

THE ASSAM ADMINISTRATIVE TRIBUNAL

ACT, 1977*

(Assam Act VIII of 1977)

CONTENTS

Section

1. Short title, extend and commencement.
2. Definition.
3. Constitutions.
4. Jurisdiction.
5. Limitation.
6. Power of the Tribunal as Civil Court.
7. Amendment of decision or orders.

8. Procedure before Tribunal.
9. The order of the Tribunal
10. Representation before Tribunal.
11. Contempt.
12. Power to make rule.
13. Power to make regulation by the Tribunal
14. Repeal of Assam Administrative Tribunal Ordinance.

[Received the assent of the President of India on 2nd May 197]

Preamble.

An Act to provided for the constitution of a Tribunal to adjudicate disputes in respect of retrain condition of service of certain classes of Civil servants of the state.

It is here by enacted in the Twenty-eighth years of the Republic of Indian as follows:

1. Short title, extent, and commencement.

- (1) This Act may be called the Assam Administrative Tribunal Act. 1977.
- (2) It shall extend to the whole of Assam.
- (3) It shall be deemed to have come into force on the Third day of January 1977.

2. Definition.

In this Act unless the context otherwise requires –

- (a) ‘Chairman’ means the Chairman of the Tribunal;
- (b) ‘Civil servant’ means a person who is or has been a member of civil service or who holds or has held a civil post in connection with the affairs of the State of Assam and includes any such person on foreign service, a person whose services have been temporarily placed at the disposal of a local or other authority, any person in the service of a local or other authority whose service have been temporarily placed at the disposal of the state Government, a person in service under the State government on a contract and a person who has retired from the government service elsewhere and has been re-employed under the State Government but does not include employees of the

Gauhati High Court, employees of the Assam Legislative Assembly Secretariat, employees of the Assam Public Service Commission, person in the All Indian Services and other civil service of the Indian Union or person of Civil Service of other State Government serving on deputation in Assam;

- (c) 'Civil Services' means the Civil Services of the State of Assam and such other services as may be specified by the State Government from time to time by notification, but shall not include –
- (i) Services under the Gauhati High Court;
 - (ii) Services under the Assam Legislative Assembly;
 - (iii) Services under the Assam public service Commission.
 - (iv) All India Service and other Civil Service of the Indian Union;
- (d) 'competent authority' means any officer or other authority having power of pass any other whether original, appellate or revisional, under any service rule, executive instruction or order, general or special, of the State Government in respect of any condition observed of civil servant;

- (e) 'conditions of services' includes all matters relating to the-
- (i) appointment, seniority, confirmation and termination of service of a civil servant ;
 - (ii) censure, withholding of increments or promoting, recovery from pay of any loss to the Government, reduction to a lower service grade or post, or to lower time scale, or to a lower stage in a time scale, denial or variation of pension or denial of the maximum pension
 - (iii) all matters arising out of application of the Fundamental Rules and Subsidiary Rules;
- (f) 'member' means a member of the Tribunal and includes the Chairman;
- (g) 'notification' means a notification published in the Assam Gazette;
- (h) 'prescribed' means prescribed by rules made under this act;
- (i) 'State Government' means the Government of Assam;
- (j) 'Tribunal' means the Assam Administrative Tribunal constituted under S. 3 of this Act.

COMMENTS

Conditions of service—Meaning of. The expression “conditions of service” covers a wide range, e.g. it includes everything from the stage of appointment to the stage of termination of services and even beyond, and relates to matters pertaining to disciplinary action. [*Lilly Kurian v. Sr. Lewina and other*, AIR 1979 SC 52 at pa. 56; 1978 Lab IC 1644; *N. W. F. Province v. Suraj Narain*, AIR 1949 PC 112; *State of U.P. v. Babu Ram*, AIR 1961 SC 751; *State of U. P. v. Shardul Singh*, (1970) 3 SCR 302]

Changing condition of service—Power of the Government. It cannot be conceded that the Government under the rule making power has any authority to change the rules, regulating the condition of service of civil servants after his retirement in such way that it could deprive him of rights which have become vested in him. An alteration of his character should not operate or be effective retrospectively. [*Jogesh Chandra Dutta v. Union of India*, AIR Assam 17 at p. 21].

Conditions of service— Regulation. The conditions of service of a Government servant appointed to a post are regulated by the terms of contract of employment, express or implied and subject thereto, by the rules applicable to the members of the particular service. [*Purshottam Lal Dhingra v. Union of India*, AIR 1958 SC 36; *T. Cajee v. U J Sein*, AIR 1961 SC 276].

