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LISTING PROFORMA

SECTION X

- Central Act (Title) : Constitution of India
- Provision : Articles 14, 21, 50, 110& 323B
- Central Rule (Title) : Rules of Procedure and Conduct of Business in Lok Sabha
- Rule No(s) : Rules 80 & 219
- State Act (Title) : NA
- Provision(s) : NA
- State Rule (Title) : NA
- Rule No(s) : NA
- Impugned Interim Order : NA
- Impugned Final Order : NA
- High Court : NA
- Names of Judges : NA
- Tribunal/Authority : NA

1. **Nature of Matter** : Civil Criminal
2.
 (a) Petitioner No. 1 : Revenue Bar Association
 (b) Email ID : NA
 (c) Mobile Number : NA
3.
 (a) Respondent No. 1 : Union of India
 (b) Email ID : NA
 (c) Mobile Number : NA
4.
 (a) Main category Classification : 18
 (b) Sub Classification : 1807
5. **Not to be listed before** : NA

6. **Similar/Pending Matter** :
- (a) Madras Bar Assn. v. Union of India & Others, **W.P (C) No. 267 of 2012**
- (b) Social Action for Forest & Environment v. Union of India, **W.P.(C) No. 561 of 2017**
7. **Criminal Matters** : NA
8. **Land Acquisition Matters** : NA
9. **Tax Matters** : NA
10. **Special Category** : NA
- Senior Citizen SC/ST Woman/Child
- Disabled Legal Aid In custody
11. **Vehicle Number** : NA
(in case of Motor Accident Claim matters)
12. **Decided cases with citation** :

Date : 25.08.2017

ADVOCATE ON RECORD

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SYNOPSIS

Revenue Bar Association, the Petitioner herein, is a society formed in the year 1963 and registered under the Societies' Registration Act, 1860. The present Writ Petition seeks to challenge the constitutional validity of **PART XIV** of the Finance Act, 2017 and the 'Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017' (**'Tribunal Rules'**) framed by the Central Government.

In one stroke, PART XIV of the Finance Act repealed substantive provisions relating to administration of 26 Tribunals established and codified under 26 diverse Central Laws. As a substitute, by virtue of Section 184, the Central Government has been given the powers to provide rules in this regard. Pursuant thereto, the Tribunal Rules have laid down the eligibility criteria, selection process, removal, tenure and other service conditions of Members (i.e., Chairpersons, Vice-Chairpersons, Technical/Specialist Members and Judicial Members) of 19 Tribunals. The substantive provisions under their parent legislations, if not expressly repealed under PART XIV, have been declared *non-est* to the extent their inconsistency with Tribunal Rules.

The Finance Act, 2017 was introduced and enacted as a 'Money Bill' through the special legislative procedure set out under Article 109 of the Constitution. At the time of consideration of the Finance Bill, a Member of the Lower House questioned the validity to include various provisions (including the insertion of PART XIV) as a 'Money Bill'. The Hon'ble Speaker, however, ruled that the impugned provisions were 'incidental' to financial proposals of the Central Government. On 22.03.2017, the Finance Bill was passed by the Lok Sabha and transmitted to Rajya Sabha for its recommendations. On 31.03.2017, the Finance Bill received assent from the President. Thereafter, PART XIV and the Tribunal Rules were brought into force on 26.05.2017 and 01.06.2017, respectively.

At the outset, it is submitted that the passage of the Finance Act in the form of a 'Money Bill' is entirely inappropriate and derogates substantive provisions of the Constitution. PART XIV deals with appointment, selection, eligibility and other service conditions of Members of Scheduled Tribunals, which is primarily concerned with administration of justice, jurisdiction and powers of courts and access to justice. Whilst Article 110 does not *per se* bar the inclusion of non-fiscal proposals in a Finance Bill, such a proposal must (i) be an 'incidental' ancillary provision (ii) to enable the State in creating or obviating fiscal charge or regulating fiscal activities such as borrowings, withdrawal or such other financial obligations. Mere incidental burden on the Consolidated Fund is insufficient to qualify proposed legislation as a 'Money Bill'. In the instant case, the provisions affecting administration of tribunals can hardly qualify as a pure fiscal measure, or enacted purely on financial considerations. As a consequence, the approval of the Rajya Sabha on ordinary legislative subjects stipulated under Articles 107 and 108 has been brought to a naught. Such colourable exercise of powers to bypass the Upper House, is impressible and amounts to fraud on the Constitution.

Notwithstanding the above, the Finance Act completely undermines the stature, efficacy and judicial independence of the Scheduled Tribunals. Section 184 has delegated the powers to prescribe service conditions (such eligibility, tenure, appointment process etc.) to the Central Government. Whereas, each of the said service conditions were expressly codified under the parent statute of the Tribunals. The delegation of critical aspects affecting independence of Tribunals is *per se* arbitrary and an affront to basic features of the Constitution (i.e., independence of judiciary and separation of powers). That apart, the Central Government wields wide discretion to prescribe/alter the service conditions, as the provisions under PART XIV fails to lay down discernible legislative policy or specify reasonable parameters for exercise of delegated powers.

The Tribunal Rules are a testament to the unbridled and unguided powers conferred under Section 184. More egregiously, the Tribunal Rules blatantly contravene binding principles laid down by this Hon'ble Court in a series of decisions to ensure independence of tribunals and proper administration of justice. Some of the glaring aberrations are enumerated below:

- (a) **Eligibility Criteria:** This Hon'ble Court has unequivocally held that a Chairperson or Presiding Officer of Judicial Tribunals is equivalent to the Chief Justice of High Courts. 13 out of 19 Tribunals fails to satisfy the said criteria. The qualifications prescribed therein allows a person merely 'qualified' to be a Judge of this Hon'ble Court or High Court are eligible for appointment as the Chairperson/President. Furthermore, 14 out of 19 Tribunals allow a Technical/Specialist Member without any expertise in law to be appointed as the Chairperson/President. 5 out of 19 Tribunals permit ILS Officers to be appointed as 'Judicial Members'.
- (b) **Selection Process:** This Hon'ble Court has categorically stated that (a) composition of Selection Committee must give primacy to Judiciary, (b) must be headed by the Chief Justice or his nominee; and (c) the Chief Justice or his nominee should have a casting vote. However, the Selection Committees prescribed by the Central Government falls short of the said stipulation on all counts.
- (c) **Removal:** The Rules allow the Central Government to initiate an enquiry merely on written complaint without even the requirement for consultation or concurrence from the Chief Justice or his nominee. The composition of the Committee entrusted to conduct an enquiry has not been specified. Furthermore, the Central Government can remove the Member of the Tribunal based on the recommendation of the Committee,

and without any requirement to consult or obtain concurrence of the Chief Justice or his nominee (with the exception to NCLAT). The removal process creates a master-servant relationship between the Central Government and Members of the Tribunals.

- (d) **Nodal Ministry:** This Hon'ble Court in **L. Chandra Kumar v. Union of India** (1997) 3 SCC 261 noted that **“The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.”** In over two decades, the Central Government has not taken any steps in this regard. The Tribunal Rules have shown blatant disregard towards unifying administration of Tribunals.

Thus, the present Petition is being filed to seek declaratory reliefs - *inter alia* - for violation of Articles 14, 19, 21, 50, 107, 109, 110 and 323B of the Constitution and failure to preserve and protect the basic features of the Constitution. In a nutshell, the grounds urged are as under:

- I. THAT the insertion of PART XIV in the form of a 'Money Bill' suffers from procedural illegality, inasmuch as the subject matter of provisions are beyond the scope of Article 110. The deliberate design to exclude the Rajya Sabha, by adopting special procedure under Article 109, smacks of constitutional impropriety and amounts to fraud on the Constitution.
- II. THAT the substantive provisions of the Finance Act affecting the stature, efficacy and independence of Judicial Tribunals is violative of Articles 14 and 50. The basic features of a Tribunal - such as eligibility, selection process and other service conditions - are essential legislative subjects. The delegation of such critical

aspects undermines independence of Tribunals which is arbitrary and an affront to basic features of the Constitution. Moreover, the impugned provisions fail to specify discernible legislative policy, hence suffers from the vice of excessive delegation..

- III. THAT the Tribunal Rules are manifestly arbitrary and irrational. The Tribunal Rules blatantly contravene binding principles laid down by this Hon'ble Court to ensure independence of tribunals and proper administration of justice. The wide powers of the Central Government casts huge shadow on impartiality and fairness in their adjudication process. Moreover, the Tribunal Rules have failed to prescribe uniform standards *inter se* amongst various Scheduled Tribunals without valid justification.

LIST OF DATES

- 1963** Revenue Bar Association, the Petitioner herein, was registered under the Societies' Registration Act, 1860 (bearing CERTIFICATE OF REGISTRATION NO. 13 OF 1963) in Madras. The society is represented through its President and comprises of advocates practicing in various commercial and revenue laws across the country before Courts, Tribunals and other *quasi-judicial fora*.
- 22.08.2009** The 18th Law Commission of India, in their Report No. 232 on 'Retirement Age of Chairpersons & Members of Tribunals: Need for Uniformity', observed that there is an **“absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the country, different Ministries of the Government adopt different yardsticks.”** To this end, the Law Commission recommended that **“There**

is an imperative need to fix the age of retirement of Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively.”

20.04.2012 This Hon’ble Court in **Rajiv Garg v. Union of India** W.P.(C) No. 120 of 2012 issued notice to the Attorney General for India to consider “**whether different conditions of engagement/service could be prescribed for the Chairperson/ President of different Tribunals/Commissions constituted under different Acts of Parliament.**”

24.07.2012 Immediately thereafter, this Hon’ble Court was pleased to issue notice to the Union of India in W.P.(C) No. 267 of 2012 filed by Madras Bar Association which has sought appropriate directions against Respondent No. 1 to take over the administration of all Tribunals created by Parliament and to streamline their functioning. Furthermore, the Petition sought appropriate directions to direct Respondent No. 1 to carry out a ‘Judicial Impact Assessment’ on all Tribunals created by the Parliament.

19.02.2014 To this end, the Union of India introduced the ‘Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014’ in the Rajya Sabha to provide “**uniform conditions of service of the Chairman and Members**” in respect of twenty-six (26) Tribunals, Appellate Tribunals and other authorities established under various Central Laws. However, the Bill was entirely inadequate and failed to provide robust standards to ensure functional autonomy and adjudicatory independence of the

Tribunals. The Hon'ble Chairman of Rajya Sabha referred the Tribunals Bill to the Department-related Standing Committee for its consideration.

26.02.2015 The Standing Committee, after lengthy deliberations, submitted their report before both the Houses. In their 74th Report, the Committee emphasized the need to have tenured appointments and uniform service conditions for independent and impartial adjudication. Furthermore, the Standing Committee criticized the present practice of appointing retired Judges and retired bureaucrats as members of Tribunals. The Standing Committee also opined that the age for retirement should be uniform for all Members, and also objected to the Minister-in-charge discharging as the Leave Sanctioning Authority. As on date, the Tribunals Bill is still pending.

10.03.2015 The Madras High Court in **Shamnad Basheer v. Union of India & Others**, W.P. No. 1256 of 2011 struck down various provisions of the Trade Marks Act, 1999 pertaining to qualifications of the Vice-Chairman, Judicial Members and Technical Members of the Intellectual Property Appellate Board ('**IPAB**'). Pertinently, the composition of the Search-cum-Selection Committee comprising of members of the Executive was struck down as being an affront to the basic structure of the constitution.

27.07.2015 This Hon'ble Court upheld the findings of the High Court in **Shamnad Basheer** (supra) and held that there is no "legal and valid ground for interference."

18.01.2016 This Hon'ble Court, in W.P.(C) No. 267 of 2012, directed Respondent No. 1 to reconsider parts of the Tribunals Bill in light of observations made by this Hon'ble Court in **Union of India v. R. Gandhi** (supra) and submit a report. However, it appears that no action was reported to this Hon'ble Court thus far.

01.02.2017 The Finance Bill, 2017 was introduced as a 'Money Bill' in the Lower House with the recommendation of the President of India in accordance with Clauses (1) and (3) of Article 117. At the time of introduction, the Finance Bill comprised of one hundred and fifty (150) Clauses along with seven (7) Schedules **“to give effect to the financial proposals of the Central Government for the financial year 2017-2018.”** The Bill largely contained proposals which sought to amend, add and modify laws dealing with taxation (i.e., direct, indirect and service taxes) and other fiscal aspects. However, PART VII of the Finance Bill (renumbered as PART VIII in the Finance Act) sought to expand the jurisdiction of Securities Appellate Tribunal [established under the Securities and Exchange Board of India Act, 1992] to hear appeals against orders passed by the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority. In addition, the Finance Bill contained a proposal to replace and substitute the existing provisions on qualifications, selection procedure, tenure and removal of Presiding Officer and Members of the Securities Tribunal.

21.03.2017 The Lower House took up the Finance Bill for discussion. On the eve of discussion, the Union Finance Minister proposed an Amendment to insert

PARTXI (renumbered as PARTXIV in the Finance Act) containing 34 new Clauses and two (2) Schedules to the Finance Bill. Two Hon'ble Members of the House – namely, Sh. N. K. Premachandran and Prof. Sugata Roy - raised a Point of Order to question the legality of enacting non-fiscal subjects in the form of a 'Money Bill'. It was also pointed out that Clause (i) of Rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha (**'Lok Sabha Business Rules'**) prohibited amendments that were neither relevant to the subject matter nor within the scope of the Bill under consideration. The Hon'ble Speaker, in exercise of special jurisdiction under Clause (3) of Article 110, stated that there was no specific bar on inclusion of non-taxation proposal in 'Money Bills' and accordingly ruled that the provisions of the Finance Bill were incidental to financial proposals of the Central Government.

22.03.2017 The Lower House adopted the Finance Bill along with an Amendment to insert PARTXI (renumbered as PARTXIV in the Finance Act). Pertinently, the House suspended the operation of Clause (i) of Rule 80 of Lok Sabha Business Rules to permit unconnected matters to be included in the Finance Bill. Thereafter, the Finance Bill was transmitted to the Upper House for their recommendations as per Clause (2) of Article 109.

29.03.2017 The Council returned the Finance Bill to the Lower House with certain recommendations.

30.03.2017 The Lower House rejected the recommendations. Resultantly, the Finance Bill was deemed to have been passed by both the Houses by virtue of Article 109.

31.03.2017 The Finance Bill received assent from the President of India.

26.05.2017 As per Section 156, the Department of Revenue (i.e., Respondent No. 2 herein) notified 26th Day of May, 2017 as the appointed date to bring the provisions of PART XIV into effect. PART XIV of the Finance Act repealed substantive provisions relating to administration of 26 Tribunals setup and contained under 26 diverse Central Laws.

01.06.2017 Thereafter, the Respondent No. 2 notified the Tribunals Rules and brought them into force with immediate effect. In terms of Section 184, the Tribunal Rules lay down (a) eligibility criteria, (a) process of selection, (c) resignation and removal, (d) salaries and emoluments, (e) term and tenure; and (f) other service conditions such as leave and allowances to Members of the Scheduled Tribunals.

24.08.2017 The present Writ Petition raises several important questions of law which involve interpretation of the Constitution. The Statement of Object and Reasons of the Finance Act has no bearing or relation to the impugned provisions affecting administration of tribunals. Moreover, these sweeping changes were brought into effect in the form of a 'Money Bill' in complete derogation of substantive provisions of the Constitution, and with a deliberate design to undermine the Rajya Sabha. Notwithstanding the

above, the substantive provisions of the Finance Act undermine the judicial independence and autonomy of Scheduled Tribunals from the Executive. The basic features of a Tribunal - such as eligibility, selection process and other service conditions – have not only been delegated to the Executive, but more egregiously, the Parliament has failed to lay down discernible legislative policy. The Impugned Rules enacted pursuant thereto is a testament to the unbridled and unguided powers, which have not only disregarded the binding principles of this Hon'ble Court, but are manifestly arbitrary and undermine judicial independence with impunity. Hence, the present Writ Petition is being filed seeking declaratory reliefs to challenge the constitutional validity of the Finance Act and the Tribunal Rules.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION
(Under Article 32 of the Constitution of India)

WRIT PETITION (CIVIL) NO. OF 2017

IN THE MATTER OF

REVENUE BAR ASSOCIATION

Through Sh. Arvind Pandian (President)
New No. 115 (First Floor),
Luz Church Road, Mylapore,
Chennai-600 004

PETITIONER

VERSUS

1. Union of India

Ministry of Law and Justice,
Through Law Secretary,
4thFloor, A Wing,
Rajendra Prasad Road
Shastri Bhavan,
New Delhi- 110 001

RESPONDENT NO. 1

2. Union of India

Ministry of Finance,
Department of Revenue,
Through Joint Secretary,
North Block,
New Delhi – 110 001

RESPONDENT NO. 2

3. Lok Sabha Secretariat

Through Secretary-General,
18, Parliament House,
New Delhi – 110 001

RESPONDENT NO. 3

**A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA**

To,

The Hon'ble Chief Justice of India
and His Companion Judges of
the Hon'ble Supreme Court of India

The Humble Petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH

1. The present Petition under Article 32 of the Constitution of India seeks to challenge the constitutional validity of PART XIV of the Finance Act, 2017 [ACT No. 7 of 2017] titled '**Amendments to Certain Acts to Provide for Merger of Tribunals & Other Authorities and Conditions of Service of Chairpersons, Members, etc.,**' and also the validity of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 ('**Tribunal Rules**') made by the Central Government by virtue of powers delegated under Section 184 thereunder.
2. Revenue Bar Association, the Petitioner herein, is a society formed in the year 1963 and registered under the Societies' Registration Act, 1860 (bearing CERTIFICATE OF REGISTRATION NO. 13 OF 1963) in Madras. The society is represented through its President and comprises of advocates practicing in various commercial and revenue laws across the country before Courts, Tribunals and other *quasi-judicial fora*. The Petitioner is prejudicially aggrieved by the provisions of Finance Act which have had an adverse impact on the independence of judicial tribunals and administration and access to justice. True Copy of the Certificate of Registration, dated 30.07.1984, is annexed herewith as **ANNEXURE P-1 (Page No.66)**.
3. The Finance Bill, 2017 was introduced as a 'Money Bill' in the House of People ('**The Lower House**' or '**Lok Sabha**') with the recommendation of the President of India in accordance with Clauses (1) and (3) of Article 117. At the time when it was introduced, on 01.02.2017, the Finance Bill contained one hundred and fifty (150) Clauses along with seven (7) Schedules "**to give effect to the financial proposals of the Central Government for the financial year 2017-2018.**".

4. The Lower House, on 21.03.2017 and 22.03.2017, deliberated and passed the Finance Bill along with 29 Government Amendments. Incidentally, the PART XI of the Finance Bill (or PART XIV of the Finance Act), impugned herein, was introduced as an Amendment on 21.03.2017, to insert 34 new Clauses and two (2) Schedules which amended 26 Central Laws. Thereafter, the Finance Bill was transmitted to the Council of States ('**The Upper House**' or '**Rajya Sabha**') for their recommendations as per Clause (2) of Article 109.
5. The Council, on 29.03.2017, returned the Bill with certain recommendations. On 30.03.2017, the Lower House rejected the recommendations, and resultantly, the Finance Bill was deemed to have been passed by both Houses. The President gave his assent to the Finance Bill on 31.03.2017, and was published in the GAZETTE OF INDIA for general information. True Copy of PART XIV of the Finance Act, 2017, published in the GAZETTE OF INDIA on 31.03.2017, is annexed herewith as **ANNEXURE P-2 (Page Nos. 67 to 106)**.
6. As per Section 156 therein, the Department of Revenue (i.e., Respondent No. 2 herein) notified 26th Day of May, 2017 as the appointed date to bring the provisions of PART XIV into effect. In one stroke, PART XIV of the Finance Act amended substantive provisions contained in twenty-six (26) diverse Central Laws ('**Scheduled Acts**') pertaining to administration, jurisdiction and functioning of twenty-six (26) Tribunals ('**Scheduled Tribunals**') setup thereunder. The enormity of this legislative exercise includes:
 - (a) The abolition of eight (8) Tribunals setup under Scheduled Acts specified in Column (2) of the NINTH SCHEDULE, and convergence/transfer of their jurisdiction, powers and

authority to Seven (7) other existing Tribunals established under Scheduled Acts specified in Column (3).

- (b) The repeal of substantive provisions relating to eligibility criteria, selection process, removal, tenure and other service conditions of Members (i.e., Chairpersons, Vice-Chairpersons, Technical/Specialist Members and Judicial Members) of Scheduled Tribunals contained in Scheduled Acts specified in the EIGHTH SCHEDULE. As a substitute, by virtue of Section 184, the Scheduled Acts were mechanically amended to confer powers upon the Central Government to prescribe rules in this regard. The substantive provisions under their parent legislations, if not expressly repealed under PART XIV, have been declared *non-est* to the extent their inconsistency with Tribunal Rules.
- (c) The termination of services of Members (including Chairperson or President, Vice-Chairman and other Members) currently administering Scheduled Tribunals under the NINTH SCHEDULE, along with a maximum of three (3) months' pay and allowances as compensation towards premature termination.
7. Thereafter, the Department of Revenue (i.e., Respondent No. 2) notified the 'Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017' ('**Tribunal Rules**') on 01.06.2017 and was brought into force with immediate effect. In terms of Section 184, the Tribunal Rules has laid down (a) eligibility criteria; (a) selection process; (c) resignation and removal; (d) salaries and emoluments; (e) term and tenure; and (f) other service conditions such as leave and allowances

applicable for Members of the Scheduled Tribunals. True Copy of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017, published in the GAZETTEOFINDIA on 01.06.2017, is annexed herewith as **ANNEXURE P-3 (Page Nos. 107 to 171)**.

8. At the outset, it is stated that the passage of the Finance Act in the form of a 'Money Bill' is inappropriate and derogates substantive procedure laid down under the Constitution. The exclusion of the Upper House, on ordinary legislative subjects, smacks of constitutional impropriety and is a fraud on the Constitution. Notwithstanding the above, the Finance Act completely undermines the stature, efficacy and judicial independence of not just the Scheduled Tribunals. Furthermore, the impugned provisions give wide powers for the Central Government to include any other Tribunal at any point in the future merely by a notification. The Finance Act has delegated essential legislative functions affecting independence and administration of Tribunals, and more egregiously failed to specify any discernible legislative policy. The Tribunal Rules are a testament to the unbridled and unguided powers conferred under Section 184, which are manifestly arbitrary and irrational. Furthermore, the Tribunal Rules blatantly contravene binding principles laid down by this Hon'ble Court issued to ensure independence of tribunals and proper administration of justice.
9. In a nutshell, the Finance Act and Tribunal Rules have incapacitated Scheduled Tribunals to function independently and discharge judicial duties fairly and impartially without Executive influences. Thus, the present Petition is being filed to seek declaratory reliefs - *inter alia* - for violation of Articles 14, 19, 21, 50, 107, 110, 117 and 323B of the Constitution and take steps

to preserve and protect the basic features of the Constitution embodied therein.

10. In the above premises, the present Writ Petition raises several important questions of law involving interpretation of the Constitution, and particularly this Hon'ble Court has to examine:
 - (a) Whether a 'Money Bill' comprising of non-fiscal legislative subjects (falling entirely outside the scope of Article 110) can be struck down for substantive procedural illegality and colourable exercise of legislative powers in adopting the special procedure prescribed under Article 109?
 - (b) Whether the ruling of the Speaker of the Lower House on the validity of Finance Act as a 'Money Bill' - in exercise of special jurisdiction under Clause (3) of Article 110 - can be interfered through the process of judicial review for procedural illegality and grave constitutional impropriety?
 - (c) Whether the powers to lay down qualifications, selection process, removal and other service conditions – which directly affect the independence and administration of Scheduled Tribunals and the doctrine of separation of powers - can be delegated/abdicated to the rule-making power of the Central Government?
 - (d) Whether the qualifications, selection process, removal and other service conditions contained in the Tribunal Rules are liable to be struck down for manifest arbitrariness and infringement of 'basic structure of the Constitution' as held by this Hon'ble Court in **Madras Bar Association v. Union of India & Others** (2014) 10 SCC 1?

