



The role of administrative tribunals for settling administrative disputes in Bangladesh: A major revision

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Abstract

Bangladesh is a democratic and welfare state. Due to the tremendous increase of the functions of the Bangladesh government, the government's executive authorities have to perform a large number of quasi-judicial and quasi-legislative functions. Although the powers of the government entrusted to the executive, judiciary and legislative branches respectively, but now this welfare state involves itself regarding socio-economic activities such as education, transportation public service, and health service etc. As a result, various forms of disputes are arising and increasing day by day. These types of disputes may affect the whole society and the country. The functions of the court system is very traditional in nature and as well as incompetent. The traditional courts are burdened with lots of cases. It is difficult for the courts to dispose all the cases without delay. Not only this but also there is no suitable arrangement for training and practical matters in the hands of the members of the judiciary in Bangladesh. In consequences, it was considered to be set up Administrative Tribunals to resolve disputes impartially and successfully. However, this paper aims to emphasize the all possible achievements and roles of the Administrative Tribunals in settling administrative disputes with special reference to govt. service in Bangladesh.

Keywords: Administrative tribunals, major revision, Bangladesh government

Introduction

In Bangladesh the Administrative Tribunal Act, 1980 is applicable. The statute has been enacted for a particular purpose. This article however, deals with general conception and characteristic of administrative tribunal. Then it explains the main objectives, similarities and dissimilarities between administrative tribunal and court in Bangladesh. It also describes the provisions of the Act as well as the present condition of administrative tribunal in Bangladesh. The article emphasizes the role of administrative tribunal to dispose leading cases by the administrative tribunal in Bangladesh.

Objectives

The specific objectives of the article are following

1. To adjudicate the cases very quickly and speedy trial;
2. To apply flexibility and leniency in adjudication of cases;
3. To settle administrative disputes by having technical expert and legal expert;
4. To minimize a huge expensive. The court fee is very minimum and the justice will be ensured with a small cost and more practically.
5. Tribunals to exercise jurisdiction in respect of matters relating to the terms and conditions of persons in the service of the republic.

1. Conception of Administrative Tribunal

It is not possible to define the word 'Tribunal' precisely and scientifically. Literally Administrative Tribunal means 'a tribunal which is run by the Administration'. Webster dictionary defines administrative tribunal as it is a seat or

bench where a judicial officer sit like a court^[1]. In a broad sense, it is a court of justice. The Supreme Court held that tribunals are clad in many of the symbols of a court and it can exercise quasi-judicial functions like other court^[2].

In the case of *Mujibur Rahman v. Bangladesh*^[3] Justice Habibur Rahman said that Administrative Tribunals are not courts in the strict sense of exercising judicial power and administrative tribunal may act judicially but still remains and Administrative Tribunal as distinguishes from a Court. Justice Mustafa Kamal said that a Tribunal has all the features of a Court but it is not a court in the strict sense. In this case the Court also held that Tribunal not substitute for, nor co-equal to the High Court Division. It is left to the legislature, after establishing the tribunals, to make necessary provisions in this regard for carrying-out of the functions of the tribunals^[4].

The idea of Administrative Tribunal originated from Civil Law Legal System. In England, chief founder of 'Rule of Law' AV Dicey opposed the Administrative tribunal. He was the supporter of one and sole court for all citizens. But in France, there are two laws and two types of courts. One law and one type of courts in only for the administrative officers and another law, another type of courts is for general people.

If any dispute arises with administrative officers then, this dispute goes to administrative tribunal. Judges are sometimes appointed from the man of administrative department who are talent in administration. If any change made against administrative personnel then that claim charge goes to administrative tribunal.

2. Reasons for the growth of Administrative Tribunal

According to Dicey's theory, there shall be only traditional court and it will discharge judicial functions. But it is found that due to the tremendous changing to the socio economic condition of Bangladesh, the courts are not always try all cases. Courts are burdened with huge cases. Therefore, for the following reasons, the administrative tribunal has been established:

a. Speedy disposal of the cases

The traditional judicial system is very slow and has already overburdened with cases. It takes 5-12 years for disposal of a case, and it is not possible to expect speedy disposal of even very important matters, e.g. disputes between employers and employee, lock-out, strike etc. Moreover, in traditional system, disposal system certain formalities must be maintained. So, to remove delay in justice, administrative tribunal has been developed.

b. Flexibility & Leniency

The administrative authorities can avoid technicalities and formalities. They take a realistic approach rather than a theoretical and legalistic approach. The traditional judiciary is conservative, rigid, and technical. On the other hand, administrative tribunals are not bound by strict rules of evidence; CPC, Cr. PC and they can take practical view of the matter to decide the complex problem.

c. Experts knowledge

Sometimes the disputed questions are technical in nature and traditional judiciary cannot be expected to decide them. On the other hand, administrative authorities are usually by experts who can deal with and solve the problems more easily.

d. Less Expensive

Traditional Courts needs a huge amount of money for disposal of a case. Traditional adjudication is costly. But administrative tribunal is very fast and not so expensive. The court fee is inexpensive. A fee of taka 100.00 plus an additional fee of taka 10.00 for each copy of the application shall be paid by the applicant in court fee stamp affixed to the application and crossed and signed by him ^[5]. It is cheaper than traditional system.

