fide mistake, requires being applicable to Administrative Tribunals to avoid deadlock. The Tribunal needs to condone delay in filing application but not appeal on the satisfaction of reasonable excuses for the proper dispensation of justice.

Besides, it is urgently required to prescribe period for filing an application for setting aside an order of dismissal and an *ex parte* order to fill up the vacuum, as presented in chapter six. Three consequences occur because of appearance and non-appearance of parties involved in proceedings; period of limitation has to be prescribed for those results of judicial procedure.[3] In

[3] It is an accepted rule of judicial procedure that the court shall decide a civil action in presence of the parties concerned. But if a party fails to be present before the court, the court shall decide the case in his absence. Yet there is another rule of judicial procedure that the party in whose absence the case has been disposed of may get the order of disposal recalled and get his case restored to file on satisfying the court that his absence was neither willful nor negligent and that he was prevented by certain circumstances from being present in court for which he cannot be held to be responsible.

this regard, provisions of the Civil Procedure Code, 1908 give light to remove difficulties. The first consequence happens through awarding *ex parte* order when a defendant becomes absent. An application for setting aside this *ex parte* order has to be filed within 30 days from the date of the *ex parte* order or where the summons would not be duly served, 30 days from the date when the defendant would come to know about the *ex parte* order. The bar of limitation should not be applicable when some elements of fraud in obtaining the *ex parte* order would be found. Secondly, non appearance of both the parties leads the case to be dismissed;[4] dismissal under the provision must not be appealable. Necessary provisions have to be inserted so that the applicant could avail the scope of filing a fresh application within the period of 30 days of the order of dismissal. The third consequence runs where the dismissal is for default in appearance of the plaintiff. Here he is not entitled to bring a fresh suit but is allowed to bring an application for setting aside the order of dismissal. Limitation period of 30 days from the date of the order of dismissal needs addition.

While highlighting procedural deficiencies, it was argued for the introduction of a full-fledged procedure, reflecting principles of 'Natural Justice', empowering Tribunals statutorily with Inherent Power like section 151 of the CPC,[5] and simplifying the mode of execution covering all available circumstances. A fully developed procedure has to be devised and enforced for its functioning and to reduce level of gravity concerning procedural technicalities and lapses. The application of the Code of Civil Procedure has to be extended like section 216 of the Bangladesh Labour Act, 2006 so that the Tribunals could exercise Inherent Power like section 151 of the

[4] See, the Administrative Tribunals Rules, 1982, rule 6 (4).

[5] The exercise of inherent power by the Administrative Tribunal is now recognized by Govt. of Bangladesh and Others vs Sontosh Kumar Shaha and Others, unreported (AD) date of judgment 15.12.2015.

CPC in extraneous circumstances faced by them. A judicious blend of 'Natural Justice' and the CPC is required to provide an effective and result oriented Tribunal system.

Regarding cost of proceedings, the first cause, which is long distance from the place of Tribunals among four, as presented in chapter six, calls for establishing another Administrative Tribunal; but this is not immediately required because the number of cases will then be decreased in Tribunals in an unexpected level. The existing scenario regarding the number of cases is quite ok. Quick disposal avoiding unnecessary adjournments can cure this barrier to a greater extent. It is noteworthy that the first cause was traced out and the above proposed recommendations are provided, so far as Administrative Tribunal Bogra is concerned. The second one, which is high rate of lawyers' fee, is found practiced in big cities, accordingly evidently available in Administrative Tribunal 1 and Administrative Tribunal 3, and is liable to be remedied only if the lawyers follow their Code of Conduct under the Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972. In this regard, prompt disposal of applications can also help decreasing the cost. While looking to third reason, lawyers on the government side are blamed of lengthening A.T. suits with a view of taking money because for each time petition they receive taka 300, which is very low. The allowance should be raised and paid as package money for a single dispute to make the proceedings cheaper and to mitigate the sufferings of the victim; and necessary amendments have to be brought in the Rules of Solicitor Wing. More importantly, frivolous grounds raised by the parties, the 4^{th} cause leading the proceeding to be time consuming and expensive, should be avoided to prevent consumption of unnecessary time and to make the procedure cheaper. It is recommended that at the time of giving a judgment, a record requires to be kept of the time spent in addressing frivolous grounds raised by the parties as well

as related costs and subsequently the parties be held liable for these costs, irrespective of the result of the litigation.

Taking into consideration different barriers of prompt disposal of applications, which exist either in law itself or in practice under its present model, highlighted in chapter six, suggestions are offered to cure those causes of delay. Administrative Tribunals being special forums, the provision of speedy justice must not take maximum six months. Data shown in table: 4, as exhibited in chapter six, are not consistent with the concept of prompt disposal of suits. The Administrative Tribunals Act and the Administrative Tribunals Rules require mentioning as to within how much period suits of Administrative Tribunals have to be finished to promote quick justice. In this regard, section 216 (12) of the Bangladesh Labour Act, 2006 may be an outline.[6] Accordingly, Tribunals have to be bound to deliver its decision within six months following the date of filing the application.

Legislators fail to control lethargy shown by employers, which is random in every case including execution suits. The number of execution suits displayed in table: 6 is not ignorable showing their (Heads of departments) disagreement to comply with the decision of Tribunals and leading the victim to file execution suits. However, the procedure covering execution suits is faulty, so far as prompt disposal of suits is concerned. Rule 7 of the Administrative Tribunals Rules, 1982 has to be modified in a way so that a re-conciliation can be made between the CPC and prompt disposal of suits. Tracing out the mid-way is not an easy task and for this, following the Bangladesh Labour Act of 2006, period of executing the orders has to be inserted. It should be like if the steps of execution were not to take within a period of 60 or maximum 90 days, then

[6] An award, decision or judgment of a Labour Court shall, in every case, be delivered, unless the parties to the dispute give their consent in writing to extend the time-limit, within sixty days following the date of filing of the case.

contempt proceeding would have been started against the Head of the department concerned. Necessary provisions fixing maximum period of 60 or 90 days for executing orders and provisions for consequences of its violation have to be prescribed. Besides, the provision introducing mechanism of controlling the disposal of execution suits within fixed timeline requires to be inserted in section 10A of the Administrative Tribunals Act, 1980. Under this section, victim would apply. The Administrative Appellate Tribunal needs to be given the power to deal with this type of contempt proceeding. Reasonable exercises of contempt proceeding can only help establishing justice. Before proceeding contempt proceeding, the Tribunals need to look into facts as to whether the parties have been given sufficient notice or time to comply with Tribunals' orders. After all, the procedure for execution must be simplistic in nature.

It appears from chapter six that complications surrounding Administrative Tribunals depend on the total scenario of the country. Changing the total scenario of the entire Tribunal structure can alleviate the situation but this is not possible in a day. As reluctance of the government is one of the reasons of delay of executing the decrees passed by Administrative Tribunals, effective mechanisms need to be introduced to compel the government to comply with the decision of Tribunals. Mandatory training letting the higher officials know as to how they behave, not only during the pendency of proceedings but also before their initiation, with the officials under his control have to be emphasized. Utmost importance has to be rested in maintaining Code of Conduct between employers and employees and certainly, due to this proposed preventive measure, the number of disputes will be decreased, if followed strictly. Furthermore, powers of imposing higher penalty and awarding and raising damages depending on the circumstances appear to put threat on government departments; and these will promote speediness, reduce reluctance and lack of promptness or lethargy on the part of government. With those focus in

mind, necessary amendments require to be made in sections 9 and 7 respectively of the Administrative Tribunals Act, 1980.

Following section 216 (6) of the Bangladesh Labour Act, 2006,[7] Administrative Tribunals must not adjourn the hearing of any case on the prayer of any party for more than seven days in all; and if both parties apply for an adjournment, an adjournment for not more than ten days in all may be allowed. This type of provision needs insertion in the Act of 1980 with a view of minimizing unnecessary adjournments, promoting quick disposal, forcing lawyers to obey the Code of Conduct under the Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972 and excluding the necessity of giving supervisory jurisdiction to the AAT. Again, the power of inspection requires to be given only to the Chairman of the Administrative Appellate Tribunal instead of the Administrative Appellate Tribunal and necessary amendments have to be made accordingly in section 7C of the Act of 1980.

Furthermore, the necessity of re-structuring the territorial jurisdiction of Administrative Tribunals was revealed. As exhibited in table: 7, transfer of cases from Administrative Tribunal 1 to Administrative Tribunal 3 is a serious concern and is not consistent with the concept of speedy disposal. In this regard, the jurisdiction of Administrative Tribunal 1 has to be re-structured; only two or three districts are required to be kept under the domain of the Tribunal with a view of reducing its workload and the rest of the districts needs to be kept under the territorial jurisdiction of Administrative Tribunal 3. Then automatically suits will be filed over there and no unnecessary time will be spent for the purpose of transfer, which will enhance ultimately speediness of justice.

[7] Labour Court shall not adjourn the hearing of any case on the prayer of any party for more than seven days in all: Provided that if both the parties apply for adjournment, an adjournment for not more than ten days in all may be allowed.