11. Some of the issues raised in the instant Petition are pending consideration before the Constitutional Bench of this Hon'ble Court in **Madras Bar Association v. Union of India & Others** [W.P.(C) No. 267 of 2012]. As a matter of fact, this Hon'ble Court is currently examining the constitutional validity of certain provisions of the Finance Act and Rules in **Social Action for Forest & Environment v. Union of India** [W.P.(C) No. 561 of 2017]. True Copy of the Order passed by this Hon'ble Court in W.P.(C) No. 561 of 2017, on 28.07.2017, is annexed herewith as **ANNEXURE P-4 (Page No. 172)**.

I. DESCRIPTION OF PARTIES

12. Revenue Bar Association, the Petitioner herein, is a society formed in the year 1963 and registered under the Societies' Registration Act, 1860 (bearing CERTIFICATE OF REGISTRATION NO. 13 OF 1963) in Madras. The society is represented through its President and comprises of advocates practicing in various commercial and revenue laws across the country before Courts, Tribunals and other *quasi-judicial fora*. The Petitioner is prejudicially aggrieved by the provisions of Finance Act which have had an adverse impact on the independence of judicial tribunals and administration and access to justice.
13. Respondent No. 1 is the Union of India represented through the Law Secretary of the Ministry of Law & Justice. As per the Government of India (Allocation of Business) Rules ('**Allocation of Business**'), the Department of Legal Affairs under the Ministry is responsible for representing the Union of India in all legal matters before this Hon'ble Court and other subordinate courts. In addition, the Department of Legal Affairs is responsible for administration of two of the Scheduled Tribunals; namely, the Income-Tax Appellate Tribunal ('**ITAT**') and Appellate Tribunal for Foreign Exchange ('**ATFE**'). The

Department of Justice under the Ministry is responsible for matters affecting administration of justice. Furthermore, this Hon'ble Court in **L. Chandra Kumar v. Union of India** (1997) 3 SCC 261 and in subsequent decisions directed the Union of India to unify administration of all Tribunals under the Ministry of Law & Justice.

14. Respondent No. 2 is the Department of Revenue under the Ministry of Finance and is represented through its Joint Secretary. Respondent No. 2 was responsible for various proposals introduced in the Finance Bill as well as framing and notification of Tribunal Rules. Although, the Allocation of Business contemplate limited responsibility over matters relating to Taxation (viz., Income Tax, Customs, Central Excise and Sales Tax), Narcotic Drugs, Money Laundering, Foreign Exchange and Smuggling. The Respondent No. 2 is responsible for administration of Customs Excise and Service Tax Appellate Tribunal ('CESTAT') and Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ('SAFEMA'). In respect of seventeen (17) other Scheduled Tribunals, on the other hand, the responsibility is vested under various Ministries or Departments administering the concerned parent statutes. Evidently, therefore, the promulgation of Tribunal Rules is *ex-facie* beyond the scope of work and jurisdiction allocated to Respondent No. 2.
15. Respondent No. 3 is the Lok Sabha Secretariat and is represented through the Secretary-General. The Hon'ble Speaker, in exercise of special jurisdiction under Clause (3) and (4) of Article 110 of the Constitution, has ruled and certified the Finance Bill (along with various Amendments) as a 'Money Bill'.

II. BRIEF STATEMENT OF FACTS

16. In India, the impetus to create Tribunals stemmed from long delays and docket explosion of High Courts and other Courts. Over the years, the Legislature increasingly felt it appropriate to infuse ‘expert’ or ‘specialist’ in the field in adjudication of technical and specialized matters. In essence, the Tribunals were envisaged to replace and substitute the functions, jurisdiction and authority of the High Courts and other Civil Courts.
17. The Parliament derives its competent to create Tribunals and confer jurisdiction to resolve disputes in exercise of legislative powers contained in Article 246 read with Entries 77, 78, 79 and 95 of List I and Entry 46 of List III of Seventh Schedule. Significantly, moreover, the Constitution (Forty Second) Amendment, 1976 [**‘42nd Amendment’**] inserted Articles 323A and 323B as under PART XIVA titled ‘Tribunals’ to establish specialised and institutional mechanism - for adjudication of various disputes, complaints and offences – in place of existing Courts and procedure. The 42nd Amendment also inserted Entry 11A under List III to enable the respective Legislatures to frame laws for **“administration of justice, constitution and organisation of all courts, except the Supreme Court and the High Courts.”**
18. It is noteworthy that the word ‘Tribunal’ has nowhere been defined either under the Constitution or an extant statute. Nevertheless, this Hon’ble Court has identified the unique attributes, purpose and functions of tribunals in various decisions. Notably, in **Kihoto Hollohon v Zachillhu & Others**, (1992) Supp 2 SCC 651 this Hon’ble Court observed that:

“Where there is a lis — an affirmation by one party and denial by another — and the dispute

necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. **That authority is called a Tribunal, if it does not have all the trappings of a Court.**" (emphasis added)

19. A Constitution Bench of this Hon'ble Court in **S.P. Sampath Kumar v. Union of India & Others** (1987) 1 SCC 124, emphasised that a "**Tribunal should be a real substitute for the High Court – not only in form and *de jure* but in content and *de facto*. As was pointed out in *Minerva Mills*, the alternative arrangement has to be effective and efficient and capable of upholding the constitutional limitation.**" In subsequent decisions, this Hon'ble Court has stated that an alternative institutional mechanism is expected to possess judicial character and judicial independence of a High Court to inspire public confidence and provide impartial, effective and efficacious adjudication. To this end, the **Report of Arrears Committee** (1989-90) headed by (Retd.) Justice V. S. Malimath catalogued the essential characteristics of Judicial Tribunals in the following words [which has been quoted with approval in this Hon'ble Court in **L. Chandra Kumar** (supra)]:

"Test for including High Court's Jurisdiction:

8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less effective than the High Court. **Such a tribunal must inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen, equipment and approach.** When such a tribunal is composed of personnel drawn from the judiciary as well as from services

or from amongst experts in the field, any weightage in favour of the service members or expert members and value- discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision making process, especially when the Government is a litigant in most of the cases coming before such tribunal. (See S.P. Sampath Kumar v. Union of India). ... Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the frame work of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass the aforesaid test in order to be constitutionally valid.” (emphasis added)

20. In the past two decades, there has been an explosion of specialised tribunals in the areas of finance, labour and regulated sectors such as intellectual property, telecom, competition and environment. However, many of these Tribunals were set up indiscriminately in an *ad hoc* and piecemeal fashion, without effective judicial impact assessment. The abolition of Tribunals under the NINTH SCHEDULE is a testament to their ineffective and inferior adjudicatory mechanism. Be that as it may, the Scheduled Tribunals can be broadly categorized into three heads, based on their statute and forum to which their orders are appealable. They are enumerated as below:

Category I: DIRECT APPEALS TO SUPREME COURT

S.No.	Tribunal	Jurisdiction
1.	Central Excise and Service Tax Appellate Tribunal	Appellate
2.	Securities Appellate Tribunal	Appellate
3.	Airport Appellate Tribunal	Appellate
4.	Telecom Disputes and Settlement Appellate Tribunal	Both
5.	National Company Law Appellate Tribunal	Appellate
6.	National Consumer Dispute Redressal Commission	Both
7.	Appellate Tribunal for Electricity	Appellate
8.	Armed Forces Tribunal	Both
9.	National Green Tribunal	Both

Category II: STATUTORY APPEALS & ORIGINAL JURISDICTION OF HIGH COURTS

10.	Income Tax Appellate Tribunal	Appellate
11.	Railway Claims Tribunal	Original
12.	Industrial Disputes Tribunal	Original
13.	Appellate Tribunal for Forfeited Property	Both
14.	Central Administrative Tribunal	Both
15.	Debt Recovery Appellate Tribunal	Appellate
16.	Intellectual Property Appellate Board	Both
17.	Film Certification Appellate Tribunal	Appellate
18.	Authority for Advanced Ruling	Original

Category III: SUPERVISORY JURISDICTION OF HIGH COURTS

19. Debt Recovery Tribunal Original
21. As stated previously, the Ministry for Law & Justice, Respondent No. 1 herein, is responsible for matters affecting the administration of this Hon'ble Court and the High Courts. Although this Hon'ble Court has directed the Union of India to unify administration of Scheduled Tribunals under one agency, no steps have been taken until date. As a consequence, each Tribunal is governed/administered by different Ministry/ Department. The nodal agencies for each of the Scheduled Tribunal under EIGHT SCHEDULE is as below:

Category I: DIRECT APPEALS TO SUPREME COURT

Tribunal	Jurisdiction	Nodal Ministry
CESTAT	Customs Act, 1962	Dept. of Revenue (Fin.)
SAT	Securities and Exchange Board of India Act, 1992	Dept. Economic Affairs (Fin.)
AAT	Airport Authority of India Act, 1994	Civil Aviation
TDSAT	Telecom Regulatory Authority Act, 1997	Communications & IT
NCLAT	Companies Act, 2013	Corporate Affairs
NCDRC	Consumer Protection Act, 1986	Dept. of Consumer Affairs
APTEL	Electricity Act, 2003	Power
AFT	Armed Forces Act, 2007	Defence
NGT	National Green Tribunal Act, 2010	Environment & Forests

**Category II: STATUTORY APPEALS & ORIGINAL JURISDICTION
OF HIGH COURTS**

ITAT	Income Tax Act, 1961	Law & Justice
RCT	Railway Claims Act, 1987	Railways
IDT	Industrial Disputes Act, 1947	Labour & Employment
ATFP	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976	Dept. of Revenue (Fin.)
CAT	Administrative Tribunals Act, 1985	Law & Justice
DRAT	Recovery of Debts due to Banks and Financial Institutions Act, 1993	Dept. Financial Services (Fin.)
IPAB	Trade Marks Act, 1999	DIPP (Commerce & Industry)
AAR		Dept. of Revenue (Fin.)
FCAT	Cinematograph Act, 1952	Information & Broadcasting

Category III: SUPERVISORY JURISDICTION OF HIGH COURTS

DRT	Recovery of Debts due to Banks and Financial Institutions Act, 1993	Dept. Financial Services (Fin.)
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A. ADMINISTRATION OF TRIBUNALS UNDER INDIAN CONSTITUTION

22. While this Hon'ble Court approved divestment of judicial functions from the High Courts to Tribunals, it was held so on the precondition that the alternative adjudicatory mechanism is efficacious and equivalent to High Courts in all respects,

including the rank, status, qualifications and profile of persons presiding such bodies. This Hon'ble Court in **Sampath Kumar** (supra) – in connection with the appointment of members to the Central Administrative Tribunal ('CAT') – stated that the position of Chairperson of a Tribunal must be equivalent to that of Chief Justice of the High Court and the Vice-Chairperson and other Administrative Members as being equivalent to Judges of the High Court. It was further added that only a 'High Powered Committee' headed by sitting Judge of this Hon'ble Court (nominated by the Hon'ble Chief Justice of India) should be entrusted with selection and appointment of Chairperson and other Members of the Tribunal. [*See also S.P. Sampath Kumar v. Union of India & Others* (1987) Supp. SCC 734]

23. Thereafter, a Seven Bench of this Hon'ble Court in **L. Chandra Kumar** (supra) declared Articles 323A(2)(d) and 323B(3)(d) as unconstitutional, inasmuch as the exclusion of judicial review of this Hon'ble Court and High Courts under Articles 32, 226 and 227 were held to be inalienable and inviolable part of basic structure. Besides this, and most significantly, this Hon'ble Court upheld the dictum in **Sampath Kumar** (supra) and expressed grave concern over the lack of uniformity and coherent policy in administering of Tribunals. In pertinent part, this Hon'ble Court stated that:

“96. ...The situation at present is that different Tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. **However, even in the case**

of Tribunals created by Parliamentary legislations, there is no uniformity in administration. We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set-up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal Ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. **To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out.**”

To this end, this Hon’ble Court directed the Union of India to converge administration of all Tribunals under one nodal agency.

In pertinent part, this Hon’ble Court held that:

97. ...We, therefore, **recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department.**"
(emphasis added)

24. Thirteen years later, the above concerns and directions were reiterated in **Union of India v. R. Gandhi**, (2010) 11 SCC 1, while examining the constitutional validity of the National Company Law Tribunal ('NCLT') established under the erstwhile Companies Act, 1957. More importantly, the Constitution Bench distilled various facets of a Tribunal necessary for just and fair dispensation of justice. While reiterating the necessity for independence of judicial tribunals, this Hon'ble Court noted that the "**the members of the tribunal should have the independence and security of tenure associated with judicial tribunals.**" Apart from functional autonomy, this Hon'ble Court underscored the sanctity of the selection in ensuring unbiased adjudication. To this end, this Hon'ble Court heavily castigated the Selection Committee which comprised of Secretary of the 'sponsoring department'. In unambiguous terms, this Hon'ble Court laid down elaborate parameters for ensuring judicial independence of Tribunals, of which the following are of extreme relevance:

"120. ...

- (i) Only Judges and advocates can be considered for appointment as judicial members of the Tribunal. Only High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practised as a lawyer for ten years can be considered for appointment as a judicial member. Persons who have held

a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and the Indian Legal Service (Grade I) cannot be considered for appointment as judicial members as provided in sub-sections (2)(c) and (d) of Section 10-FD. The expertise in Company Law Service or the Indian Legal Service will at best enable them to be considered for appointment as technical members.

- (ii) As NCLT takes over the functions of the High Court, the members should as nearly as possible have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as technical members of the National Company Law Tribunal. Clauses (c) and (d) of sub-section (2) and clauses (a) and (b) of sub-section (3) of Section 10-FD which provide for persons with 15 years experience in Group A post or persons holding the post of Joint Secretary or equivalent post in the Central or the State Government, being qualified for appointment as Members of Tribunal, are invalid.
- (iii) A “technical member” presupposes an experience in the field to which the Tribunal relates. A member of the Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of company law cannot be considered

as “experts” qualified to be appointed as technical members. Therefore clauses (a) and (b) of sub-section (3) are not valid.

- (iv) ...
- (v) Persons having ability, integrity, standing and special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy, may however be considered as persons having expertise in rehabilitation/revival of companies and therefore, eligible for being considered for appointment as technical members.
- (vi) ...
- (vii) ...
- (viii) ... Instead of a five-member Selection Committee with the Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and the Secretary in the Ministry of Law and Justice as members mentioned in Section 10-FX, the Selection Committee should broadly be on the following lines:
 - (a) Chief Justice of India or his nominee—
Chairperson (with a casting vote);
 - (b) A Senior Judge of the Supreme Court or
Chief Justice of High Court—Member;
 - (c) Secretary in the Ministry of Finance and
Company Affairs—Member; and
 - (d) Secretary in the Ministry of Law and
Justice—Member.
- (ix) The term of office of three years shall be changed to a term of seven or five years

subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the field concerned. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as post-retirement havens. If these Tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service.

- (x) ...
- (xi) To maintain independence and security in service, sub-section (3) of Section 10-FJ and Section 10-FV should provide that suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.
- (xii) The administrative support for all Tribunals should be from the Ministry of Law and Justice. Neither the Tribunals nor their members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or Department concerned.”

25. Once again, a Constitution Bench of this Hon’ble Court in **Madras Bar Association v. Union of India & Others** (2014) 11 SCC 1 struck down the National Tax Tribunal Act, 2005 *inter alia* for failure to ensure adequate safeguards for ensuring judicial independence of their functionaries. In particular, the Hon’ble Court reiterated the dictum in **L. Chandra Kumar** (supra) pertaining to the composition of the Selection Committee. In pertinent part, this Hon’ble Court observed that:

“130. ... Herein the acknowledged position is that NTT has been constituted as a replacement of High Courts. NTT is, therefore, in the real sense a tribunal substituting the High Courts. **The manner of appointment of Chairperson/Members to NTT will have to be by the same procedure (or by a similar procedure) to that which is prevalent for appointment of the Judges of High Courts.** Insofar as the instant aspect of the matter is concerned, the above proposition was declared by this Court in *Union of India v. Madras Bar Assn.* [Union of India v. Madras Bar Assn., (2010) 11 SCC 1], wherein it was held that the stature of the Members who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal. **Accordingly, if the jurisdiction of the High Courts is being transferred to NTT, the stature of the Members of the tribunal had to be akin to that of the Judges of High Courts. So also the conditions of service of its Chairperson/Members, and the manner of their appointment and removal, including transfers. Including, the tenure of their appointments.**

132. Insofar as the validity of Section 8 of the NTT Act is concerned, it clearly emerges from a perusal thereof that a Chairperson/Member is appointed to NTT, in the first instance, for a duration of 5 years. Such Chairperson/Member is eligible for reappointment for a further period of 5 years. We have no hesitation to accept the submissions advanced at the hands of the learned counsel for the petitioners, that a provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of NTT. Every Chairperson/Member appointed to NTT would be constrained to decide matters in a manner that would ensure his reappointment in terms of Section 8 of the NTT Act. His decisions may or may not be based on his independent

understanding. We are satisfied that the above provision would undermine the independence and fairness of the Chairperson and Members of NTT. Since NTT has been vested with jurisdiction which earlier lay with the High Courts, in all matters of appointment, and extension of tenure, must be shielded from executive involvement.” (emphasis added)

26. Following the series of precedents set out hereinabove, the Madras High Court in **Shamnad Basheer v. Union of India & Others**, W.P. No. 1256 of 2011 (dated 10.03.2015) struck down various provisions of the Trade Marks Act, 1999 pertaining to qualifications of the Vice-Chairman, Judicial Members and Technical Members of the Intellectual Property Appellate Board (**‘IPAB’**). Furthermore, the composition of the Search-cum-Selection Committee consisting of Secretaries/Add. Secretaries from the parent Ministry was struck down as being an affront to the basic features of the constitution. This Hon’ble Court upheld the findings of the High Court vide Order 27.07.2015 and held that there is no “legal and valid ground for interference.” True Copy of the Final Judgment in W.P. No. 1256 of 2011, dated 10.03.2015, passed by the High Court of Judicature at Madras is annexed herewith as **ANNEXURE P-5 (Page Nos. to)**. True Copy of the Order dated 27.07.2015 passed by this Hon’ble Court in S.L.P.(C) No. 18142 of 2015 is annexed herewith as **ANNEXURE P-6(Page Nos. 213 to 214)**.
27. Recently, on 14.05.2015, this Hon’ble in **Madras Bar Association v. Union of India & Others** (2015) 15 SCC 583 reiterated the principles laid down in **R. Gandhi** (supra) and struck down Sections 409(3)(a) and (e) and 411(3) of the Companies Act, 2013 pertaining to qualifications of Technical Members of NCLT and NCLAT, respectively. Furthermore, the Constitution Bench reiterated that the Selection Committee

should give primacy to representatives from the Judiciary, with the Chief Justice (or his nominee) having a 'casting vote' in case of any disagreement.

B. RECENT DEVELOPMENTS

28. The 18th Law Commission of India, in their Report No. 232 on 'Retirement Age of Chairpersons & Members of Tribunals: Need for Uniformity', submitted on 22.08.2009, observed that there is an **"absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the country, different Ministries of the Government adopt different yardsticks."** To this end, the Law Commission recommended that **"There is an imperative need to fix the age of retirement of Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively."** True Copy of the Report No. 232 on 'Retirement Age of Chairpersons & Members of Tribunals: Need for Uniformity', submitted on 22.08.2009 by the 18th Law Commission of India is annexed herewith as **ANNEXURE P-7 (Page Nos. 215 to 222)**.
29. On 20.04.2012, this Hon'ble Court in **Rajiv Garg v. Union of India** W.P.(C) No. 120 of 2012 issued notice to the Attorney General for India to consider **"whether different conditions of engagement/service could be prescribed for the Chairperson/President of different Tribunals/Commissions constituted under different Acts of Parliament."** True Copy of the Order dated 20.04.2012 passed by this Hon'ble Court in W.P.(C) No. 120 of 2012 is annexed herewith as **ANNEXURE P-8 (Page Nos. 223 to 224)**.
30. Immediately thereafter, the Madras Bar Association filed W.P.(C) No. 267 of 2012 seeking appropriate directions from this Hon'ble Court to implement **R. Gandhi** (supra) and **L.**

Chandra Kumar (supra), in particular, sought a writ of *mandamus* to direct the Respondent No. 1 to take over the administration of all Tribunals created by Parliament and streamline their functioning. Furthermore, the Petition sought appropriate directions to direct Respondent No. 1 to carry out a 'Judicial Impact Assessment' on all Tribunals created by the Parliament. On 24.07.2012, this Hon'ble Court was pleased to issue notice the Respondents.

31. Consequently, the Government of India introduced the '**Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014**' in the Rajya Sabha on 19.02.2014 to provide "uniform conditions of service of the Chairman and Members" in respect of twenty-six (26) Tribunals, Appellate Tribunals and other authorities established under various Central Laws. However, the Bill was entirely inadequate and failed to provide robust standards to ensure functional autonomy and adjudicatory independence of the Tribunals. True Copy of the '**Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014**' is annexed herewith as **ANNEXURE P-9 (Page Nos. 225 to 240)**.

32. On 19.02.2014, the Hon'ble Chairman of Rajya Sabha referred the Tribunals Bill to the Department-related Standing Committee. The Committee submitted their 74th Report before both the Houses on 26.02.2015. In their 74th Report, the Committee emphasized the need to have tenured appointments and uniform service conditions for independent and impartial adjudication. Furthermore, the Standing Committee criticized the present practice of appointing retired Judges and retired bureaucrats as members of Tribunals. The Standing Committee also opined that the age for retirement should be uniform for all Members, and also objected to the Minister-in-charge

discharging as the Leave Sanctioning Authority. Besides these, the Parliamentary Committee noted that many Tribunals do not have adequate residential accommodation, proper office, infrastructure or inadequate supporting staff. As on date, the Tribunals Bill is still pending despite the passage of three (3) years. True Copy of the 74th Report of the Department-Related Parliamentary Standing Committee on the 'Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014', tabled on 26.02.2015 is annexed herewith as **ANNEXURE P-10 (Page Nos. 241 to 264)**.

33. In view of the above, this Hon'ble Court directed Respondent No. 1 to reconsider parts of the Tribunals Bill in light of observations made by this Hon'ble Court in **R. Gandhi** (supra) and submit a report. However, it appears that no action was reported to this Hon'ble Court thus far. True Copy of the Order dated 18.01.2016 passed by this Hon'ble Court in W.P.(C) No. 267 of 2012 is annexed herewith as **ANNEXURE P-11 (Page Nos. 265 to 266)**.

C. FINANCE BILL, 2017

34. The Finance Bill, 2017 was introduced as a 'Money Bill' in the Lower House with the recommendation of the President of India in accordance with Clauses (1) and (3) of Article 117. At the time of introduction, on 01.02.2017, the Finance Bill comprised of one hundred and fifty (150) Clauses along with seven (7) Schedules "**to give effect to the financial proposals of the Central Government for the financial year 2017-2018.**" The Bill largely contained proposals which sought to amend, add and modify laws dealing with taxation (i.e., direct, indirect and service taxes) and other fiscal aspects. However, PART VII of the Finance Bill (renumbered as PART VIII in the Finance Act) sought to expand the jurisdiction of SAT [established under the

Securities and Exchange Board of India Act, 1992] to hear appeals against orders passed by the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority. In addition, the Finance Bill further proposed to replace and substitute the existing provisions on qualifications, selection procedure, tenure and removal of Presiding Officer and Members of the SAT.

35. On 21.03.2017, the House took up the Finance Bill for discussion and came to be passed on the following day (i.e., 22.03.2017) along with 29 Government Amendments. On the eve of discussion - quite literally - the Union Finance Minister proposed an Amendment to insert PART XI (renumbered as PART XIV in the Finance Act) containing 34 new Clauses and two (2) Schedules to the Finance Bill.
36. Two Hon'ble Members of the House – namely, Sh. N. K. Premachandran and Prof. Sugata Roy - raised a Point of Order to question the legality of enacting non-fiscal subjects in the form of a 'Money Bill' through the Finance Bill. It was also pointed out that Clause (i) of Rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha (**'Lok Sabha Business Rules'**) prohibited amendments that were neither relevant to the subject matter nor within the scope of the Bill under consideration. The Hon'ble Speaker, in exercise of special jurisdiction under Clause (3) of Article 110, stated that there was no specific bar on inclusion of non-taxation proposal in 'Money Bills' and accordingly ruled that the provisions of the Finance Bill were incidental to financial proposals of the Central Government. In pertinent part, the ruling of the Hon'ble Speaker on 21.03.2017, as excerpted from LOKSABHADEBATES (Original Version) is reproduced below:

“Hon. Members would recall that during last year when similar objections were raised at the time of consideration of the Finance Bill, 2016, I had observed that as per rule 219, the primary object of a Finance Bill is to give effect to the financial proposals of the Government. There is no doubt about it. At the same time, this Rule does not rule out the possibility of inclusion of non-taxation proposals. Therefore, I have accepted this. The Finance Bill may contain nontaxation proposals also.

