CHAPTER 7
ADMINISTRATIVE TRIBUNALS

General : As discussed in Chapter 3, today over and above ministerial functions, the executive performs many *quasi*-legislative, and *quasi*-judicial functions also. Governmental functions have increased and even though according to the traditional theory, the function of adjudication of disputes is the exclusive jurisdiction of the ordinary Courts of law, in reality, many judicial functions have come to be performed by the executive, e.g., search and seizure, imposition of fine, levy of penalty, confiscation of goods, etc. 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. Today it exercises not only sovereign functions, but, as a progressive democratic State, it also seeks to ensure social security and social welfare for the common masses. It regulates industrial relations, exercises control over production, starts many enterprises. The issues arising therefrom are not purely legal issues. It is not possible for the ordinary Courts of law to deal with all these socio-economic problems. For example, industrial disputes between the workers and the management must be settled as early as possible. It is not only in the interest of the parties to the disputes, but of the society at large. Yet it is not possible for an ordinary Court of law to decide these disputes expeditiously, as it has to function, restrained by certain innate limitations. All the same, it is necessary that such disputes should not be determined in an arbitrary or autocratic manner. Administrative Tribunals are, therefore, established to decide various *quasi*-judicial issues in place of ordinary Courts of law. These Tribunals are recognised even by the Constitution of Pakistan.

Constitutional jurisdiction of High Court under Art. 199, is abridged by Art. 212 as Article 212 controls earlier Articles including Art. 199. **N L R 1994 Ser. 113**. Under clause (1) of Article 212 the appropriate Legislature has been empowered to enact for the establishment of one or more Administrative Courts or Tribunals for exercising exclusive jurisdiction in respect of the matters referred to in sub-clauses (*a*), (*b*) and (*c*) of the above clause, which *inter alia* include the matters relating to the terms and conditions including disciplinary matters of persons who are or have been in the service of Pakistan. **1991 S C M R 1041.** The matters in respect of which an Administrative Court or Tribunal can be established are the terms and conditions of persons in service of Pakistan; matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law. **1983 S C M R 22.**

A Tribunal falling within Art. 160 (Constitution of Pakistan 1956) must be a person or body, charged with functions which lead upon the conclusion of any matter before him or it to a final order falling within the expression 'judgment', 'decree', 'order' or 'sentence'. **P L D 1957 SC 91; P L R 1957 (1) 893; P L D 1957 SC 170.**

Tribunals are those bodies of men who are appointed to decide controversies arising under certain special law. **KLR 1983 CC 299.**

"A Tribunal is not necessarily a Court in the 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 subject. (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." **P L D 1957 Lah. 631; P L R 1958 (1) 323.**

"Indeed Tribunal is a generic term which includes a Court and often these terms are used interchangeable. The functions of the Special Tribunal set up under Section 8 are wholly judicial and not Administrative. Section 10 of the 1971 Ordinance makes the provisions of Criminal Procedure Code applicable to the Special Tribunal save as it is expressly provided otherwise". **P L D 1977 SC 273.**

In a petition before the Tribunal or the Court all the parties likely to be effected by the result of the proceedings must be impleaded. Where in case of grievance that certain promotions were not made in accordance with seniority list and that certain persons junior to petitioner were shown as his seniors, the Petitioner did not implead persons superseding him. It was held, neither Service Tribunal nor Supreme Court could deal with such objection. **1983 S C M R 57.** Leave to appeal was granted where Tribunal had failed to appreciate that in a suit filed in civil Court, petitioner was likely to be affected but he was not joined as a party and therefore judgment and decree passed in suit was not binding on him. **1986 S C M R 1341.**

It is not possible to define the word 'Tribunal' precisely and scientifically. The expression has also not been defined in the Constitution. The word 'Tribunal' finds place in Article 212 of the Constitution. According to the dictionary meaning, 'Tribunal' means 'a seat or a Bench upon which a judge or judges sit in a Court', 'a Court of justice' but this meaning is very wide as it includes even the ordinary Courts of law, whereas, in Administrative Law this expression is limited to adjudicating authorities other than ordinary Courts of law.

In *Durga Shankar Mehta* v. *Raghuraj Singh*, **A I R 1954 SC 520**, the Supreme Court defined 'Tribunal' in the following words:

"T The expression 'Tribunal' as used in Article 136 does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from Administrative or executive functions."

In *Bharat Bank Ltd.* v. *Employees* **A I R 1950 SC 188**, the Supreme Court observed that though Tribunals are clad in many of the trappings of a Court and though they exercise *quasi*-judicial functions, they are not full-fledged Courts. Thus, a Tribunal is an adjudicating body which decides controversies between the parties and exercises judicial powers as distinguished from purely Administrative functions and thus possesses some of the trappings of a Court, but not all.

The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. Generally speaking, it can be said that any outside authority empowered by the State to determine conclusively, the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with judicial powers of the State and may be regarded as a Tribunal within the meaning of Article 212. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by the ascertainment of the relevant fact on the materials before it and by application of the relevant law to those facts. This test of a Tribunal is, however, not meant to be exhaustive, and it may be that other bodies not satisfying this test are also Tribunals. In order to be a Tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule; and not from an agreement between the parties. The duty to act judicially imposed upon an authority by the statute does not necessarily clothe the authority with the judicial power of the State. Even Administrative or executive authorities are often by virtue of their Constitution, required to act judicially in dealing with questions affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income-Tax and Sales-tax Officers are illustrations *prima facie* of such Administrative authorities, who though under a duty to act judicially, either by the express provision of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is Administrative and not judicial. **A I R 1963 SC 677**. It is respectfully submitted that the following observations of Shah, J. (as he then was) in the case of *Jaswant Sugar Mills* v. *Lakshmi Chand*, **A I R 1963 SC 677**, lay down correct principle of law and are required to be quoted:

> "The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even Administrative or executive authorities are often by virtue of their Constitution, required to act judicially in dealing with questions affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income-tax and Sales-tax Officers are illustrations *prima facie* of such Administrative authorities who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial powers of the State. Their primary function is Administrative and not judicial. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be regarded as a Tribunal, though not a Court, the principal incident is the investiture of the 'trappings of a Court' such as authority to determine matters in case initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Qanun-e-Shahadat, provisions for imposing sanctions by way of imprisonment, fine, damages or mandatory or prohibitory

orders to enforce obedience to their commands. The list is illustrative; some though not necessarily all such trappings will ordinarily, make the authority which is under a duty to act judicially, a 'Tribunal'.