Procedural delay was transpired responsible for hampering proceedings of Tribunals. In it, leave petition wastes unnecessary time and hence, the specially engaged Justice has to be active and if overburdened, more Justices have to be recruited to enhance quick justice. But in no way the purposes of Administrative Tribunals could let be frustrated. Apart from the above, the difficulty further lies in allowing to make leave petition even after bar of limitation, which is of 30 days under Order 12, rule 3 of the Appellate Division Rules, 1988 read with section 6A of the Administrative Tribunals Act, 1980. Rigid rules require to be followed for the appeal to the Appellate Division so that no appeal could even be filed after bar of limitation. Furthermore, if leave petition is filed to the Appellate Division of the Supreme Court during the pendency of A.T. execution suits, proceedings of the Tribunal should not be allowed to be stayed until receives decision of the Appellate Division. The proposed step resembles to section 31 of the Money Loan Court Act, 2003, and if implemented, will reduce wastage of time in unnecessary appeals.

It was demonstrated in chapter six that lawyers working in Administrative Tribunals sometimes prolong Administrative Tribunal suits with a view of taking money because for each time petition they receive a fixed amount. Besides raising allowance for lawyers' on the government side and fixing maximum number of days for adjournment as recommended earlier for overcoming the problem, the concerned Member needs to be strong not to allow more time that is required. Allowing unnecessary adjournments at the prayer of lawyers are the fate of many applications; hence Members require gaining knowledge and boldness for outright rejection of application. Moreover, the government has to be active, co-operative and has to change the intention to serve the public and to reach justice to their door as early as possible. Another way of reducing the suffering due to delay disposal as suggested earlier is to provide compensation to

the victim by the government. The provision of providing compensation to the victim (in most of the cases the service holder who has been deprived of his service benefits) by the government (Department concerned) requires to be inserted. Nevertheless, if the average administrative officer had been better informed of his procedural obligations, many of his orders would not have been a casualty on judicial scrutiny and many of the suits would not have been born. During the continuance of training through BPATC, utmost importance has to be rested on obligations of high ranking officials during departmental proceedings, rights and remedies through Administrative Tribunals. After all, recruitment of sufficient manpower, namely, Registrar and Process Server, can enhance attaining the goal of prompt disposal of suits.

In offering suggestions, it cannot be ignored the flexibility and adaptability Administrative Tribunals try to keep; also the Tribunals endeavor to remain themselves out of conservatism and inelasticity of outlook and approach of courts of law. Last but not the least; the main recommendation is that government must overcome from providing legitimate excuse for avoiding its obligations and implement appropriate legislative and judicial measures properly. It is now a high time for the government to have a comprehensive approach to efficacy of Administrative Tribunals by developing new ways to meaningfully address the past and to provide all supports for improving its activities.

The overall picture, so far as Administrative Tribunals in the country are concerned, is far from satisfactory. A fresh look at the system of Tribunals in the country is required so as to ensure speedy justice. But this is also true that Administrative Tribunals of Bangladesh are still in the stage of infancy and trying so far to promote justice. If necessary amendments were made according to the directions pointed out above, then obviously Members would be able to ensure justice. Needless to mention here that the dispensation of justice denotes the civilization and rich

cultural heritage of a country and its concern for the democratic values. Therefore, earnest efforts have to be spent for it. Finally, it is submitted that suggestions offered in the preceding paragraphs are not meant to create an illusion that these would create 'perfect justice', once these suggestions are implemented. Rather it is reiterated that the search for efficacy of Administrative Tribunals of Bangladesh constantly remains a never-ending revisiting of issues. Indeed, many possibilities of solutions cannot be predicted at all times, and for all places and all scenarios. But what has been seen to occur in Tribunals at present certainly calls for ameliorative efforts.

BIBLIOGRAPHY

Books

Ahmad, A., *Equity, Trust, Fiduciary Relations and Specific Relief* (Allahabad: Central Law Agency, 2008).

Allison, J. W. F., *A Continental Distinction in the Common Law-A Historical and Comparative Perspective on English Public Law* (Oxford: Clarendon, 1996).

Allison, J. W. F., *the English Historical Constitution-Continuity, Change and European Effects* (Cambridge: Cambridge University Press, 2001).

Cane, P., *Administrative Law* (New York: Oxford University Press, 2011).

Cane, P., *Administrative Tribunals and Adjudication* (Oxford: Hart Publishing, 2009).

Chhabra, S., *Administrative Tribunals* (New Delhi: Deep and Deep Publications, 1990).

Chiti, E. and Editors, B. G. M., *Global Administrative Law and EU Administrative Law* (Verlag Berlin Heidelberg: Springer, 2011).

Chowdhury, J. A., *An Introduction to the Constitutional Law of Bangladesh* (Dhaka: Northern University Bangladesh, 2010).

Davis, K. C., *Administrative Law Treatise*, Vol. 1 (San Diego: K.C. Davis Publication Company, 1958).

Dhaka Law Reports, *Statutory Laws on Service* (Dhaka: Esrarul Haque Chowdhury, 2006).

Fazal, M. A., *Judicial Control of Administrative Action in India, Pakistan and Bangladesh* (Allahabad: Law Book Company Pvt. Ltd., 1990).

Fulbrook, J., *Administrative Law and the Unemployed* (London: Mansell, 1978).

Griffith, J. A. G. and Street, H., *Principles of Administrative Law* (London: Pitman Publishing, 1973).

Gupta, H. P., *Comparative Law* (Allahabad: Central Law Agency, 1997).

Hall, D., *Administrative Law* (London: Butterworts, 1983).

Hossain, Z., *Law of Writs* (Dhaka: Universal Book House, 2012).

Huda, A. K. M. S., *The Constitution of Bangladesh* (Dhaka: Istiaq Hasan, 1997).

Islam, M., *Constitutional Law of Bangladesh* (Dhaka: Mullick Brothers, 2010).

Islam, M., *Constitutional Law of Bangladesh* (Dhaka; Mullick Brothers, 2012).

Islam, M., *The Law of Civil Procedure* (Dhaka: Mullick Brothers, 2013).

Jain, M. P. and Jain, S. N., *Principles of Administrative Law* (Nagpur: Lexis Nexis India, 2013).

Johnston, R. M., *The Corsican: A Diary of Napoleon's Life in His Own Words* (New York: Houghton Mifflin Company, 1910).

Khanna, S. L., *Comparative Law* (Allahabad: Central Law Agency, 2004).

Kiinnecke, M., *Tradition and Change in Administrative Law* (Verlag Berlin Heidelberg: Springer, 2007).

Massey, I. P., *Administrative law* (Huderabad: Asia Law, 1985).

Massey, I. P., *Administrative law* (Lucknow: Eastern Book Company, 2007).

Massey, I. P., *Administrative Law* (Lucknow: Eastern Book Company, 2008).

Munro, W. B., *The Government of Europe* (London: Macmilan Company, 1938).

Nasrin, S., *The Administrative Tribunals Act and the Rules* (Dhaka: Titu Publications and University Publications, 2012).

Neuman, W. L., *Social Research Methods-Quantitative and Qualitative Approaches* (New Delhi: Pearson Education Inc., 2006).

Okafo, N., *Reconstructing Law and Justice in a Post colony* (Surrey: Ashgate Publishing, 2009).

Rahman, S. L. and Roksana, S. N. S., *Administrative Tribunals Manual* (Dhaka: New Warsi Book Corporation, 2012).

Siems, M., *Comparative Law* (Cambridge: University Printing House, 2014).

Sikder, J. U., *Chakrir Bidhanaboli and Prashonghik 625 Cases* (Dhaka: Jamal Uddin Sikder, 2006).

Sikder, J. U., *the Rules on Service and Related 1500 Cases* (Dhaka: Book Syndicate, 2015).

Sikder, Z. U., *The Rules on Service and Related 625 Cases* (Dhaka: Mrs. Rashida Begum, 2006).

Sullivan, E. T. and Frase, R. S., *Proportionality Principles in American Law* (New York: Oxford University Press, 2009).

Talukdar, S. M. H., *Development of Administrative Law in Bangladesh: Outcomes and Prospects* (Dhaka: Bangladesh Law Research Centre, 2011).

Tandon, M. P. and Tandon, R., *Comparative Law* (Delhi: Allahabad Law Agency, 1997).

Thakker, C. K., and Thakker, M. M. C., *Lectures on Administrative Law* (Lucknow: Eastern Book Company, 2011).

Wade, H. W. R. and Forsyth, C. F., *Administrative Law* (Oxford: Oxford University Press, 2004).

Wade, H. W. R., *Administrative Law* (Oxford: Oxford University Press, 2009).

Wade, S. W. and Forsyth, C., *Administrative Law* (New York: Oxford University Press, 2003).

Wraith, R. E. and Hutchesson, P. G., *Administrative Tribunals* (London: Royal Institute of Public Administration, 1973).

Zweigert, K. and Kotz, H., *Introduction to Comparative Law* (New York: Clarendon Press, 1998).