Now, another thing is, no doubt, every effort should be made to separate taxation measures from other matters. It should be done. But as has been very widely explained by the Finance Minister, I need not say the things again and again.

... (Interruptions)

HON. SPEAKER: What is it? I am giving my ruling.

So, incidental provisions can be made. That is why, keeping in view that rule 219 does not specifically bar inclusion of non-taxation proposals in a Finance Bill, I rule out the Point of Order.”

37. On 22.03.2017, the House adopted the Finance Bill along with an Amendment to insert PART XI (renumbered as PART XIV in the Finance Act). Pertinently, the House suspended the operation of Clause (i) of Rule 80 of Lok Sabha Business Rules to permit unconnected matters to be included in the Finance Bill. Thereafter, the Finance Bill was transmitted to the Upper House for their recommendations as per Clause (2) of Article 109. The Council, on 29.03.2017, returned the Bill with certain recommendations to the Lower House. On 30.03.2017, however,

the Lower House rejected the recommendations, and resultantly, the Finance Bill was deemed to be passed by both the Houses.

38. Incidentally, on 22.03.2017, the Members of House sought a reply from the Minister for Law & Justice regarding any existing proposal to converge 36 existing Tribunals into a total of 17. To this end, the Hon'ble Minister replied that:

“The issue of merger/convergence of various Tribunals has been under consideration of the Government for quite some time. The matter was discussed at various levels including Indian Law Institute (ILI) and exhaustive study was undertaken for better laws and better governance. ILI in its report considered 36 Tribunals and after assessing the purpose, function and scope of all these Tribunals, recommended that the identified 36 Tribunals can be reduced to 17.

2. To further examine the report of the ILI, an Inter-Ministerial Group (IMG) under the chairmanship of Law Secretary was constituted which examined the merger/convergence of 36 Tribunals on three parameters of their (i) functional requirements; (ii) qualifications, and (iii) workload. Thereafter, a phased-wise Action Plan for the proposed merger of the aforesaid Tribunals including few other Tribunals and authorities was prepared in consultation with all the concerned administrative Ministries/Departments.

3. However, during the study undertaken on Merger/ Conversion of Tribunals, the number of Tribunals have been reduced by 5. The Company Law Board, Board for Industrial and Financial Reconstruction and Appellate Authority for Industrial and Financial Reconstruction have been subsumed into National Company Law Tribunal and National Company Law Appellate Tribunal

and two Appellate Tribunals, namely the Appellate Tribunal for Prevention of Money Laundering”

True Copy of the Reply of the Ministry of Law & Justice, dated 22.03.2017, before the Lower House is annexed herewith as **ANNEXURE P-12 (Page Nos. 267 to 269)**.

39. Thereafter, the Respondent No. 2 notified the Tribunals Rules on 01.06.2017 and brought into force with immediate effect. In terms of Section 184, the Tribunal Rules have laid down the (a) eligibility criteria, (a) process of selection, (c) resignation and removal, (d) salaries and emoluments, (e) term and tenure; and (f) other service conditions such as leave and allowances to various all Members of the Scheduled Tribunals. While the Tribunal Rules prescribe uniform conditions in respect of (c) to (f) above across the board, however, different yardsticks have been adopted for eligibility and selection process of Members.

III. CAUSE OF ACTION

40. The present Writ Petition raises several important questions of law which involve interpretation of the Constitution. The Statement of Object and ReasonsoftheFinance Act has no bearing or relevance for administration of tribunals howsoever. Thesesweeping changes were introduced entirely by surprise and without any deliberation with the relevant stakeholders. Be that as it may, the enactment of PART XIV in the form of a ‘Money Bill’ is entirely inappropriate and derogates substantive procedure laid down under the Constitution. The suppression of Upper House, on ordinary legislative subjects, smacks of constitutional impropriety and is a plain fraud on the Constitution. Notwithstanding the above, the substantive provisions of the Finance Act undermine the constitutional necessity to ensure judicial independence and autonomy of

Scheduled Tribunals from the Executive. The basic features of a Tribunal - such as eligibility, selection process and other service conditions – have not only been sub-delegated to the Executive, but egregiously failed to lay down discernible legislative policy for exercise of discretion. The Impugned Rules enacted pursuant thereto is a testament to the unbridled and unguided powers, which not only disregard the binding principles of this Hon'ble Court, but are manifestly arbitrary and undermine judicial independence with impunity.

A. PROCEDURAL ILLEGALITY

41. The PART XIV of the Finance Act is primarily concerned with appointment, selection, eligibility and other service conditions of Members of Scheduled Tribunals. These subjects are purely in the realm of (a) administration of justice; (b) jurisdiction and powers of courts; and (c) access to justice; and in pith and substance pertain to Articles 323A and 323B, Entry 95 of List I and Entries 11A and 46 of List III. The dominant effect of the impugned provisions is far from being a fiscal measure. It is entirely disingenuous to consider the provisions affecting administration of tribunals as a pure fiscal measure, or enacted purely on financial considerations.
42. First and foremost, the decision of the Hon'ble Speaker to treat provisions of the Finance Bill along with their Amendments as an 'incidental' legislative subject to matters specified under Clause (1) of Article 110 is *ex-facie* illegal and smacks of constitutional impropriety. Clause (1) of Article 110 reads as follows:

“(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains **only** provisions dealing with all or any of the following matters, namely

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the consolidated Fund of India;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- (g) **any matter incidental to any of the matters specified in sub clause (a) to (f)**” (emphasis added)

43. Whilst Article 110 does not *per se* bar the inclusion of non-fiscal proposals in a Finance Bill, such a proposal must be an incidental measure to enable other substantive provisions which have direct fiscal effect as specified in Sub-clauses (a) to (f). In other words, the inclusion of non-fiscal provision in Money Bill would be permissible if and only if (i) it is an ‘incidental’ ancillary

provision (ii) to enable the State in creating or obviating fiscal charge or regulating fiscal activities such as borrowings, withdrawal or such other financial obligations. Mere incidental burden on the Consolidated Fund is insufficient to qualify proposed legislation as a 'Money Bill'. PART XIV of the Finance Act, on the other hand, has repealed and replaced substantive provisions under the Scheduled Acts dealing with administration of Tribunals.

44. Furthermore, the adoption of special legislative procedure –under Article 109 – at whim of the Lower House has rendered the substantive procedure for Ordinary Bills under Articles 107 and 108 entirely redundant and nugatory. Consequently, the views and approval of the Upper House on legislative subjects other than fiscal measures have been muzzled and their role rendered futile. Such colourable exercise of powers to bypass the Upper House, is impermissible and constitutes fraud on the Constitution.
45. Worryingly moreover, a streak of non-fiscal/ordinary matters have been enacted as Money Bills in the recent past. The Insolvency and Bankruptcy Code, 2016 and the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 are a case in point. The situation is akin to abuse of ordinance making power, which has been deprecated by this Hon'ble Court in **Krishna Kumar Singh v. State of Bihar** (2017) 3 SCC 1 as a fraud on the Constitution. Likewise, the deliberate use of special procedure under Article 109 read with 110, either to circumvent the approval of Upper House or otherwise, is a fraud on the Constitution and an affront to supremacy of the Constitution.

B. DILUTION OF SEPARATION OF POWERS

46. As stated earlier, the efficacy and independence of judicial tribunals has been recognized by this Hon'ble Court as an inviolable part of basic features of the Constitution. The eligibility criteria, selection process and service conditions of members of Tribunal is determinative of its independence and for impartial and effective discharge of judicial functions. By virtue of Sections 184 read with 183, however, the service conditions stipulated under Scheduled Acts have been nullified and delegated to the rule-making powers of the Central Government. Clause (1) of Section 184 reads as follows:

“(1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in column (2) of the Eighth Schedule:”

47. It is submitted that Section 184 is a complete self-effacement of constitutional duty conferred upon the Parliament. Previously, each of the service conditions such eligibility, tenure, appointment process etc., have been expressly codified under each of the Scheduled Acts. The service conditions of Tribunals – being critical to safeguard the constitutional mandate – are non-delegable legislative subjects. In other words, the delegation of critical aspects affecting independence of Tribunals is arbitrary and an affront to basic features of the Constitution (i.e., independence of judiciary and separation of powers).

48. Moreover, Clause (1) of Article 323B imposes an obligation on the Parliament to frame a law in respect of creation of tribunals

for adjudication of disputes specified in Clause (2). Furthermore, the Sub-clause (f) under Clause (3) of Article 323B requires such law to provide for any “**supplemental, incidental and consequential**” measures necessary for the effective functioning, speedy disposal and enforcement of orders. The Article 323B, therefore, casts a positive duty on the Parliament to administer tribunals through a law, and by no other means.

49. At the very minimum, without prejudice to the above, it is incumbent upon the Parliament to provide sufficient legislative guidance or lay down definitive parameters for exercising the rule-making powers. In the instant case, the Finance Act fails to lay down any discernible criteria on the subject. For instance, the Finance Act does not even advert to selection process through the Search-cum-Selection Committees, and thereby allowing the Central Government to adopt any process/method for appointment.

C. EFFICACY & JUDICIAL INDEPENDENCE

50. It is submitted that the Finance Act and the Tribunal Rules seriously affects the stature, efficacy and independence of the Tribunals. As noted previously, the Parliament has failed to laid precise parameters for framing rules on eligibility, selection and other service conditions. Resultantly, the Impugned Rules are not only arbitrary, irrational and vague, but also lack *inter se* uniformity various Scheduled Tribunals without valid justification. Some of the glaring violations are enumerated below:

- (a) **Eligibility Criteria:** RULE 3 read with Column (3) of the Schedule, which provides eligibility conditions for members of the Scheduled Tribunals, are thoroughly arbitrary, irrational and fails to secure its stature equivalent

to that of a High Court. The qualifications prescribed therein are starkly contrary to the binding directions issued by this Hon'ble Court in plethora decisions. For instance,

- i. **CHAIRPERSON/PRESIDENT:** In **Sampath Kumar** (supra), this Hon'ble Court unequivocally held that Chairperson or the Presiding Officer of a Judicial Tribunal is equivalent to Chief Justice of the High Courts. Thirteen (13) out of nineteen (19) Scheduled Tribunals – namely, ATFP, CAT, RCT, DRAT, AAT, TDSAT, IPAB, AAR, FCAT, NCDRC, APTEL, AFT and NGT -fails to satisfy the said criteria. The qualifications prescribed therein allows persons merely 'qualified' for appointment as a Judge of this Hon'ble Court or a High Court as the Chairperson/President, without having ever served as a Judge of High Court. Furthermore, 14 out of 19 Scheduled Tribunals – namely IDT, ITAT, CESTAT, CAT, RCT, DRT, AAT, TDSAT, IPAB, AAR, FCAT, NCDRC, APTEL and NGT - permit Technical/Specialist Member without any expertise in law to be considered for appointment as the Chairperson. More egregiously, RULE 10 allows the Central Government may appoint any member (including Specialist Member) to act as the Chairperson in case of any casual vacancy, contrary to **R. Gandhi** (supra).
- ii. **JUDICIAL MEMBERS:** In **R. Gandhi** (supra), this Hon'ble Court categorically held that only Judges and Advocates must be considered for appointment as Judicial Members. [**Pr. 120(i)**] The Madras High

Court in **Shamnad Basheer** (supra) struck down Section 85(3)(a) of the Trade Marks Act precisely on this count, holding that Indian Legal Service ('**ILS**') officers [Grade I] are ineligible for appointment as Judicial Members. In spite of the clear mandate, the Impugned Rules allow ILS Officers to be appointed as Judicial Members for ITAT, CESTAT, RCT, AAT and DRAT. Few other Tribunals permit 'Judicial Officers' with 10 years of experience to be considered for appointment, although the categories of officers eligible for such appointments has not been defined.

iii. **TECHNICAL/SPECIALIST MEMBERS:** This Hon'ble Court in **R. Gandhi** (supra) held that direct relevant experience in the subject – and not merely incidental knowledge - is a precondition for persons to be considered for appointment as Technical Member. [**Pr. 120(iii)**] Furthermore, this Hon'ble Court held that bureaucrats may be considered for the post of Technical Members if and only if they have held the rank of Secretaries/Add. Secretaries. The Tribunals such as SAT and IPAB have not only appointed bureaucrats below the rank of Add. Secretary, but permit persons without no relevant expertise on the subject to be appointed.

(b) **Selection Process:** RULE 4 read with Column (4) of the Schedule provide for appointment of members of the Scheduled Tribunals by the Central Government based on the recommendations of the Search-cum-Selection Committee setup for each Tribunal. However, the

composition of such Committees, and appointments to such committees, is manifestly arbitrary and violative of basic structure of the Constitution. This Hon'ble Court has categorically stated that (a) composition of Selection Committee must give primacy to Judiciary, (b) must be headed by the Chief Justice or his nominee; and (c) the Chief Justice or his nominee should have a casting vote. However, the Selection Committees prescribed by the Central Government falls short of the said stipulation on all counts. It is submitted that:

- i. The composition for every Selection Committee completely undermined the primacy of the Judiciary, inasmuch it fails to ensure equal representation alongside the Executive. The opinion of the Chief Justice or his nominee could be entirely disregarded.
- ii. Insofar as appointments to IDT and FCAT, the Judiciary is entirely excluded from the Selection Committees. In several others, such as ITAT, AATF, CAT, RCT, SAT, TDSAT, IPAB, AAR, APTEL and NGT, the Selection Committees for Members does not include any representation from the Judiciary.
- iii. Few Scheduled Tribunals – such as IDT, CESTAT, SAT, AAR, - comprise of even members, however, the Impugned Rules do not contemplate the procedure for resolving conflicts.
- iv. The criteria and procedure for nomination of 'Experts' included as part of the Selection Committees, in the cases of IDT, ITAT, CAT, RCT, AAT, TDSAT, IPAB, FCAT, APTEL and NGT, has

not been specified howsoever. As a result, the Central Government has complete discretion to appoint 'Experts' of their choice.

- v. The Secretary of the relevant/parent Ministry acts as the convener of their respective Search-cum-Selection Committees, as per RULE 4(2). As a result, the meetings, deliberations, advertisements and other secretarial aspects of appointments are entirely under the control of the parent Ministry/Department.
- (c) **Tenure of Office:** Proviso to Clause (1) of Section 184 provides that the tenure of appointment shall not exceed five (5) years and permits reappointment. Furthermore, the Proviso has fixed an age limit of 70 and 67 years for Chairperson and Members, respectively. Pursuant thereto, RULE 9 read with Column (5) of the Schedule has prescribed a uniform tenure of 3 years for all Scheduled Tribunals with eligibility for reappointment. Once again, the Respondent has ignored the dictum of this Hon'ble Court in **R. Gandhi** (supra) wherein the term of office of 3 years was struck down. Similarly, this Hon'ble Court in **Madras Bar Assn.** (supra) observed that reappointment would undermine independence of judiciary, and struck down the corresponding provision under the National Tax Tribunal Act, 2005.
- (d) **Age:** RULE 9 read with Column (5) of the Schedule has prescribed retirement age for members of the Tribunals. However, the age limit is not uniform and without any rational basis. The Rule has ignored the 232nd Report of the Law Commission which recommended that "**There is an imperative need to fix the age of retirement of**

Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively.” On the other hand, the Standing Committee in their 74th Report opined that retirement age should be fixed at the age of 70 years for all members. Be that as it may, the Impugned Rules have failed to maintain uniformity across the Tribunals, without any valid justification.

- (e) **Removal:** RULES 7 and 8 which provide for the procedure for removal of members of the Tribunals is entirely illegal and undermines independence of Tribunals. The Rules allows the Central Government to initiate an enquiry merely on written complaint without the requirement for consultation or concurrence from the Chief Justice or his nominee. The composition of the Committee entrusted to conduct an enquiry has not been specified, and once again leaving wide and unguided discretion to the Central Government. Furthermore, the Central Government can remove the Member of the Tribunal based on the recommendation of the Committee, and without any necessity to consult or receive concurrence from the Chief Justice (with the exception to NCLAT). It is submitted the removal process creates a master-servant relationship between the Central Government and Members of the Tribunals, and casts a huge shadow on impartiality and fairness in their adjudication process.
- (f) **Salaries & Allowances:** RULES 11, 12, 13, 15, 16 and 18 provides for service conditions, such as salaries, leave pay, travel allowance ('TA'), house rent allowance ('HRA') and other benefits admitted to Members of the Scheduled Tribunals. As it is evident, the emoluments and allowances conferred on the Members is equal to Group 'A' officers

of the Government of India of a corresponding status. However, this Hon'ble Court has repeatedly stated that the service conditions admitted to Members of such Tribunals should be equivalent or comparable to that of High Court Judges. The comparative chart below shows the sharp contrast between various service conditions prescribed under the Impugned Rules and for High Court Judges:

Particular(s)	IMPUGNED RULES	HC JUDGES ACT, 1954
Leave Pay	As per Rule 40 of Central Civil Services (Leave) Rules, 1972	All India Services (Leave) Rules, 1955
TA	Equivalent to of a Group 'A' officer of Central Government of corresponding status	HC Judges (TA) Rules, 1956
Medical facilities	Equivalent to of a Group 'A' officer of Central Government of corresponding status	Equivalent to Minister with a cabinet rank of the respective State
HRA	No accommodation. But HRA allowed similar to Group 'A' officer of Central Government of corresponding status	Entitled for official residence as per High Court Judges Rules, 1956
Other conditions	Equivalent to of a Group 'A' officer of Central Government of corresponding status	High Court Judges Act, 1954

- (g) **Leave Sanctioning Authority:** RULE14 has conferred the responsibility on the Central Government to act the Leave

Sanctioning Authority of various members of the Tribunals. In view of Business Allocation Rules, the concerned in-charge/parent Ministry or Department would act as the Leave Sanctioning Authority. This creates a master-servant relationship between the concerned Ministry/Department and the Tribunal. It is instructive to note that the similar provision was included in the draft Tribunals Bill, and the Standing Committee several criticized the provision in the following words: “... **The Committee is not in agreement with the Clause 20 of Bill mainly for two reasons. Firstly, if leave sanctioning authority remains with the ministry-in-charge it would affect the independence of the Tribunals as the concerned Ministry is one of the parties to the disputes that come for adjudication before the Tribunal and secondly, it affects the status of Tribunals.**”

- (h) **Nodal Ministry:** As noted at Paragraph 23 above, this Hon’ble Court in **L. Chandra Kumar** (supra) noted that “**The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.**” In more than two decades, no steps have been initiated by the Ministry of Law & Justice to take over the functioning of the tribunals. On the contrary, the Tribunal Rules are *ex-facie* contemptuous and blatantly disregard the mandate of this Hon’ble Court to unify administration of Tribunals.

51. In the above premises, aggrieved by the provisions of the Finance Act, 2017 and the Tribunal Rules framed thereunder, the Petitioner prefers the present Writ Petition *inter alia* on the following grounds, which are urged in the alternative and without prejudice to one another:

GROUND

I. **BECAUSE** the framers of the Constitution have consciously made a distinction between various types of Bills – namely - Constitution Amendment Bill, Ordinary Bill, Finance Bill and Money Bill. The Articles 109, 110 and 117 have carved out definitive scope, legislative subjects and prescribed special procedure for enactment of Money Bills. The provisions of Finance Act, impugned herein, do not fall within the parameters of ‘Money Bill’ provided under Article 110 of the Constitution. The passage of Finance Act is a blatant overreach of substantive provisions of the Constitution and liable to be struck down for procedural illegality, *inter alia* for the following reasons:

(a) **First** and foremost, the impugned provisions of the Finance Act substantively deal with provisions affecting ‘**administration of justice**’ and allied subjects. Admittedly, the convergence of Tribunals was proposed based on three parameters – namely (i) functional requirements; (ii) qualifications, and (iii) workload – none of which fall within the scope of legislative heads specified in Clause (1) of Article 110 in *sensu stricto* or even on an liberal construction. Besides this, the dominant effect of the impugned provisions is far from enabling or

connected to a fiscal measure. In other words, the impugned provisions were not enacted with a view to make provisions for fiscal adjustments or such other measures. It is submitted that Clause (1) of Article 110 is exhaustive of legislative subjects to be considered as a 'Money Bill', and by necessary implication, all other aspects are excluded therefrom. Even amongst these subjects, the Clause (2) of Article 110 excludes Bills to be treated as a Money Bill merely for making provisions for imposition of fine, penalties, license fees or affecting levies imposed by any local authority or body intended for local purpose. Thus, the categories enumerated in Clause (1) of Article 110 are **exhaustive** and pertains to narrowly defined fiscal subjects. Thus, the sweeping changes to jurisdiction, composition, appointments and service conditions of Members of Scheduled Tribunals dealing with **administration of justice** and cannot be treated as 'Money Bill' merely for any incidental expenditure to be incurred from the Consolidated Fund of India.

- (b) **Second**, it is unclear if the impugned provisions have any financial implications, and or require appropriation or regulate monies out of the Consolidated Fund. The provisions of the Finance Act impugned herein do not create new Tribunals or add new posts/positions. On the other hand, the provisions affecting service conditions, salaries and other emoluments of Members –though involve appropriation out of Consolidated Fund –but the dominant object and purpose of such provisions

is quite far from being considered as a fiscal measure.

- (c) **Third**, Clause (i) of Rule 80 of the Business Rules – framed in accordance with Article 118 – do not permit ‘amendments’ to a Bill which are neither relevant to the subject matter nor falls within its scope. However, the House suspended Clause (i) of Rule 80 before introducing and voting on the motion to insert PART XIV to the Finance Act. In other words, the said amendment would be inadmissible as it does not fall within the scope of the Bill or relevant or subject-matter of the Bill. This is an acknowledgment that PART XIV of the Finance Act is misfit and does not conform to the parameters provided under Clause (1) of Article 110.
- (d) **Fourth**, Clause (1) of Article 323B is highly instructive inasmuch as it imposes an obligation on the Parliament to frame a law in respect of creation of tribunals for adjudication of disputes specified in Clause (2). Furthermore, the Sub-clause (f) under Clause (3) of Article 323B requires such law to provide for any “**supplemental, incidental and consequential**” measures necessary for the effective functioning, speedy disposal and enforcement of orders. It is submitted that any law dealing with Tribunals under Article 323B for its effective functioning cannot be construed as a fiscal subject under Article 110. Similarly, any other law dealing with Tribunals constituted under Entry 11A of List III and such other entries under Schedule VII cannot

be considered as fiscal subjects, irrespective of its financial implications on the State.

II. **BECAUSE** the Clause (1) of Article 117 provides for introduction of Finance Bill only in the House of People **if and only if** the Bill or an Amendment thereto falls within any of the matters contained in Clause (1) of Article 110, and the procedure of passage of such Finance Bills is exclusively provided under Article 109. By necessary implication, all other Finance Bills and any Amendments – not within the strict scope of Clause (1) of Article 110 – are not subject to such restrictions and are required to follow the procedure laid down in Articles 107 and 108. The Speaker, however, in exercise of special jurisdiction under Clause (3) of Article 110 erroneously ruled that provisions of Finance Act must be treated as a ‘Money Bill’. By virtue of Clause (4) of Article 110, moreover, the Finance Bill as passed by the Lower House was transmitted to the Rajya Sabha under the certificate of the Speaker to treat it as a ‘Money Bill’. Hence, the role of Upper House was severely restricted to merely offering non-binding recommendations to the Lok Sabha. In essence, the role and views of Council of States on the subject was rendered irrelevant and nugatory. Thus, the Finance Act was passed in complete derogation of mandatory provision under Clause (2) of Article 107 which requires approval of both Houses on all subjects matters other than Money Bill.

III. **BECAUSE** the procedure adopted to enact the Finance Act is a gross abuse of parliamentary practices and violation of substantive procedure prescribed under the Constitution. The Hon’ble Speaker has ignored the fact that

none of the Scheduled Acts, or relevant provisions therein, have been introduced as a 'Money Bill' earlier. The Hon'ble Speaker not only erred ignoring earlier precedents, but the manifest act in transmitting the Finance Bill as a Money Bill to the Upper House is a fraud on the Constitution.