Executive discretion must be exercised justly, fairly, reasonably and not in an arbitrary manner. **1992 C L C 2392**. The High Court will control the action of an Administrative Tribunal by appropriate order only if he:

(*a*) goes out of the law, i.e., exercise a jurisdiction not vested in him by law;

(*b*) wrongly denies or omit to exercise a jurisdiction; and

(*c*) where the law under which he acts prescribes the manner in which he is to act, materially departs from that law.

The overriding requirement in all the three cases is that the excess or denial of jurisdiction or the irregularity in the prescribed procedure should have injuriously affected some justifiable right of the party; **P L D 1967 Dacca 6 (DB).** While exercising powers under this Article the Court has to see whether the powers given to a Tribunal have been exercised in a manner laid down in the law itself and in consonance with the well-known principles and procedure in regard to the exercise of such powers. **P L D 1967 Dacca 179 (DB)**. No doubt Administrative Tribunals are not required to follow the procedure commonly known to law Courts but nevertheless in *quasi*-judicial matters they are bound to act in conformity with the principles of natural justice and in accordance with the canons of fair play. **P L D 1964 (WP) Lah. 743.**

The Administrative Tribunals are judges of sufficiency of evidence and necessity, expediency and reasonableness of the action to be taken. The High Court in exercise of its jurisdiction under Article 199 cannot sit as a Court of Appeal and pronounce upon the sufficiency quality or quantum of evidence on which the finding of an Administrative Authority is based. **P L D 1968 Kar. 422.** But the superior Courts have always the power to review the decisions of the Administrative or executive or *quasi*-judicial Tribunals. When their findings are in violation of law or rules, or, are based on misreading or insufficient or inadmissible evidence, or the findings are found to be arbitrary. **P L D 1978 Quetta 131; N L R 1978 Civ. 1045 (DB).**

The High Court under Art. 199 has no power to interfere with the decision of a statutory body except on the ground of want of jurisdiction, error on the face of the record, *etc*. **P L D 1962 Lah 352.** Where a statutory body acts *mala fide* or in a partial, unjust and oppressive manner, the High Court in the exercise of its writ jurisdiction has ample power to grant relief to the aggrieved party. **P L D 1958 S.C. 41**

The following authorities have been held Tribunals within the meaning of Article 227:-

(*i*) Election Tribunal. **A I R 1977 SC 2155.**

(*ii*) Industrial Tribunal. **A I R 1953 SC 58.**

(*iii*) Revenue Tribunal. **A I R 1984 SC 898.**

(*iv*) Rent Control Authority. **A I R 1961 SC 149.**

(v) Excise Appellate Authority. **A I R 1958 SC 398.**

(vi) Commissioner for Religious Endowments. **A I R 1972 SC 2466.**

(vii) Custodian of Evacuee Property. **A I R 1956 SC 77.**

(viii) Payment of Wages Authority. **A I R 1959 SC 1226.**

(ix) Statutory Arbitrator. **A I R 1976 SC 425; A I R 1980 SC 1896.**

On the other hand, the following authorities are held not Tribunals:-

(i) Domestic Tribunal. **A I R 1963 SC 874.**

(ii) Conciliation Officer. **A I R 1963 SC 677.**

(iii) Military Tribunal. **A I R 1954 SC 520.**

(iv) Private Arbitratory. **A I R 1963 SC 874.**

(v) Legislative Assembly. **A I R 1970 Punj 379 (FB).**

(vi) Registrar acting as a Taxing Officer.

(vii) Custom Officer. **A I R 1964 SC 1140.**

(viii) Advisory Board under Preventive Detention Laws. **A I R 1966 SC 740.**

(ix) Provincial Government exercising power to make a reference under the Industrial Relations Ordinance. **A I R 1979 SC 170.**

Reasons for growth of Administrative Tribunals

According to Dicey's theory of rule of law, the ordinary law of the land must be administered by the ordinary law Courts. He was opposed to the establishment of Administrative Tribunals. According to the classical theory and the doctrine of separation of powers, the function of deciding disputes between the parties belonged to the ordinary Courts of law. But, as discussed above, the Governmental functions have increased and ordinary Courts of law are not in a position to meet the situation and solve the complex problems arising in the changed socio-economic context. In these circumstances, Administrative Tribunals are established for the following reasons:-

(1) The traditional judicial system proved inadequate to decide and settle all the disputes requiring resolution. It was slow, costly, inexpert, complex and formalistic. It was already overburdened, and it was not possible to expect speedy disposal of even very important matters, *e.g.*, disputes between employers and employees, lock-outs, strikes, *etc.* These burning problems cannot be solved merely by literally interpreting the provisions of any statute, but require the consideration of various other factors and this cannot be accomplished by the Courts of law. Therefore, Industrial Tribunals and Labour Courts were established, which possessed the technique and expertise to handle these complex problems.