Zweigert, K., and Kotz, H., *Introduction to Comparative law* (Oxford: Clarendon Press, 1998).

Journals

Allison, J. W. F., "Variation of View on English Legal Distinctions Between Public and Private", *Cambridge University Press* 66, no. 3 (2007).

Bobek, M., "Quantity or Quality? Reassessing the Role of Supreme Jurisdictions in Central Europe", *American Journal of Comparative Law* 57, no. 1 (2009).

Cane, P., "Taking Disagreement Seriously: Courts, Legislatures and the Reform of Tort Law", *Oxford Journal of Legal studies* 25, no. 3 (2005).

Chand, B., "Administrative Courts in England", *The Indian Journal of Political Science* 2, no. 2 (1940).

Colliard, C. A., "Comparison between English and French Administrative Law", *Cambridge University Press* 25, (1939).

Diamant, A., "The French Council of State: Comparative Observations on the Problem of Controlling the Bureaucracy of the Modern State", *The Journal of Politics* 13, no. 4 (1951).

Dicey, A. V., "*Droit Administratif* in Modern French Law", *Law Quarterly Review* 17, (1901).

Drewry, G., "the Judicialisation of Administrative Tribunals in UK: From Hewart to Leggatt", *Transylvanian Review of Administrative Sciences*, no. 28 (2009).

Dwivedi, O. P. and Olowu, D., "Bureaucratic Morality: An Introduction", *International Political Science Review* 9, no. 3 (1988).

Friedmann, W., "French Administrative Law and the Common Law World", *University of Toronto Press* 11, no. 1 (1955).

Jenkins, D., "The Lockean Constitution: Separation of Powers and the Limits of Prerogative", *McGill Law Journal* 56, no. 3 (2011).

Langrod, G., "The French Council of State: Its Role in the Formulation and Implementation of Administrative Law", *The American Political Science Review* 49, no. 3 (1955).

Lobingier, C. S., "Administrative Law and Droit Administratif: A Comparative Study with an Instructive Model", *University of Pennsylvania Law Review* 91, no. 1 (1942).

Lobingier, C. S., "Napoleon and His Code", *Harvard Law Review* 32, no. 2 (1918).

Mohammad Mizanur Rahman Chowdhury, "A Study on Delay in the Disposal of Civil Litigation", *International Juornal of Social Sciences* 14, no. 1 (2013).

Parker, E. M., "State and Official Liability", *Harvard Law Review* 19, no. 5 (1906).

Pillsbury, W. H., "Administrative Tribunals", *Harvard Law Review* 36, no. 4 (2007).

Ratnapala, S., "Juhn Locke's Doctrine of the Separation of Powers: A Re-Evaluation", *American Journal of Jurisprudence* 38, no. 1 (1993).

Conference and Ph.D. Thesis

Ara, R., "Normative and Institutional Responses to Torture in Bangladesh" (Unpublished Ph.D. thesis, University of Dhaka, 2015).

K. G. Balakrishnan, "All India Conference of the Central Administrative Tribunal" (Keynote address, Inaugural Session of the All India Conference of the Central Administrative Tribunal, New Delhi, August 2, 2008).

Khan, M. I., "Administrative Reforms in Pakistan: A Case Study of Administrative Tribunals" (Ph. D. thesis, University of Karachi, 2005).

Talukdar, S. M. H., "Establishment and Operation of Administrative Tribunals in Bangladesh" (Unpublished Ph.D. Thesis, University of Dhaka, 2004).

Web sources

‘Administrative Tribunals’ available at: <http://www.archive.india.gov.in/knowindia/profile.php?id=36>, last visited on 20.04.15.

‘Administrative Justice in Europe’, available at: <www.juradmin.eu/en/eurtour/i/countries.france/france-en.pdf>, last visited on 04.03.2016.

‘Administrative Law’, available at: <http://www.encyclopedia.com/topic/Administrative_law.aspx>, last visited on 26.11.15.

‘Central Administrative Tribunal’, available at: <http://cgat.gov.in/intro.htm>, last visited on 20.03.15.

‘Courts and Adjudication in Bangladesh’, available at: <https://books.google.com.bd/books?id=Yk1sBQAAQBAJ&pg=PA481&lpg=PA481&dq=time+spent+in+civil+suits+in+Bangladesh&source=bl&ots=gck-SOgS7a&sig=Yo5TFqKwA8hpfUrOeXmAwP9aImA&hl=en&sa=X&redir_esc=y#v=onepage&q=time%20spent%20in%20civil%20suits%20in%20Bangladesh&f=false>, last visited on 03.09.15.

‘Delay in Disposal of Civil Suits: Bangladesh Perspective’, available at: <http://www.assignmentpoint.com/arts/law/delay-in-the-disposal-civil-suits-bangladesh-perspective.html>, last visited on 03.09.15.

‘Employment Tribunal’, available at: <https://en.wikipedia.org/wiki/Employment_Tribunal>, last visited on 22.09.15.

'Employment Tribunals', available at: <http://www.inbrief.co.uk/employees/employment-tribunals.htm>, last visited on 22.09.15.

'Insurance Company in Bangladesh', available at: <http:///C:/Users/User/Desktop/Insurance%20Company%20in%20Bangladesh,%20list%20of%20insurance%20companies%20in%20bangladesh,%20life%20insurance%20company%20in%20bangladsh,%20general%20insurance%20company%20in%20bangladesh.htm>, last visited on 31.10.15.

'Judiciary of France', available at: <http:///E:/Research/administrative%20tribunal%20in%20France/Judiciary%20of%20France%20-%20Wikipedia,%20the%20free%20encyclopedia.htm>, last visited on 03.04.2014.

'List of Scheduled Banks in Bangladesh (Part 2)', available at: <http://www.reportbd.com/articles/1429/1/List-of-Scheduled-Banks-in-Bangladesh-Part-2/Page1.html>, last visited on 31.10.15.

'Montesquieu and the Separation of Powers', available at: <http://oll.libertyfund.org/pages/montesquieu-and-the-separation-of-powers>, last visited on 04.03.15.

'Public Administration Training Policy', available at: <http://www.bpatc.org.bd/images/document/39_ProshikkhanNitimala.pdf>, last visited on 10.02.16.

'Rule of Law', available at: <http://dictionary.reference.com/browse/rule+of+law>, last visited on 02.10.13.

'What is the Rule of Law?' available at: <http:///C:/Users/User/Desktop/What%20is%20the%20rule%20of%20law.htm>, last visited on 06.03.15.

'Separation of Powers: Parliament, Executive and Judiciary', available at: <http://www.peo.gov.au/uploads/peo/docs/fact-sheets/separation_powers.pdf>, last visited on 04.03.2015.

'Separation of Powers-An Overview', available at: <http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx>, last visited on 4.3.2015.

'Training Package on Administrative Law', available at: <http://persmin.gov.in/otraining/UNDPProject/undp_modules/Administrative%20Law%20N%20DLM.pdf>, last visited on 03.03.2013.

'What is the Rule of Law?', available at: <http:///C:/Users/User/Desktop/What%20is%20the%20rule%20of%20law.htm>, last visited on 06.03.15.

'What is the Rule of Law?', available at: <http:///C:/Users/User/Desktop/What%20is%20the%20rule%20of%20law.htm>, last visited on 06.03.15.

Frydman, M. P., "Administrative Justice in France" (Key note address, 11th Australian Institute of Judicial Administration Tribunals Conference, Surfers Paradise): also available at: <http:///E:/Research/administrative%20tribunal%20in%20France/Administrative%20Justice%20in%20France%20by%20M.%20Patrick%20Frydman.htm>, last visited on 08.03.15.

Nigar, M. and Urmi, H. N., 'Doctrine of Legitimate Expectation in Administrative Law: A Bangladesh Perspective', available at: <http: // works.bepress.com/meher.nigar/2>, last visited on 27.09.14.

Servai, H. M., *Constitutional Law of India* (Bombay: N.M. Tripathi Private Ltd., 1967); also available at: <http://www.academia.edu/4614327/ADMINISTRATIVE_TRIBUNALS_OF_INDIA_A_Study_in_the_light_of_decided_cases>, last visited on 22.04.2015.

UNHCR, 'Country of Origin Information Report-Bangladesh, 2009', available at: <http://www.unhcr.org/refworld/docid/4a8d005b2.html>, last visited on 08.07.2014.