IV. **BECAUSE** the exclusion of jurisdiction of this Hon'ble Court by virtue of Article 122 of the Constitution is inapplicable, inasmuch as the power of judicial review of this Hon'ble Court is inviolable to cure procedural illegalities and issue appropriate reliefs to restore the supremacy of the constitution. In the backdrop of egregious violations, it is submitted that the passage of Bill cannot be immune from judicial scrutiny. To this extent, the decision of this Hon'ble Court in **Mohd. Saeed Siddiqui v. State of Uttar Pradesh & Another** (2014) 11 SCC 415 [followed in (2016) 3 SCC 183] requires reconsideration.

V. **BECAUSE** the Clause (1) of Section 184 of the Finance Act has delegated 'essential legislative function' to the rule-making powers of the Central Government to enact rules affecting (a) qualifications; (b) appointment & selection process; (c) term and tenure of office; (d) resignation and removal procedure; (e) salaries and emoluments; and (f) leave and other conditions of services. As stated at Paragraphs 19 to 25 above, the efficacy and independence of judicial tribunals has been recognized by this Hon'ble Court as an inviolable part of basic structure of the Constitution. The eligibility criteria, selection process and service conditions of members of

Tribunal is determinative of its independence and for proper and effective discharge of judicial functions. The Finance Act, on the other hand, has causally delegated the powers to prescribe the service conditions to the Central Government. It is instructive to note that Clause (1) of Article 323B imposes an obligation on the Parliament to frame a law in respect of creation of tribunals for adjudication of disputes. Furthermore, such law may contain “**supplemental, incidental and consequential**” measures necessary for effective functioning, speedy disposal and enforcement of orders - by virtue of Sub-clause (f) under Clause (3) of Article 323B. Similarly, any provision affecting or dealing with critical aspects of Tribunals dealing with their power, jurisdiction and independence must necessarily be enacted through a legislation.

VI. **BECAUSE** the delegation of essential features of a Judicial Tribunal in the hands of Central Government is a self-effacement of essential legislative functions. Moreover, the Finance Act does not provide any legislative framework or guidance to the Central Government in laying down service conditions providing unruly discretion. The failure to lay down precise parameters would leave the Members of the Tribunals vulnerable and susceptible to pressures and influences from the Executive. At the minimum, the suspicion of interference by the executive and the perception of bias are irrefutable. This Hon’ble Court in **Devi Das Gopal Krishnan v. State of Punjab**[1967] 3 SCR 557 unambiguous terms held that the Courts must strike down delegation of essential legislative functions, and it is unnecessary to offer any liberal construction to identify

any dormant or latent legislative policy to sustain the arbitrariness.

“... An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. **But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.**

See Vasantlal Maganbhai Sanjanwala v. State of Bombay [(1961) 1 SCR 341] at pp. 356-357.”

[See also **Hamdard Dawakhana (WAKF) Lal Kuan, Delhi & Another v. Union of India & Others** [1960] 2 SCR 671]

VII. **BECAUSE** the Finance Act and the Tribunal Rules seriously affect the stature, efficacy and independence of the Tribunals. This Hon'ble Court in **Sampath Kumar**(supra) stated that: **“It can no longer be disputed that total insulation of the judiciary from all forms of interference from the co-ordinate branches of the Government is a basic essential feature of the Constitution, the same independence from possibility of Executive pressure or influence must also be ensured to the Chairman, vice Chairman and Members of the Administrative Tribunals... The Constitution makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence.”**The importance to ensure judicial independence assumes heightened importance considering the fact that the Executive is directly involved in the *lis* before seventeen (17) out of nineteen (19) Scheduled Tribunals. It is submitted that the Impugned Act and Rules are *ex-facie* violative of the basic structure of the Constitution inasmuch as the Central Government has undue control over the appointments and other service conditions of the Scheduled Tribunals.

VIII. **BECAUSE** the Impugned Rules relating to the appointment of the Members are in violation of binding guidelines laid down by this Hon'ble Court, wherein the only members with the status and experience equivalent to the Judges of the High Courts can only be considered. On the other hand, the Impugned Rules have permitted Specialist/Technical Member to appointed as the Chairperson or President of a Tribunal. More egregiously, RULE 10 allows the Central Government may appoint any

member (including Specialist Member) to act as the Chairperson in case of any casual vacancy, contrary to **R. Gandhi** (supra). The submissions at Paragraph 50 above reiterated and are not repeated for brevity.

- IX. **BECAUSE** this Hon'ble Court in **R. Gandhi** (supra) categorically held that only Judges and Advocates must be considered for appointment as Judicial Members. [**Pr. 120(i)**] The Madras High Court in **Shamnad Basheer** (supra) struck down Section 85(3)(a) of the Trade Marks Act precisely on this count, holding that an Indian Legal Service ('**ILS**') officers [Grade I] is ineligible for appointment to the post of Judicial Officer. In spite of the clear mandate, the Impugned Rules permit ILS Officers to be appointed as Judicial Members for ITAT, CESTAT, RCT, AAT and DRAT. Few other Tribunals permit 'Judicial Officers' with 10 years of experience to be considered for appointment, although the categories of officers eligible for appointment is undefined.
- X. **BECAUSE** this Hon'ble Court in **R. Gandhi** (supra) held that direct relevant experience in the subject – and not merely incidental knowledge - is a precondition for persons to be considered for appointment as Technical Member. [**Pr. 120(iii)**] Furthermore, this Hon'ble Court held that bureaucrats may be considered for the post of Technical Members if and only if they have held the rank of Secretaries/Add. Secretaries. The Tribunals such as SAT and IPAB have not only appointed bureaucrats below the rank of Add. Secretary, but permit persons without no relevant expertise on the subject to be appointed.

XI. **BECAUSE** RULE 4 read with Column (4) of the Schedule dealing with Search-cum-Selection Committee for appointment of Members for each of the Scheduled Tribunal is manifestly arbitrary and seriously undermines the primacy of judiciary. The Tribunal Rules blatantly contravene the binding principles laid down by this Hon'ble Court in **R. Gandhi** (supra) et. al., to ensure independence in the appointment process. In particular, this Hon'ble Court has held that the composition of Search-cum-Selection Committee should (a) give primacy to the Judiciary, (b) headed by Chief Justice of India (or his nominee) and (c) having a casting vote. However, the Selection Committees prescribed by the Central Government falls short of the said stipulation on all counts, as detailed below:

- i. The composition for every Selection Committee completely undermined the primacy of the Judiciary, inasmuch it fails to ensure equal representation alongside the Executive. The opinion of the Chief Justice or his nominee could be entirely disregarded.
- ii. Insofar as appointments to IDT and FCAT, the Judiciary is entirely excluded from the Selection Committees. In several others, such as ITAT, ATFP, CAT, RCT, SAT, TDSAT, IPAB, AAR, APTEL and NGT, the Selection Committees for Members does not include any representation from the Judiciary.
- iii. Few Scheduled Tribunals – such as IDT, CESTAT, SAT, AAR, - comprise of even members, however,

the Impugned Rules do not contemplate the procedure for resolving conflicts.

- iv. The criteria and procedure for nomination of 'Experts' included as part of the Selection Committees, in the cases of IDT, ITAT, CAT, RCT, AAT, TDSAT, IPAB, FCAT, APTEL and NGT, has not been specified howsoever. As a result, the Central Government has complete discretion to appoint 'Experts' of their choice.
- v. The Secretary of the relevant/parent Ministry acts as the convener of their respective Search-cum-Selection Committees, as per RULE 4(2). As a result, the meetings, deliberations, advertisements and other secretarial aspects of appointments are entirely under the control of the parent Ministry/Department.

XII. **BECAUSE** the Impugned Rules allows the Central Government to initiate an enquiry merely on written complaint without the consultation or concurrence from the Chief Justice. The composition of the Committee entrusted to conduct an enquiry has not been specified, giving wide and unguided discretion to the Central Government. Furthermore, the Central Government has been given the powers to remove a member based on the recommendation of the Committee, and without any necessity to consult or receive concurrence from the Chief Justice (with the exception to NCLAT). This would effectively mean that Judge of a High Court can be removed by the Central Government, based on an inquiry conducted by the Nodal Ministry, and subsequently removed by the same Ministry. It is submitted that said

procedure is a stark departure from the procedure laid down in several parent Acts of Tribunals which vested the powers to enquire and removal of any member through Judges and with the concurrence of the Chief Justice of India. The entirely removal process creates a master-servant relationship between the Central Government and Members of the Tribunals, and casts a huge shadow on impartiality and fairness in their adjudication process. Thus, it is submitted the removal procedure is manifestly arbitrary, unreasonable and violative of the doctrine of separation of powers.

XIII. **BECAUSE** the retirement age for members of the Tribunals is not uniform and without any rational basis. The Rule has ignored the 232nd Report of the Law Commission which recommended that “**There is an imperative need to fix the age of retirement of Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively.**” On the other hand, the Standing Committee in their 74th Report opined that retirement age should be fixed at the age of 70 years for all members. The Impugned Rules have failed to maintain uniformity across the Tribunals, and is entirely arbitrary.

XIV. **BECAUSE** the service conditions of Members - such as salaries, leave pay, TA, HRA and other benefits – is made equivalent to Group ‘A’ officers of the Government of India of a corresponding status. However, this Hon’ble Court has repeatedly stated that the service conditions admitted to Members of such Tribunals should be equivalent or comparable to that of High Court Judges. The submissions at Paragraph 50 above reiterated and are not repeated for brevity.

- XV. **BECAUSE** the Leave Sanctioning Authority for grant of leave to the Members has been vested in the hands of Central Government as per RULE 14. In view of the Business Allocation Rules, the concerned in-charge/parent Ministry or Department would act as concerned Leave Sanctioning Authority. This has reinforced master-servant relationship between the concerned Ministry/Department and the Tribunal. It is instructive to note that the similar provision was included in the draft Tribunals Bill, and the Standing Committee several criticized the provision in the following words: “... **The Committee is not in agreement with the Clause 20 of Bill mainly for two reasons. Firstly, if leave sanctioning authority remains with the ministry-in-charge it would affect the independence of the Tribunals as the concerned Ministry is one of the parties to the disputes that come for adjudication before the Tribunal and secondly, it affects the status of Tribunals.**”
- XVI. **BECAUSE** the Impugned Rules are not only arbitrary and vague, but also lack uniformity *inter se* amongst various Scheduled Tribunals. The difference in retirement ages, selection process, eligibility criteria and other service conditions for different members of similarly placed tribunals is entirely in violation of the ‘equal protection’ clause of Article 14 which requires similarly placed classes to be treated equally. There is no reasonable basis to have different procedure or criteria for tribunals carrying out similar functions.
- XVII. **BECAUSE** the administrative assistance and support to all the Tribunals have continued to remain under the Nodal

Ministry, contrary to the guidelines prescribed by this Hon'ble Court in **Chandra Kumar** (supra) and binding directions issued in **R. Gandhi** (supra), wherein the Ministry of Law & Justice (i.e., Respondent No. 1) was given the responsibility to provide administrative support for all Tribunals. It is submitted that the dependence of Tribunals on their 'parent' Ministry/Department is not only a clear case of conflict of interest, but has an enduring and debilitating effect on the independent and impartial adjudication by the Tribunal.

XVIII. **BECAUSE** the separation of executive from judiciary as envisaged under Article 50 is a part of the basic structure of the Constitution, and necessary for rule of law and access to justice. The Impugned Rules directly encroach into these basic features and derogate from the same by vesting vague and unbridled powers in the Executive. RULE 21, for instance, is testament to such Executive excesses. The Central Government has reserved to itself the final authority in interpreting service conditions, without any legislative oversight. Overall, the Executive enjoys dominant and pervasive control over the functioning of the Scheduled Tribunals.

52. The Petitioner has not filed any other petition before this Hon'ble Court or in any High Court or this Hon'ble Court challenging the constitutional validity of the Impugned Act and Rules.
53. The Petitioner submit that there is no other alternative, equally efficacious remedy available to them.

54. The Petitioner state that they are approaching this Hon'ble Court as expeditiously as possible and there is no delay or laches in filing the present Petition.
55. This Hon'ble Court has jurisdiction to entertain try and dispose of this Petition under Article 32 of the Constitution of India.

PRAYER

In the premises, it is most respectfully prayed that this Hon'ble Court may be pleased to -

- A. Issue a Writ of Declaration and Mandamus or any other appropriate Writ, Direction, Order or such other appropriate remedy to declare the Finance Act, 2017 [ACT No. 7 of 2017] as null and void for violation of Articles 107, 110 and 117 of the Constitution of India;
- B. Issue a Writ of Declaration and Mandamus or any other appropriate Writ, Direction, Order or such other appropriate remedy to declare PART XIV of Finance Act, 2017 [ACT No. 7 of 2017] as ultra vires the Articles 14, 21, 50 and 323B of the Constitution of India and violative of basic structure of the Constitution;
- C. Issue a Writ of Declaration and Mandamus or any other appropriate Writ, Direction, Order or such other appropriate remedy to declare the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 as being illegal and *ultravires* the Articles 14, 21 and 50 of the Constitution of India; and

D. Pass such further and other orders as this Hon'ble Court may deem fit and proper in the instant facts and circumstances.

FILED BY:

Drawn on : 05.08.2016
Filed on : 25.08.2017

NIKHILNAYYAR
ADVOCATE FOR THE PETITIONER

Settled By: Arvind P. Datar
Senior Advocate

Drawn By: Nikhil Nayyar, Advocate
N. Sai Vinod, Advocate
Rahul Unnikrishnan, Advocate

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION
(Under Article 32 of the Constitution of India)

WRIT PETITION (CIVIL) NO. _____ OF 2017

Revenue Bar Association ... **PETITIONER**

VERSUS

Union of India & Others ... **RESPONDENTS**

AFFIDAVIT

I, [■], aged about [■] years, office at [■], Chennai – [■], do hereby solemnly affirm and state as under:-

1. That I am the [■] of Petitioner authorized to swear the present affidavit and am as such am conversant with facts and circumstances of the matter as borne out from the records and as such am competent to swear the present affidavit.
2. That the contents of the List of Dates from pages **B**to and those of Paragraph Nos. _____ from Pages **1**to _____ of the Writ Petition are facts true to my knowledge, and the contents of Paragraph Nos. _____ are based upon legal advice received by me from the Advocate on Record and believed to be true and correct, while the rest are prayers made to this Hon'ble Court.
3. That the contents of Paragraphs _____ of the accompanying application for ex-parte stay are facts true to my knowledge and the contents of Paragraph Nos. _____ are based upon legal advice received by me from the Advocate on Record and believed to be true and correct, while the rest are prayers made to this Hon'ble Court.

4. The annexures filed along with the Writ Petition are true copies of their respective originals.

DEPONENT

VERIFICATION

Verified on this theday of August, 2017 at Chennai that the contents of the above affidavit are true and correct to the best of my knowledge and belief and that no part of it is false and nothing material has been concealed there from.

DEPONENT

APPENDIX - A

Constitution of India, 1950

14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

50. Separation of judiciary from executive

The State shall take steps to separate the judiciary from the executive in the public services of the State.

110. Definition of "Money Bills"

(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains **only** provisions dealing with all or any of the following matters, namely

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

- (d) the appropriation of moneys out of the consolidated Fund of India;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- (g) any matter incidental to any of the matters specified in sub clause (a) to (f).

323B. Tribunals for other matters.

- (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws
- (2) The matters referred to in clause (1) are the following, namely:
 - (a) levy, assessment, collection and enforcement of any tax;
 - (b) foreign exchange, import and export across customs frontiers;
 - (c) industrial and labour disputes;
 - (d) land reforms by way of acquisition by the State of any estate as defined in Article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;
 - (e) ceiling on urban property;

- (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329A;
 - (g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;
 - (h) offences against laws with respect to any of the matters specified in sub clause (a) to (g) and fees in respect of any of those matters;
 - (i) any matter incidental to any of the matters specified in sub clause (a) to (h)
- (3) A law made under clause (1) may—
- (a) provide for the establishment of a hierarchy of tribunals;
 - (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;
 - (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;
 - (d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;
 - (e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

- (f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.
- (4) The provisions of this article have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

Explanation.—In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.

APPENDIX - B

Rules of Procedure and Conduct of Business in Lok Sabha

CHAPTER X Legislation

Amendments to clauses etc. and clause by clause consideration of Bills

80. *Admissibility of amendments.*

The following conditions shall govern the admissibility of amendments to clauses or schedules of a Bill:—

- (i) An amendment shall be within the scope of the Bill and relevant to the subject-matter of the clause to which it relates.
- (ii) An amendment shall not be inconsistent with any previous decision of the House on the same question.
- (iii) An amendment shall not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.
- (iv) If an amendment refers to, or is not intelligible without a subsequent amendment or schedule, notice of the subsequent amendment or schedule shall be given before the first amendment is moved, so as to make the series of amendments intelligible as a whole.
- (v) The Speaker shall determine the place at which an amendment shall be moved.
- (vi) The Speaker may refuse to propose an amendment which is, in the opinion of the Speaker, frivolous or meaningless.
- (vii) An amendment may be moved to an amendment which has already been proposed by the Speaker

CHAPTER XIX
Financial Business

Appropriation Bill

218. Procedure regarding Appropriation Bill.

- (1) Subject to the provision of the Constitution, the procedure in regard to an Appropriation Bill shall be the same as for Bills generally with such modifications as the Speaker may consider necessary.
- (2) The debate on an Appropriation Bill shall be restricted to matters of public importance or administrative policy implied in the grants covered by the Bill which have not already been raised while the relevant demands for grants were under consideration.
- (3) The Speaker may, in order to avoid repetition of debate, require members desiring to take part in discussion on an Appropriation Bill to give advance intimation of the specific points they intend to raise, and the Speaker may withhold permission for raising such of the points, as in the opinion of the Speaker appear to be repetitions of the matters discussed on a demand for grant or as may not be of sufficient public importance.
- (4) If an Appropriation Bill is in pursuance of a supplementary grant in respect of an existing service, the discussion shall be confined to the items constituting the same, and no discussion shall be raised on the original grant nor the policy underlying it save in so far as it may be necessary to explain or illustrate a particular item under discussion.
- (5) The Speaker, if thinks fit, may prescribe a time limit for speeches.

ANNEXURE P-1

COPY OF CERTIFICATE OF S. NO. 13 of 1963.

CERTIFICATE OF REGISTRATION OF SOCIETIES ACT, XXI OF 1960 S. No. 13 of 1963, I hereby certify that “REVENUE BAR ASSOCIATION” has this day been registered under the Societies’ Registration Act XXI of 1960.

Given under my hand at Madras, this Twentieth day February one thousand nine hundred and sixty three ...(sd.) 20/2. Registrar of Assurances Chingleput District. (Seal)

(True copy)

O/o. REGISTRAR OF SOCIETIES
MADRAS – CENTRAL.

30.7.1984.
Registrar of Societies.

Dated : 30.7.1984.

(The seal of the Registrar of
Societies, Madras Central
Tamil Nadu)

TRUE COPY

ANNEXURE P-2

REGISTERED NO. DL—(N)04/0007/2003—17

THE GAZETTE OF INDIA
EXTRAORDINARY
PART II—Section 1
PUBLISHED BY AUTHORITY

No. 7] NEW DELHI, FRIDAY, MARCH 31, 2017/CHAITRA 10,
1939 (SAKA)

Separate paging is given to this Part in order that it may be filed as a
separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 31st March, 2017/Chaitra 10, 1939 (Saka)

The following Act of Parliament received the assent of the President on
the 31st March, 2017, and is hereby published for general
information:—

THE FINANCE ACT, 2017
NO. 7 OF 2017

[31st March, 2017.]

An Act to give effect to the financial proposals of the Central
Government for the financial year 2017-2018.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of
India as follows:—

CHAPTER I
PRELIMINARY

1. Short title and commencement.

(1) This Act may be called the Finance Act, 2017.

(2) Save as otherwise provided in this Act, sections 2 to 88 shall
come into force on the 1st day of April, 2017.

...

PART XIV
AMENDMENTS TO CERTAIN ACTS TO PROVIDE FOR
MERGER OF TRIBUNALS AND OTHER AUTHORITIES AND
CONDITIONS OF SERVICE OF CHAIRPERSONS, MEMBERS,
ETC.

A.— PRELIMINARY

156. Commencement of this Part

The provisions of this Part shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Part and any reference in any provision to the commencement of this Part shall be construed as a reference to the coming into force of that provision.

157. Definitions

In this Part, unless the context otherwise requires,—

- (a) "appointed day", in relation to any provision of this Part, means such date as the Central Government may, by notification in the Official Gazette, appoint;
- (b) "Authority" means the Authority, other than Tribunals and Appellate Tribunals, specified in the Eighth Schedule or Ninth Schedule, as the case may be;
- (c) "notification" means a notification published in the Official Gazette;
- (d) "Schedule" means the Eighth Schedule and Ninth Schedule appended to this Act.

B.—AMENDMENTS TO THE INDUSTRIAL DISPUTES
ACT, 1947 AND THE EMPLOYEES' PROVIDENT
FUNDS AND MISCELLANEOUS PROVISIONS ACT,
1952.

158. Amendment of Act 14 of 1947

In the Industrial Disputes Act, 1947,—

- (a) in section 7A, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Industrial Tribunal constituted by the Central Government under sub-section (1) shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal referred to in section 7D of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.";

- (b) after section 7C, the following section shall be inserted, namely:—

"7D. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of the Presiding Officer of the Industrial Tribunal appointed by the Central Government under sub-section (1) of section 7A, shall, after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be governed by the provisions of section 184 of that Act:

Provided that the Presiding Officer appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

159. Amendment of Act 19 of 1952

In the Employees' Provident Funds and Miscellaneous Provisions Act, 1952,—

- (a) in section 2, for clause (m), the following clause shall be substituted, namely:—

'(m) "Tribunal" means the Industrial Tribunal referred to in section 7 D;';

- (b) for section 7D, the following section shall be substituted, namely:—

"7D. The Industrial Tribunal constituted by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.";

- (c) sections 7E, 7F, 7G ,7H, 7M and 7N shall be omitted;

- (d) for section 18A, the following section shall be substituted, namely:—

Authorities and inspector to be public servant

"18A. The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.";

- (e) in section 21, in sub-section (2), clause (a) shall be omitted.

C.—AMENDMENTS TO THE COPYRIGHT ACT, 1957
AND THE TRADE MARKS ACT, 1999.

160. Amendment of Act 14 of 1957

In the Copy Right Act, 1957,—

- (a) for the words "Copyright Board", wherever they occur, the words "Appellate Board" shall be substituted;
- (b) in section 2, after clause (a), the following clause shall be inserted, namely:—

'(aa) "Appellate Board" means the Appellate Board referred to in section 11';

- (c) for section 11, the following section shall be substituted, namely:—

"11. The Appellate Board established under section 83 of the Trade Marks Act, 1999 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.";

- (d) in section 12, sub-sections (3) and (4) shall be omitted;
- (e) in section 78, in sub-section (2), clause (a) shall be omitted."

161. Amendment of 47 of 1999

In the Trade Marks Act, 1999,—

- (a) for the word "Chairman" or "Vice-Chairman", wherever it occurs, the word "Chairperson" or "Vice-Chairperson" shall be substituted;
- (b) in section 83, after the words "under this Act", the words and figures "and under the Copyright Act, 1957" shall be inserted;
- (c) after section 89, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairperson, Vice-Chairperson and Member

"89A. Notwithstanding anything in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson, Vice-Chairperson and other Members of the Appellate Board appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson, Vice-Chairperson and other Members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017, had not come into force."

D.—AMENDMENTS TO THE RAILWAY CLAIMS TRIBUNAL ACT, 1987 AND THE RAILWAYS ACT, 1989.

162. Amendment of Act 54 of 1987

In the Railway Claims Tribunal Act, 1987,—

(a) in section 3, after the words "under this Act", the words, letters and figures "and under Chapter VII of the Railways Act, 1989" shall be inserted;

(b) after section 9, the following section shall be substituted, namely:—

"9A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairman, Vice-Chairman and other Members of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman, Vice-Chairman and Members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017, had not come into force.";

(c) in section 13, after sub-section (IA), the following sub-section shall be inserted, namely:—

"(1B) The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act, 1989.";

(d) in section 15, for the words, brackets, figures and letter "sub-sections (1) and (1A)", the words, brackets, figures

and letters "sub-sections (1), (1A) and (1B)" shall be substituted;

- (e) in section 24, in sub-section (1), for the words, brackets, figure and letter "or, as the case may be, the date of commencement of the provisions of sub-section (1A)", at both the places where they occur, the words, brackets, figures and letters "or the date of commencement of the provisions of sub-section (1A), or, as the case may be, the date of commencement of the provisions of sub-section (1B)" shall be substituted.