(2) The Administrative authorities can avoid technicalities. They take a functional rather than a theoretical and legalistic approach. The

traditional judiciary is conservative, rigid and technical. It is not possible for the Courts of law to decide the cases without formality and technicality. On the other hand, Administrative Tribunals are not bound by strict rules of evidence and procedure and they can take practical view of the matter to decide the complex problems.

(3) Administrative authorities can take preventive measures, *e.g.*, licensing, rate fixing, etc. Unlike regular Courts of law, they have not to wait for parties to come before them with disputes. In many cases, these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach of any legal provision.

(4) Administrative authorities can take effective steps for enforcement of the aforesaid preventive measures, *e.g.*, suspension, revocation or cancellation of licences, destruction of contaminated articles, etc., which are not generally available through the ordinary Courts of law.

(5) In ordinary Courts of law, the decisions are given after hearing the parties and on the basis of the evidence on record. This procedure is not appropriate in deciding matters by the Administrative authorities where wide discretion is conferred on them and decisions may be given on the basis of the departmental policy and other relevant factors.

(6) Sometimes, the disputed questions are technical in nature and the traditional judiciary cannot be expected to appreciate and decide them. On the other hand, Administrative authorities are usually manned by experts who can deal with and solve these problems; *e.g.*, problems relating to atomic energy, gas, electricity, etc.

(7) In short, as Robson says, Administrative Tribunals do their work 'more rapidly, more cheaply, more efficiently than ordinary Courts... possess greater technical knowledge and *fewer prejudices against Government*... give greater heed to the social interests involved... decide disputes with conscious effort at furthering social policy embodied in the legislation.

Administrative Tribunal distinguished from a Court

An Administrative Tribunal is similar to a Court in certain aspects. Both of them are constituted by the State, invested with judicial powers and have a permanent existence. Thus, they are adjudicating bodies. They deal with and finally decide disputes between parties which are entrusted to them. As observed by the Supreme Court in *Associated Cement Companies Ltd.* v. *P.N. Sharma,* **A I R 1965 SC 1595** 'the basic and fundamental feature which is common to both the Courts and the Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

But at the same time, it must not be forgotten that an Administrative Tribunal is not a Court. A Tribunal possesses some of the trappings of a Court, but not all, and therefore, both must be distinguished:

(1) A Court of law is a part of the traditional judicial system. Where judicial powers are derived from the State and the body deals

with *King's Justice* it is called a 'Court'. On the other hand, an Administrative Tribunal is an agency created by a statute and invested with judicial powers. Primarily and essentially, it is a part and parcel of the Executive branch of the State, exercising executive as well as judicial functions. As Lord Green **A I R 1950 SC 188**, states, Administrative Tribunals perform '*hybrid functions*'.

(2) Judges of ordinary Courts of law are independent of the executive in respect of their tenure, terms and conditions of service, etc. On the other hand, members of Administrative Tribunals are entirely in the hands of the Government in respect of the same.

(3) A Court of law is generally presided over by an officer trained in law, but the president or a member of a Tribunal may not be trained as well in law.

(4) In a Court of law, a judge must be an impartial arbiter and he cannot decide a matter in which he is interested. On the other hand, an Administrative Tribunal may be part to the dispute to be decided by it.

(5) A Court of law is bound by all the rules of evidence and procedure but an Administrative Tribunal is not bound by those rules unless the relevant statute imposes such an obligation.

(6) A Court must decide all the questions *objectively* on the basis of the evidence and materials produced before it, but an Administrative Tribunal may decide the questions taking into account the departmental policy or expediency and in that sense, the decision may be *subjective* rather than *objective*.

(7) While a Court of law is bound by precedents, principles of *res judicata* and estoppel, an Administrative Tribunal is not *strictly* bound by them.

(8) A Court of law can decide the '*vires*' of a legislation while an Administrative Tribunal cannot do so. **A I R 1969 SC 78**.

Administrative Tribunal distinguished from an executive authority

At the same time, an Administrative Tribunal is not an executive body or Administrative department of the Government. The functions entrusted to and the powers conferred on an Administrative Tribunal are not *purely* Administrative in nature. It cannot delegate its *quasi*-judicial functions to any other authority or official. It cannot give decisions without giving an opportunity of being heard to the parties or without observing the principles of natural justice. An Administrative Tribunal is bound to act judicially. It must record findings of facts, apply legal rules to them correctly and give its decisions. Even when the discretion is conferred on it the same must be exercised judicially and in accordance with well established principles of law. The prerogative writs of *certiorari* and prohibition are available against the decisions of Administrative Tribunals. "They are 'Administrative' only

because they are part of an Administrative scheme for which a minister is responsible to Parliament, and because the reasons for preferring them to the ordinary Courts are Administrative reasons.

Characteristics : The following are the characteristics of an Administrative Tribunal:

(1) An Administrative Tribunal is the creation of a statute and thus, it has a statutory origin.

(2) It has some of the trappings of a Court but not all.

(3) An Administrative Tribunal is entrusted with the judicial powers of the State and thus, performs judicial and *quasi*-judicial functions, as distinguished from pure Administrative or executive functions and is bound to act judicially.

(4) Even with regard to procedural matters, an Administrative Tribunal possesses powers of a Court, *e.g.*, to summon witnesses, to administer oath, to compel production of documents, etc.

(5) An Administrative Tribunal is not bound by *strict* rules of evidence and procedure.

(6) The decisions of most of the Tribunals are in fact judicial rather than Administrative inasmuch as they have to record findings of facts *objectively* and then to apply the law to them without regard to executive policy. Though the discretion is conferred on them, it is to be exercised objectively and judicially.

(7) Most of the Administrative Tribunals are not concerned *exclusively* with the cases in which Government is a party; they also decide disputes between two private parties, *e.g.*, Election Tribunal, Rent Tribunal, Industrial Tribunal, etc. On the other hand, the Income Tax Appellate Tribunal always decides disputes between the Government and the assessees.

