

The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014

The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 (the Bill, hereinafter) has been drafted in response to the need for having uniform conditions of service across Chairmen and Members of quasi-judicial bodies such as Tribunals, Appellate Tribunals, Commissions, Boards and so on. Further, the Bill also attempts to address the issue of Members of such quasi-judicial bodies undertaking arbitration whilst holding office. Though a step in the right direction, it ignores addressing a number of issues.

The Bill at a Glance

Highlights

- ◆ Clearly defines the Chairmen and Members of 26 tribunals and authorities and empowers the Central Government to bring within the ambit of the Bill other such tribunals and authorities which have a sitting or retired Supreme Court or High Court judge as a Chairman and Member
- ◆ Specifies the terms for: term of office, reappointment, retirement, suspension of pension, allowances, medical facilities, and leaves
- ◆ Prohibits Chairmen and Members from undertaking arbitration while holding office and prohibits Members from appearing before the tribunal that they were serving on completion of their term of service with that tribunal

Lowlights

- ◆ Allows different dates for enforcement of the Bill with no review clause
- ◆ Given the fact that judgements of tribunals are often challenged in superior courts, qualification/prerequisites for appointment of Chairmen and Members should be clearly spelt out
- ◆ Does not provide for removal of Chairmen and Members
- ◆ Does not extend to forbid Chairmen and Members from undertaking private litigation and such other activities
- ◆ Chairmen and Members remain unaccountable for their acts
- ◆ Absence of cooling clause
- ◆ Independence of tribunals and authorities diluted by:
a) providing for the Minister to sanction chairperson's leave and foreign travel of Chairmen and Members; and
b) provision for reappointment of Members for another term by the government in cases where the government is a litigant before it

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Action Points

- All the provisions of the Bill should come into force on the same date
- The Bill should specify certain qualifications and prerequisites for the appointment of Chairmen and Members
- Conditions and process for removal of Members and Chairman should be mentioned
- Besides arbitration, similar activities such as private litigation, advisories, etc., should also be prohibited
- Members and Chairman should be made accountable for their acts
- Cooling clause of two years should be provided to ensure impartiality of any kind
- Ministry's involvement in administrative issues relating to the Chairperson and Members should be done away with

Introduction

The issues pertaining to the variance in terms of conditions of Chairmen and Members of different tribunals and authorities was brought before the Supreme Court of India in a writ petition (*Rajiv Garg vs. Union of India*),¹ where the Court decided that the matter needed immediate attention.

An incidental issue was also raised in a recent Public Interest Litigation (PIL) in the New Delhi High Court, filed by the Non-governmental Organisation (NGO), Common Cause, where Prashant Bhushan, appearing on behalf of the NGO argued against former judges of the Supreme Court and High Court taking arbitration cases while being Members of tribunals and appellate tribunals. The Court set aside the PIL on the ground that the bone of contention in the given matter is covered in the tribunals, appellate tribunals and other authorities (Conditions of Service) Bill, 2014, which is pending before the Rajya Sabha.

The Bill was submitted in the Rajya Sabha on February 11, 2014 by the ex-Minister of Law and Justice, Kapil Sibal.

The Bill extends to include Members of tribunals, appellate tribunals, board, commissions and authorities which have been enlisted under Schedule I of the Bill.

Bill to bring even conditions of service for Chairmen and Members of Tribunals

The core objective of the captioned Bill, as mentioned in the Statement of Objective and Reasons and its preamble, is to bring even conditions of service for Members and Chairman of the quasi-judicial bodies enlisted in Schedule I of the Bill. Further, to bring the Bill to enforcement, Section 1(2) of the Bill provides that for coming into force, “different dates may be appointed for different provisions of this Act” by the Central Government.

It is argued that if different provisions come into enforcement at different times, the same defeats the very purpose of the Bill, which is to essentially provide uniform condition of service for Chairmen and Members of the enlisted bodies. To ensure the objective of the Bill is met as it comes into force and that unnecessary delays on the part of the government do not hinder the objective of the Bill, it is necessary that the whole Bill comes into existence at the same time. If different provisions come into force at different times, varied conditions of service will remain.

There have been instances where the relevant provisions of an Act were not timely enforced because of lack of prompt action from the government. For

instance, various provisions of the Competition Act, 2002, were enforced at different intervals. Section 5 and Section 6, pertaining to “Regulations and Combinations”, only came into force in 2011.

Qualifications for Appointment

The Bill must take this opportunity to prescribe the benchmark of prerequisites attached to appointment of Chairmen and Members with a view to improve the quality of judgements and reduce reference of its decisions to higher courts. Tribunals are expected to reduce delays and pendency in the prevailing judicial set-up but have not been successful in doing so.