Appendix A

List of cases of the Supreme Court

Abdul Aziz vs The Chairman, Board of Directors, Sonali Bank and Others, (1999) 4 MLR (AD) 401-402

Abdul Latif Mirza vs Government of Bangladesh, (1979) 31 DLR (AD) 1

Abu Taleb vs Government of Bangladesh and Others, (1993) 45 DLR (AD) 45-47

Abul Bashar vs Bangladesh through the Secretary, Banking Division, Ministry of Finance and Others, (1996) 1 BLC (AD) 77

Abul Bashar vs Investment Corporation of Bangladesh and Another, (2000) 52 DLR (AD) 178-184

Abul Kashem vs The Secretary, Ministry of Agriculture and Others, (1997) 2 MLR (AD) 51-52

Agrani Bank, represented by the Chairman, Board of Directors, Agrani Bank, Head Office, Motijheel C/A Dhaka and Others vs Khandaker Badrudduza, (2004) 9 MLR (AD) 281-284

AKM Ali Imam vs DG, Bangladesh Agricultural Research Institute and Another (Civil), (2002) 54 DLR (AD) 5-6

AKM Mohsin vs Bangladesh, Civil Petition No. 573/95

AKM Nurul Alam vs Bangladesh, Civil Appeal No. 24/1992

AKM Ruhul Amin vs District Judge, (1986) 38 DLR (AD) 271

Anwarul Haque Khan vs Government of Bangladesh, (1979) 30 DLR (HCD) 22

Asaf Khan and Others vs The Court of Settlement, Dhaka and Others, (2003) 23 BLD (AD) 24

Bangladesh Bank and Another vs the Administrative Appellate Tribunal and Others, Civil Appeal No. 4/91

Bangladesh Bank and Another vs the Administrative Appellate Tribunal, represented by its Chairman, Supreme Court Premises, Ramna, Dhaka and Others, Civil Petition No. 291/91

Bangladesh Bank and Another vs the Administrative Appellate Tribunal, represented by its Chairman, Supreme Court Premises, Ramna, Dhaka and Others , Civil Petition No. 291 of 1991

Bangladesh Biman Corporation vs Rabia Bashri Irene and others, (2003) 55 DLR (AD) 132

Bangladesh House Building Finance Corporation vs Quazi Nazrul Islam, Civil Appeal No. 29/92

Bangladesh Krishi Bank and Others vs Mohammed Hossain Bhuiyan, (1999) 7 BLT (AD) 308

Bangladesh Public Service Commission represented by its Chairman, Public Service Commission Secretariat and Another vs Maloti Rani Mondol, (2012) 17 MLR (AD) 104-108)

Bangladesh represented by the Secretary, Ministry of Finance and Another vs Bangladesh Retired Government Employees Welfare Association represented by its President Mr. Kafiluddin Mahmood and Others, Civil Petition No. 244/93; (1999) 4 MLR (AD) 89-106

Bangladesh represented by the Secretary, Ministry of Home Affairs, Dhaka vs Member, Administrative Tribunal, Dhaka and Others, (2001) 6 MLR (AD) 181-183; (2001) 53 DLR (AD) 112-113

Bangladesh represented by the Secretary, Ministry of Home Affairs and Others vs Md. Waziullah, (2008) 113 MLR (AD) 161-163

Bangladesh Retired Government Employees Welfare Association and Others vs Bangladesh represented by the Secretary Ministry of Finance and Another, Civil Appeal No. 50/93(1999); 4 MLR (AD) 89-106

Bangladesh Retired Government Employees Welfare Association and Others vs Bangladesh represented by the Secretary, Ministry of Finance and Another, Civil Appeal No. 71/93; (1999) 4 MLR (AD) 89-106

Bangladesh Shilpa Bank vs Md. Anwarul Haque, (2005) 10 MLR (AD) 14-17

Bangladesh vs A.K.M. Enayet Ullah, (2006) 11 BLC (AD) 2001

Bangladesh vs Abdur Rab, (1981) 33 DLR (AD) 143

Bangladesh vs AKM Zahangir Hossain, (1982) 34 DLR (AD) 173-207

Bangladesh vs Mahabubuddin Ahmed, (1998) 3 MLR (AD) 121

Bangladesh vs Mashiur Rahman, (1998) 50 DLR (AD) 250

Bangladesh vs Md. Abdur Razzak and Others, (2007) 12 MLR (AD) 176-180; (2007) 59 DLR (AD) 94-97

Bangladesh, represented by the Secretary, Establishment Division and Others vs Mahbubuddin Ahmed, (1998) 3 MLR (AD) 121-129

Bangladesh, represented by the Secretary, Ministry of Establishment vs Shafiuddin Ahmed and Others, (1997) 2 MLR (AD) 257-281

Bangladesh, represented by the Secretary, Ministry of health and Family Welfare and Others vs Md. Idrish Miah, (2006) 58 DLR (AD) 55-57

Chairman, Bangladesh Textile Mills Corporation v. Nasir Ahmed Chowdhury, (2002) 22 BLD (AD) 199

Delwar Hossain Mia vs Bangladesh, (2000) 52 DLR (AD) 120

Delwar Hossain Mollah vs Bangladesh, (2007) 15 BLT (AD) 124

Director (Establishment and Administration) T and T Board, Tele Communication Building, Dhaka and other vs Hasan Ahmed Bhuiyan and Another, (1996) 4 BLT (AD) 25

Director General of Prisoners of Bangladesh, Nazimuddin Road, Dhaka and Others vs Md. Nasim Uddin, (2001) 6 MLR (AD) 149-151

Ehtesham Uddin vs Bangladesh, (1981) 33 DLR (AD) 154

Ekushey Television vs Dr. Chowdhury Mahmood Hasan, (2003) 55 DLR (AD) 26

Ekushey Television vs Dr. Chowdhury Mahmood Hasan, (2003) 55 DLR (AD) 26

General Manager, Janata Bank vs Md. Shah Alam Sarkar, (1998) 3 MLR (AD) 105-107; (1999) 51 DLR (AD) 138-139

Golam Mustafa v. Bangladesh, (2007) 15 BLT 128

Government of Bangladesh and Another vs Md. Abdul Karim, (2011) 16 MLR (AD) 361-368; (2011) 63 DLR (AD) 143-148

Government of Bangladesh and Others vs Ansarul Huq, (2011) 16 MLR (AD) 252-254

Government of Bangladesh and Others vs Md. Anwarul Islam, (2009) 14 MLR (AD) 283-290; (2010) 62 DLR (AD) 273-277

Government of Bangladesh and Others vs Md. Nurul Alam, (2013) 18 MLR (AD) 97-108

Government of Bangladesh and Others vs Md. Nurul Alam, (2013) 18 MLR (AD) 97-108; (2013) 65 DLR (AD) 77-81

Government of Bangladesh and Others vs Mirza Giasuddin, (2001) 6 MLR (AD) 110-111

Government of Bangladesh and Others vs Mohammad Faruque, (1999) 4 MLR (AD) 12-16

Government of Bangladesh represented by the Secretary, Ministry of Food, Bangladesh Sachibalaya, Dhaka and Others vs A.B.M. Siddique Mia, (2010) 30 BLD (AD) 274-276; (2010) 15 MLR (AD) 460-465;(2011) 63 DLR (AD)15-17

Government of Bangladesh vs Abdul Halim Mia, (2004) 9 MLR (AD) 105

Government of Bangladesh vs Abdul Halim, (2005) 13 BLT (AD) 120

Government of Bangladesh vs Md. Salauddin Talukder, (2007) 15 BLT (AD) 60

Government of Bangladesh vs Member Administrative Tribunal, (2001) 6 MLR (AD) 181

Government of Bangladesh, represented by the Secretary, Ministry of Shipping, Bangladesh Secretariat, Dhaka and Others vs Dr. Md. Tofajjal Hossain, (2012) 17 MLR (AD) 59-61

Government of Bangladesh, represented by the Secretary, Ministry of Defence, Ganabhaban Complex, Sher-E-Bangla Nagar, Dhaka and Others vs Md. Afzal Hossain Ansari, (2003) 8 MLR (AD) 131-136

Government of Bangladesh, represented by the Secretary, Ministry of Post, Telegraph and telecommunication and Others vs Mr. Abul Khair, (2004) 9 MLR (AD) 221-224, (2004) 56 DLR (AD) 183-185

Government of the People's Republic of Bangladesh and Others vs Syed Sakhawat Hossain, (1997) 2 MLR (AD) 387-389

Government of the People's Republic of Bangladesh, represented by the Comptroller and Auditor General of Bangladesh vs Abdul Latif Chokder, (1997) 49 DLR (AD) 29-32

Govt. of Bangladesh and Others vs Sontosh Kumar Saha and Others, Unreported (AD) date of judgment 15.12.2015

Govt. of Bangladesh, represented by the principal Secretary to Prime Minister's Office, Tejgaon, Dhaka and Another vs Md. Sultan Ahmed, (2006) 10 MLR (AD) 378-380

Hafizul Islam (Md.) v. Government of Bangladesh and Others, (2002) 7 MLR (HCD) 433

Helal Uddin Ahmed vs Bangladesh, (1993) 45 DLR (AD) 1

Ismail Hoque vs Bangladesh, (1982) 34 DLR (AD) 125

Ishaquddin Ahmed vs Government, School of Armour and Centre Bogra Cantonment, Bogra and Others, (1998) 3 MLR 114-115; (1999) 51 DLR 144-145

Jahangir Kabir vs Bangladesh, represented by the Secretary, Ministry of Home Affairs, (1996) 48 DLR (AD) 156-158.