(8) Administrative Tribunals are independent and they are not subject to any Administrative interference in the discharge of their judicial or *quasi*-judicial functions.

(9) The prerogative writs of *certiorari* and prohibition are available against the decisions of Administrative Tribunals.

Thus, taking into account the functions being performed and the powers being exercised by Administrative Tribunals, we may say that they are neither exclusively judicial nor exclusively Administrative bodies, but are partly Administrative and partly judicial authorities.

Administrative Tribunals and principles of Natural Justice

As discussed above, Administrative Tribunals exercise judicial and *quasi*-judicial functions as distinguished from purely Administrative functions. An essential feature of these Tribunals is that they decide the disputes independently, judicially, objectively and without any bias for or prejudice against any of the parties to the disputes. The Franks Committee, in its Report has proclaimed three fundamental objectives: (*i*) openness, (*ii*) fairness, and (*iii*) impartiality. The Committee observed:

"In the field of Tribunals openness appears to us to require the publicity of proceedings and knowledge of the essential reasoning underlying the decisions; fairness to require the adoption of a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have to meet; and impartiality to require the freedom of Tribunals from the influence, real or apparent of Departments concerned with the subject-matter of their decisions.

The said principle is accepted in country also. The Law Commission in its Fourteenth Report has observed that Administrative Tribunals perform *quasi*-judicial functions and they must act judicially and in accordance with the principles of natural justice. Administrative Tribunals must act openly, fairly and impartially. They must afford a reasonable opportunity to the parties to represent their case and to adduce the relevant evidence. Their decisions must be *objective* and not *subjective*. Thus, in *State of U.P.* v. *Mohd. Nooh*, **A I R 1958 SC 86**, where the prosecutor was also an adjudicating officer, or in *Dhakeswari Cotton Mills* case, where the Tribunal did not disclose some evidence to the assessee relied upon by it, or in *Bishambhar Nath* v. *State of U.P.*, **A I R 1981 SC 613**, where the adjudicating authority accepted new evidence at the revisional stage and relied upon the same without giving the other side an opportunity to rebut the same, the decisions were set aside. In *British Medical Store* v. *Bhagirath*, **A I R 1977 SC 1512,** on an application being made by the tenants, a Rent Controller made private inquiry, visited the premises in the absence of the landlord and without giving him the opportunity of being heard held that the contractual rent was excessive and fixed the standard rent. The High Court set aside the order as violative of the principles of natural justice.

In the leading decision of *Union of India* v. *T.R. Verma,* **A I R 1957 SC 882,** speaking for the Supreme Court, Venkatarama Aiyar, J, observed: "The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law. Stating it broadly and without intending to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Qanun-e-Shahadat for taking evidence was not strictly followed."

Administrative Tribunals and Rules of Procedure and Evidence

Administrative Tribunals have inherent powers to regulate their own procedure subject to the statutory requirements. Generally, these Tribunals are invested with powers conferred on civil Courts by Code of Civil Procedure, 1908 in respect of summoning of witnesses and enforcement of

attendance, discovery and inspection, production of documents, etc. The proceedings of Administrative Tribunals are deemed to be judicial proceedings for the purposes of Sections 193, 195 and 228 of the Penal Code, 1860 and Sections 480 481 and 482 of the Code of Criminal Procedure, 1898. But these Tribunals are not bound by strict rules of procedure and evidence, provided that they observe principles of natural justice and 'fair play'. Thus, technical rules of evidence do not apply to their proceedings, and they can rely on hearsay evidence or decide the questions of onus of proof or admissibility of documents, etc., by exercising discretionary powers. *In State of Mysore* v. *Shivabasappa,* **A I R 1963 SC 375**, the Supreme Court observed:

> "Tribunals exercising *quasi*-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. *The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it.* What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts. **A I R 1976 SC 1080.**

In *State of Haryana* v. *Rattan Singh* **A I R 1977 SC 1512**, speaking for the Court, Krishan Iyer, J. observed: "It is well settled that in a domestic enquiry the srict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act... *The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice.* (Emphasis supplied).

It is submitted that the correct legal position has been enunciated by Diplock, J. in *R.* v. *Dy. Industrial Injuries Commr., exp Moore.*

> "'Evidence' is not restricted to evidence which would be admissible in a Court of law. For historical reasons, based on the fear that juries who might be illiterate would be incapable of differentiating between the probative values of different methods of proof, the practice of the common law Courts has been to admit only what the judges then regarded as the best evidence of any disputed fact, and thereby to exclude such material which, as a matter of common sense, would assist a fact-finding Tribunal to reach a correct conclusion."
>
> "These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising *quasi-*

judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but that he must take into account any material which, as a matter of reason, has some probative value... If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue: The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.

Yet as held by the Supreme Court in the case of *Bareilly Electricity* v. *Workmen*, **A I R 1972 SC 330**, this does not mean that Administrative Tribunals can decide a matter without any evidence on record or can act upon what is not evidence in the eye of law or on a documents not proved to be a genuine one. Speaking for the Court, Reddy, J. observed:

"When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true.... If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit no doubt.