163. Amendment of Act 24 of 1989

In the Railways Act, 1989,—

- (a) in section 2, for clause (40), the following clause shall be substituted, namely:—

'(40) "Tribunal" means the Tribunal referred to in section 33;';

- (b) in Chapter VII, for the heading, the following heading shall be substituted, namely:—

"TRIBUNAL";

- (c) for section 33, the following section shall be substituted, namely:—

Tribunal

"33. The Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise

the jurisdiction, authority and powers conferred on it by or under this Act.";

- (d) sections 34 and 35 shall be omitted;
- (e) in section 48, in sub-section (2), clause (a) shall be omitted.

E.—AMENDMENTS TO THE SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976 AND THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999.

164. Amendment of Act of 1976

In the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976,—

- (a) in section 12, in sub-section (1), after clause (c), the following clause shall be inserted, namely:—

"(d) by the Adjudicating Authorities, Competent Authorities and the Qualifications, Special Director (Appeals) under the Foreign Exchange Management Act, 1999.";

- (b) after section 12, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairperson, and Member

"12A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal appointed after the

commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and other members appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

165. Amendment of Act 42 of 1999

In the Foreign Exchange Management Act, 1999,—

(a) in section 2,—

(i) for clause (b), the following clause shall be substituted, namely:—

'(b) "Appellate Tribunal" means the Appellate Tribunal referred to in section 18;';

(ii) in clause (zc), for the word and figures "section 18", the word and figures "section 17" shall be substituted;

(b) for section 18, the following section shall be substituted, namely:—

Appellate Tribunal

"18. The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall

exercise the jurisdiction, powers and authority conferred on it by or under this Act.";

- (c) section 20 shall be omitted;
- (d) for section 21, the following section shall be substituted, namely:—

Qualifications, for appointment of Special Director (Appeals)

"21. A person shall not be qualified for appointment as a Special Director (Appeals) unless he—

(a) has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or

(b) has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India.";

- (e) section 22 shall be omitted;
- (f) for section 23, the following section shall be substituted, namely:—

"23. The salary and allowances payable to and the other terms and conditions of service of the Special Director (Appeals) shall be such as may be prescribed.";

- (g) sections 24, 25 and 26 shall be omitted;
- (h) for section 27, the following section shall be substituted, namely:—

"27. (1) The Central Government shall provide the office of the Special Director (Appeals) with such officers and employees as it may deem fit.

(2) The officers and employees of the office of the Special Director (Appeals) shall discharge their functions under the general superintendence of the Special Director (Appeals).

(3) The salaries and allowances and other terms and conditions of service of the officers and employees of the office of the Special Director (Appeals) shall be such as may be prescribed.";

(i) sections 29, 30 and 31 shall be omitted;

(j) in section 32,—

(i) for the words and brackets "Appellate Tribunal or the Special Director (Appeals), as the case may be", at both the places where they occur, the words and brackets "Special Director (Appeals)" shall be substituted;

(ii) in sub-section (1), for the words and brackets "Appellate Tribunal or the Special Director (Appeals)", the words and brackets "Special Director (Appeals)" shall be substituted;

(k) for section 33, the following section shall be substituted, namely:—

Officers and employees, etc., to be public servant

"33. The Adjudicating Authority, Competent Authority and the Special Director (Appeals) and other officers and employees of the Special Director (Appeals) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.";

(l) in section 46, in sub-section (2),—

(i) in clause (e), for the words and brackets "Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals)", the words and brackets "Special Director (Appeals)" shall be substituted;

(ii) in clause (f), for the words and brackets "Appellate Tribunal and the office of the Special Director (Appeals)", the words and brackets "office of the Special Director (Appeals)" shall be substituted.

F.—AMENDMENTS TO THE AIRPORTS AUTHORITY OF INDIA ACT, 1994 AND THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002.

166. Amendment of Act 55 of 1994

In the Airports Authority of India Act, 1994,—

(a) in section 28-I, in sub-section (1), after the words "under this Act", the words, brackets and figures "and the Control of National Highways (Land and Traffic) Act, 2002" shall be inserted;

(b) after section 28J, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairperson

"28JA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson of the Tribunal appointed after the commencement of Part XIV of Chapter

VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

167. Amendment of Act 13 of 2003

In the Control of National Highways (Land and Traffic) Act, 2002,—

- (a) in section 2, for clause (1), the following clause shall be substituted, namely:—

‘(1) "Tribunal" means the Airport Appellate Tribunal referred to in sub section (1) of section 5;’

- (b) in Chapter II, for the heading, the following heading shall be substituted, namely:—

"HIGHWAYS ADMINISTRATION AND TRIBUNALS,
ETC.";

- (c) in section 5,—

- (i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Airport Appellate Tribunal established under section 28-I of the Airports Authority of India Act, 1994 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for

the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.";

- (ii) in sub-section (2), for the words, brackets and figure "shall also specify, in the notification referred to in sub-section (1)", the words "shall specify, by notification in the Official Gazette", shall be substituted;
- (d) sections 6, 7, 8, 9, 10, 11, 12 and 13 shall be omitted;
- (e) for section 44, the following section shall be substituted, namely:—

Officers of Highways Administration to be public servant

"44. The officer or officers constituting the Highways Administration and any other officer authorised by such Administration under this Act, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.";

- (f) in section 45, for the words "the Presiding Officer of the Tribunal or any other officer of the Central Government or an officer or employee of the Tribunal", the words "any other officer of the Central Government" shall be substituted;
- (g) in section 50, in sub-section (2), clauses (b), (c), (d) and (e) shall be omitted.

G.—AMENDMENTS TO THE TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997, THE INFORMATION TECHNOLOGY ACT, 2000 AND THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA ACT, 2008.

168. Amendment of Act 24 of 1997

In the Telecom Regulatory Authority of India Act, 1997,—

(a) in section 14, after clause (b), the following clause shall be inserted, namely:—

"(c) exercise jurisdiction, powers and authority conferred on—

(i) the Appellate Tribunal under the Information Technology Act, 2000; and

(ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008.";

(b) after section 14G, the following section shall be substituted, namely:—

Qualifications, terms and conditions of service of Chairperson and Member

"14GA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as

if the provisions of section 184 of the Finance Act, 2017 had not come into force."

169. Amendment of Act 21 of 2000

In the Information Technology Act, 2000,—

(a) for the words "Cyber Appellate Tribunal", wherever they occur, the words "Appellate Tribunal" shall be substituted;

(b) in section 2, in sub-section (1),—

(i) after clause (d), the following clause shall be inserted, namely:—

' (da) "Appellate Tribunal" means the Appellate Tribunal referred to in sub-section (1) of section 48;'

(ii) clause (n) shall be omitted;

(c) in section 48,—

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"APPELLATE TRIBUNAL";

(ii) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act."

- (iii) in sub-section (2), for the words, brackets and figure "shall also specify, in the notification referred to in sub-section (1)", the words "shall specify, by notification" shall be substituted;
- (d) sections 49, 50, 51, 52, 52A, 52B, 52C, 53, 54 and 56, shall be omitted;
- (e) for section 82, the following section shall be substituted, namely:—

Controller, Deputy Controller and Assistant Controller to be public servants

"82. The Controller, the Deputy Controller and the Assistant Controllers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.";

- (f) in section 84, for the words "the Chairperson, Members, adjudicating officers and the staff of the Cyber Appellate Tribunal", the words "and adjudicating officers" shall be substituted;
- (g) in section 87, in sub-section (2), clauses (r), (s) and (t) shall be omitted.

170. Amendment of Act 27 of 2008

In the Airports Economic Regulatory Authority of India Act, 2008,—

- (a) in the long title, the words "and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals" shall be omitted;

- (b) in section 2, for clause (d), the following clause shall be substituted, namely:—

'(d) "Appellate Tribunal" means the Telecom Disputes Settlement and Appellate Tribunal referred to in section 17;'

- (c) in section 17,—

(i) for the marginal heading, the following marginal heading shall be substituted, namely:—

"APPELLATE TRIBUNAL"

- (ii) for the portion beginning with the words "The Central Government" and ending with words "Appellate Tribunal", the words and figures "The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act" shall be substituted;

- (d) sections 19, 20, 21, 22, 23, 24, 25, 26 and 27 shall be omitted;

- (e) in section 51, in sub-section (2), clauses (i), (j) and (k) shall be omitted.

H.—AMENDMENTS TO THE COMPETITION ACT, 2002
AND THE COMPANIES ACT, 2013.

171. Amendment of Act 12 of 2003

In the Competition Act, 2002,—

- (a) in section 2, for clause (ba), the following clause shall be substituted, namely:—

'(ba) "Appellate Tribunal" means the National Company Law Appellate Tribunal referred to in sub-section (1) of section 53A;'

- (b) in Chapter VIIIA, for the heading, the following heading shall be substituted, namely:—

"APPELLATE TRIBUNAL";

- (c) for section 53A, the following section shall be substituted, namely:—

Appellate Tribunal

"53A. The National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall—

- (a) hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act; and
- (b) adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the

Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.";

- (d) sections 53C, 53D, 53E, 53F, 53G, 53H, 53-I, 53J, 53K, 53L, 53M and 53R shall be omitted;
- (e) in section 63, in sub-section (2), clauses (mb), (mc) and (md) shall be omitted.

172. Amendment of Act 18 of 2013

In the Companies Act, 2013,—

- (a) in section 410, for the words "for hearing appeals against the orders of the Tribunal", the following shall be substituted, namely:—

"for hearing appeals against,—

- (a) the order of the Tribunal under this Act; and
 - (b) any direction, decision or order referred to in section 53N of the Competition Act, 2002 in accordance with the provisions of that Act.";
- (b) after section 417, the following section shall be inserted, namely: —

Qualifications, terms and conditions of service of Chairperson and Member

"417A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson and other

Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

I.—AMENDMENT TO THE CINEMATOGRAPH ACT, 1952

173. Amendment of Act 37 of 1952

In the Cinematograph Act, 1952, after section 5D, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of chairman and member

"5E. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman and member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if

the provisions of section 184 of the Finance Act, 2017 had not come into force."

J.—AMENDMENTS TO THE INCOME- TAX ACT, 1961

174. Amendment of Act 43 of 1961

In the Income Tax Act, 1962,— (a) after section 245-O, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairman, Vice-Chairman and Member

"245-OA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman, Vice-Chairman and other Members of the Authority appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman, Vice-Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.";

(b) after section 252, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of President, Vice-President and Member.

"252A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.";

K.—AMENDMENT TO THE CUSTOMS ACT, 1962

175. Amendment of Act 52 of 1962

In the Customs Act, 1962, in section 129, after sub-section (6), the following sub-section shall be inserted, namely:—

"(7) Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President or other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President. Vice-President and Member appointed before the commencement of Part XIV of

Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

L.—AMENDMENT TO THE ADMINISTRATIVE TRIBUNALS ACT, 1985

176. Amendment of Act 13 of 1985

In the Administrative Tribunals Act, 1985, after section 10A, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairman and Member

"10B. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman and other Members of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

M.—AMENDMENT TO THE CONSUMER PROTECTION ACT, 1986

177. Amendment of Act 68 of 1986

In the Consumer Protection Act, 1986, after section 22D, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of President and Member

"22E. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President and other members of the National Commission appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President and member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

N.—AMENDMENT TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

178. Amendment of Act 15 of 1992

In the Securities and Exchange Board of India Act, 1992, after section 15Q, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Presiding Officer and Member

"15QA. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal appointed after the

commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Presiding Officer and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

O.—AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

179. Amendment of Act 51 of 1993

In the Recovery of Debts due to Banks and Financial Institutions Act, 1993,—

- (a) after section 6, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Presiding Officer

"6A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Presiding Officer appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions

of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.";

- (b) after section 15, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairperson

"15A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the terms and conditions of service of the Chairperson of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

P.—AMENDMENT TO THE ELECTRICITY ACT, 2003

180. Amendment of Act 36 of 2003

In the Electricity Act, 2003, after section 47, the following section shall be inserted, namely:—

Qualifications, terms and conditions of service of Chairperson and Member

"117A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and

allowances, resignation, removal and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Q.—AMENDMENT TO THE ARMED FORCES
TRIBUNAL ACT, 2007

181. Amendment of Act 55 of 2007

In the Armed Force Tribunal Act, 2007, after section 9, the following section shall be inserted, namely: —

Qualifications, terms and conditions of service of Chairperson
and Member

"9A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson and Member appointed before the commencement of Part XIV of Chapter VI of

the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

R.—AMENDMENT TO THE NATIONAL GREEN TRIBUNAL ACT, 2010

182. Amendment of Act 19 of 2010

In the National Green Tribunal Act, 2010, after section 10, the following section shall be inserted, namely:—

"10A. Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chairperson, Judicial Member and Expert Member of the Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairperson, Judicial Member and Expert Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

S.—CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS OF TRIBUNALS, APPELLATE TRIBUNALS AND OTHER AUTHORITIES

183. Application of section 184

Notwithstanding anything to the contrary contained in the provisions of the Acts specified in column (3) of the Eighth

Schedule, on and from the appointed day, provisions of section 184 shall apply to the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in column (2) of the said Schedule:

Provided that the provisions of section 184 shall not apply to the Chairperson, Vice Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or, as the case may be, Member holding such office as such immediately before the appointed day.

184. Qualifications, appointment, terms and conditions of service, salary and allowances, etc. of Chairperson, Vice-Chairperson and Members, etc. of the Tribunal, Appellate Tribunal and other Authorities

- (1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in column (2) of the Eighth Schedule:

Provided that the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or other Authority shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided further that no Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,—

(a) in the case of Chairperson, Chairman or President, the age of seventy years;

(b) in the case of Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer or any other Member, the age of sixty-seven years:

- (2) Neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment.

T.—MISCELLANEOUS

185. Transitional provisions.

- (1) Any person appointed as the Chairperson or Chairman, President or Vice-Chairperson or Vice-Chairman, Vice-President or Presiding Officer or Member of the Tribunals, Appellate Tribunals, or as the case may be, other Authorities specified in column (2) of the Ninth Schedule and holding office as such immediately before the appointed day, shall on and from the appointed day, cease to hold such office and such Chairperson or Chairman, President, Vice-Chairperson or Vice-Chairman, Vice-President or Presiding officer or Member shall be entitled to claim compensation not exceeding three months' pay and

allowances for the premature termination of term of their office or of any contract of service.

- (2) The officers and other employees of the Tribunals, Appellate Tribunals and other Authorities specified in column (2) of the Ninth Schedule appointed on deputation, before the appointed day, shall, on and from the appointed day, stand reverted to their parent cadre, Ministry or Department.
- (3) Every officer or other employee of the Tribunal, Appellate Tribunal and other Authorities specified in column (2) of the Ninth Schedule employed on regular basis, by such Tribunal, Appellate Tribunal or other Authorities shall become, on and from the appointed day, the officer and other employee, of the corresponding Tribunal, Appellate Tribunal or other Authorities specified in column (3) of the said Schedule with same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve the Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the said Schedule until his employment is duly terminated or until his remuneration, terms and conditions of employment are duly altered by such corresponding Tribunal, Appellate Tribunal or other Authorities, as the case may be, specified in column (3) of the Ninth Schedule or until the expiry of a period of one year from the appointed day if such officer or other employee opts not to continue to be the officer or other employee of such Tribunal, Appellate Tribunal or other Authorities within such period.
- (4) Any appeal, application or proceeding pending before the Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the Ninth Schedule, before the appointed day, shall stand transferred to the corresponding Tribunal, Appellate

Tribunal or other Authorities specified in column (3) of the said Schedule and the said Tribunal, Appellate Tribunal or other Authority shall, on and from the appointed day, deal with de novo or from the stage at which such appeal, application or proceeding stood before the date of their transfer and shall dispose them in accordance with the provisions of the Act specified in column (2) of the said Schedule.

- (5) The balance of all monies received by, or advanced to the Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the Ninth Schedule and not spent by it before the appointed day, shall, on and from the appointed day, stand transferred to and vest in the Central Government which shall be utilised for the purposes stated in sub-section (7).
- (6) All property of whatever kind owned by, or vested in, the Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the Ninth Schedule before the appointed day, shall stand transferred to, on and from the appointed day, and shall vest in the Central Government.
- (7) All liabilities and obligations of whatever kind incurred by the Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the Ninth Schedule and subsisting immediately before the appointed day, shall, on and from the appointed day, be deemed to be the liabilities or obligations, as the case may be, of the corresponding Tribunal, Appellate Tribunal or other Authorities specified in column (3) of the Ninth Schedule; and any proceeding or cause of action, pending or existing immediately before the appointed day by or against the Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the Ninth Schedule in relation to such liability or obligation may, on and from the appointed day, be continued or enforced by

or against the corresponding Tribunal, Appellate Tribunal or other Authority specified in column (3) of the Ninth Schedule.

186. General Power to make rules.

Without prejudice to any other power to make rules contained elsewhere in this Part, the Central Government may, by notification, make rules generally to carry out the provisions of this Part.

187. Power to amend Eighth Schedule

- (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may by notification published in the Official Gazette, amend the Eighth Schedule and thereupon the said Schedule shall be deemed to have been amended accordingly.
- (2) A copy of every notification issued under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is issued.

188. Rules to be laid before Parliament

Every rule made under this Part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall

be without prejudice to the validity of anything previously done under that rule.

189. Removal of difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government, may by general or special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Part as appear to it to be necessary or expedient for removing the difficulty.
- (2) No order under sub-section (1) shall be made after the expiry of three years from the appointed day.
- (3) Every order made under this section shall, as soon as may be after it is made, be laid before each Houses of Parliament.'

THE EIGHTH SCHEDULE

[See sections 183 and 184]

S.No.	Tribunal/Appellate Tribunal/Board/Authority	Acts
(1)	(2)	(3)
1	Industrial Tribunal constituted by the Central Government.	The Industrial Disputes Act, 1947 (14 of 1947)
2	Income-Tax Appellate Tribunal	The Income -Tax Act, 1961 (43 of 1961)
3	Customs, Excise and Service Tax Appellate Tribunal	The Customs Act, 1962 (52 of 1962)
4	Appellate Tribunal.	The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976)
5	Central Administrative Tribunal	The Administrative Tribunals Act, 1985 (13 of 1985)
6	Railway Claims Tribunal	The Railway Claims Tribunal Act, 1987 (54 of 1987)
7	Securities Appellate Tribunal	The Securities and Exchange Board of India Act, 1992 (15 of 1992)
8	Debts Recovery Tribunal	The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993)
9	Debts Recovery Appellate Tribunal	The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993)
10	Airport Appellate	The Airport Authority of India

	Tribunal	Act, 1994 (55 of 1994)
11	Telecom Disputes Settlement and Appellate Tribunal	The Telecom Regulatory Authority of India Act, 1997 (24 of 1997)
12	Appellate Board	The Trade Marks Act, 1999 (47 of 1999)
13	National Company Law Appellate Tribunal	The Companies Act, 2013 (18 of 2013)
14	Authority for Advance Ruling	The Income Tax Act, 1961(43 of 1961)
15	Film Certification Appellate Tribunal	The Cinematograph Act, 1952 (37 of 1952)
16	National Consumer Disputes Redressal Commission	The Consumer Protection Act, 1986 (68 of 1986)
17	Appellate Tribunal for Electricity	The Electricity Act, 2003 (36 of 2003)
18	Armed Forces Tribunal	The Armed Forces Act, 2007 (55 of 2007)
19	National Green Tribunal	The National Green Tribunal Act, 2010 (19 of 2010).

THE NINTH SCHEDULE

[See section 185]

Sl.No.	Tribunal/ Appellate Tribunal under the Acts	Tribunal/ Appellate Tribunal/ Authority to exercise the jurisdiction under the Acts.
(1)	(2)	(3)
1	The Employees Provident Fund Appellate Tribunal under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.	The Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947.
2	The Copyright Board under the Copyright Act, 1957.	The Intellectual Property Appellate Board under the Trade Marks Act, 1999.
3	The Railway Rates Tribunal under the Railways Act, 1989.	The Railway Claims Tribunal under the Railway Claims Tribunal Act, 1987.
4	The Appellate Tribunal for Foreign Exchange under the Foreign Exchange Management Act, 1999.	The Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
5	The National Highways Tribunal under the Control of National Highways (Land and Traffic) Act, 2002.	The Airport Appellate Tribunal under the Airport Authority of India Act, 1994.
6	(A) The Cyber Appellate Tribunal under the Information Technology Act, 2000.	The Telecom Disputes Settlement and Appellate Tribunal

	(B) The Airports Economic Regulatory Authority Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008.	under the Telecom Regulatory Authority of India Act, 1997.
7	The Competition Appellate Tribunal under the Competition Act, 2002.	The National Company Law Appellate Tribunal under the Companies Act, 2013."

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

TRUFCOPY

ANNEXURE P-3

MINISTRY OF FINANCE
(Department of Revenue)

NOTIFICATION
New Delhi, the 1st June, 2017

G.S.R. 514(E).—In exercise of the powers conferred by section 184 of the Finance Act, 2017 (7 of 2017), the Central Government hereby makes the following rules, namely: -

1. **Short title, commencement and application.**—(1) These rules may be called the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
 - (3) These rules shall apply to the Chairman, Vice-Chairman, Chairperson, Vice- Chairperson, President, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority as specified in column (2) of the Eighth Schedule of the Finance Act, 2017 (7 of 2017).
2. **Definitions.**—In these rules, unless the context otherwise requires, -
 - (a) “Act” means an Act specified in column (3) of the Eighth Schedule of the Finance Act, 2017(7 of 2017);

- (b) “Accountant Member”, “Administrative Member”, “Judicial Member”, “Expert Member”, “Law Member”, “Revenue Member” or “Technical Member” means the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member or Technical Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority appointed under the corresponding provisions of the Act;
- (c) “Appellate Tribunal”, “Authority” or “Tribunal” has the same meaning as assigned to it in the corresponding provisions of the Act;
- (d) “Chairman” or “Chairperson” or “President” means the Chairman, Chairperson or President of the Tribunal, Appellate Tribunal or, as the case may be, Authority appointed under the corresponding provisions of the Act;
- (e) “Member” means the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member or Technical Member and includes the Chairman, Vice-Chairman, Chairperson, Chairperson, Presiding Officer of the Security Appellate Tribunal, President or, as the case may be, Vice-President;
- (f) “Presiding Officer” means the Presiding Officer of the Security Appellate Tribunal appointed under section 15L of the Securities and Exchange Board of India Act, 1992 (15 of 1992), Presiding Officer of the Debt Recovery Tribunal appointed under sub-section (1) of section 4 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993) and Presiding Officer of the Industrial Tribunal appointed by the Central

Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 (14 of 1947);

(g) “Search-cum-Selection Committee” means the Search-cum-Selection Committee referred to in rule 4;

(h) “Vice-Chairman” or “Vice-Chairperson” or “Vice-President” means the Vice-Chairman, the Vice-Chairperson or Vice-President of the Tribunal, Appellate Tribunal or, as the case may be, Authority;

(i) words and expressions used herein and not defined but defined in the Act shall have the same meanings respectively assigned to them in the respective Acts.

3. **Qualifications for appointment of Member.**—The qualification for appointment of the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be such as specified in column (3) of the Schedule annexed to these rules.

4. **Method of recruitment.**—(1) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee specified in column (4) of the said Schedule in respect of the Tribunal, Appellate Tribunal

or, as the case may be, Authority specified in column (2) of the said Schedule.

- (2) The Secretary to the Government of India in the Ministry or Department under which the Tribunal, Appellate Tribunal or, as the case may be, Authority is constituted or established shall be the convener of the Search-cum –Selection Committee.
 - (3) The Search-cum-Selection Committee shall determine its procedure for making its recommendation.
 - (4) No appointment of Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or Authorities shall be invalid merely by reason of any vacancy or absence in the Search-cum-Selection Committee.
 - (5) Nothing in this rule shall apply to the appointment of Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority functioning as such immediately before the commencement of these rules.
5. **Medical fitness.**—No person shall be appointed as the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice- President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or Authority, or a

case may be unless he is declared medically fit by an authority specified by the Central Government in this behalf.