It is open to the Government to regulate matters relating to conditions of service by means of administrative instruction, so long as the statutory rules have not been made. If the rules are silent on any matters, Government can fill up the gap with instructions. [*Shantram Sharma v. State of Rajasthan*, AIR 1967 SC 1910: (1967) 2 SCA 574].

3. Constitution of the Tribunal.

- (1) The State Government shall constitute for the State of Assam a tribunal to be known as the Assam Administrative Tribunal.
- (2) The Tribunal shall consist of three members to be appointed by the State Government.
- (3) The State Government shall appoint one of the members of the Tribunal to act as the Chairman thereof.
- (4) The Chairman shall be a person who at the time of appointment to the tribunal in a senior Administrator with wide experience and of the other two members, one shall have experience in legal affairs and the other shall have experience in technical matters, none being lower in the rank than secretary to the State Government.

- (5) No person shall be retained as member of the Tribunal after he has attained the age of sixty years
- (6) The salary and allowances of the members of the Tribunal shall be such as may be prescribed.
- (7) The principal seat of the Tribunal shall be at Gauhati but the tribunal may also sit at such other place or place as the Chairman may, from time to time specify.

4. Jurisdiction.

- (1) Save as otherwise expressly provided in sub-S. (2) below the Tribunal shall have jurisdiction to entertain and dispose of appeals referred by civil servants against any order passed by a competent authority in respect of any condition of service.
- (2) Notwithstanding anything contained in sub-S. (1) above, the Tribunal shall have on jurisdiction with respect to any order passed, when the civil servant has not availed of all the remedies available to him under the relevant service rules, executive instruction or orders:

Provided that notwithstanding anything contained in the above paragraph the Tribunal may entertain an appeal from a civil servant, if any appeal, revision petition or representation filed by him under the

relevant service rules before the competent authority has been finally disposed of by the competent authority within a period of six months from the date of filing such appeal, revision petition or representation.

- (3) Notwithstanding anything contained in sub- S. (1) above, the Tribunal shall have no jurisdiction to entertain and dispose of appeals against any order passed by a competent authority under Art, 31 (2) proviso (a), (b) and (c) as also under R. 56 (b)

COMMENTS

A perusal of sub S- (1) of S. 4 together with the preamble of the Act shows that the Administrative Tribunal has jurisdiction to entertain and dispose of appeals preferred by civil servant against any order passed by a competent authority only in respect of any condition of service. A declaration that a public servant was in service in the eye of law, although actually he was not in service, is not a condition of service. As such no appeal could have been filed by the plaintiff before the Administrative Tribunal. [*Ranjit Chakrabarty v State of Assam*, AIR 1981 Gau 1]

The Tribunal being subject to the judicial superintendence of the High Court under remanded Art. 227 of the Constitution, it cannot be said that the legislature had envisaged

separating of the judgment of the High Court by the Tribunal. [*per* Hansaria, J. in AIR 1981 Gau 1, *supra*]

Jurisdiction – Meaning and scope of. Jurisdiction may be defined to be the power of a court (or Tribunal) to hear and to determine a case to adjudicate upon or to exercise judicial power in reaction to it [*Kumbeenamma v. Puthalath Balakrishnan Nair*, AIR 1967 Ker 97 at p. 99: ILR (1966) 2 Ker 440]

Jurisdiction of court- Contempt proceedings- Contempt jurisdiction is a special and to some extent an unusual jurisdiction wherein the prosecutor and the judge are combined in one. The contempt jurisdiction has to be sparingly exercised with utmost restraint and considerable circumspection. [*Rama Dayal v. M. P.*, AIR 1978 SC 921 at pp. 926, 927]

5. Limitation.

No appeal shall lie to the Tribunal after the expiry of 60 days from the date order appealed against:

Provided that the Tribunal may entertain an appeal after the expiry of sixty days from the date of passing the order if the Tribunal is satisfied that the civil servant was prevented by the sufficient cause for preferring the appeal within the aforesaid period.

6. Power of the tribunal as civil court.

The tribunal shall, for the purposes of the disposal of an appeal, have all the powers of a civil court of the trial of a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) repairing the discovery and production of document;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or a copy thereof from any court or officer; and
- (e) issuing commission for examination of witnesses or documents.