Tribunal's verdict--Scope of interference of High Court : An inferior Tribunal vested with powers to exercise judicial or *quasi*-judicial functions might have come to an erroneous conclusion, but where the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Tribunal and where the record of the case does not disclose any error apparent on the face of the proceedings or any irregularity in the procedure adopted by the Tribunal which goes contrary to the principles of justice, there are absolutely no grounds which would justify a superior Court in issuing a writ or direction for the removal of an order of proceedings of such Tribunal and there is no power to quash a decision of an inferior Tribunal on the mere ground that such decision is erroneous and

It must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior Court might not have authority to enter on the enquiry. It may also arise from the absence of some essential preliminary or upon the existence of some particular fact collateral to the actual matter which the Court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the Court has jurisdiction but while exercising it, it made a mistake the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly. **P L D 1985 Quetta 74.**

Administrative orders : Functionaries of State derive their powers from the Constitution or laws and are required to act clearly within the defined parameters of law. Constitutional scheme leaves no room for arbitrariness, capriciousness, nepotism and jobbery. **1995 MLD 123.** Article 199 does not forbid issue of writs against Government but only limits them to appropriate cases. Even Administrative orders can be interfered with if these were in defiance of mandatory provisions of law. **A I R 1953 Mys. 156.**

Service Tribunal : The Service Tribunals, set up under a Constitutional mandate have exclusive jurisdiction to deal with the matters relating to terms and conditions of service of civil servants. These Tribunals are presided over by persons who have been or are members of superior judiciary of the country. The Service Tribunals are, therefore, vested with vast powers to grant full redress and to do complete justice to an aggrieved party by suitably moulding the relief. If the circumstances of a particular case so require. However, at the same time it must also be borne in mind that as these Tribunals of exclusive jurisdiction are presided over by persons belonging to superior judiciary, all norms of propriety applicable to the superior Courts in deciding the case equally apply to the Service Tribunals in their decision making. Every decision rendered by the Tribunal should disclose a conscious application of mind to the facts and law in the case, supported by cogent speaking reasons. **1993 S C M R 582; N L R 1993 Scr. 7; 1993 S C M R 138.**

Where question involved in the matter was consideration of various notifications and rules relating to the appointment or promotion of civil servant and interpretation of Section 23, Civil Servants Act, 1973. Such matters pre-eminently fell within the exclusive jurisdiction of the Service Tribunal and High Court had wrongly assumed jurisdiction in the case under Art. 199, Constitution of Pakistan, which did not vest in it. **P L D 1994 SC 539.** Where grievance of civil servant was germane to terms and conditions of service a dispute with regard thereto fell within exclusive jurisdiction of Service Tribunal under Art. 212(2). Therefore Service Tribunal had jurisdiction where order of suspension, in so far as it had taken effect had attained finality. **1985 S C M R 63.**

Reason for decisions : Recording of reasons in support of the order is considered to be a part of natural justice, and every *quasi*-judicial authority including an Administrative Tribunal is bound to record reasons in support of the orders passed by it.

In the leading case of *M.P. Industries* v. *Union of India*, **A I R 1966 SC 671**, Subba Rao, J. (as he then was) observed:

> "In the context of a welfare State, Administrative Tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimise arbitrariness. The least a Tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the Tribunals within bounds. A reasoned order is a desirable condition of judicial disposal".

Putting emphasis on recording of reasons by Administrative Tribunals in support of the order passed by them, the Supreme Court observed in *S.N. Mukherjee* v. *Union of India*, **A I R 1990 SC 1984**: "Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, *statement of reasons is one of the essentials of justice.*"

(Emphasis supplied).

Finality of Decisions : In many statutes, provisions are made for filing appeals or revisions against the orders passed by Administrative Tribunals and statutory authorities. For example, under the Bombay Industrial Relations Act, 1946, an appeal can be filed before the Industrial Tribunal against the order passed by the Labour Court; or to the Rent Control Tribunal against the order passed by the Rent Controller under the Delhi Rent Control Act, 1958; or to the Income Tax Appellate Tribunal against the order passed by the Appellate Assistant Commissioner, Inspecting Assistant Commissioner or Commissioner under the Income Tax Ordinance.

But sometimes, provisions have been made in a statute by which the orders passed by Administrative Tribunals and other authorities are made *'final'*. This is known as statutory finality. Such a clause, however, does not totally exclude the judicial review of an Administrative action.

The expression 'final' in any statute means that it is final *under the Act* and that no appeal or revision is maintainable. This does not, however, mean that such a clause totally eliminates the jurisdiction of the Civil Court.

Decisions of Tribunals and Judicial Review

As discussed above, no appeal, revision or reference against the decision of an Administrative Tribunal is maintainable if the said right is not conferred by the relevant statute. Provisions may also be made for ouster of jurisdiction of civil Court; and in all these cases the decisions rendered by the Tribunal will be treated as *'final'*. But this statutory finality will not affect the jurisdiction of the High Courts under Articles 226 and 227 and of the Supreme Court under Articles 32 and 136 of the Constitution of India. The

power of judicial review of High Courts and the Supreme Court is recognised by the Constitution and the same cannot be taken away by any statute; and if the Tribunal has acted without jurisdiction, or has failed to exercise jurisdiction vested in it, or if the order passed by the Tribunal is arbitrary, perverse or *mala fide*, or it has not observed the principles of natural justice, or there is an error apparent on the face of the record, or the order is *ultra vires* the Act, or there is no evidence in support of the order, or the order is based on irrelevant considerations, or where the findings recorded are conflicting and inconsistent, or grave injustice is perpetuated by the order passed by the Tribunal or the order is such that no reasonable man would have made it, the same can be set aside by the High Court or by the Supreme Court.

At the same time, it must be borne in mind that the powers of the High Courts and the Supreme Court under the Constitution of India are extremely limited and they will be reluctant to interfere with or disturb the decisions of specially constitutes authorities and Tribunals under a statute on the ground that the evidence was inadequate or insufficient, or that detailed reasons were not given. The Supreme Court and High Courts are not Courts of appeal and revision over the decisions of Administrative Tribunals.

In Halsbury's Laws of England, the law has been summarised thus:

> "Where the proceedings are regular on their face and the inferior Tribunal had jurisdiction, the superior Court will not grant the order of *certiorari* on the ground that the inferior Tribunal had misconceived a point of law. When the inferior Tribunal has jurisdiction to decide a matter, it cannot, merely because it incidentally misconstrues a statute, or admits illegal evidence, or reject legal evidence, or misdirects itself as to the weight of evidence, or convicts without evidence be deemed to exceed or abuse its jurisdiction."