6. **Resignation by a Member.**—A Member may, by writing under his hand addressed to the Central Government, resign his office at any time:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as a successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

7. **Removal of Member from office.**—The Central Government may, on the recommendation of a Committee constituted by it in this behalf, remove from office any Member, who—

- (a) has been adjudged as an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such a Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), the Member shall be informed of the charges against him and given an opportunity of being heard in respect of those charges:

Provided further that the Chairperson or member of the National Company Appellate Tribunal shall be removed from office in consultation with the Chief Justice of India.

8. Procedure for inquiry of misbehavior or incapacity of the Member.—

- (1) If a written complaint is received by the Central Government, alleging any definite charge of misbehavior or incapacity to perform the functions of the office in respect of a Chairman, Vice-Chairman, Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, the Ministry or Department of the Government of India under which the Tribunal, Appellate Tribunal or, as the case may be, Authority is constituted or established, shall make a preliminary scrutiny of such complaint.
- (2) If on preliminary scrutiny, the Ministry or Department of the Government of India under which the Tribunal, Appellate Tribunal or, as the case may be, Authority is constituted or established, is of the opinion that there are reasonable grounds for making an inquiry into the truth of any misbehavior or incapacity of a Chairman, Vice-Chairman, Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, it shall make a reference to the Committee constituted under rule 7 to conduct the inquiry.
- (3) The Committee shall complete the inquiry within such time or such further time as may be specified by the Central Government.

- (4) After the conclusion of the inquiry, the Committee shall submit its report to the Central Government stating therein its findings and the reasons therefor on each of the charges separately with such observations on the whole case as it may think fit.
- (5) The Committee shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and shall have power to regulate its own procedure, including the fixing of date, place and time of its inquiry.
9. **Term of office of Member.**—Save as otherwise provided in these rules, the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or, as the case may be, Member shall hold office for a term as specified in column (5) of the said Schedule and shall hold the office up to such age as specified in column (6) in the said Schedule from the date on which he enters upon his office and shall be eligible for reappointment.
10. **Casual vacancy.**—(1) In case of a casual vacancy in the office of,—
- (a) the Chairman, Chairperson, President, or Presiding Officer of the Security Appellate Tribunal, the Central Government shall have the power to appoint the senior most Vice-Chairperson or Vice-Chairman, Vice-President or in his absence, one of the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member, or Member of the Tribunal, Appellate Tribunal or, as

the case may be, Authority to officiate as Chairperson, Chairman, President or Presiding Officer.

- (b) the Chairperson of the Debts Recovery Appellate Tribunal, the Central Government shall have power to appoint the Chairperson of another Debts Recovery Appellate Tribunal to officiate as Chairperson and in case of a casual vacancy in the office of the Presiding Officer of the Debts Recovery Tribunal, the Chairperson of the Debts Recovery Appellate Tribunal shall have power to appoint the Presiding Officer of another Debts Recovery Appellate Tribunal to officiate as Presiding Officer.

11. **Salary and allowances.**—(1) The Chairman, Chairperson or President of the Tribunal, Appellate Tribunal or, as the case may be, Authority or the Presiding Officer of the Security Appellate Tribunal shall be paid a salary of Rs. 2,50,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay.

(2) The Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or, as the case may be, Member shall be paid a salary of Rs. 2,25,000 and shall be entitled to draw allowances as are admissible to a Government of India Officer holding Group 'A' post carrying the same pay.

(3) A Presiding Officer of the Debt Recovery Tribunal or a Presiding Officer of the Industrial Tribunal constituted by the Central Government shall be paid a salary of Rs.1,44,200 – 2,18,200 and shall be entitled to draw allowances as are admissible to a Government of India officer holding Group 'A' post carrying the same pay.

- (4) In case of a person appointed as the Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member, as the case may be, is in receipt of any pension, the pay of such person shall be reduced by the gross amount of pension drawn by him.
12. Pension, Gratuity and Provident Fund.—(1) In case of a serving Judge of the Supreme Court, a High Court or a serving Judicial Member of the Tribunal or a member of the Indian Legal Service or a member of an organised Service appointed to the post of the Chairperson, Chairman, President or Presiding Officer of the Security Appellate Tribunal , the service rendered in the Tribunal, Appellate Tribunal or, as the case may be, Authority shall count for pension to be drawn in accordance with the rules of the service to which he belongs and he shall be governed by the provisions of the General Provident Fund (Central Services) Rules, 1960 and the Contribution Pension System.
- (2) In all other cases, the Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member shall be governed by the provisions of the Contributory Provident Fund (India) Rules, 1962 and the Contribution Pension System.
- (3) Additional pension and gratuity shall not be admissible for service rendered in the Tribunal, Appellate Tribunal or, as the case may be, Authority.
- 13 **Leave.**—(1) The Chairman, Chairperson, President, Vice-Chairman, Vice- Chairperson, Vice President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member,

Presiding Officer or a Member shall be entitled to thirty days of earned Leave for every year of service.

- (2) Casual Leave not exceeding eight days may be granted to the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member or Technical Member, Presiding Officer or a Member in a calendar year.
 - (3) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.
 - (4) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member shall be entitled to encashment of leave in respect of the earned Leave standing to his credit, subject to the condition that maximum leave encashment, including the amount received at the time of retirement from previous service shall not in any case exceed the prescribed limit under the Central Civil Service (Leave) Rules, 1972.
14. **Leave sanctioning authority.**—(1) Leave sanctioning authority,—
- (a) for the Vice-Chairman, Vice-Chairperson, Vice-President, Presiding Officer of the Debts Recovery Tribunal and Industrial Tribunal, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member shall be Chairman, Chairperson or as the case may be, President; and

- (b) for the Chairman, Chairperson, Presiding Officer of Security Appellate Tribunal or President, shall be the Central Government, who shall also be sanctioning authority for Accountant Member, Administrative Member, Judicial Member, Expert Member or Member in case of absence of Chairman, Chairperson, Presiding Officer of Security Appellate Tribunal or President.
- (2) The Central Government shall be the sanctioning authority for foreign travel to the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or a Member.
15. **House rent allowance.**—The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member or Member shall be entitled to house rent allowance at the same rate as are admissible to Group ‘A’ Officer of the Government of India of a corresponding status.
16. **Transport allowance.**—The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall be entitled to the facility of staff car for journeys for official and private purposes in accordance with the facilities as are admissible to Group ‘A’ Officer of the Government of India of a corresponding status as per the provisions of Staff Car Rules.
17. **Declaration of Financial and other Interests.**—The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial

Member, Expert Member, Technical Member, Presiding Officer or Member shall, before entering upon his office, declare his assets, and his liabilities and financial and other interests.

18. **Other conditions of service.**—(1) The terms and conditions of service of a Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member with respect to which no express provision has been made in these rules, shall be such as are admissible to a Group 'A' Officer of the Government of India of a corresponding status.
- (2) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall not practice before the Tribunal, Appellate Tribunal or Authority after retirement from the service of that Tribunal, Appellate Tribunal or, as the case may be, Authority.
- (3) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall not undertake any arbitration work while functioning in these capacities in the Tribunal, Appellate Tribunal or Authority.
- (4) The Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member, Technical Member or Member of the Tribunal, Appellate Tribunal or, as the case may be, Authority shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or

connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal, Appellate Tribunal or, as the case may be, Authority:

Provided that nothing contained in this rule shall apply to any employment under the Central Government or a State Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

19. **Oaths of office and secrecy.**—Every person appointed to be the Chairman, Chairperson, President, Vice-Chairman, Vice-Chairperson, Vice-President, Accountant Member, Administrative Member, Judicial Member, Expert Member, Technical Member, Presiding Officer or Member shall, before entering upon his office, make and subscribe an oath of office and secrecy in Forms I and II annexed to these rules.
20. **Power to relax.**—Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons.
21. **Interpretation.**—If any question arises relating to the interpretation of these rules, the decision of the Central Government thereon shall be final.
22. **Saving.**—Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, Scheduled Tribes, Ex-servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

FORM I
(See rule 19)

Form of Oath of Office for Chairman/Vice-Chairman/ Chairperson/
Vice-Chairperson/ President/Vice-President/ Presiding
Officer/Administrative Member/Judicial Member/ Expert Member/Law
Member/Revenue Member/Technical Member, /Member of the (Name
of the Tribunal/Appellate Tribunal/Authority)

I, A. B., having been appointed as Chairman/Vice-Chairman/
Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding
Officer/ Accountant Member/ Administrative Member, Judicial
Member/ Expert Member / Law Member/ Revenue Member/ Technical
Member/ Member of the (Name of the Tribunal/Appellate
Tribunal/Authority

do solemnly affirm/do swear in the name of God that I will faithfully
and conscientiously discharge my duties as the Chairman/Vice-
Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/
Presiding Officer/ Accountant Member/ Administrative Member/
Judicial Member/ Expert Member / Law Member/ Revenue Member/
Technical Member/ Member (Name of the Tribunal/Appellate
Tribunal/Authority) to the best of my ability, knowledge and judgment,
without fear or favour, affection or ill-will and that I will uphold the
Constitution and the laws of land.

FORM II
(See rule 19)

Form of Oath of Secrecy for Chairman/Vice-Chairman/ Chairperson/
Vice-Chairperson/ President/Vice-President/ Presiding Officer /
Accountant Member/ Administrative Member/ Judicial Member/
Expert Member / Law Member/ Revenue Member/ Technical Member
/Member of the (Name of Tribunal/Appellate Tribunal/Authority

I, A. B., having been appointed as the Chairman/Vice-Chairman/
Chairperson/ Vice-Chairperson/ President/Vice-President/ Presiding
Officer/Member of the(Name of Tribunal/Appellate
Tribunal/Authority), do solemnly affirm/do swear in the name of God
that I will not directly or indirectly communicate or reveal to any
person or persons any matter which shall be brought under my
consideration or shall become known to me as Chairman/Vice-
Chairman/ Chairperson/ Vice-Chairperson/ President/Vice-President/
Presiding Officer / Accountant Member/ Administrative Member,
Judicial Member/ Expert Member / Law Member/ Revenue Member/
Technical Member /Member of the said (Name of Tribunal/Appellate
Tribunal/Authority) except as may be required for the due discharge of
my duties as the Chairman/Vice-Chairman/ Chairperson/ Vice-
Chairperson/ President/Vice-President/ Presiding Officer/Member.

SCHEDULE

Sl. No.	Name of Tribunal, Appellate Tribunal or Authority.	Qualification for appointment of Chairperson, Chairman, President, Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer, Accountant Member, Administrative Member, Judicial Member, Expert Member or Technical Member or Member.	Composition of Search-cum-Selection Committee	Term of Office	Maximum age for holding Office (in years)
(1)	(2)	(3)	(4)	(5)	(6)
1	Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act,	A person shall not be qualified for appointment as Presiding Officer, unless he, - (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) he has, for a period of not less than three-years, been a District Judge or an	Search-cum-Selection-Committee for the post of the Presiding Officer, - (i) a person to be nominated by the Central Government-chairperson; (ii) Secretary to the Government of India, Ministry of Labour and	Three Years	Presiding Officer- Sixty- five years of age

	1947 (14 of 1947)	Additional District Judge; or (c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, management, industry, public affairs, administration, labour relations, industrial disputes or any other matter which in the opinion of the Central Government is useful to the Industrial Tribunal.	Employment- member; (iii) Secretary to the Government of India to be nominated by the Central Government-member; (iv) two experts to be nominated by the Central Government-members.		
2	Income-tax Appellate Tribunal under the Income-tax Act, 1961 (43 of	(1) A person shall not be qualified for appointment as President unless he is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court	(A) Search-cum-Selection Committee for the post of the President and Vice-President, - (i) a sitting Judge of Supreme	Three Years	President-Sixty-five years Vice-President-

	<p>1961)</p>	<p>or a Vice-President of the Income-tax Appellate Tribunal.</p> <p>(2) The Central Government may appoint one or more members of the Income-tax Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.</p> <p>(3) A person shall not be qualified for appointment as a Judicial Member, unless, —</p> <p>(a) he has for at least ten years held a judicial office in the territory of India; or</p> <p>(b) he has been a member of the Indian Legal Service and has held a post in Grade II of the Service or any equivalent or</p>	<p>Court to be nominated by the Chief Justice of India-chairperson;</p> <p>(ii) the President, Income-tax Appellate Tribunal-member; and</p> <p>(iii) the Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member.</p> <p>(B) Search-cum-Selection Committee for the Accountant Member and Judicial Member, —</p> <p>(i) a nominee of the Minister of Law and Justice=chairperson;</p>		<p>Sixty-two years Member- Sixty-two years</p>
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		<p>higher post for at least three years; or</p> <p>(c) he has been an advocate for at least ten years;</p> <p>(4) A person shall not be qualified for appointment as an Accountant Member, unless, —</p> <p>(i) he has for at least ten years been in the practice of accountancy, -</p> <p>(a) as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or</p> <p>(b) as a registered accountant under any law formerly in force; or partly as such registered accountant and partly as a</p>	<p>(ii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)-member;</p> <p>(iii) President of the Income-tax Appellate Tribunal – member; and</p> <p>(iv) such other persons, if any, not exceeding two, as the Minister of Law and Justice may appoint-member.</p>		
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		<p>chartered accountant; or</p> <p>(ii) he has been a member of the Indian Revenue Service (Income-tax Service Group 'A') and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.</p>			
3	<p>The Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 (52 of 1962)</p>	<p>(1) A person shall not be qualified for appointment as President unless, -</p> <p>(a) he is or has been a Judge of a High Court; or</p> <p>(b) he is the member of the Appellate Tribunal.</p>	<p>(A) Search-cum- Selection Committee for the post of President, -</p> <p>(i) Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India as chairperson;</p>	Three Years	<p>President – Sixty-seven years</p> <p>Member- Sixty-two years</p>

		<p>(2) A person shall not be qualified for appointment as a Judicial Member, unless, -</p> <p>(a) he has for at least ten years held a judicial office in the territory of India; or</p> <p>(b) he has been a member of the Indian Legal Service and has held a post in Grade-I of that Service or any equivalent or higher post for at least three years; or</p> <p>(c) he has been an advocate for at least ten years.</p> <p>(3) A person shall not be qualified for appointment as a Technical Member unless he has been a member of the Indian</p>	<p>(ii) Secretary to the Government of India, Department of Revenue-member;</p> <p>(iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)-member;</p> <p>(iv) Secretary to the Government of India, Department of Personnel and Training-member.</p> <p>(B) Search- cum- Selection Committee for post of Judicial Member, -</p> <p>(i) a Judge of the Supreme Court</p>		
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		<p>Revenue Service (Customs and Central Excise Service Group 'A') and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.</p>	<p>as nominated by the Chief Justice of India chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Finance (Department of Revenue)-member;</p> <p>(iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs) -member;</p> <p>(iv) President of the Customs, Excise and Service Tax Appellate Tribunal- member; and</p> <p>(v) such other persons, not exceeding two, as the Central Government may nominate-member;</p>		
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			<p>(C). Search-cum-Selection Committee for the post of Technical member,-</p> <p>(i) Cabinet Secretary to the Government of India – chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Finance (Department of Revenue)- member;</p> <p>(iii) Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) – member;</p>		
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			(iv) Secretary to the Government of India, Ministry of Law (Department of Legal Affairs) – member.		
4	Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976)	(1) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of a Supreme Court or a Judge of a High Court. (2) The Member of the Appellate Tribunal shall be a person not below the rank of Joint Secretary to the Government of India.	(A) Search-cum- Selection Committee for the post of Chairman, - (i) Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India – chairperson; (ii) Secretary to the Government of India (Department of Revenue)-member;	Three Years	Chairperson – Sixty-five years Member – Sixty-two years

			<p>(iii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs)- member;</p> <p>(iv) Secretary to the Government of India, Department of Personnel and Training- member.</p> <p>(B) Search-cum-Selection Committee for the post of Member, -</p> <p>(i) Cabinet Secretary – chairperson;</p> <p>(ii) Secretary to the Government of India, Department of Personnel</p>		
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			<p>and Training- member;</p> <p>(iii) Secretary to the Government of India (Department of Revenue) - member;</p> <p>(iv) two Secretaries to the Government of India to be nominated by the Central Government - members.</p>		
5	<p>Central Administrative Tribunal under the Administrative Tribunal Act, 1985 (13 of</p>	<p>(1) A person shall not be qualified for appointment as the Chairman, unless he, –</p> <p>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>(b) has, for a period of not less than three</p>	<p>(A) Search-cum-Selection Committee for the post of Chairman and Judicial Member, –</p> <p>(i) Chief Justice of India or his nominee- chairperson;</p>	<p>Three Years</p>	<p>Chairman - Sixty-eight years</p> <p>Member - Sixty-five years</p>

	<p>1985).</p>	<p>years, held office as Administrative Member or Judicial Member in the Central Administrative Tribunal;</p> <p>(c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs or administration, or any other matter which in the opinion of the Central Government is useful to the Central Administrative Tribunal.</p> <p>(2). A person shall not be qualified for appointment, —</p>	<p>(ii) Chairman of the Central Administrative Tribunal, Principal Bench – member;</p> <p>(iii) Secretary to the Government of India, (Department of Personnel and Training)- member;</p> <p>(iv) Secretary to the Government of India, Ministry of Law and Justice -member;</p> <p>(e) one expert, to be nominated by the Central Government of India-member.</p> <p>(B) Search-cum-Selection</p>		
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		<p>(a) as a Judicial Member, unless he, -</p> <p>(i) is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>(ii) has, for at least one year, held the post of Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department including Member –Secretary, Law Commission of India; or</p> <p>(iii) has, for at least two years, held a post of Additional Secretary to the Government of India in the Department of Legal Affairs or Legislative Department; or</p> <p>(iv) has, for at least ten years, held a judicial office in the territory of India.</p>	<p>Committee for the post of Administrative Member, –</p> <p>(a) a person to be nominated by the Central Government - chairperson;</p> <p>(b) Chairman of the, Central Administrative Tribunal – member;</p> <p>(c) Secretary to the Government of India, (Department of Personnel and Training)- member;</p> <p>(d) Secretary to the Government of India, Ministry of Law and Justice</p>		
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		<p>(b) as an Administrative Member, unless he, -</p> <p>(i) has, for at least one year, held the post of Secretary to the Government of India or any other post under the Central Government or a State Government and carrying the scale of pay which is not less than that of a Secretary to the Government of India for at least one year; or</p> <p>(ii) has, for at least two years, held a post of Additional Secretary to the Government of India, or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of</p>	<p>-member;</p> <p>(e) one expert, to be nominated by the Government of India - member.</p>		
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		<p>India at least for a period of two years:</p> <p>Provided that the officers belonging to the All-India services who were or are on Central deputation to a lower post shall be deemed to have held the post of Secretary or Additional Secretary, as the case may be, from the date such officers were granted proforma promotion or actual promotion whichever is earlier to the level of Secretary or Additional Secretary, as the case may be, and the period spent on Central deputation after such date shall count for qualifying service for the purpose of this clause.</p>			
6	Railway Claims Tribunal under	(1) A person shall not be qualified for appointment as the Chairman, unless he, –	(A) Selection Committee consisting for the post of the	Three Years	Chairman-Sixty-seven

	<p>the Railway Claims Tribunal Act, 1987 (54 of 1987)</p>	<p>(a) is, or has been, or is qualified to be a Judge of a High Court; or</p> <p>(b) has, for a period of not less than three years, held office as Vice-Chairman, Judicial Member or Technical Member, as the case may be; or</p> <p>(c) is a person of ability, integrity and standing, and having a special knowledge of, and professional experience of not less than twenty-five years in claims and commercial matters relating to railways.</p> <p>(2) A person shall not be qualified for appointment as the Vice-Chairman (Judicial), unless he, –</p>	<p>Chairman, Vice-Chairman (Judicial) or Member (Judicial): -</p> <p>(i) Chief Justice of India or his nominee- chairperson;</p> <p>(ii) Chairman or Member (Traffic) of the Railway Board- member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government- member;</p> <p>(iv) two experts who should have knowledge and experience of Claims and Commercial matters pertaining to Railways to be nominated by the Central</p>		<p>years</p> <p>Vice-Chairman- Sixty-five years</p> <p>Member – Sixty-two years</p>
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		<p>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years; or</p> <p>(c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or</p> <p>(d) has, for a period of not less than three years, held office as a Judicial Member.</p> <p>(3) A person shall not be qualified for</p>	<p>Government- members.</p> <p>(B) Search-cum-Selection Committee for the post of the Vice-Chairman (Technical) or Member (Technical),-</p> <p>(i) a person to be nominated by the Central Government-chairperson;</p> <p>(ii) Chairman or Member (Traffic) of the Railway Board- member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government- member;</p> <p>(iv) two experts with knowledge</p>		
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		<p>appointment as the Vice-Chairman (Technical), unless he, –</p> <p>(a) has, for a period of not less than three years, held office as a Technical Member;</p> <p>(b) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.</p> <p>(4) A person shall not be qualified for appointment as a Judicial Member, unless he, –</p>	<p>and experience of Claims and Commercial matters relating to Railways to be nominated by the Central Government - members.</p>		
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		<p>(a) is, or has been, or is qualified to be, a Judge of a High Court;</p> <p>(b) has, for at least ten years, held a judicial office in the territory of India.</p> <p>(5) A person shall not be qualified for appointment as a Technical Member unless he is a person of ability, integrity and standing having special knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways of not less than twenty years.</p>			
7	Securities Appellate Tribunal under	(1) A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member	(A) The Presiding Officer and Judicial Member of the Tribunal shall be appointed by the Central	Three Years	Presiding Officer – Seventy years

	<p>the Securities Exchange Board of India Act, 1992 (15 of 1992)</p>	<p>of the Securities Appellate Tribunal, unless he, —</p> <p>(a) in the case of the Presiding Officer, is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of a High Court for at least seven years;</p> <p>(b) in the case of a Judicial Member, is, or has been, a Judge of a High Court for at least five years; or (c) in the case of a Technical Member, —</p> <p>(i) is, or has been, an Additional Secretary or Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government</p>	<p>Government in consultation with the Chief Justice of India or his nominee.</p> <p>(B) Search-cum-Selection Committee for the post of Technical Member, —</p> <p>(i) Presiding Officer, Securities Appellate Tribunal— chairperson;</p> <p>(ii) Secretary to the Government of India (Department of Economic Affairs) – member;</p> <p>(iii) Secretary to the Government of India, (Department of Financial Services) – member; and</p>		<p>Member – Sixty-seven years</p>
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		<p>or a State Government; or</p> <p>(ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sectors including securities market or pension funds or commodity derivatives or insurance.</p> <p>(2) A Member or Part time Member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to Executive Director in the Board or in such Authorities, shall not be appointed as</p>	<p>(iv) Secretary to the Government of India, in the Legislative Department or Department of Legal Affairs –member.</p>		
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		<p>Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.</p> <p>(3) The Presiding Officer or Member of the Securities Appellate tribunal shall be a person who does not have any financial or other interest as are likely to prejudicial affect their functions as such Presiding Officer or Member.</p>			
8	Debts Recovery Tribunal under the Recovery of	A person shall not be qualified for appointment as Presiding Officer of the Debts Recovery Tribunal, unless he,—	Search-cum-Selection Committee for the post of Presiding Officer of the Debts Recovery Tribunal,—	Three Years	Presiding Officer – Sixty-five

	<p>Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)</p>	<p>(a) is, or has been, or is qualified to be, a District Judge; or</p> <p>(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, banking, debt recovery or any other matter, which in the opinion of the Central Government is useful to the Debt Recovery Tribunal.</p>	<p>(i) Chief Justice of India or his nominee-chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Finance (Department of Economic Affairs)- member;</p> <p>(iii) Secretary to the Government of India, Ministry of Law and Justice-member;</p> <p>(iv) Governor of the Reserve Bank or the Deputy Governor of the Reserve Bank of India nominated by the Governor of the Reserve Bank of India member;</p>		<p>years</p>
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			and (v) Secretary to the Government of India or Additional Secretary to the Government of India, Ministry of Finance, (Department of Financial Services)- member.		
9	Debts Recovery Appellate Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)	A person shall not be qualified for appointment as Chairperson, unless he, — (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service; or	Search-cum-Selection Committee for the Chairperson of the Debts Recovery Appellate Tribunal,— (i) Chief Justice of India or his nominee- chairperson; (ii) Secretary to the Government of India, Ministry of Finance (Department of Economic	Three Years	Chairperson- Seventy years