(6) To assist the traditional court in adjudication smoothly.

(7) To preserve public interest, financial and commercial matter.

However, all the tribunals existing in Bangladesh may be classified into ^[6]

1. Statutory Tribunal: It is such tribunal which is established and adjudicates by the express provisions of a statute. For example, Administrative Tribunal, Labour Appellate Tribunal, Administrative Appellate Tribunal, Labour Court ^[7] etc.
2. Domestic Tribunal: Domestic tribunals are those which are designed to regulate professional conduct and to enforce discipline among the members. As for example, Bar Council in case of professional, Chamber of Commerce in case of trade, sporting in case of social clubs etc ^[8].

Present condition of Administrative Tribunal in Bangladesh

In Bangladesh, before 1982 there was single type of courts but in 1980 The Administrative Tribunal Act was passed on the spirit of Art 117 of the Constitution. The Administrative Tribunal is based on the Article 117 of the Constitution of Bangladesh. The Constitution Provides that Parliament may by law establish one or more Administrative Tribunal to exercise jurisdiction in respect on matters relating to or arising out the terms and conditions of persons or employees in the service of the republic or of any statutory public authority ^[9].

Under Article 117, only Govt. service holder and statutory public authority service holder could go to the Administrative Tribunal not the other person. Every citizen has no right to go to Administrative Tribunal.

These service holders cannot go to Administrative Tribunal for any personal dispute; dispute must be about service matters for example condition of service, Suspension, Transfer etc.

At present there are seven Administrative Tribunals in Bangladesh such as three situated in Dhaka for Dhaka division, one in Khulna for Khulna division, one in Barisal for Barisal division, one in Chattogram for Chattogram and Sylhet division and the other one in Bogura for Rajshahi and Rangpur divisions respectively.

Discussion

Primarily it seems that, only Govt. service holders and specified statutory public authority service holder's right to go to Administrative Tribunal is contradictory to the Constitution under art. 27 and 29. This is because Article 27 specifies "all citizens are equal before law and are entitled to equal protection of law."

According to Article 29 (i) "There shall be equality of opportunity for all citizen in respect of employment or officer in service of the Republic."

In the schedule of the Act, there is no name of any University. So, University's employees cannot go to Administrative Tribunal for getting remedy.

Its jurisdiction is to hear and determine applications made by any person in the service of the republic or of any statutory of the republic or of any statutory public authority in respective of the terms and conditions of his service including pension rights or in respect of any action taken in relation to him as a person in the service of the republic or of any statutory public authority.

But there is a precondition in application to Administrative Tribunal. At first aggrieved person will have to seek local or departmental remedy to a higher Administrative authority that can set aside, vary or modify the lower authority's order, decision or action. After seeking local remedy, if s/he becomes aggrieved, then he can go to Administrative Tribunal.

For example, if Magistrate suspends a clerk in his office then the clerk has to go to Deputy Commissioner (DC). If DC does same thing then clerk can go to administrative tribunal. The applications will have to file with-in six months from the date of making or taking order, decision. Administrative Tribunal has no Review power.

In the case of Bangladesh vs. *Shahjahan Mulla* (1987) the court held that Administrative Tribunal has no power to review and no power to issue an injunction. Administrative Tribunal has no jurisdiction to hear an appeal submitted by a

person in the defense services of Bangladesh or of the Bangladesh Rifles^[10].

The Administrative Tribunal can issue an order for violation of natural justice and for infringement of fundamental rights. The Tribunal can't exercise power on any bar or rule on the ground of its constitutionality^[11].

The Administrative Tribunal can also exercise its jurisdiction promotion matters and matters relating to transfer order^[12].

The Administrative Tribunal has no jurisdiction to grant interim relief in matters relating to a case pending before it for final application^[13].