Jamil Huq and Eleven Others vs Bangladesh, (1982) 34 DLR (AD) 125

Janata Bank, represented by its Chairman and Another vs Fazlul Huq and Another, (2009) 14 MLR (AD) 217- 218) Director-Cum-Professor, Pabna, Mental Hospital and Others vs Tossadek Hossain and Others, (2005) 10 MLR (AD) 110-115

Junnur Rahman vs BSRS, (1999) 51 DLR (AD) 166

Kamrul Hasan vs Bangladesh and Others, (1997) 49 DLR (AD) 44-46

Kazi Shamsunnahar and Others vs Commandant PRF Khulna and Others, (1997) 2 BLC (AD) 569

Khalilur Rahman vs Md. Kamrul Ahsan, (2006) 11 MLR (AD) 5

Khalilur Rahman vs Md. Kamrul Ahsan, (2007) 11MLR (AD) 5

Khandker Delwar Hossain vs Bangladesh Italian Marble works Ltd., (2010) 29 BLD (AD) 1

Managing Director, Bangladesh Krishi Bank, Head Office, 83-85, Motijheel Commercial Area, Dhaka-1000 and Another vs Gopal Chandra Nath and Others, (2010) 15 MLR 494-496

Managing Director, Bangladesh Krishi Bank, Head Office, 83-85, Motijheel Commercial Area, Dhaka-1000 and Another vs Gopal Chandra Nath and Others, (2010) 15 MLR (AD) 494-496

Masder Hossain (Md.) and 440 Others (Petitioners) vs Govt. of Bangladesh and Others (Respondents), (1997) 2 BLC (HCD) 444; (2000) 52 DLR (AD) 82

Md. Abdur Rashid and Another vs Abdul Barik and Others, (1984) 4 BLD (AD) 83

Md. Anwar Hossain Chowdhury vs Bangladesh, represented by the Secretary, Ministry of Home Affairs and Others, (1997) 2 MLR (AD) 382-383

Md. Giasuddin Ahmed and Others vs Md. Sirajul Islam and Others, (2001) 6 MLR (AD) 173-175

Md. Hafizuddin (Petitioner) in C.P. 109/96; SK. Mawla Baksha (Petitioner) in C.P. 136/96, Nirmal Chandra Biswas (Petitioner) in C.P. 137/96, Abdul Kader Patwari (Petitioner) in C.P. 138/96 vs Bangladesh Bank, represented by Governor and Others (Respondents in all the petitions), (1997) 5 BLT (AD) 179; (1997) 2 MLR (AD) 89-93; (1997) 49 DLR (AD) 147-152

Md. Mokbul Hossain vs Govt. of Bangladesh and Others, (2007) 12 MLR (AD) 69-72; (2007) 59 DLR (AD) 215-216

Md. Mominul Islam vs Government of the People's Republic of Bangladesh, represented by the secretary, Ministry of Agriculture, Bangladesh Secretariat, Ramna, Dhaka has been studied, (2010) 15 MLR 474-477

Md. Nurul Huq vs Governor, Bangladesh Bank, (1994) 14 BLD (AD) 5

Md. Shahinur Alam vs People's Republic of Bangladesh and Others, (1998) 3 MLR(AD) 20-22, (1998) 50 DLR (AD) 211-212

Md. Shamsul Huda and others v. Bangladesh and others, (2009) 17 BLT (HCD) 62

Md. Shamsul Islam Khan vs Secretary, (2000) 8 BLT (AD) 64

Miss Shaheda Khatun vs Administrative Appellate Tribunal, Dhaka and Others, (1998) 3 MLR (AD) 201-207

Mohammad Jahangir Kabir vs Government of Bangladesh and Others, Civil Appeal No. 82/1992

Mohboob Murshed vs Bangladesh, (1980) 32 DLR (AD) 77

Mostaque Ahmed vs Bangladesh, (1982) 34 DLR (AD) 222

Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 111-136

Mujibur Rahman vs Govt. of Bangladesh and Others; Civil Appeal No. 35/87

Nawab Sir K. G. M. Farooqui vs Province of East Bengal and Another, (1957) 9 DLR (SC) 174-182

Nazmul Hasan and Others vs the Administrative Appellate Tribunal and Others, Civil Appeal No. 1/91

Nazmul Hasan and Others vs the Administrative Appellate Tribunal and Others, Civil Petition No. 308/1991 Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 118

Nazmul Hasan and Others vs the Administrative Appellate Tribunal and Others, Civil Petition No. 308 of 1991 Mujibur Rahman vs Bangladesh, (1992) 44 DLR (AD) 239-241

Pakistan vs Mrs. AV Issacs, (1970) 22 DLR (SC) 371

Pubali Bank vs Chairman, Labour Court, (1992) 44 DLR (AD) 40

Quazi Nazrul Islam vs Bangladesh House Building Finance Corporation, Civil Appeal No. 28/92

Rafiqul Haider vs Ministry of Food, Miscase No. 01/12

Ruhul Amin vs District Judge, (1986) 38 DLR (AD) 172

Ruhul Quddus vs Justice M. A. Aziz, (2008) 59 DLR (HCD) 511

Sadrul Amin vs Asaduzzaman, (1999) BLC (HCD) 340

Secretary, Ministry of Establishment and other vs M.A. Malek, (1997)2 MLR (AD) 48-50

Secretary, Ministry of Establishment vs A.M. Nurunnabi, (2001) 6 MLR (AD) 81-84

Secretary, Ministry of Establishment vs Shafi Uddin Ahmed, (1997) 2 MLR (AD) 257

Secretary, Ministry of Finance vs Masdar Hossain, (1999) 52 DLR (AD) 82

Secretary, Ministry of Food and Others vs Md. Nuruzzaman, (2005) 10 MLR (AD) 97-99

Serajul Islam Takhur vs Bangladesh, (1994) 46 DLR (HCD) 318; Ishaquddin Ahmed (a) Md.

Serajul Islam vs The Director of Food, (1990) 42 DLR (AD) 199

Shaheda Khatun vs Administrative Appellate Tribunal, (1998) 3 BLC (AD) 155

Shahida Khatun vs Bangladesh, (1998) 3 BLC (AD) 155

Shajahan Khondoker vs Grameen Bank, represented by its M.D. and Others, (2014) 34 BLD (AD) 12-14

Shamsun Nahar Begum vs Secretary Ministry of Health and Family Welfare, (1998) 3 MLR (AD) 68

Sirajul Islam vs Bangladesh, (2008) 60 DLR (HCD) 79

Sonali Bank vs Md. Zalaluddin and Others, (2009) 14 MLR (AD) 70-75)

Sonali Bank vs Ruhul Amin Khan, (1994) 46 DLR (AD) 85

Tambia vs Rouf, (1994) DLR (HCD) 521

TNT Board vs Md. Shafiul Alam, (2000) 8 BLT (AD) 225

Upendra Nath Talukder vs Secretary Ministry of Communication Roads and High Ways and Others, Civil Petition No. 346/1992

Appendix B

(List of cases studied for the purpose of chapter six)

List of cases of Administrative Tribunal 1

A.K.M. Hasmat Ali vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 101/10

A.K.M. Imam Mehedi Shah Alam vs Secretary, Ministry of Information Technology, Administrative Tribunal Suit No. 160/09

A.K.M. Zafar Sadek vs Secretary, Ministry of Posts and Telecommunications, Administrative Tribunal Suit No. 105/12

A.S.M. Abdul Latif vs Chairman, Chairman, Board of Directors, Sonali Bank Limited, Administrative Tribunal Suit No. 137/12

A.Z.M. Rafiqur Rahman vs Secretary, Ministry of Establishment, Administrative Tribunal Suit No. 65/10

Abdul Halim vs Secretary, Ministry of Land, Administrative Tribunal Suit No. 111/12

Abdul Hamid vs Ministry of Establishment and 2 Others, Administrative Tribunal Suit No. 119/09

Abdul Kader vs Secretary, Ministry of Defence, Administrative Tribunal Suit No. 68/11

Abdul Mannan vs Secretary, Ministry of Land, Administrative Tribunal Suit No. 113/12

Abu Awal Monzurul Haque vs Secretary, Ministry of Finance, Administrative Tribunal Suit No. 185/12

Abul Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 93/11

Abul Kalam Mustafa vs Bangladesh, represented by the Secretary, Ministry of Education and 3 Others, Administrative Tribunal Suit No. 113/09

Aga Md. Shawkat vs Director, Customer Care, Biman Bangladesh Airlines, Administrative Tribunal Suit No. 183/10

AKM Rafiqul Islam vs Secretary, Ministry of Land, Administrative Tribunal Suit No. 106/12

AKM Shahjahan vs Secretary, Ministry of Health and Family Welfare and Others, Administrative Tribunal Suit No. 99/12

Ashraf Ali vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 86/09

Aulad Hossain Ahmed vs Secretary, Ministry of Housing and Others, Administrative Tribunal Suit No. 157/12