		<p>(c) has held office as the Presiding Officer of a Debts Recovery Tribunal for at least three years.</p>	<p>Affairs)– member;</p> <p>(iii) Secretary to the Government of India, Ministry of Law and Justice-member;</p> <p>(iv) Governor of the Reserve Bank or the Deputy Governor of the Reserve Bank of India nominated by the Governor of the Reserve Bank of India - member; and</p> <p>(v) Secretary to the Government of India or Additional Secretary to the Government of India, Ministry of Finance, (Department of Financial Services)-member.</p>		
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10	<p>Airport Appellate Tribunal under the Airport Authority of India Act, 1994(55 of 1994)</p>	<p>A person shall not be eligible for appointment as Chairperson, unless he,—</p> <p>(a) is, or has been, or is qualified to be, a judge of a High Court; or</p> <p>(b) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the Appellate Tribunal.</p>	<p>Search-cum-Selection Committee for the post of Chairperson of Airport Appellate Tribunal,—</p> <p>(i) a person to be nominated by the Central Government-chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Civil Aviation- member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government-member;</p> <p>(iv) two experts, to be nominated by the Central Government-members.</p>	<p>Three Years</p>	<p>Chairperson- Sixty-two years</p>
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11	Telecom Disputes Settlement and Appellate Tribunal under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997)	<p>(1) A person shall not be qualified for appointment as Chairperson, unless he,—</p> <p>(a) is, or has been, or is qualified to be, a Judge of Supreme Court; or</p> <p>(b) is, or has been, Chief Justice of a High Court; or</p> <p>(c) has, for a period of not less than three years held office as Member; or</p> <p>(d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance,</p>	<p>(A) Search-cum-Selection Committee for the post of the Chairperson, —</p> <p>(i) Chief Justice of India or his nominee-chairperson;</p> <p>(ii) Secretary to the Government of India, (Department of Telecommunications) - member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government - member;</p> <p>(iv) two experts, to be nominated by the Central Government – members.</p>	Three Years	<p>Chairperson- Seventy years</p> <p>Member – Sixty-five years</p>
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		<p>accountancy, management, industry, public affairs, administration, telecommunications or any other matter which in opinion of the Central Government is useful to the Telecom Disputes Settlement and Appellate Tribunal.</p> <p>(2) A person shall not be qualified for appointment as Member unless he is a person of ability, integrity and standing having special knowledge of, and professional experience of, not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, telecommunications or any other matter which in opinion of the</p>	<p>(B) Search-cum-Selection Committee for the post of Member, —</p> <p>(i) a person to be nominated by the Central Government-chairperson;</p> <p>(ii) Secretary to the Government of India, (Department of Telecommunications)- member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government- member;</p> <p>(iv) two experts to be nominated</p>		
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		Central Government is useful to the Telecom Disputes Settlement and Appellate Tribunal.	by the Central Government-members.		
12	Appellate Board under the Trade Marks Act, 1999 (47 of 1999)	<p>(1) A person shall not be qualified for appointment as Chairman, unless he, -</p> <p>(a) is, or has been, or is qualified to be, a Judge of High Court; or</p> <p>(b) has, for a period of not less than three years, held office as Vice- Chairperson of the Appellate Board.</p> <p>(2) A person shall not be qualified for appointment as Vice-Chairman, unless he,—</p>	<p>(A) Search-cum-Selection for the post of the Chairman, Vice-Chairman or Judicial Member of the Appellate Board, -</p> <p>(i) Chief Justice of India or his nominee- chairperson;</p> <p>(ii) Secretary to the Government of India, (Department of Industrial Policy and Promotion) - member;</p> <p>(iii) Secretary to the Government of India to be nominated by the</p>	Three Years	<p>Chairman- Sixty-seven years</p> <p>Vice-Chairman - Sixty-five years</p> <p>Member – Sixty-five years</p>

		<p>(a) is, or has been, or is qualified to be, a Judge of High Court; or</p> <p>(b) has, for at least two years, held the office of Judicial Member or a Technical Member, and has a degree in law with at least 12 years of practice at bar or 12 years' experience in a State Judicial Service.</p> <p>(3) A person shall not be qualified for appointment as Judicial Member, unless he, -</p> <p>(a) is, or has been, or is qualified to be a Judge of High Court; or</p> <p>(b) has, for at least ten years, held a</p>	<p>Central Government-member;</p> <p>(iv) two experts, to be nominated by the Central Government-members.</p> <p>(B) Search-cum-Selection Committee for the post of Technical Member (Trade mark), Technical Member (Patent) and Technical Member (Copyright) of the Appellate Board,—</p> <p>(i) a person to be nominated by the Central Government – chairperson;</p> <p>(ii) Secretary to the Government</p>		
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		<p>judicial office in the territory of India.</p> <p>(4) A person shall not be qualified for appointment as Technical Member (Trademark), unless he,—</p> <p>(a) has, for at least ten years, exercised functions of a tribunal under the Trade Marks Act, 1999 (47 of 1999) and has held a post not lower than the post of Joint Registrar for at least five years and has a degree in law with at least twelve years of practice at bar or twelve years' experience in a State Judicial Service, or (b) has, for at least ten years, been an advocate of a proven specialized experience in trade mark law.</p>	<p>of India, (Department of Industrial Promotion and Policy) -member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government - member;</p> <p>(iv) two experts, to be nominated by the Central Government - members.</p>		
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		<p>(5) A person shall not be qualified for appointment as Technical Member (Patent), unless he, -</p> <p>(a) has, for at least five years, held the post or exercised the functions of the Controller under the Patents Act, 1970 (39 of 1970); or</p> <p>(b) has, for at least ten years, functioned as a registered patent agent and possesses a degree in engineering or technology or a master's degree in science from any University established under law for the time being in force.</p> <p>(6) A person shall not be qualified for appointment as Technical Member</p>			
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		<p>(Copyright), unless he, –</p> <p>(a) is, or has been a member of the Indian Legal Service and is holding, or has held a post in Grade I of that Service for at least three years; or</p> <p>(b) has, for at least ten years, held a judicial office in the territory of India; or</p> <p>(c) is, or has been a member of a Tribunal or Civil Service not below the rank of a Joint Secretary to the Government of India with three years' experience in the field of Copyright; or</p> <p>(d) has, for at least ten years, been an advocate of a proven specialized</p>			
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		<p>experience in Copyright Law:</p> <p>Provided that at least one member of the Appellate Board for purposes of the Copyright Act shall have qualification as in (a), (b) or (d) above.</p>			
13	<p>National Company Law Appellate Tribunal under the Companies Act, 2013 (18 of 2013).</p>	<p>(1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.</p> <p>(2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the National Company Law Tribunal for five years.</p> <p>(3) A Technical Member shall be a person</p>	<p>(A) The Chairperson of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.</p> <p>(B) Search-cum-Selection Committee for the post of the Judicial Member and Technical Member of the Appellate Tribunal, -</p>	<p>Three Years</p>	<p>Chair-Person- Seventy years Member – Sixty seven years</p>

		of proven ability, integrity and standing having special knowledge and professional experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy or any other matter which in the opinion of the Central Government is useful to the National Company Law Appellate Tribunal.	(i) Chief Justice of India or his nominee -chairperson; (ii) a senior Judge of the Supreme Court or a Chief Justice of a High Court-member; (iii) Secretary to the Government of India, Ministry of Corporate Affairs- member; (iv)Secretary to the Government of India, Ministry of Law and Justice-member.		
14	Authority for Advance Ruling under the Income-tax Act,	A person shall be qualified for appointment as,— (a) Chairman, who:—	(A) Search-cum Selection Committee for the post of Chairman and Vice-Chairman, -	Three Years	Chairman- Seventy years Vice-

	<p>1961 (43 of 1961)</p>	<p>(i) is, or has been, or is qualified to be, a Judge of the Supreme Court; or</p> <p>(ii) is or has been a Chief Justice of a High Court; or</p> <p>(iii) has, for at least seven years, been a Judge of a High Court; or</p> <p>(iv) has, for at least three years, been a Vice-Chairman, Revenue Member or Law Member of the Authority for Advance Ruling; or</p> <p>(v) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less</p>	<p>(i) Chief Justice of India or a Judge of the Supreme Court of India as nominated by the Chief Justice of India – chairperson;</p> <p>(ii) Secretary to the Government of India (Department of Revenue) -member;</p> <p>(iii) Secretary to the Government of India (Department of Legal Affairs) - member;</p> <p>(iv) Secretary to the Government of India (Department of Personnel and Training) -member.</p> <p>(B) Search-cum-Selection</p>		<p>Chairman- Sixty-five years</p> <p>Member – Sixty-two years.</p>
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		<p>than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, taxation or any other matter which in the opinion of the Central Government is useful to the Authority.</p> <p>(b) Vice-chairman, who is, or has been, or is qualified to be, a Judge of a High Court;</p> <p>(c) Revenue Member from the Indian Revenue Service who is qualified to be a Member of the Central Board of Direct Taxes Board and an officer of the Indian Customs and Central Excise Service, who is qualified to be a Member of the Central Board of Excise and Customs;</p>	<p>Committee for the post of Member, -</p> <p>(i) Cabinet Secretary – chairperson;</p> <p>(ii) Secretary to the Government of India, (Department of Personnel and Training) - member;</p> <p>(iii) Secretary to the Government of India, (Department of Revenue) - member;</p> <p>(iv) two Secretaries to the Government of India to be nominated by the Central Government - members.</p>		
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		(d) Law Member from the Indian Legal Service, who is an Additional Secretary to the Government of India.			
15	Film Certification Appellate Tribunal under the Cinematograph Act, 1952 (37 of 1952)	<p>(1) A person shall not be qualified for appointment as Chairman, unless he, -</p> <p>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>(b) has, for a period of not less than three years, held office as member; or</p> <p>(c) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in, law,</p>	<p>Search-cum-Selection Committee for post of the Chairman and member of the Appellate Tribunal, —</p> <p>(i) a person to be nominated by the Central Government-chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Information and Broadcasting-member;</p> <p>(iii) Secretary to the Government</p>	Three Years	<p>Chairman – Sixty-seven years</p> <p>Member – Sixty-five years</p>

		<p>management, industry, public affairs, administration, films or any other matter which in the opinion of the Central Government, is useful to the Appellate Tribunal.</p> <p>(2) The Central Government may appoint such persons, who, in its opinion, or qualified to judge the effect of films on the public, to be a member of the Appellate Tribunal.</p>	<p>of India to be nominated by the Central Government- member;</p> <p>(iv) two experts to be nominated by the Central Government-members.</p>		
16	National Consumer Disputes Redressal Commission under the	<p>(1) A person shall not be qualified for appointment as President, unless he, –</p> <p>(a) is, or has been, or is qualified to be, a Judge of the Supreme Court; or</p>	<p>(A) The President shall be appointed by the Central Government after consultation with the Chief Justice of India. (B) Search-cum-Selection Committee for the post</p>	Three Years	<p>President – Seventy years</p> <p>Member- Seventy years</p>

	<p>Consumer Protection Act, 1986 (68 of 1986)</p>	<p>(b) is, or has been, Chief Justice of a High Court; or</p> <p>(c) has, for a period not less than three years, held office of Member or Judicial Member; or</p> <p>(d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the National Consumer Disputes Redressal Commission.</p>	<p>of member, —</p> <p>(i) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India - chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs) - member;</p> <p>(iii) Secretary to the Government of India, Ministry of Consumer Affairs – member;</p> <p>(iv) two experts to be nominated by the Central Government -</p>		
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		<p>(2) A person shall not be qualified for appointment as Member unless he is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government, is useful to the National Consumer Disputes Redressal Commission:</p> <p>Provided that a person shall not be appointed as a Judicial Member, unless he,</p> <p>—</p>	members.		
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		<p>(a) is, or has been, or is qualified to be, a Judge of a High Court;</p> <p>(b) has, for at least ten years, held a Judicial office in the territory of India.</p>			
17	<p>Appellate Tribunal for Electricity under the Electricity Act, 2003 (36 of 2003).</p>	<p>(1) A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal, unless he, —</p> <p>(a) is, or has been, or is qualified to be, a Judge of Supreme Court; or</p> <p>(b) is, or has been, Chief Justice of a High Court; or (c) has, for a period of not less than three years, held office of Judicial Member, or Technical member; or</p>	<p>(A) Search-cum-Selection Committee for the post of Chairperson and Judicial Member of the Appellate Tribunal, —</p> <p>(i) Chief Justice of India or his nominee-chairperson;</p> <p>(ii) Secretary to the Government of India, Ministry of Power-member;</p>	<p>Three Years</p>	<p>Chairperson- Seventy years</p> <p>Member- Sixty-five years</p>

		<p>(d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government is useful to Appellate Tribunal.</p> <p>(2) A person shall not be qualified for appointment as Judicial Member, unless, he—</p> <p>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</p>	<p>(iii) Secretary to the Government of India to be nominated by the Central Government- member;</p> <p>(iv) two experts, to be nominated by the Central Government-members.</p> <p>(B) Search-cum-Selection Committee for the post of the Technical Member of the Appellate Tribunal,—</p> <p>(i) a person to be nominated by the Central Government-chairperson;</p> <p>(ii) Secretary to the Government</p>		
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		<p>(b) has, for at least ten years, held a judicial office in the territory of India.</p> <p>(3) A person shall not be qualified for appointment as Technical Member unless he is a person of ability, integrity and standing having special knowledge of, and professional experience of, not less than twenty years in matters dealing with electricity generation, transmission, distribution, regulation, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government is useful to the Appellate Tribunal.</p>	<p>of India, Ministry of Power-member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government- member;</p> <p>(iv) two experts to be nominated by the Central Government-members.</p>		
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18	Armed Force Tribunal under the Armed Forces Act, 2007 (55 of 2007)	<p>(1) A person shall not be qualified for appointment as Chairperson, unless, he, -</p> <p>(a) is, or has been, or is qualified to be a Judge of Supreme Court or,</p> <p>(b) is or has been a Chief Justice of a High Court.</p> <p>(2) A person shall not be qualified for appointment as Judicial Member unless he is, or has been, a Judge of a High Court.</p> <p>(3) A person shall not be qualified for appointment as Administrative Member, unless he, -</p> <p>(a) he has held or he has been holding the</p>	<p>(A) The Chairperson of the Armed Forces Tribunal shall be appointed by the Central Government in consultation with Chief Justice of India.</p> <p>(B) Search-cum-Selection Committee for the post of Vice-Chairperson, Judicial Member, or Administrative Member of Armed Forces Tribunal, -</p> <p>(i) a sitting Judge of Supreme Court to be nominated by Chief Justice of India or Chairman, Law Commission of India- chairperson;</p> <p>(ii) Chairperson, Armed Forces</p>	Three Years	Chairperson- Seventy years Member- Sixty-five years
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		<p>rank of Major General or above for a total period of at least three years in the Army or equivalent rank in the Navy or the Air Force; or</p> <p>(b) he has served for not less than one year as Judge Advocate General in the Army or the Navy or the Air Force, and is not below the rank of Major General, Commodore and Air Commodore respectively; or</p> <p>(c) he is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, economics, business, commerce, law, finance, accountancy, management, industry, public affairs,</p>	<p>Tribunal – member;</p> <p>(iii) two Secretaries to Government of India including Defence Secretary-members.</p>		
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		administration or in any other matter which in the opinion of the Central Government, is useful to the Armed Forces Tribunal.			
19	National Green Tribunal under the National Green Tribunal Act, 2010 (19 of 2010)	(1) A person shall not be qualified for appointment as Chairperson, unless he, – (a) is, or has been, or is qualified to be, a Judge of Supreme Court; or (b) is, or has been, Chief Justice of a High Court; or (c) has, for a period of not less than three years, held office as Judicial Member or Expert Member; or	(A) Search-cum-Selection Committee for the post of the Chairperson or Judicial Member of the National Green Tribunal, — (i) Chief Justice of India or his nominee-chairperson; (ii) Secretary to the Government of India, Ministry of Environment, Forests and Climate Change-member; (iii) Secretary to the Government	Three Years	Chairperson- Seventy years Member- Sixty-seven years

	<p>(d) is a person of ability, integrity and standing, and having special knowledge of, and professional experience of not less than twenty-five years in law including five years' practical experience in the field of environment and forests.</p> <p>(2) A person shall not be qualified for appointment as Judicial Member, unless he, –</p> <p>(a) is, or has been, or is qualified to be, a Judge of a High Court; or</p> <p>(b) has, for at least ten years, held a judicial office in the territory of India.</p> <p>(3) A person shall not be qualified for</p>	<p>of India to be nominated by the Central Government-member;</p> <p>(iv) two experts, to be nominated by the Central Government-members.</p> <p>(B) Search-cum-Selection Committee for the post of the Expert Member of the National Green Tribunal, —</p> <p>(i) a person to be nominated by the Central Government -chairperson;</p> <p>(ii) Secretary to the government of India, Ministry of Environment, Forests and Climate Change -</p>		
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		<p>appointment as Expert Member, unless he,</p> <p>-</p> <p>(a) has a degree/ Post-graduation degree/ Doctorate</p> <p>Degree in Science and has an experience of twenty years in the relevant field including five years' practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or</p> <p>(b) has administrative experience of</p>	<p>member;</p> <p>(iii) Secretary to the Government of India to be nominated by the Central Government -member;</p> <p>(iv) two experts, to be nominated by the Central Government - members.</p>		
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		twenty years including experience of five years in dealing with environmental matters in the Central Government or a State Government or in a reputed National or State level institution.			
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[F. No. A.50050/9/2016-CESTAT Pt-1]
UDAI SINGH KUMAWAT, Jt. Secy.

TRUE COPY

ANNEXURE P-4

ITEM NO. 6

COURT NO. 1

SECTION PIL-W

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Writ Petition(s)(Civil) No(s).561/2017

SOCIAL ACTION FOR FOREST
AND ENVIRONMENT

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

Date : 28-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr.Vivek Chib, Adv.
Ms.Ruchira Goel, Adv.
Mr.Asif Ahmed, Adv.
Ms.Kushee Gupta, Adv.
Mr.Vikramaditya, Adv.
Ms.Pracheta K.,
Ms.Gayatri Jamwal, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Issue notice, returnable in two weeks.

Tag with W.P.(C)No.279 of 2017.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASST.REGISTRAR

TRUE COPY

ANNEXURE P-5

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2015

DATED : 10.03.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

and

The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.No.1256 of 2011

Shamnad Basheer,
Ministry of HRD Chair Professor in
Intellectual Property Rights
West Bengal National University of
Juridical Sciences,
NUJS Bhavan, 12 LB Block,
Salt Lake City, Sector III
Kolkata – 700 098, India.

.... Petitioner

Vs.

1. Union of India,
represented by its Secretary,
Department of Industrial Policy & Promotion,
Ministry of Industry & Commerce,
Government of India,
Udyog Bhavan,
New Delhi – 110 011
2. Intellectual Property Appellate Board,
represented by its Registrar,
Annex-I, Guna Complex, II Floor,
443, Anna Salai, Teynampet,
Chennai – 600 018.
3. Intellectual Property Rights Bar Association
(Regn.No.48/2011), rep.by its President,
Mr.K.Rajasekaran, III Floor, YMCA Building,
No.223, NSC Bose Road, Chennai – 600 001.

...Respondents

Respondent No.3 has been impleaded as per order of this Court dated 27.06.2011 in M.P.No.2 of 2011 in W.P.No.1256 of 2011.

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Declaration declaring Chapter XI of the Trade Marks Act, 1999, and Chapter XIX of the Patents Act, 1970 as ultra vires Articles 14, 19(1)(g), 21, 50, 245 of the Constitution of India and violative of the basic structure of the Constitution and hence void ab initio, in so far as it establishes the Intellectual Property Appellate Board (IPAB) and vests important judicial functions on this Board.

For Petitioner : Mr.Aravind P.Datar
Sr.Counsel for
M/s.Vineet Subramani

For Respondents : Mr.G.Rajagopal,
Addl. Solicitor General
assisted by
Mr.A.S.Vijayaraghavan,
SCGSC for R.1
Mr.K.Rajasekaran for R.3

ORDER

THE HON'BLE CHIEF JUSTICE & M.M.SUNDRESH,J.

The petitioner has called for our studied scrutiny of Section 85 of the Trade Marks Act, 1999 (47 of 1999) qua the qualification and selection of Chairman, Judicial Member and Technical Member of the Intellectual Property Appellate Board (in short, "IPAB") alleging a grave affront to the basic structure enshrined in the Constitution of India.

2. We have heard Mr.Aravind P.Datar, learned Senior Counsel appearing for the petitioner, Mr.G.Rajagopal, learned Additional Solicitor General assisted by Mr.A.S.Vijayaraghavan, Senior

Central Government Standing Counsel for the 1st respondent and Mr.K.Rajasekaran, learned counsel appearing for the 3rd respondent and also perused the written submissions of either side.

3. As the issues that are germane to the writ petition have been substantially dealt with by the Honourable Supreme Court in the cases in point, we would like to highlight the guiding principles enunciated therein.

S.P.Sampath Kumar Vs. Union of India (AIR 1987 SC 386):-

4. In this case, a challenge has been made to the vires of the Administrative Tribunals Act, 1985. The provisions, which contained the qualification and appointment of the Chairman and an Administrative Member were also tested by the Supreme Court. Though the decision was consentaneous, two judgments have been written one concurring with another giving separate reasons. The aggregate of it is deduced hereunder:-

The Office of the Chairman for all practical purposes has to be equated with the office of the Chief Justice of High Court. Section 6(1)(c) was directed to be omitted which provides for the eligibility of a Secretary to Government to be appointed as a Chairman. Such an appointment to the post of Chairman will have to be made by a High Powered Committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India to ensure selection of proper and competent persons. A person sans legal or judicial training and experience would not only fail to inspire confidence in the public mind but make the Tribunal less effective and efficacious, especially, when the jurisdiction vested in the High Court was supplanted by its creation. Therefore, when such a supplanting is done it should be filled up with men of legal training and experience. In the fitness of things, it would be appropriate that a District Judge or an

advocate, who is qualified to be a Judge of the High Court, should be regarded as eligible for being Vice-Chairman since the existing provisions having been tilted in favour of the members of the Services.

5. Union of India Vs. R.Gandhi, President, Madras Bar Association, ((2010) 11 SCC 1):-

In this case, a challenge was made to the constitutional validity of Chapters IB and 1C of the Companies Act, 1956 (inserted by Companies (Second Amendment) Act, 2002 which inter alia provide for the constitution of National Company Law Tribunal and the National Company Law Appellate Tribunal. In the said decision, the Supreme Court was pleased to deal with the Westminster Model, selection of the members, including the selection of Chairman and Vice-Chairman, extent of judicial review, independence of judiciary, separation of powers and the role of both judicial and technical members. All these principles have been considered on the touchstone of basic structure, which is one of the fulcrum of the Constitution of India.

The Independence of Judiciary was dealt with by the Supreme Court in the following paragraphs:

"46. Impartiality, independence, fairness and reasonableness in decision making are the hallmarks of Judiciary. If 'Impartiality' is the soul of Judiciary, 'Independence' is the life blood of Judiciary. Without independence, impartiality cannot thrive. Independence is not the freedom for Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also

the discipline in life, habits and outlook that enables a Judge to be impartial. Its existence depends however not only on philosophical, ethical or moral aspects but also upon several mundane things - security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures within (from others in the Judiciary) and without (from the Executive).

.....

52. Independence of Judiciary has always been recognized as a part of the basic structure of the Constitution (See : Supreme Court Advocates-on-Record Association vs. Union of India - (1993 (4) SCC 441), State of Bihar vs. Bal Mukund Sah,((2000) (4) SCC 640), Kumar Padma Prasad vs. Union of India,((1992) (2) SCC 428) and All India Judges Association vs. Union of India,((2002) (4) SCC 247)."

The concept of separation of powers was dealt with in extensor after taking note of the decisions rendered in Indira Nehru Gandhi Vs. Raj Narayan, (1975 Supp SCC 1) and L.Chandra Kumar Vs. Union of India, ((1997) 3 SCC 261). Accordingly, it was reiterated that doctrine of separation of powers is part of the basic structure of the Constitution. The following paragraphs are apposite:

"53. In Ram Jawaya Kapur vs. State of Punjab,(AIR 1955 SC 549 = (1955) 2 SCR 225), this Court explained the doctrine of separation of powers thus : (AIR p.556, para 12)

"12. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the

Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.”