1. Jurisdiction and Power of the Administrative Tribunal

After coming into force of Administrative Tribunal Act, 1980, its jurisdiction is to hear and determine applications made by any person in the service of the republic or of any statutory public authority. The Tribunal can exercise its jurisdiction on the matters of terms and conditions of the service such as pension rights etc. But there is a precondition in application to Administrative Tribunal. At first aggrieved person will have to seek local or departmental remedy to a higher administrative authority that can set aside, vary or modify the lower authority's order, decision or action. After seeking local remedy, if he becomes aggrieved, then he can seek remedy to the Administrative Tribunal. In view of section 4 of the Administrative Tribunal Act, 1980, in case where the suit lay, the employee will now have to seek his remedy by application under this Act.

For example, if a Magistrate suspends a clerk in his office then the clerk has to go to Deputy Commissioner (DC). If DC does same thing then clerk can go to Administrative Tribunal against the order of DC. He has to file an application within six months from the date of making or taking order, decision by the local or departmental authority (hereinafter DC). Administrative Tribunal has no power to review a case^[14].

In the case of *Kamrul Hasan v Banladesh*^[15] the court held that Administrative Tribunal has no power to issue an injunction and grant interim relief in respect of a case pending before it for final adjudication. Administrative Tribunal has no jurisdiction to hear an appeal submitted by a person in the defense services of Bangladesh or of the Bangladesh Rifles^[16].

The Administrative Tribunal can issue an order for violation of natural justice and for infringement of fundamental rights. The Tribunal can't exercise power on any bar or rule on the ground of its constitutionality^[17]. The Administrative Tribunal can also exercise its jurisdiction promotion matters and matters relating to transfer order^[18].

Functions of the Administrative Tribunal

1. Unconstitutionality of Law

- a. Generally Administrative Tribunal can declare a statute of delegated legislation unconstitutional on the following grounds:
 1. If it shall be inconsistent with the provisions of the Constitution;
 2. It may decide question of law;
 3. Which is related to the administrative disputes;

This is because constitution is the supreme law in Bangladesh and this constitution empowers to the Administrative Tribunal to exercise this power.

- b. The Administrative Tribunal shall determine the persons who are entitle to seek remedy from the respective tribunals within the meaning under section 2 and 2(aa) of the Act.
- c. The Administrative Tribunal is capable to scrutinize the legal jurisdiction where an investigation is needed.
- d. It may decide some important issue such as question of law, law of limitation, non-joinder of parties, *res judicata* etc.
- e. A Tribunal shall have power to punish any person who, without lawful excuse, obstructs it in the performance of its functions with imprisonment that can be extended to one month, or with fine which may extend to five hundred Taka, or with both^[19].

Course of action

- a. In order to find out the truth, the tribunal may resort to the inquisitional procedure, provided no principle of natural justice is violated. In the case of *G Mohanti v Union of India* the court held that administrative tribunal is not barred by the provisions of the Evidence Act, 1872^[20].
- b. Administrative Tribunal shall have all the powers of Civil Court and by the principles of natural justice and shall have the power to regulate its own procedure. It must follow *the Code of Civil Procedure*, 1908, in respect of the following matters, namely-
 - (i) Summoning; (ii) Attendance of any person and examining him on oath; (iii) Discovery and production of any documents; (iv) requiring evidence on affidavit etc.
 - (ii) Administrative Tribunal has power to make rules about case arrangement and court management. They determine and conduct it.
 In case of Civil Rules Order in tribunal and courts determines these things.
- c. Any proceedings of a tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 of *the Penal Code*, 1860.
- d. Although there is no specific provision in the Administrative Tribunal, it is competent to execute its own order.

Disciplinary matters

Administrative Tribunal can perform functions of the matters relating to the conditions of the service, punishments, compulsory retirement, and dismissal from service etc.

The decisions and orders of an Administrative Tribunal shall, subject to the decisions and orders of the Appellate Division or of the Administrative Appellate Tribunal^[21].

Besides these, the Administrative Tribunal has some limitations. Therefore, it can't exercise its functions in the following matters:

1. The Administrative Tribunal cannot overrule or find a way around decision of the High Court Division. It means that the decision of the High Court Division is binding on the tribunal.
2. Constitutionally there are many grounds where the satisfaction of the President is necessary. But the Administrative Tribunal cannot put any question on the ground of satisfaction of the President.

3. Subject to this Act, no proceedings, order or decision of a tribunal shall be liable to be challenged, reviewed, quashed or called in question in any Court. So, a particular restriction has been imposed by this section against the decree or judgment of the Administrative Tribunal ^[22].
4. The Administrative Tribunal has no power to review of its own judgment.
5. The Administrative Tribunal has no jurisdiction to grant interim relief in matters relating to a case pending before it for final application. It cannot issue an injunction.