To ensure appointment of diligent, meritorious, and erudite Chairmen and Members, the Bill must propose certain benchmarks as ‘qualifications for appointment’. Qualification of appointment is incidental to the conditions of service, the scope of this Bill. The same may be provided as an overarching principle, where the acts applicable under the Bill may use the principle as a yardstick to enlist qualifications. Holding of interviews for selection by an independent body should be considered. The same is likely to ensure prudent appointment which shall ultimately stir the efficiency of the tribunals/such authorities in question.

1 *Civil Writ Petition No. 120/2012*

Removal of Chairmen and Members

While the Bill prescribes the tenure and age for retirement, it does not provide for a uniform process for removal of the Chairmen and Members under its ambit.

The provision for 'Removal of Members and Chairmen' must mention the reasons based on which one may be removed from office and prescribe the process of removal.

Chairmen and Members may not act as Arbitrators

Section 7 mentions, "No person while holding office as the Chairman or Member shall act as an arbitrator in any matter...."

In furtherance of the objective of the Bill, it is important to not only exclude Chairmen and Members from matters regarding arbitration, but also from any kind of private practice before any tribunals. Additionally, the same will enable Members and Chairmen to focus more on duties endowed on them under the line Act.

The suggested amendment of the Section is: "No person while holding office as the Chairman or Member shall act as an arbitrator in any matter or appear, act or plead before any Tribunal, Appellate Tribunal, Board, Commission or Authority."

Accountability

As the Bill sets to prescribe the conditions of service, it should also provide for uniform method of review and accountability. Review and accountability should be made a part of conditions of service to trigger uniform process of periodic evaluation across pertinent tribunals and other bodies. The provision is important to encapsulate efficiency and responsibility amongst the relevant stakeholders.

Furthermore, the Bill mentions, "A person who, immediately before the date of assuming office as the Chairman or, as the case may be, a Member, was in service of the government, shall be deemed to have retired from service on the date on which he enters upon his office as such Chairman or Member".

The Bill hence makes provision for immediate absorption of government officers, as member or Chairman of a Tribunal and other bodies under question. It is suggested that to ensure impartiality and biasness of any kind towards the body in question and diligent neutral functioning, a cooling clause must be inserted in the said section.

The cooling clause shall commend a gap of two years before a government officer or Judge is absorbed as Chairman or Member of a Tribunal or such body under the Bill. Such a

proposal has also been mooted by the former Chief Justice of India, R M Lodha soon after he demitted the high office recently. Under the UN Convention on Corruption a similar advice is provided to Member States, and India is a signatory to the same. It has also been ratified by India.

Independence and Neutrality of Tribunals

Independence and neutrality of tribunals are compromised in the existing system where they are perceived to be acting favourably towards their appointing authorities – the Ministries and departments of the government. The proposed Bill only strengthens this major anomaly by providing for the Minister to sanction chairperson's leave and foreign travel of Chairmen and Members; and possibility of reappointment of Members for another term in cases where the government is a litigant.

Other Issues

The Bill does not take into account recommendations of the Law Commission dated August 22, 2009 that the age of retirement of Chairpersons should be uniformly fixed at 70 years for all tribunals. Likewise, the age of retirement of Members of all the tribunals should be fixed uniformly at 65 years.

The Bill would do well to address the anomalies of salaries paid to Chairpersons and Members

of tribunals *vis-à-vis* other regulators with a view to bring in parity. Chairman of the Competition Commission of India draws close to ₹4.5lac plus pension whereas Chairman of the Competition Appellate Tribunal gets ₹0.80lac minus pension.

In order to address the issue of judiciary more holistically, a piecemeal approach would not suffice. Questions such as mandate for procedures to be followed by tribunals and other authorities, Judicial

Accountability Bill, the much debated National Judicial Appointments Commission, audio-video recording of proceedings, etc. need to be concomitantly addressed.

Conclusion

The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, takes cognizance of the need for providing uniform conditions of service for relevant Members and Chairmen. However, the Bill misses the

opportunity of drafting an inclusive Bill on the conditions of service. The drafters could have taken the objective of the Bill to a deeper level to include the role, scope, qualification, powers and removal of Members and Chairmen.

Lastly, the tribunals and appellate tribunals have been unable to achieve their main objective of providing speedy trials. The Bill could have expanded its mandate to include strong provisions to ensure efficiency of such bodies.

Comments received from Justice VS Dave (Retired) and Pradeep S Mehta, Secretary General, CUTS have been suitably incorporated.

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