Begum Rehana Aktar vs Secretary, Ministry of Environment and Forest and Others, Administrative Tribunal Suit No. 165/12

Bijoy Chandra Das vs Govt. of Bangladesh, represented by the Cabinet Secretary, Office of Prime Minister, Administrative Tribunal Suit No. 81/10

Debdas Halder vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 163/12

Dhirendra Nath Karmaker vs Secretary, Ministry of Women and Children Affairs and Others, Administrative Tribunal Suit No. 75/10

Dilip Kumar Banik vs Secretary, Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 70/12

Dipok Kumar Roy vs Chairman, Board of Directors, Administrative Tribunal Suit No. 04/10

Dr. Engineer Md. Humayoun Kabir vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 142/11

Dr. Md. Abdul Aziz vs Secretary, Ministry of Health and Family Planning, Administrative Tribunal Suit No. 169/10

Dr. Md. Abdul Mazed vs Secretary, Ministry of Land, Administrative Tribunal Suit No. 76/12

Dr. Md. Monjurul Haque vs Secretary, Ministry of Health and Others, Administrative Tribunal Suit No. 30/11

Dr. Md. Sarwar vs Secretary, Ministry of Education, Administrative Tribunal Suit No. 210/12

Dr. Nasima Begum vs Secretary, Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 166/11

Dr. Nasima Begum vs Secretary, Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 02/12

Dr. Nigar Sultana vs Secretary, Ministry of Health and Family Welfare, Administrative Tribunal Suit No. 149/12

Dr. S.M. Zahangir Alam vs Govt. of Bangladesh, represented by the Secretary, Ministry of Finance and 1 Other, Administrative Tribunal Suit No. 150/09

Ex Professor Patriatic vs Secretary, Ministry of Health and Family Welfare, Administrative Tribunal Suit No. 75/11

Faruq Al Mamun Bhuiyan vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 212/09

Gauranga Chandra Shaha vs Secretary, Ministry of Forest and Others, Administrative Tribunal Suit No. 38/11

Gokul Chandra Debnath vs Secretary, Ministry of Primary and Mass Education and Others, Administrative Tribunal Suit No. 106/11

Golam Mostafa vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 184/12

Golam Mostafa vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 91/11

Haripad Biswas vs Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 111/09

Hasina Begum vs Secretary, Ministry of Establishment and Others, Administrative Tribunal Suit No. 42/11

Jabunnesa vs Secretary, Ministry of Education, Administrative Tribunal Suit No. 139/12

Jahir Uddin Md. Taimur Ali vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 98/11

Jalaluddin Ahmed vs Secretary, Ministry of Agriculture and Others, Administrative Tribunal Suit No. 87/11

Kalipad Sarkar vs Secretary, Ministry of Home Affairs, Administrative Tribunal Suit No. 77/10

Kamal Kumar Roy vs Chairman, Anti-Corruption Commission and Others, Administrative Tribunal Suit No. 148/11

Kazi Amzad Hossain vs Secretary, Ministry of Home Affairs, Administrative Tribunal Suit No. 66/10

Kazi Emdadul Huq vs Secretary, Ministry of Information and Five Others, Administrative Tribunal Suit No. 68/10

Kazi Enamul Haque vs Secretary, Ministry of Forest and Others, Administrative Tribunal Suit No. 112/11

Kazi Zilhaj Miah vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 117/10

Khandaker Zulfiker Haider vs Secretary, Ministry of Civil Aviation and Tourism, Bangladesh Secretariat, Dhaka, Administrative Tribunal Suit No. 152/09

Khandoker Mofazzal Hossain vs Secretary, Ministry of Health and Family Planning, Administrative Tribunal Suit No. 182/10

Khandoker Saidur Rahman vs Secretary, Ministry of Family Planning and Others, Administrative Tribunal Suit No. 60/11

Khandoker Sayed Hasan vs Secretary, Ministry of Planning and 2 Others, Administrative Tribunal Suit No. 35/12

Khondoker Humayoun Kabir vs Secretary, Ministry of Law, Justice and Parliamentary Affairs, Administrative Tribunal Suit No. 89/12

M. Sohrab Hossain vs Secretary, Ministry of Home Affairs, Administrative Tribunal Suit No. 190/09

M.A.K. Mahmood vs Secretary, Ministry of Foreign Affairs and Others, Administrative Tribunal Suit No. 161/09

M.S. Anamul Kabir vs Secretary, Ministry of Finance and Planning, Administrative Tribunal Suit No. 53/09

Mahbubul Haque Mollah vs Assistant Post Master General, Dhaka, Administrative Tribunal Suit No. 55/11

Manik Lal Das vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 122/09

Manik Lal Nath vs Secretary, Ministry of Primary and Mass Education and Others, Administrative Tribunal Suit No. 190/10

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Maynul Ahsan Kabir vs Secretary, Ministry of Home Affairs, Administrative Tribunal Suit No. 147/09

Md. Abdul Awal vs Secretary, Ministry of Health and Others, Administrative Tribunal Suit No. 03/10

Md. Abdul Aziz vs Secretary, Ministry of Defence, Administrative Tribunal Suit No. 69/11

Md. Abdul Aziz vs Secretary, Ministry of Education and Others, Administrative Tribunal Suit No. 125/12

Md. Abdul Hakim vs Managing Director, Sonali Bank, Administrative Tribunal Suit No. 48/11

Md. Abdul Hamid vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 103/11

Md. Abdul Kalam Azad vs Secretary, Election Commission, Administrative Tribunal Suit No. 4/11

Md. Abdul Karim Sarkar vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 83/11

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Md. Abdul Matin vs Managing Director, Sonali Bank, Administrative Tribunal Suit No. 11/11

Md. Abdul Matin vs Secretary, Ministry of Defence, Administrative Tribunal Suit No. 66/11

Md. Abdul Motaleb vs Secretary, Ministry of Land, Administrative Tribunal Suit No. 154/12

Md. Abdul Salam Sheikh vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 15/11

Md. Abdullah al Baquee vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 107/11

Md. Abu Bakar Siddique vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 85/11

Md. Abu Bakar Siddique vs Secretary, Ministry of Home, Administrative Tribunal Suit No. 100/09

Md. Abul Kalam vs Government of Bangladesh, represented by the Secretary, Non-Government Civil Aviation Authorities and 5 Others, Administrative Tribunal Suit No. 141/09

Md. Abul Kashem vs Managing Director, Sonali Bank, Administrative Tribunal Suit No. 10/10

Md. Ahsan-ul-Karim vs Secretary, Ministry of Posts and Telecommunications, Administrative Tribunal Suit No. 100/12

Md. Aklam Hossain vs Managing Director, Grameen Bank, Administrative Tribunal Suit No. 89/09

Md. Alauddin Khan vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 155/11

Md. Alauddin Mollah vs Chairman, Board of Directors and Others, Administrative Tribunal Suit No. 85/10

Md. Ali Ashraf vs Secretary, Ministry of Posts and TeleCommunications, Administrative Tribunal Suit No. 172/11

Md. Alimuddin vs Chairman, Board of Directors, Grameen Bank, Administrative Tribunal Suit No. 181/12

Md. Aminul Haque Miah vs Secretary, Ministry of Posts and Telecommunications, Administrative Tribunal Suit No. 157/10

Md. Aminul Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 101/12

Md. Amir Hossain vs Chairman, Board of Directors, Janata Bank, Administrative Tribunal Suit No. 37/12

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Md. Anwar Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 151/11

Md. Anwar Hossain vs Secretary, Ministry of Posts and Telecommunications, Administrative Tribunal Suit No. 46/12

Md. Anwar Hossain vs Secretary, Ministry of Youth and Sports, Administrative Tribunal Suit No. 134/11

Md. Ariful Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 155/10

Md. Ashequr Rahman vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 170/11

Md. Azizul Haque vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 23/11

Md. Azizul Karim vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 159/10

Md. Babul Aktar vs Secretary, Ministry of Land, Administrative Tribunal Suit No. 173/12

Md. Babul Miah vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 123/09

Md. Badiul Kabir vs Secretary, Ministry of Establishment and Others, Administrative Tribunal Suit No. 155/09

Md. Bakul Mia and Other Four vs Secretary, Ministry of Health and Family Welfare, Administrative Tribunal Suit No. 215/09

Md. Bazlur Rashid vs Government of Bangladesh represented by the Secretary, Ministry of Home and Others, Administrative Tribunal Suit No. 64/09

Md. Belayet Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 171/09

Md. Delwar Hossain Akland vs Secretary, Ministry of Home Afffairs and Others, Administrative Tribunal Suit No. 120/10

Md. Delwar Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 42/10

Md. Delwar Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 72/11

Md. Ezazul Haque vs Director General and Others, Administrative Tribunal Suit No. 167/09

Md. Faruq Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 81/11

Md. Fazlul Haque vs Secretary, Ministry of Family and Health Welfare and Others, Administrative Tribunal Suit No. 193/10

Md. Fazlul Haque vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 39/09

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Md. Ferdous Al Amin vs Secretary, Ministry of Posts and Telecommunications, Administrative Tribunal Suit No. 221/12