Review of Decisions : There is no inherent power of review with any authority and the said power can be exercised only if it is conferred by the relevant statute. As a general rule, an Administrative Tribunal becomes *functus officio* (ceases to have control over the matter) as soon as it makes an order and thereafter cannot review its decision unless the said power is conferred on it by a statute, and the decision must stand unless and until it is set aside by the appellate or revisional authority or by the competent Court.

Review is not a re-hearing of the matter on merits. Maybe, the Court might not be right in refusing relief in the 'first round', but when once the order is passed by the Court, a review thereof 'must be subject to the rules of the same and cannot be lightly entertained'. "A review of a judgment is a serious step and reluctant resort to this is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different Counsel of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel's certificate which should be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the

precious public time lost what with a huge back-log of dockets waiting in the queue for disposal, for Counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. **A I R 1975 SC 1500.**

According to the case of *Moonda* v. *The State*, **P L D 1961 Lah. 33**, "If the Supreme Court errs and manned by human beings as it is by no means impossible that it may sometimes err-no one can evade carrying out its orders on the ground that they could not have been intended to be given. The remedy in cases in which the Supreme Court is believed to have committed an error in review of judgment by that Court itself, or the correction of the error by the law-maker."

The Court will not review findings of fact which findings were recorded after hearing full arguments and on a consideration of the entire evidence and the reasons given by the High Court, there being no allegation that any material fact which was apparent on the record escaped the notice of the Court. **P L D 1956 FC 50.**

"To permit a review on the ground of incorrectness would amount to granting the Court the jurisdiction to hear appeals against its own judgments or perhaps a jurisdiction to one Bench of the Court to hear appeals against other Benches; and that surely is not the scope of review jurisdiction. No mistake in a considered conclusion, whatever the extent of that mistake can be a ground for the exercise of review jurisdiction. On a proper consideration it will be found that the principle underlying the limitations mentioned in O. XLVII, r. 1., CPC are implicit in the nature of review jurisdiction. While I would prefer not to accept those limitations as if they placed any technical obstruction in the exercise of the review jurisdiction of this Court, I would accept that they embody the principles on which this Court would act in the exercise of such jurisdiction. It is not because a conclusion is wrong but because something obvious has been overlooked, some important aspect of the matter has not been considered, that a review petition will lie. It is a remedy to be used only in exceptional circumstances." (Per Kaikaus, J). **P L D 1962 SC 335; DLR 1962 SC 276.**

This, however, does not mean that in absence of any statutory provision, the Administrative Tribunal is powerless. In fact the Administrative Tribunal possesses those powers which are inherent in every judicial Tribunal. Thus, it can reopen *ex parte* proceedings, if the decision is arrived at without issuing notice to the party affected or on the ground that it had committed a mistake in overlooking the change in the law which had taken place before passing the order or to prevent miscarriage of justice or to correct grave and palpable errors committed by it or what the principles of natural justice required it to do. **A I R 1963 SC 1909**

It is submitted that the following observations of Chinnappa Reddy, J. in *A.T. Sharam* v. *A.P. Sharma*, **A I R 1979 SC 104** lay down correct law on the point. After referring the well-known decision in *Shivdeo Singh*, **1979 SC 393** His Lordship observed:

> "No power vests in a High Court to review its own judgment in criminal cases except to correct clerical errors or by a judgment passed on appeal in cases in which an appeal to that Court itself is

allowed as by Sec. 411-A of the Code of Criminal Procedure." **P L D 1961 Lah. 333.**

"....can lie only when alleged error is an evident error which can be established without elaborate arguments". **1978 S C M R 367.**

"A review is a proceeding which exists by virtue of Statute. It is in the nature of a new trial of the issue previously tried between the parties. The cause of action being brought into Court again for trial by a new petition. The proceeding in some respect resembles a writ of error and also a new trial..." **N L R 1981 Civil 113.**

Review means Judicial re-examination or reconsideration of matter... The power of review under Article 203-E (9) of the Constitution of Pakistan has been granted in a very wide and absolute terms, "the Court shall have power to review any decision given or order made by it". Thus a decision given before 13.4.1981 or after that could be competently reviewed by Federal Shariat Court. **P L D 1983 Fed. Sh. Court 255.**

With reference to Black's Law Dictionary it has been held that the import of the word review is to re-examine judicially. A re-consideration; second view or examination; revision; consideration for purposes of correction. **P L D 1984 Lah 204.**

"The scope of review is very limited it is not a substitute for appeal. The application for review lies if a party discovers a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason." **1970 PLC 208.**

Doctrine of res judicata : The principles of *res judicata* and constructive *res judicata* embodied in Sec. 11 of the CPC are not exhaustive. The said principles are constructively applied to cases where a party could and should have agitated the issue in a former suit. He is estopped from agitating the same in a later suit if he had not raised it in the former. **P L D 1967 Dac. 384; DLR 1965 Dac. 373.**

The general principles of *res judicata* has been held not applicable in the following situations. In departmental proceeding **P L D 1962 Kar. 362,** when a decision in the previous proceeding was not *inter parties* **P L D 1963 Lah. 566.** Rehabilitation Authority not being a Court the principle is not applicable **P L D 1965 Lah. 580.** While it was made applicable to writ petition **P L D 1965 SC 254; P L D 1967 Dac. 303.** In insolvency proceedings **P L D 1962 Lah. 106.** The minority of the defendant at the time of prior decision **P L D 1962 Pesh. 171.** The previous judgment on the same cause of action is binding on the parties whether the same is wrong or right. **P L D 1961 Dac. 628.**

"It is basic principle of Law that the decision by a Tribunal/Court is operative only if the Court or Tribunal had jurisdiction and a decision by any Court, howhighsoever, without jurisdiction is no decision in the eye of law." **P L D 1965 Pesh. 149; DLR 1966 W.P. 57. Also see Litigating under the same title.**

The doctrine of *res judicata* is embodied in Section 11 of the Code of Civil Procedure, 1908. It means that if an issue had been made the subject-

matter of the previous suit and had been raised, tried and decided by a competent Court having jurisdiction to try the suit, the same issue cannot thereafter be raised, tried or decided by any Court between the same parties in a subsequent suit.