Result

1. Role of Administrative Tribunal in Bangladesh with Reference to Leading Cases

In many cases it was found that the Administrative Tribunals are playing a successful role and in many cases not. By analyzing the decision of the following cases, it is more comprehensible

For example, it was held that Administrative Tribunal Act, 1980 which is a self-contained amalgamated legislation. It does not need the additional umbrella of writ jurisdiction under Article 102 of the Constitution for the implementation of its decisions and orders ^[23]. Thus the Administrative Tribunal shall not exercise any of the writ jurisdictions.

In the case of *Mozibul Huq v Chairman, 1st Labour Court* the court held that the Administrative Tribunal Act, 1980 being a subsequent Act to the Industrial Relations Ordinance, 1969 and Government Servants' (Discipline and Appeal) Rules, 1985 ^[24].

Therefore it is established that the scope of jurisdictions of the Administrative Tribunal is exceptionally limited.

There is no command in the Constitution that the Tribunal or the Appellate Tribunal is substitute or co-equal to the High Court Division. It is left to the legislature, after establishing the tribunals, to make necessary provisions in this regard for the carrying out of the functions of the Tribunals ^[25]. So it is very unambiguous that legislature shall control administrative tribunals in the true sense although tribunal is successfully performing its functions to adjudicate administrative disputes pending before it.

Furthermore, it was held that if a branch or the Department of the government is not following the lawful order of the hierarchy of the Governmental authority, definitely the person who is aggrieved can come before this court and pray for direction or declaration to implement, fulfill or obey the lawful order of the Government, which the Administrative Tribunal is not competent to do ^[26]. In respect of jurisdiction of Administrative Tribunal, it can strike down an order for violation of natural justice and for infringement of fundamental rights but it can't strike down any bar or rule on the grounds of its constitutionality. Duty of court is to see the right given under Article 102(1) is not frittered away or misused ^[27]. It is presumed that an order passed by the tribunal is declaratory in nature and there was no direction for restoration of the petitioner and as such order passed by the tribunal is not executable ^[28]. It is not a success of the real functions of the tribunal. Hence more executable powers should be given to the administrative tribunal.

It was found in the case of *Government of Bangladesh v Abul Khair* that the authority imparting any punishment upon a delinquent staff has a duty to see that he has been

dealt with in accordance with law and following principles of natural justice ^[29]. Thus the administrative tribunal is bound by the principles of natural justice at all the times.

In case of jurisdiction, the Administrative Tribunal and the Administrative Appellate Tribunal shall have limited jurisdictions. The Tribunal gratuitously granting relief acts in excess of its jurisdiction ^[30]. There will create a question for abuse of excess of jurisdiction ^[31]. So, the tribunal performing its functions by maintaining the general principles of law recognized by the civilized states.

Decree of Civil Court having already been executed after the appellant was reinstated in service, his subsequent prayer for another benefits do not fall in the category of any pending suit, case, application and appeal. The Tribunals took a wrong view that the other relief are ancillary and consequential relief emanating from the decree of the Civil Court and wrongly refrained from executing jurisdiction in the matter ^[32]. Administrative Tribunal was not correct in holding that they belonged to the defence services. The petitioner may prefer an appeal in case of any mistake of an order, before the Administrative Appellate Tribunal. Their applications under writ jurisdiction are not maintainable ^[33]. Thus it is obvious that the role of Administrative Tribunal have been able to inspire confidence in the public in determining disputes although there have some lacking. In many cases, tribunals are playing an important role to redress of the citizens' grievances.

Major Revision: Finality of the decision of Administrative Appellate Tribunal

- a. Before 1991, decision of the Administrative Appellate Tribunal was final and no appeal was available to the Supreme Court.
- b. But in 1991, Administrative Tribunals (Amendment) Act, 1991, was passed by the Parliament. This amendment has inserted section 6A in the Act. This section provides that the decision of the
- c. Administrative Appellate Tribunal is subjective to the Article 103 of the Constitution.
- d. This section has made provisions made for appeal before the Appellate Division of the Supreme Court against the order or decision of the Administrative Appellate Tribunal.

After amendment, an aggrieved party can go to Appellate Division of the Supreme Court. So, the decisions of the Administrative Appellate Tribunal are subject to the Article 103 of the Constitution. So, the decision of the Administrative Appellate Tribunal is not conclusive.