Md. Forhad Kabir vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 18/12

Md. Giasuddin vs Secretary, Ministry of Information, Administrative Tribunal Suit No. 144/10

Md. Golam Rabbani vs Secretary, Ministry of Foreign Affairs, Administrative Tribunal Suit No. 82/10

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Md. Harun-ur-Rashid vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 107/12

Md. Helal Uddin vs Secretary, Ministry of Foreign Affairs, Administrative Tribunal Suit No. 80/12

Md. Humayoun Hamidi vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 169/11

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Md. Ibrahim Howlader vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 108/11

Md. Ibrahim Khalil vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 77/11

Md. Imam Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 44/12

Md. Ishaq Ali vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 144/12

Md. Jalal Uddin vs Secretary, Ministry of Finance, Administrative Tribunal Suit No. 197/10

Md. Jalil Hossain Mollah vs Govt. of Bangladesh, represented by the Secretary, Ministry of Finance, Banking Division and Others, Administrative Tribunal Suit No. 104/10

Md. Jewel Rana vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 73/11

Md. Kamrul Hasan vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 103/12

Md. Kamruzzaman, MLSS vs Secretary, Ministry of Health, Administrative Tribunal Suit No. 19/09

Md. Kanchon Biswas vs Secretary, Ministry of Education, Administrative Tribunal Suit No. 176/10

Md. Khizir Ahmed vs Secretary, Ministry of Home Affairs, Administrative Tribunal Suit No. 22/11

Md. Liaqat Ali Khan vs Ministry of Primary and Mass Education, Bangladesh Secretariat, Dhaka, Administrative Tribunal Suit No. 112/09

Md. Lokman Hossain vs Secretary, Ministry of Home and 4 Others, Administrative Tribunal Suit No. 191/09

Md. Mahbubul Alam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 118/12

Md. Mainul Huq Sikdar vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 120/09

Md. Makton Biswas vs Bangladesh, represented by the Secretary,Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 117/09

Md. Mamunur Rashid vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 187/09

Md. Mashiur Rahman vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 73/10

Md. Masud Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 201/12

Md. Mir Hossain vs Secretary, Ministry of Fisheries and Livestock, Administrative Tribunal Suit No. 113/11

Md. Mizanur Rahman vs Bangladesh represented by the Secretary, Ministry of Communication, Bangladesh Secretariat, Dhaka and 2 Others, Administrative Tribunal Suit No. 109/09

Md. Mizanur Rahman vs Secretary, Ministry of Establishment, Administrative Tribunal Suit No. 44/11

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Md. Mohibullah vs Secretary, Ministry of Fisheries and Livestock, Administrative Tribunal Suit No. 114/11

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Md. Mojnu Mia vs Secretary, Ministry of Health and Family Planning, Administrative Tribunal Suit No. 46/10

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Md. Moniruzzaman vs Secretary, Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 113/10

Md. Monjurul Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 70/10

Md. Mosahiduzzaman vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 189/12

Md. Mosharaf Hossain vs Secretary, Ministry of Land and Others, Administrative Tribunal Suit No. 207/12

Md. Mosharraf Hossain vs secretary, Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 214/12

Md. Mostafa Kamal vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 222/12

Md. Mozaffar Ali vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 31/09

Md. Mozammel Huq vs Secretary, Ministry of Law, Justice and Parliamentary Affairs, Administrative Tribunal Suit No. 84/10

Md. Mozzammel Huq vs Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 87/09

Md. Mozzammel Khan vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 09/10

Md. Mukul Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 177/12

Md. Muzahidur Rahman vs Secretary, Ministry of Posts and TeleCommunications, Administrative Tribunal Suit No. 171/11

Md. Muzibur Rahman vs Secretary, Office of Prime Minister, Administrative Tribunal Suit No. 79/11

Md. Nasir Uddin vs I.G., Police Headquarters, Dhaka, Administrative Tribunal Suit No. 62/12

Md. Nazir Hossain vs Government of Bangladesh represented by the Secretary, Election Commission and Others, Administrative Tribunal Suit No. 148/10

Md. Nazmul Haider vs Secretary, Ministry of Defence and Others, Administrative Tribunal Suit No. 128/11

Md. Nazmul Haider vs Secretary, Ministry of Defence, Administrative Tribunal Suit No. 188/10

Md. Nazmul Huda Khan vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 128/12

Md. Nazrul Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 29/09

Md. Nazrul Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 200/12

Md. Nazrul Islam vs Secretary, Ministry of Land and Others, Administrative Tribunal Suit No. 18/11

Md. Nobi Hossain Talukdar vs Secretary, Department of Primary and Secondary Education, Bangladesh Secretariat, Dhaka, Administrative Tribunal Suit No. 93/09

Md. Noor Nobi Chowdhury vs Secretary, Ministry of Disaster Management and Relief and Others, Administrative Tribunal Suit No. 108/12

Md. Nurul Alam Joadder vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 33/12

Md. Nurul Islam Bhuiyan vs Secretary, Ministry of Primary and Mass Education and Others, Administrative Tribunal Suit No. 108/10

Md. Omar Faruq Rabbani vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 156/11

Md. Rafiqul Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 184/10

Md. Rafiqul Islam vs Secretary,Min istry of Home Affairs and Others, Administrative Tribunal Suit No. 51/09

Md. Raju Ahmed vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 190/12

Md. Rakibul Hasan vs Secretary, Ministry of Law, Justice and Parliamentary Affairs, Administrative Tribunal Suit No. 131/11

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Md. Rezaul Karim vs Secretary, Ministry of Land and Others, Administrative Tribunal Suit No. 118/10

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Md. Ruhul Amin vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 123/11

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Md. Salim Ahmad vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 158/11

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Md. Shahjahan Dewan Monir vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 116/10

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Md. Shofiullah vs Secretary, Ministry of Establishment, Administrative Tribunal Suit No. 45/11

Md. Shohid Mollah vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 140/11

Md. Shohidul Huq vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 172/09

Md. Shohidul Islam vs Secretary, Ministry of Agriculture and Others, Administrative Tribunal Suit No. 127/12

Md. Shohidul Islam vs Secretary, Ministry of Bank and Financial Institution Division and Others, Administrative Tribunal Suit No. 104/11

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Md. Yousuful Haque Siddique vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 132/11

Md. Zahangir Sikder vs Secretary, Ministry of Local Government and Others, Administrative Tribunal Suit No. 09/12

Md. Zuran Ali vs Secretary, Ministry of Health and Family Welfare and Others, Administrative Tribunal Suit No. 59/11

Merina Zaman vs Secretary, Ministry of Women and Children Affairs, Administrative Tribunal Suit No. 146/11

Milon Chandra vs Honourable Chief Justice of Bangladesh, Law, Justice and Parliamentary Affairs and Others, Administrative Tribunal Suit No. 48/12

Mirja Md. Abdur Rashid vs Secretary, Ministry of Land, Bangladesh Secretariat and Others, Administrative Tribunal Suit No. 109/10

Moazzem Hossain Bhuiyan vs Secretary, Ministry of Posts and Telecommunications, Administrative Tribunal Suit No. 91/12

Mobina Aktar vs Secretary, Ministry of Health and Family Welfare, Administrative Tribunal Suit No. 164/12

Mossammat Roksana Akhtar vs Managing Director, Grameen Bank and two Others, Administrative Tribunal Suit No. 11/12

Mr Reaz Uddin Ahmed vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 110/10

Mr. Abdus Sobhan vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 118/11

Mr. AKM Nasir Uddin vs Chairman, Board of Directors, Bangladesh Krishi Bank and Others, Administrative Tribunal Suit No. 105/11

Mr. Dhirendra Nath Karmaker vs Secretary, Ministry of Women and Children Affairs and Others, Administrative Tribunal Suit No. 40/10

Mr. Farid Ahmed vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 119/11

Mr. Kazi Abdus Samad vs Secretary, Ministry of LGED, Administrative Tribunal Suit No. 141/11

Mr. Kazi Sarwar Imtiaz Hasme vs Secretary, Ministry of Environment and Others, Administrative Tribunal Suit No. 170/09

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Mr. Md. Ashrafuzzaman vs Cabinet Secretary, Bangladesh Secretariat and Others, Administrative Tribunal Suit No. 100/10

Mr. Md. Azizul Haque vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 158/10

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Mr. Md. Emtazuddin vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 162/10

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Mr. Md. Gias Uddin Khan vs secretary, Ministry of Home Affairs and others, Administrative Tribunal Suit No. 136/09

Mr. Md. Golam Mostafa vs Secretary, Ministry of LGED and Others, Administrative Tribunal Suit No. 139/11

Mr. Md. Golam Mostafa vs Secretary, Ministry of LGED and Others, Administrative Tribunal Suit No. 111/11

Mr. Md. Haider Ali Miah vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 141/10

Mr. Md. Humayoun Kabir vs Bangladesh, represented by the Secretary, Ministry of Establishment and Others, Administrative Tribunal Suit No. 116/09