7. Amendment of decision or orders.

Clerical or arithmetical mistakes in decision or orders or errors arising therein from any accidental slip or omission any at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

8. Procedure before Tribunal.

- (1) Subject to the provisions of this Act and the Rules framed there under the Tribunal shall have power to regulate its own procedure and for the constitution of Benches, if any, for the disposal of all matters arising out of the exercise of its powers under the provisions of this Act.
- (2) At least two of the member of the Tribunal will hear and pass orders on appeals referred before the Tribunal.
- (3) The decisions of the majority of the members resent and hearing the matter shall be the decision of the Tribunal. Where the members are equally divided in their opinion, the appeal would be heard and decide by all the members and the decision arrived at by the majority opinion of all the members shall be the decision of the Tribunal.
- (4) The Tribunal shall have power to confirm, modify or reverses the order against which the appeal is preferred or to remand the matter for a fresh decision by the competent authority a passing the order in accordance with such directions, if any, as may be given by the Tribunal.

9. The order of the Tribunal.

- (1) (a) The order of the tribunal passed in any appeal under the provisions of the Act shall be final.
- (b) Notwithstanding anything contained in sub – S. (1) (a) the Tribunal may, on the application of any of the parties, review its own decision or order in any case and may pass such order as it thinks fit:

Provided that no such decision or order shall be reviewed unless notice has been given to the opposite parties to appear and to show cause, why such order or decision should not be reviewed;

- (2) Notwithstanding anything contained in any law, no civil court or other authority shall entertain any civil suit or other proceedings with respect to any matter relating to any condition of service of any civil servant or question in any form any order passed by the Tribunal in any appeal or review with respect to any matter or with respect any other matter which arises out of the exercise of powers under the Act.
- (3) Notwithstanding anything contained in any law, all suits or other proceedings with respect of any matter relating to any condition of service of any civil servant

and which are pending before any civil court or other authority on the date of coming into force of his Act, shall stand transferred all relevant and connected papers and records to the Tribunal and thereupon the Tribunal shall decide the suit and proceedings in the same manner as if they were appeals referred under the provision of this Act

- (4) the decision of the tribunal shall be implemented within such reasonable time as may be specified by the Tribunal.

COMMENTS

Sub – section (2) and (3) of S. 9 have been substituted *vide* Act No III of 1992.

Sub – section (4) of S. 9 enjoins the decision of the Tribunal shall be implemented within such reasonable time as may be specified by the Tribunal but if it is not implemented there is no further remedy for the aggrieved civil servant [*Ranjni Chakrabarty v State of Assam*, AIR 1981 Gau 1]

10. Representation before Tribunal.

The Government, the competent authority as well as the civil servant preferring any appeal shall have the representative or by and Advocate.

11. Contempt.

- (1) Tribunal shall be deemed to be a civil court for the purpose of Ss. 345 and 365 of the Code of Criminal Procedure, 1971, (Central Act 2 of 1974) and the Contempt of Courts Act, 1971 (Central Act 70 of 1971)
- (2) The proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of S 193 of the Indian Penal Code, 1860 (Central Act No of 1860).

COMMENTS

Contempt– Meaning of. Ordinarily “ contempt of court” means interference with the administration of justice by whether means it may be i.e., by openly criticizing the action of the Presiding Officer, whether, orally or in writing, or by influencing the court by any means or by disobeying the orders or direction of the court. An act of writing which is calculated to bring obstruction or interference with due

course of justice of lawful process of the court would amount of contempt of court. [*Joytinarayan v. Brijanandan Singh*, AIR 1954 Part 280 at p. 295].

12. Power to make rule.

- (1) The State Government may, by notification in the official Gazette, make rules for the purposes of giving effect to the provision of this Act.
- (2) All rules made under this section shall be laid for not less than fourteen day before the Assam Legislative Assembly as soon as possible after they are made and shall be subject to such modification as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

13. Power to make regulation by the Tribunal.

- (1) Subject to the previous sanction of the Government, the Tribunal shall, from time to time frame regulation consistent with the provisions of this Act and rule made under S. 12 regulation its procedure and disposal of its business.
- (2) The Regulation made under sub - s. (1) shall be published in the Assam gazette.

14. Repeal of Assam Administrative Tribunal Ordinance.

- (1) The Assam Administrative Tribunal Ordinance, 1971 in hereby repealed.
 - (2) Notwithstanding such repeal, any order passed, notification issued, anything done or any action taken under the Assam Administrative Tribunal Ordinance, 1976, shall be deemed to have been assed issued, one or taken under the corresponding provision of this Act.
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