Findings and Recommendations

In modern time of administration the adjudication system of the Administrative Tribunal is powerful, indispensable and functional. In a democratic society some defects are found from which it suffers or dangers. However, the main problems are mentioned below

1. Sometimes the members of the Administrative Tribunals are appointed from among the persons of administrators. They may have no technical knowledge of law or training of judicial functions. Sometimes they are not independent to discharge of their functions. Thus the administrators of the tribunal should come from law discipline only and be trained and experienced of judicial work. If it is possible, the Administrative

- Tribunal will perform more effective for the peoples of the country.
2. Precedents are one of the sources of law. Administrative Tribunals often embrace summary trials and they do not follow any precedents. As such it is not possible for the tribunal to ensure justice impartially.
 3. Rule of law ensures equality before law for everybody and supremacy of ordinary law and due procedure of law over governmental arbitrariness. But Administrative Tribunals with their separate laws and procedures often made by themselves, put a serious limitation upon the notable principles of rule of law.
 4. As there is flexibility and no set procedures Administrative Tribunals sometimes violate the principles of natural justice.
 5. A uniform code is necessary for administering justice. Due to non-availability of code like Code of Criminal and Civil Procedures, a uniform code should be introduced in this respect.

Conclusion

The present condition of Administrative Tribunal in Bangladesh is not greatly satisfactory. This is because unconsciousness of people and lacking of the application of rule of law. Moreover the administrative influence is one of the important factors in this respect. Besides this, the role of administration is increasing day by day. So it is expected that the Administrative Tribunal can play an important role to redress the grievance of citizen's. In this respect, it was observed the nature of Administrative Tribunals and the various reasons for their consequence. The various forms of Administrative Tribunals are set up in the country to settle the disputes such as disputes and complaints of public servants and disputes arising out of statutory public servants. Administrative Tribunals must act quickly, equitably and objectively to ensure justice and to provide relief to the courts. Although there are some limitations, the Administrative Tribunals enjoy greater flexibility. However, it is possible to resolve some of these limitations with certain protections. The Administrative Tribunals should have people with legal training and practice. Tribunals are also expected to give reasoned decisions as to introduce transparency and to reduce irregularity.

References

1. Webster's New World Dictionary, 1972
2. Bharat Bank Ltd v Emperor, AIR (1950) SC
3. 44 DLR (AD) 992.
4. Soyed Lutfor Rahman Soilur & Syeda Rokhshana, Administrative Tribunals Manual (2010) p.23
5. Rule 4 of the Administrative Tribunal Rules, 1982
6. Talukder Dr. S.M Hassan, Development of Administrative law in Bangladesh: Outcomes and Prospects (2011), 62.
7. Pubali Bank v Chairman, Labour Court, Dhaka (1992) [44 DLR (AD) 40]
8. Talukder Dr. S.M Hassan, Development of Administrative law in Bangladesh: Outcomes and Prospects (2011), 65.
9. Article 117 of the Constitution of the People's Republic of Bangladesh.
10. Section 4(3) of the Administrative Tribunal Act, 1980
11. 44DLR (AD) 111
12. 50 DLR 39 and 49 DLR 62

13. 49 DLR (AD) 44
14. Md. Shahidul Islam, Administrative Law in Bangladesh (Shams Publication, Dhaka, 2014), p 223
15. Kamrul Hasan v Bangladesh, 49 DLR (AD) 44
16. Section 4(3) of the Administrative Tribunal Act, 1980
17. Mujibur Rahman v Bangladesh, 44 DLR (AD) (1992) 111
18. 50 DLR (1998) 39 and 49 DLR (1997) 62
19. Section 9 of the Administrative Tribunal Act, 1980
20. G Mohanti v Union of India, ATR (1987) 1 CAT, p 229
21. Section 8(2) of the Administrative Tribunal Act, 1980
22. Section 10, ibid
23. Saifur Rahman v Secretary, Ministry of Agriculture, 41 DLR (1989) 538
24. Mozibul Huq v Chairman, Ist Labour Court, 55 DLR (AD) (2003) 91
25. Mujibur Rahman v Bangladesh, 44 DLR (AD) (1992) 111
26. Matiur Rahman (Md) v Bangladesh, 50 DLR (1998) 357
27. Mujibur Rahman v Bangladesh, 44 DLR (AD) (1992) 111
28. AKM Ali Imam v DG, Bangladesh Agricultural Research Institute, 54 DLR (AD) (2002) 5
29. Government of Bangladesh v Abul Khair, 56 DLR (AD) (2004) 183
30. Quazi Nazrul Islam v Bangladesh House Building Finance Corporation, 45 DLR (1993) 62
31. Government of Bangladesh v AKM Yusuf Mia & others, 50 DLR (AD) (1998) 200
32. Khnadaker Golam Najib v Chairman, Board of Directors, Agrani Bank, 49 DLR (AD) (1997) 109
33. Abdul Latif v Bangladesh, 43 DLR (1991) 446