Though Section 11 of the Code speaks about civil suits only, the general principles underlying the doctrine of *res judicata* applies even to Administrative adjudication. Thus, an award pronounced by the Industrial Tribunal operates as *res judicata* between the same parties and the Payment of Wages Authority has no jurisdiction to entertain the said question again, **A I R 1961 SC 1196**, or if in an earlier case, the Labour Court had decided that *A* was not a 'workman' within the meaning of the Industrial Relations Ordinance, 1969 it operates as *res judicata* in subsequent proceedings. **(1975) 4 SCC 690**. In *Pondurang* **(1975) 45 SCC 690**, the Supreme Court observed:

> *"The doctrine of res judicata, is a wholesome one which is applicable not merely to matters governed by the provisions of the Code of Civil Procedure but to all litigations.* It proceeds on the principle that there should be no unnecessary litigation and whatever claims and defences are open to parties should all be put forward at the same time provided no confusion is likely to arise by so putting forward all such claims".

It is submitted that the view taken by Gajendragadkar, J. (as he then was) in case of *Trichinopoly Mills* v. *Worker's Union* is correct. In that case, His Lordship observed:

> "It is not denied that the principles of *res judicata* cannot be strictly involved in the decisions of such points though it is equally true that Industrial Tribunals would not be justified in changing the amounts of rehabilitation from year to year without sufficient cause."

According to the case of *Behar Jan Nessa* v. *Sajid Ali*, **P L D 1956 Dac. 1; P L R 1953 Dac. 262,** dispute/issue/matter finally decided. Also *see* Section 11, Civil Procedure Code. A matter which has been finally adjudicated upon by a competent Court between the same parties cannot be reagitated on the principle of *Res Judicata*. The principle is based on the need of giving a finality to judicial proceedings.

"Therefore, the Court dealing with a pre-emption proceeding has jurisdiction to decide the question about the nature of the holding and so his decision in the pre-emption case will be *res judicata* in view of the provision in Explanation IV of Sec. 11 of the Code of Civil Procedure."

"...a consent decree come in between the parties in a previous suit touching matters substantially and directly in issue between them is *res judicata*. The consent decree has to all intents and purposes the same effect for purposes of *res judicata* as a decree passed *per invitum* and this notwithstanding the words in Section 11 of the Code of Civil Procedure 'has been heard and finally decided'. **P L D 1956 Lah. 760.**

"A final judicial decision of a Court of competent jurisdiction, once pronounced between parties litigant, cannot be contradicted by any one, as against any other of such parties, in any subsequent litigation between the same parties, respecting the same subject-matter." **P L D 1979 SC (AJ&K) 139.**

"Where previous suit was not decided on merits and only plaint was rejected without determining amount of deficient Court-fee, plaintiff would not be precluded from presenting fresh plaint in respect of same cause of action provided right of action was not barred by any law". **1989 S C M R 58.**

"If the party against whom an issue had been decided could have gone in appeal and did not do so, then it would be estopped to challenge the decision on that issue. But if, on the other hand, it could not have gone in appeal for the reason that the final judgment was in its favour, then the decision on the issue would not operate as *res judicata*". **P L D 1975 Lah. 1463.**

"....**principles of:** Principles of *res judicata* applies in all the cases of punitive detention but does not, apply to cases of preventive detention". **P L D 1987 AJ&K 29.**

In spite of the fact that the person impleaded is the same, a decision given in one suit cannot be *res judicata* in the other suit, because the title under which the person was litigating was not the same. **P L D 1960 Lah. 261; P L R 1960 (2) 781.**

"The question as to when an adjudication between the parties arrayed on the same side, such as the co-defendants, may be *res judicata* has been the subject-matter of illuminating discussion in several authorities. It has been unanimously held, for that reason it may be said that it is now a settled law, that such an adjudication will operate as *res judicata* only if all the following conditions are satisfied:- (1) there must be a conflict of interest between the defendants concerned, (2) it must be necessary to decide the conflict in order to give the relief which the plaintiff claims, (3) the question between the defendants must be finally decided, and (4) the co-defendants were necessary or proper parties in the former suit. To these I will add a fifth condition, namely, that the adjudication is incorporated in the decree, because I have already stated, it is only the decree which confers a right of appeal on an aggrieved person and not the judgment." **P L D 1958 Pesh. 213; P L D 1963 Pesh. 199.**

The maxim is that no one shall be vexed twice over the same matter which presupposes that the issue has been fairly and finally tried and decided in a former suit, which was independent of the proceedings in which the same matter is again in dispute. The essence of the rule is that the two suits should be so independent of each other that the trial of one cannot be confused with the trial of the other. **P L D 1959 Dac. 316; DLR 1958 Dac. 621.**

"....although by and large the principle of *res judicata* is also applicable to writ petitions, with a view to conclude litigation and impart finality to adjudication it cannot be invoked in the instant case." **P L D 1967 Lah. 18.**

Res judicata pro veritate accipitur. A maxim based on the principle that a judicial decision is binding until reversed by a Superior Court. It means "A thing adjudicated is received as the truth".