Mr. Md. Iqbal Ahmed vs Chairman, Board of Directors, Sonali Bank and Others, Administrative Tribunal Suit No. 194/12

Mr. Md. Kaikobad vs Secretary, Ministry of LGED and Others, Administrative Tribunal Suit No. 49/11

Mr. Md. Masud Karim vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 74/11

Mr. Md. Matior Rahman vs Secretary, Ministry of Law, Justice and Parliamentary Affairs and Others, Administrative Tribunal Suit No. 127/09

Mr. Md. Mostafiz Alam vs Secretary, Ministry of Cultural Affairs and Others, Administrative Tribunal Suit No. 167/10

Mr. Md. Motiur Rahman vs Government of Bangladesh, represented by the Secretary, Ministry of T and T and Others, Administrative Tribunal Suit No. 137/09

Mr. Md. Nazmul Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 152/12

Mr. Md. Salah Ahmed vs Secretary, Ministry of Post and Telecommunications and Others, Administrative Tribunal Suit No. 38/10

Mr. Md. Shahadat Hossain Bhuiyan vs Secretary, Ministry of Law, Justice and Parliamentary Affairs, Administrative Tribunal Suit No. 47/12

Mr. Md. Shahadat Hossain vs Secretary, Ministry of Establishment, Dhaka, Administrative Tribunal Suit No. 101/11

Mr. Md. Shamsul Islam Khan vs Secretary, Ministry of Finance and Others, Administrative Tribunal Suit No. 138/12

Mr. Md. Shohidul Islam vs Chairman, Board of Directors and Others, Administrative Tribunal Suit No. 208/12

Mr. Md. Taherul Islam vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 104/09

Mr. Moazzem Hossain vs Secretary, Ministry of Health and Family Welfare and Others, Administrative Tribunal Suit No. 52/11

Mr. Mosharaf Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 125/10

Mr. Mosharaf Hossain vs Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 126/10

Mr. Sanchayan Talukdar vs Secretary, Ministry of Land, Bangladesh Secretariat and Others, Administrative Tribunal Suit No. 68/12

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Mrs. Gulnahar Begum vs Secretary, Ministry of Commerce, Administrative Tribunal Suit No. 36/12

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N.M. Selim vs Secretary, Ministry of Establishment, Administrative Tribunal Suit No. 06/10

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Nirmal Kanti Saha vs Secretary, Ministry of LGRD and Co-operatives, Administrative Tribunal Suit No. 87/12

Nitta Nonda Singh vs Managing Director, Grameen Bank, Head Office, Dhaka, Administrative Tribunal Suit No. 99/11

Nittaya Gopal Tarafdar vs Bangladesh, represented by the Secretary,Ministry of Primary and Mass Education, Administrative Tribunal Suit No. 118/09

Nur Ahmed Hossain vs Bangladesh, represented by the Secretary, Ministry of Communication, Bangladesh Secretariat and 2 Others, Administrative Tribunal Suit No. 115/09

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Rita Rani Mondol vs Secretary, Ministry of Education, Administrative Tribunal Suit No. 93/12

Salauddin Ahmed vs Govt. of Bangladesh, represented by the Secretary, Ministry of Home Affairs and Others, Administrative Tribunal Suit No. 49/10

Santosh Chandra Matabbor vs Bangladesh, represented by the Secretary, Mionistry of Defence, Ganabhaban, Sher-e-Bangla Nagar, Dhaka and Others, Administrative Tribunal Suit No. 149/10

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A.P.S.R.T Crop. vs S. Transport, (1965) AIR (SC) 1303

Abbott vs Sullivan, (1952) 1 K.B. 189

Abdul Ghaffar vs Lahore Development Authority, (1958) PLD (Lahore) 769

Abdul Rehman vs Inspector General Police, Punjab, (1995) PLD (SC) 546

Associated Provincial Picture House Ltd. vs Wednesbury Corp, (1948) 1 KB 223

Associated Provincial Picture House Ltd. vs Wednesbury Corporation, (1948) 1 KB 223

Chairman Broadcasting Corporation, Islamabad vs Nisar Ahmed and 30 others, (1995) SCMR 1593

Chairman PIAC and Others vs Nasim Malik, (1990) PLD (SC) 951

Chairman/Secretary, Pakistan Railway, Islamabad vs Muhammad Sharif Javaid Warsi, (2003) PLJ (SC) 407

Deepti Bhandari vs Nitin Bhandari, (2012) AIR (SC) 326.

Dr. Munir vs Chancellor, NED University Karachi, (1996) PLJ (SC) 1686

Fazal Haji vs Pakistan through Establishment Division, (1990) PLD (SC) 692

Federation of Pakistan vs Muhammad Azim Khan, (1989) SCMR 1271

Haji Kadir Bux vs Province of Sindh, (1982) SCMR 582

Haji Kadir Bux vs Province of Sindh, (1993) SCMR 582

Haryana and Another vs Ratan Singh, (1977) AIR (SC) 1512

High Commissioner for India vs I.M. Lall, (1948) AIR (P.C.) 121

High Commissioner for India vs IM Lall, (1948) AIR (PC) 121

Inspector General of Police vs Muhammad Farid Ex-Constable, (2003) NLR (Labour) 73

Jaswant Sugar Mills vs Lakshmi Chand, (1963) AIR (SC) 677

K.K.Dutta vs Union of India, (1980) 4 SCC 38

Kasavananda Bharati vs State of Kerala, (1997) AIR (SC) 1461

Keshavananda Bharati vs State of Kerala, (1973) AIR (SC) 1461 (paras 1521 and 1920)

L. Chandra Kumar vs Union of India, (1997) 3 SCC 261; (1997) 3 JT (SC) 589

M. Yamin Qureshi vs Islamic Republic of Pakistan, (1980) PLD (SC) 22

M.A. Khakwani vs Mrs. Shaheen and Others, (1981) PLJ (Lahore) 122

Major UR Bhatt vs Union of India, (1962) AIR (SC) 1344

Managing Director, Sui Southern Gas Company Ltd. Vs Ghullam Abbas and Others, (2003) NLR 2003

Mohammad Mohsin Siddique vs Govt. of West Pakistan, (1964) PLD (SC) 64

Mohammad Yousuf vs Government of Pakistan, (1992) SCMR 1748

Muhammad Ahmed vs Pakistan through Secretary, Establishment Division, (1986) PLJ (Karachi) 441

Muhammad Jan Marwat vs Nazir Mohammad, (1997) SCMR 287

Muskrat vs United States, (1911) 219 U.S. 346

Nand Kishore Prasad vs State of Bihar, (1981) C.R.P.F (2) SLR (Cal) 182

Pradesh Industries Limited vs Union of India, (1966) AIR (SC) 671

Pratap Singh vs State of Punjab, (1964) AIR (SC) 72

Province of Punjab vs Ramjan Ali Khan, (1982) PLD (SC) 349

R vs Cambridge Health Authority, 2 All ER 129

R vs the Secretary of State for Education and Employment ex P Begbie, (2002), 1 WLR1115

Rogers vs Swindon NSH Primary Care Trust, (2006) 1 WLR 2649

Royal Aquarium and Summer and Winter Garden Society Limited vs Parkinson, (1892) 1 QB 431

Saeed Rabbani vs Director General, Leather Industries, (1994) PLD (SC) 123

Sampath Kumar vs Union of India, (1985) 4 SCC 458

Shea vs North Butte Mining Co., (1919) 55 Mont. 522

Shell Company of Australia vs Federal Commissioners, (1931) 275 AC 297-8

Shipping Corporation of India vs Machadeo Brothers, (2004) AIR (SC) 2093

Sindh Employees Social Security Institution and Others vs Adamjee Cotton Mills Ltd., (1975) PLD (SC) 32

Smith vs Clay, (1767) 3 Brpo. C.C. 640

State of Mysore vs Shivabasappa Shivappa Makapur, (1963) AIR (SC) 375

Sui Northern Gas Pipelines Ltd. vs Mr. Aftab Ali Khan, (2002) PLJ (SC) 1148

Suresh Chandra Poddar vs Dhani Ram, (2002) 1 SCC 766

Syed Imran Raza Zaidi vs Government of Punjab S and GAD, (1996) PLJ (SC) 601

T. Sudhakar Prasad vs Govt. of A.P and Others, (2000) Supp 5 SCR 610

Tanveer Iqbal vs OPF College, Islamabad, (1994) SCMR 958

Underwood vs McDuffee, (1867) 15 Mich. 361

Union of India vs T.R. Varma, (1957) AIR (SC) 882

Venkata Rao vs Secy of State, (1937) AIR (P.C.) 31

WAPDA vs Abdul Rashid Dar, (1990) SCMR 1513

WAPDA vs Zulfiqar Ali, (1988) PLD (SC) 693

Western Mental Supply Co. vs Pillsbury, (1916) 172 Cal. 407

Zafar Iqbal vs WAPDA, (1995) SCMR 16

Zubaida Zahoor vs Deputy Director, Health Service, Bhawalpur Division, (1991) SCMR 1472