

Tribunals

May 14, 2020

Source: *The Hindu*

Manifest pedagogy: Tribunals are treated as a less expensive, speedy, alternate judicial mechanism to the courts. But in recent times judicial independence of these institutions has been marred. This topic focuses on new rules which intend to correct the blunders done so far. It's important both from prelims as well as mains perspective.

In news: Central government has come up with new rules to govern its tribunals

Placing it in syllabus: Tribunals

Static dimensions:

- About a tribunal
- Tribunal rules, 2017
- SC judgement in Roger Mathew case

Current dimensions: Tribunals Rules, 2020

Content:

What is a Tribunal?

- Tribunal is a **quasi-judicial institution** that is set up to deal with problems such as resolving administrative or tax-related disputes.
- They are constituted with the **objective of** delivering speedy, inexpensive and decentralised adjudication of disputes in various matters.
- They are **created to avoid the regular courts' route for dispensation of disputes.**
- They run in parallel to the courts and generally are **less formal, less expensive and less time consuming.**

- They are **not originally a part of the Constitution.**
- The **42nd Amendment Act** introduced these provisions in accordance with the recommendations of the Swaran Singh Committee.
- The Amendment introduced **Part XIV-A** to the Constitution, which deals with 'Tribunals' and contains two articles:
 - **Article 323A** deals with Administrative Tribunals. These are quasi-judicial institutions that resolve disputes related to the recruitment and service conditions of persons engaged in public service.
 - **Article 323B** deals with tribunals for other subjects such as *Taxation, Industrial and labour, Foreign exchange, import and export, Land reforms, Food, Ceiling on urban property, Elections to Parliament and state legislatures, Rent and tenancy rights.*

Tribunal rules 2017:

- The Department of Revenue, in 2017, under **Section 184 of the Finance Act, 2017** notified the "*Tribunal, Appellate Tribunal and other Authorities Rules*", 2017.
- The rules **gave the Central Government wide-ranging powers for appointment of members to 19 Tribunals** by amending 19 existing laws.
- The **qualifications of persons** who may be appointed as the Chairperson and judicial member of the National Green Tribunal (NGT) was revised.
- The membership of the **Search-cum-Selection Committee for the post of Expert Members** no longer contained the Chairperson of the NGT and a Sitting Judge of the Supreme Court, with the Chairperson of the Committee being a Government appointee.
- The Rules made the Ministry of Environment and Forests (MoEF) responsible for conducting the inquiry with a written complaint against any member of the NGT and made a reference to a committee to conduct an inquiry. The **rules were silent on the composition of such a committee**

on the basis of whose recommendations, the government may remove the member from the NGT.

The Finance Act of 2017 merged eight tribunals according to functional similarity.



A petition was filed before the Supreme Court challenging the constitutionality of amendments that had been made in the NGT Act, 2010 through the Finance Act, 2017.

SC judgement in Rojer Mathew case: In November 2019, a **Constitution Bench of the Supreme Court, in the Rojer Mathew case**, declared the *Tribunal, Appellate Tribunal and other Authorities Rules, 2017* as **unconstitutional for being violative of principles of independence of the judiciary.**

The Court noted that barring the National Company Law Appellate Tribunal (NCLAT), the selection committee for all other tribunals was made up either entirely from personnel within or nominated by the Central government or comprised a majority of personnel from the Central government.

Reiterating its previous decision in **Madras Bar Association (2010)**, the Court held that the **judiciary must have an equal say in the appointment of members of the tribunals.** This decision is applicable to the selection process and constitution of all tribunals in India.

To deny the executive an upper hand in appointing members to tribunals, the court ordered **two judges of the Supreme Court to be a part of the four-member selection committee.**

(Note: In Madras Bar Association(2010), the court had held that the selection committee should comprise the Chief Justice of India or his nominee, a senior judge of the Supreme Court or Chief Justice of the High Court and secretaries in the Ministry of Finance and Ministry of Law and Justice

respectively).

However the court referred the question of whether Part XIV of the Act was validly passed as a Money Bill to a larger Bench to avoid conflicts. It also **directed the Central government to reformulate the rules** strictly in accordance with principles delineated by the Court in its earlier decisions.

Tribunals Rules 2020: The **Union Ministry of Finance** has framed new rules that prescribe uniform norms for the appointment and service conditions of members to various tribunals.

- The new Rules prescribes that the **appointments to the Tribunals will be made by Central Government on the recommendations by the "Search cum Selection Committee"** constituted for each Tribunal.
- The composition of such committees of each Tribunal is specified in the Schedule of the Rules.
- The **Chief Justice of India or a Judge nominated by the CJI is a member** of the Search Cum Selection Committee of all Tribunals.
- The **Committee has the power to recommend the removal of a member, and also to conduct inquiry** into allegations of misconduct by a member.

Does the new rules solve the problem of a lack of judicial dominance?

- The rule 2017 made persons having no judicial or legal experience eligible for appointment as presiding officers of the tribunal. This clause has been omitted in the 2020 rules.
- The 2017 rules treated judges of the Supreme Court, high court and district court equal by making them all eligible to be appointed as presiding officer. The 2020 rules have substituted judges of the high court with CJI of the high court in the qualification criteria for the said appellate tribunal.

- The 2017 rules provided that the secretary in the ministry or department under which the tribunal be constituted shall be the convener of the search cum selection committee. Such provision has been omitted in 2020 rules.
- The 2020 rules has provided a **fixed term of 4 years to the tribunal** (it was 3 years term under 2017 and held ineffective).

Criticisms:

- The **upper hand to the executive** in the matter of appointments to tribunals is still present in 2020 rules.
- The **rules have not incorporated the suggestions given in Madras Bar Association(2010)** case that proposed composition of selection committee as 4 member committee with 2 representatives from judiciary and casting vote for CJI.
- The court had also observed that the suspension of chairperson or member of tribunal can be only with the concurrence of CJI. But there is no provision in 2020 rules to incorporate this direction.

Mould your thought: Explain the importance of Tribunal Rules, 2020 in advancing the cause of independence of the tribunals. What are the criticisms raised against the rules?