The maxim '*res judicata pro veritate accipitur*' is no less applicable to criminal than to civil proceedings. **P L D 1957 SC. (Ind.) 1.** *Also see* Article 13 of the Constitution of Pakistan, Section 403, Criminal Procedure Code and Section 26, General Clauses Act.

Administrative Tribunals: Whether bound by decisions of Supreme Court and High Courts

The question, therefore, arises whether the law declared by a High Court has a similar binding effect over all subordinate Courts and inferior Tribunals within the territories in relation to which it exercises jurisdiction.

Generally, even in the absence of specific provision, the same principle applies to judgments of a High Court. Again, as the Supreme Court is the apex Court in the country, the High Court is the apex Court in the State. Moreover, like the Supreme Court, the High Court, over and above writ jurisdiction, has also supervisory jurisdiction over all subordinate Courts and inferior Tribunals within the territories in relation to which it exercises its jurisdiction. Therefore, if any Administrative Tribunal acts without jurisdiction, exceeds its power or seeks to transgress the law laid down by the High Court, the High Court can certainly inter fere with the action of the Tribunal.

This question directly arose in the Supreme Court in the case of *East India Commercial Co. Ltd.* v. *Collector of Customs*, **A I R 1962 SC 1893.** In that case, proceedings had been initiated by the Collector of Customs against the petitioner company on the allegations that it had violated the conditions of licence and illegally disposed of goods and thereby committed an offence. The High Court confirmed the order of acquittal passed by the trial Court holding that it cannot be said that "a condition of the licence amounted to an order under the Act" and therefore, no offence was committed by the company. The High Court also passed an order directing the seized goods to be sold and the sale proceeds to be deposited in the Court. After those proceedings, a notice was issued by the Collector on the company to show cause why the amount should not be confiscated and the penalty should not be imposed. It was contended by the company that when once the High Court had decided that the breach of a condition of the licence cannot be said to be a breach of order, the Collector had no jurisdiction to issue the show cause notice. It was submitted that the decision of a High Court on a point is binding on all subordinate Courts and inferior Tribunals within its territorial jurisdiction and the notice was, therefore, required to be quashed. Upholding the contention and quashing the show cause notice, the majority, **A I R 1962 SC 1893,** rightly observed:

> "This raises the question whether an Administrative Tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can

do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on all subordinate Courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working, otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such proceeding". **A I R 1984 SC 898.**

Limitations

Many complaints had been made by people against the working of Administrative Tribunals to the Franks Committee:

(1) Sometimes, there is no appeal against the Tribunal's decision, *e.g.* Rent Tribunal. Tremendous power, which can ruin a person's life, has been put into the hands of three men. Yet there is no higher Court in which their decisions can be rested.

(2) The three on the Bench of the Tribunal need have no proper legal qualifications. A Court of no appeal has been put into the hands of men who are generally neither qualified lawyers, Magistrates nor Judges.

(3) There is no evidence on oath, and therefore there can be no proper cross-examination as in a Court of law. Statements are made on both sides, but the time-honoured method of getting to the truth cannot be used.

(4) Procedure is as the Tribunal shall determine. No rules have been laid down as to the procedure at a Tribunal hearing. Witnesses may be heard or not heard at their pleasure.

Though, the aforesaid complaints are against the Rent Tribunals, they were present in all Tribunals.

Franks Committee

In 1955, a Committee was appointed by the Lord Chancellor under the Chairmanship of Sir Oliver Frank to consider and make recommendations of the Constitution and working of Administrative Tribunals in England. The Committee submitted its report in 1957 and made the following recommendations:

(1) Chairman of Tribunals should be appointed and removed by the Lord Chancellor; members should be appointed by the Council and removed by the Lord Chancellor.

(2) Chairmen should ordinarily have legal qualifications and always in the case of appellate Tribunals.

(3) Remuneration for service on Tribunals should be reviewed by the Council on Tribunals.

(4) Procedure for each Tribunal, based on common principles but suited to its needs, should be formulated by the Council.

(5) The citizen should be helped to know in good time the case he will have to meet.

(6) Hearings should be in public, except only in cases involving (*i*) public security, (*ii*) intimate personal or financial circumstances or (*iii*) professional reputation, where there is a preliminary investigation.

(7) Legal representation should always be allowed, save only in most exceptional circumstances. In the case of National Insurance Tribunals the Committee were content to make legal representation subject to the Chairman's consent.

(8) Tribunals should have power to take evidence on oath, to subpoena witnesses, and to award costs. Parties should be free to question witnesses directly.

(9) Decisions should be reasoned, as full as possible, and made available to the parties in writing. Final Appellate Tribunals should publish and circulate selected decisions.

(10) There should be a right of appeal on fact, law and merits to an Appellate Tribunal, except where the lower Tribunal is exceptionally strong.

(11) There should also be an appeal on a point of law to the Courts; and judicial control by the remedies of *certiorari*, prohibition and *mandamus* should never be barred by statute.

(12) The Council should advise, and report quickly, on the application of all these principles to the various Tribunals, and should advise on any proposal to establish a new Tribunal.

Griffith and Street have included:

(13) Adjudications of law and fact in which no policy question is involved should not be carried out by Ministers themselves or by civil servants in the Minister's name.

(14) The personnel of Tribunals deciding issues of law or fact or applying standards should be independent of the departments with which their functions are connected.

(15) The personnel should enjoy security of tenure and adequacy of remuneration essential to the proper discharge of their duties.

(16) At least one member of the Tribunal should be a lawyer if the questions of fact and law arise; one member may have expert knowledge where such knowledge would be helpful to guide discretion and apply standards.

(17) An appellate system should be provided so that those aggrieved by an adjudication may go to higher Tribunal and ultimately matters of law should reach the Court.