54. In *Chandra Mohan vs. State of UP*, (AIR 1966 SC 1987), this Court held : (AIR p.1993, para 14)

“14.The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States; it constitutes a High Court for each State, prescribes the institutional conditions of service of the Judges thereof, confers extensive jurisdiction on it to issue writs to keep all tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over all courts and tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that “it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges.” Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Ch. VI of Part VI under the heading “Subordinate Courts”. But at the time the Constitution was made, in most of the States the magistracy was under the direct control of the executive. Indeed it is common knowledge that in pre-independent India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be

a mockery. So Article 50 of the Directive Principles of Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control.

(emphasis supplied)

55. In *Indira Nehru Gandhi vs. Raj Narain*, (1975 Supp SCC 1), this Court observed that the Indian Constitution recognizes separation of power in a broad sense without however there being any rigid separation of power as under the American Constitution or under the Australian Constitution. This Court held thus :

“60. It is true that no express mention is made in our Constitution of vesting in the judiciary the judicial power as is to be found in the American Constitution. But a division of the three main functions of Government is recognised in our Constitution. Judicial power in the sense of the judicial power of the State is vested in the Judiciary. Similarly, the Executive and the Legislature are vested with powers in their spheres. Judicial power has lain in the hands of the Judiciary prior to the Constitution and also since the Constitution. It is not the intention that the powers of the Judiciary should be passed to or be shared by the Executive or the Legislature or that the powers of the Legislature or the Executive should pass to or be shared by the Judiciary. (SCC pp. 44-45, para 60)

*

*

*

“555. '[The] Constitution' has a basic structure comprising the three organs of the Republic: the Executive, the Legislature and the Judiciary. It is through

each of these organs that the sovereign will of the people has to operate and manifest itself and not through only one of them. None of these three separate organs of the Republic can take over the functions assigned to the other. This is the basic structure or scheme of the system of Government of Republic..... (SCC p.210, para 555)

688. But no Constitution can survive without a conscious adherence to its fine checks and balances. Just as courts ought to enter into problems entwined in the 'political thicket', Parliament must also respect the preserve of the court. The principle of separation of powers is a principle of restraint SCC p.260, para 688)

56. In L. Chandra Kumar Vs.Union of India, ((1997) 3 SCC 261), the seven-Judge Bench of this Court referred to the task entrusted to the superior courts in India thus : (SCC p.301, para 78).

“78. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence.”

(emphasis supplied)

57. The doctrine of separation of powers has also been always considered to be a part of the basic structure of the

Constitution (See : Keshavananda Bharati vs. State of Kerala,((1973) 4 SCC 225), Indira Nehru Gandhi vs. Raj Narain, (1975 Supp SCC 1), State of Bihar vs. Bal Mukund Shah, ((2000) 4 SCC 640) and I.R. Coelho vs. State of Tamil Nadu,((2007) 2 SCC 1)."

The Supreme Court then proceeds to state that all Courts are Tribunals and any Tribunal to which any existing jurisdiction of court is transferred should also be a Judicial Tribunal. The natural corollary of it would be, its members should have their rank, capacity and status akin to that of a Court. Coming to the role of a technical member, it was held that such a member should be a person with expertise in the field of law, rather than a mere experience in civil service. A word of "caution" was sounded as an extrapolation qua the control of the Tribunal by the Executive by filling up the posts of technical members with its officers. It was also observed that the prescription of qualification/eligibility criteria by the Legislature is subject to judicial scrutiny. Accordingly, the provisions which paved the way for the appointment of technical member without adequate experience in law by merely being holder of a office were held to be bad. The Supreme Court went on to hold that the function of the Tribunal, being judicial, primacy should be given to judicial members.

The constitution of the selection Committee was also dealt with. The provision, which paved way for the five member selection Committee, was found not acceptable. Accordingly, it was duly re-constituted assigning a predominant role to the judiciary. The Supreme Court pointed out the necessary corrections to be brought forth. Some of them, which are apposite for our case, are placed below:-

"(i) Only Judges and Advocates can be considered for appointment as Judicial Members of the Tribunal. Only the High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practised as a Lawyer for ten years can be considered for appointment as a Judicial Member. Persons who have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and Indian Legal Service (Grade-1) cannot be considered for appointment as judicial members as provided in sub-section 2(c) and (d) of Section 10FD. The expertise in Company Law service or Indian Legal service will at best enable them to be considered for appointment as technical members.

(ii) As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as Technical members of the National Company Law Tribunal. Clauses (c) and (d) of sub-section (2) and Clauses (a) and (b) of sub-section (3) of section 10FD which provide for persons with 15 years experience in Group A post or persons holding the post of Joint Secretary or equivalent post in Central or State Government, being qualified for appointment as Members of Tribunal is invalid.

(iii) A 'Technical Member' presupposes an experience in the field to which the Tribunal relates. A member of Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of Company Law cannot be considered as 'experts' qualified to be appointed as Technical Members. Therefore Clauses (a) and (b) of sub-section (3) are not valid.

(iv) The first part of clause (f) of sub-section (3) providing that any person having special knowledge or professional experience of 15 years in science, technology, economics, banking, industry could be considered to be persons with expertise in company law, for being appointed as Technical Members in Company Law Tribunal, is invalid.

(v) and (vi)

(vii) Only Clauses (c), (d), (e), (g), (h), and later part of clause (f) in sub- section (3) of section 10FD and officers of civil services of the rank of the Secretary or Additional Secretary in Indian Company Law Service and Indian Legal Service can be considered for purposes of appointment as Technical Members of the Tribunal.

(viii) Instead of a five-member Selection Committee with Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and Secretary in the Ministry of Law and Justice as members mentioned in section 10FX, the Selection Committee should broadly be on the following lines:

(a) Chief Justice of India or his nominee - Chairperson (with a casting vote);

(b) A senior Judge of the Supreme Court or Chief Justice of High Court - Member;

(c) Secretary in the Ministry of Finance and Company Affairs - Member; and

(d) Secretary in the Ministry of Law and Justice - Member.

(xiii) Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special benches are constituted, the number of Technical Members shall not exceed the Judicial Members."

The Supreme Court, while upholding the creation of National Company Law Tribunal as well as Appellate Tribunal, held Chapters 1B and 1C of the Act as unconstitutional.

The said judgment reveals that the principles laid down therein have got application to all the Tribunals and it was not rendered on the fact situation alone. That is the reason why a specific direction was given that the administrative support for all Tribunals should be from the Ministry of Law and Justice. The principal issue decided qua the basic structure of the Constitution, ensures the separation of powers and independence of the Judiciary from the clutches of the Executive.

6. Madras Bar Association Vs. Union of India, ((2014) 10 SCC 1):-

The Madras Bar Association is the petitioner in this case as well. A challenge was made to the constitutional validity of the National Tax Tribunal. The challenge pertains to the formation of the Tribunal, its constitution and violation of basic structure of the Constitution qua the power of judicial review vested in the

High Court. By the majority judgment, the creation of the Tribunal was held constitutionally valid, but not its composition, being anathema to the basic structure of the Constitution of India. By a separate judgment, while concurring with the result qua the composition of the Tribunal it was held that the very creation itself as unconstitutional.

The Supreme Court in the said judgment once again dealt with in extenso the concept of independence of judiciary, basic structure and the power of judicial review and the earlier decision rendered in *Union of India Vs. Madras Bar Association*, ((2010) 11 SCC 1) was referred to with approval. It also recorded its understanding of the judgment referred supra with reference to the stature of members of Tribunal, which has been created to supplant the functions of the High Court. It has been held that the members of the Tribunals discharging judicial functions could only be selected from among those who possess expertise in law and competent to discharge judicial functions. The role of a technical member is meant to use his expertise in the relevant field and not otherwise.

The following passage deals with the understanding of the Supreme Court of the earlier judgment of *Union of India Vs. Madras Bar Association*, ((2010) 11 SCC 1):

"107. In *Union of India v. Madras Bar Assn.*, ((2010) 11 SCC 1), all the conclusions/propositions narrated above were reiterated and followed, whereupon the fundamental requirements which need to be kept in mind while transferring adjudicatory functions from courts to tribunals were further crystallised. It came to be unequivocally recorded that tribunals vested with judicial power (hitherto before vested in, or exercised by courts) should possess the same independence, security and capacity, as the

courts which the tribunals are mandated to substitute. The members of the tribunals discharging judicial functions could only be drawn from sources possessed of expertise in law and competent to discharge judicial functions. Technical members can be appointed to tribunals where technical expertise is essential for disposal of matters, and not otherwise. Therefore, it was held that where the adjudicatory process transferred to tribunals did not involve any specialised skill, knowledge or expertise, a provision for appointment of technical members (in addition to, or in substitution of judicial members) would constitute a clear case of delusion and encroachment upon the independence of the judiciary and the "rule of law". The stature of the members, who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal. In other words, if the jurisdiction of the High Court was transferred to a tribunal, the stature of the members of the newly constituted tribunal, should be possessed of qualifications akin to the judges of the High Court. Whereas, in case, the jurisdiction and functions sought to be transferred were being exercised/performed by District Judges, the Members appointed to the tribunal should be possessed of equivalent qualifications and commensurate stature of District Judges. The conditions of service of the members should be such that they are in a position to discharge their duties in an independent and impartial manner. The manner of their appointment and removal including their transfer, and tenure of their employment, should have adequate protection so as to be shorn of legislative and executive interference. The functioning of the tribunals, their infrastructure and responsibility of fulfilling their administrative requirements ought to be assigned to the

ministry of Law and Justice. Neither the tribunals nor their members, should be required to seek any facilities from the parent ministries or department concerned. Even though the legislature can reorganize the jurisdiction of judicial tribunals, and can prescribe the qualifications/eligibility of members thereof, the same would be subject to "judicial review" wherein it would be open to a court to hold that the tribunalisation would adversely affect the adjudicatory standards, whereupon it would be open to a court to interfere therewith. Such an exercise would naturally be a part of the checks and balances measures conferred by the Constitution on the judiciary to maintain the rule of "separation of powers" to prevent any encroachment by the legislature or the executive."

The Supreme Court once again reiterated the position that the proceedings before the Tribunal are judicial in nature and accordingly it adopted the Westminster policy, which prescribes the qualification akin to that of a judicial officer who was dealing with such matters prior to the creation of a Tribunal. Thus, it was held that a Tribunal will have to be established with the similar characteristics and standards of the Court, which is sought to be substituted. The following passage would be relevant in this regard:

"113.2. We have given our thoughtful consideration to the submission advanced at the hands of the learned counsel for the petitioners insofar as the first perspective is concerned. We find substance in the submission advanced at the hands of the learned counsel for the petitioners, but not exactly in the format suggested by the learned counsel. A closer examination of the judgments relied upon lead us to the conclusion, that in every new Constitution, which makes separate provisions for the legislature, the executive

and the judiciary, it is taken as acknowledged/conceded that the basic principle of "separation of powers' would apply. And that, the three wings of governance would operate in their assigned domain/province. The power of discharging judicial functions which was exercised by members of the higher judiciary at the time when the Constitution came into force should ordinarily remain with the court, which exercised the said jurisdiction at the time of promulgation of the new Constitution. But the judicial power could be allowed to be exercised by an analogous/similar court/tribunal with a different name. However, by virtue of the constitutional convention while constituting the analogous court/tribunal it will have to be ensured that the appointment and security of tenure of Judges of that court would be the same as of the court sought to be substituted. This was the express conclusion drawn in *Hinds v. R.*, (1977 AC 195 = (1976) 1 All ER 353 (PC)). In *Hinds* case, it was acknowledged that Parliament was not precluded from establishing a court under a new name to exercise the jurisdiction that was being exercised by members of the higher judiciary at the time when the Constitution came into force. But when that was done, it was critical to ensure that the persons appointed to be members of such a court/tribunal should be appointed in the same manner and should be entitled to the same security of tenure as the holder of the judicial office at the time when the Constitution came into force. Even in the treatise *Constitutional Law of Canada* by Peter W.Hogg, it was observed: if a province invested a tribunal with a jurisdiction of a kind, which ought to properly belong to a Superior, District or County Court, then that court/tribunal (created in its place), whatever is its official name, for constitutional purposes has to, while replacing a

Superior, District or County Court, satisfy the requirements and standards of the substituted court. This would mean that the newly constituted court/tribunal will be deemed to be invalidly constituted, till its members are appointed in the same manner, and till its members are entitled to the same conditions of service as were available to the Judges of the court sought to be substituted. In the judgments under reference it has also been concluded that a breach of the above constitutional convention could not be excused by good intention (by which the legislative power had been exercised to enact a given law). We are satisfied, that the aforesaid exposition of law is in consonance with the position expressed by this Court while dealing with the concepts of "separation of powers", the "rule of law" and "judicial review". In this behalf, reference may be made to the judgments in L.Chandra Kumar case, ((1997) 3 SCC 261), as also Union of India v. Madras Bar Association, ((2010) 11 SCC 1). Therein, this Court has recognized that transfer of jurisdiction is permissible but in effecting such transfer, the court to which the power of adjudication is transferred must be endured with salient characteristics, which were possessed by the court from which the adjudicatory power has been transferred. In recording our conclusions on the submission advanced as the first perspective, we may only state that our conclusion is exactly the same as was drawn by us while examining the petitioners' previous submission, namely, that it is not possible for us to accept that under recognised constitutional conventions, judicial power vested in superior courts cannot be transferred to coordinate courts/tribunals. The answer is, that such transfer is permissible. But whenever there is such transfer, all conventions/customs/practices of the court

sought to be replaced have to be incorporated in the court/tribunal created. The newly created court/tribunal would have to be established in consonance with the salient characteristics and standards of the court which which is sought to be substituted."

The following are the conclusions of the Supreme Court on the Westminster model and the basic structure:

"136. (iii) The "basic structure" of the Constitution will stand violated if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure that the newly created court/tribunal conforms with the salient characteristics and standards of the court sought to be substituted.

137. (iv) Constitutional conventions pertaining to the Constitutions styled on the Westminster model will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced are not incorporated in the court/tribunal sought to be created."

Thus, the Supreme Court was reemphasizing the protection of judiciary from the Executive qua the basic structure of the Constitution. Even in this case, the conclusions are general in nature, being applicable to all similar Tribunals. In any case, the principle of law would a fortiori be applicable to all similar cases.

7. Having understood the principles delineated by the Supreme Court with certain amount of regularity in the above stated categorical pronouncements, let us go into the issues raised in this writ petition.

8. The presentation of the parties is telescoped hereunder:

Petitioner:-

Section 85 of the Trade Marks Act, 1999 impinges upon the independence of judiciary. It violates the doctrine of separation of powers between Executive and Judiciary. The basic structure as expounded by the Supreme Court right from Kesavananda Bharati's case ((1973) 4 SCC 225) is being violated. There is no statutory prescription for the selection process of members, Vice-Chairman and Chairman of IPAB. The procedure adopted for selection is contrary to the decision rendered in Union of India Vs. R.Gandhi, President, Madras Bar Association, ((2010) 11 SCC 1). What was sought to be avoided by the Supreme Court in the earlier decisions has come into being and the Tribunal is functioning at times with the majority of technical members. The role of "technical member" impinges upon the independence of the judiciary. A person without practising as a lawyer is sought to be appointed as a technical member and thereafter as Vice-Chairman and Chairman merely based on the office held by him earlier, which is totally illegal. There is a discrepancy between the qualification of a Registrar under the Trade Marks Act and a Controller under Patent Act. In view of the same, a person with lesser number of years of service is likely to be appointed without adequate qualification. The consultative procedure under Section 85(6) of the Trade Marks Act is illusory, as the consultation with the Chief Justice of India for appointment of Chairman is made subject to the approval of the appointment Committee of the Cabinet. The entire administration of the IPAB is controlled by Government and not left to the Chairman. The scheme governing Section 85 would demonstrate imposition of Executive within the judicial sphere. The learned Senior Counsel concluded his argument by sprinkling with the references which we dealt with already.

Respondents:-

Learned Additional Solicitor General sought to distinguish the decisions rendered by the Supreme Court by stating that the power of judicial review over a decision rendered by the IPAB available to the High Court under Article 226/227 has not been taken away and as such the decisions of the Supreme Court do not have any application. Even on the principle of law, the earlier decisions of the Supreme Court do not have any application. Specific qualifications have been prescribed for the Registrars. They hold Law Degrees apart from other requisite qualifications. Therefore, it cannot be said that they cannot be allowed to function either as Technical members, Vice-Chairman and thereafter as Chairman. There is a specific procedure adopted for the selection of members. In the absence of any arbitrariness the same cannot be questioned. There is nothing wrong in the recommendation of the Chief Justice of India being submitted for approval of the appointment Committee of Cabinet in appointing the Chairman. As certain element of expertise is required, assistance of the technical members becomes necessary.

Discussion:-

Before we proceed with the matter on merits, we are alive to the extent of judicial review that can be exercised in a given case. While a Constitutional Court can declare a provision as unconstitutional, it should stop short of giving any direction to legislature to make an enactment in a particular way. Judicial restraint is being hailed as a virtue. However, we are dealing with a situation where directions have already been issued by the Supreme Court of India while dealing with the functioning of tribunals qua judicial independence and basic structure. The directions, in our considered view, are not recommendatory, but binding on the 1st respondent. If they are not followed in letter

and spirit we are duty bound to see their proper implementation. The stand taken in the counter affidavit qua the position of Committee on the understanding of the earlier decisions of the Supreme Court would only exhibit the conduct of the 1st respondent as reticent. The 1st respondent has looked at the decisions of the Supreme Court in a furtive manner. The directions issued to alleviate the difficulties as they stood on that day a fortiori would be applicable to all other cases as well. We are also of the view that a Court of law has to strive to bring forth a statutory harmony. The process might require at times a judicial craftsmanship to alleviate the possible difficulties. Thus, we approach this case with the above premise.

At this juncture, we may point out that during the course of hearing, we made a suggestion to the learned Additional Solicitor General to inform the 1st respondent to have a re-look at the impugned provisions and take remedial measures in the light of the two decisions referred supra. During the subsequent hearing, we were informed that the 1st respondent was not willing to undertake the said exercise. Accordingly, we proceeded to decide the matter on merits.

Constitution of the Committee:- Before dealing with the qualifications for appointment as Chairman, Vice-Chairman and Members of IPAB, we would like to first deal with the constitution of the Committee meant for appointments to the Board. A Search-cum-Selection Committee has been constituted based on the guidelines of the Government as contained in the Department of Personnel and Training. The Search-cum-Selection Committee constituted recently comprises –

- (1) Secretary – Department of Industrial Policy and Promotion – Chairman

(2) Chairman, Intellectual Property Appellate Board – Member

(3) Secretary – Department of Legal Affairs – Member

(4) Director General, Council for Scientific and Industrial Research – Member.

Based on the recommendations of the Search-cum-Selection Committee, as per qualification stipulated in Section 85(2) of Trade Marks Act, 1999 and subject to approval of Appointment Committee of Cabinet, appointments are made to the posts of Vice Chairman and Technical Members.

As the Constitution of the Committee, as referred above, is obviously loaded in favour of Executive, which is impermissible in law, as held by the Supreme Court in the judgments referred above, the then Chairman of IPAB raised an issue about the role assigned in the selection process. However, it was decided to stick on to the very same procedure notwithstanding the decision rendered in Union of India Vs. R.Gandhi, President, Madras Bar Association, ((2011) 10 SCC 1) with a justification that it does not have any bearing on the present case. Resultantly the selection process has been left entirely to the Executive, though the functions of the Tribunal are judicial. This act is a direct affront to the basic structure, which is fundamental to the Constitution of India. The 1st respondent has totally overstepped and acted in disregard to the law laid down by the Supreme Court in Union of India Vs. R.Gandhi, President, Madras Bar Association, ((2011) 10 SCC 1) by turning a blind eye. The directions issued therein are meant to be applicable to all the Tribunals. The 1st respondent cannot take a stand that for one enactment they can maintain basic structure by their action and violate through another. The need to protect the independence of

judiciary has been dealt with and decided in all the decisions referred supra. It has been consistently held that the judiciary should have a substantial role in the selection. It was also held that the process of appointment should substantially be that of members of judiciary. We also note that under the Constitutional Scheme for the State Subordinate Judiciary, it is the High Court, which has got the primacy along with its administrative control. The directions issued in paragraphs (viii), (xii) and (xiii) of its conclusion in *Union of India Vs. R.Gandhi, President, Madras Bar Association*, ((2011) 10 SCC 1) with regard to the composition are binding on the 1st respondent and therefore they ought to have followed the same. The Committee as it exists today is packed with an over-dose of Executive with the lone voice of the Chairman of IPAB is restricted to that of a member.

Apropos recommendation of search cum selection committee required to be approved by the appointment Committee of the Cabinet for the post of Vice-Chairman and other members, we hold that the said methodology is also totally unconstitutional as it impinges upon the independence of the judiciary. Therefore, such an yardstick prescribed is also struck down in the light of the decisions of the Supreme Court referred supra. This exercise is done to alleviate the concern and to see that the independence of the judiciary is not destroyed by an indirect method. We also draw our support from the following passage of the judgment of the Supreme Court in the case of *State of Maharashtra v. Labour Law Practitioners' Association*, ((1998) 2 SCC 688).

We are quite aware of the settled position of law that a Court of law is required to adopt a dignified reluctance before contemplating to enter upon the field earmarked for the Legislature or Executive, as the case may be. Composition of Search-cum-Selection Committee is the function entrusted to the 1st respondent. However, in the light of the principles deduced

from the judgments of the Supreme Court referred supra, we may state with conviction that such a composition should exhibit the leading role of the judiciary. Thus, we feel that the 1st respondent may consider inclusion of judges from the higher judiciary signalling its greater participation, rather than filling the Committee from the Executive.

Section 2(k) of the Trade Marks Act, 1999:-

Section 2(k) of the Trade Marks Act, 1999 defines a "judicial member", which is as follows:-

"Judicial Member" means a Member of the Appellate Board appointed as such under this Act, and includes the Chairman and the Vice-Chairman"

This Section seeks to provide an expanded meaning to the word "Judicial Member". We would like to express our understanding of this provision when we discuss the impugned provisions.

Provisions of Section 85 of the Trade Marks Act, 1999:-

Chapter XI of the Trade Marks Act, 1999 deals with the Appellate Board qua the establishment, composition, qualifications for appointment, term of office, functioning, salaries, etc.,

Section 85 deals with the qualifications for appointment as Chairman, Vice-Chairman or other Members. Now, we are dealing with the constitutionality of this provision. For better appreciation, the said provision is reproduced hereunder:

"(1) A person shall not be qualified for appointment as the Chairman unless he—

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman, unless he—

(a) has, for at least two years, held the office of a Judicial Member or a Technical Member; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years.

(3) A person shall not be qualified for appointment as a Judicial Member, unless he—

(a) has been a member of the Indian Legal Service and has held the post in Grade I of that Service for at least three years; or

(b) has, for at least ten years, held a civil judicial office.

(4) A person shall not be qualified for appointment as a Technical Member, unless he—

(a) has, for at least ten years, exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or both, and has held a post not lower than the post of a Joint Registrar for at least five years; or

(b) has, for at least ten years, been an advocate of a proven specialised experience in trade mark law.

(5) Subject to the provisions of sub-section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President of India.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India."

Technical Member:-

The Supreme Court in *Madras Bar Association Vs. Union of India* ((2014) 10 SCC 1), after taking note of the earlier decisions was pleased to hold that the role of a technical member is rather limited. Though the Legislature has got a power to appoint technical member, it has to decide its necessity first. Considering the nature of the Tribunal and the steps that are being dealt with, we do not find any error in the provisions, which require appointment of a technical member.

The qualification for the post of Senior Joint Registrar of Trade Marks and Geographical Indications is prescribed hereunder:

"(i) Degree in Law from a recognised University;

(ii) Twelve years practice at a Bar or Twelve years experience in a State Judicial Service or in the Legal Department of a State Government or of the Central Government or in the processing of applications for registration filed under the Trade Marks Act or Geographical Indications Act or in teaching law in a recognised University or Institute.

Or

Masters Degree in Law of a recognised University with ten years' experience in teaching law or in conducting

research in law in a recognised University or Research Institution."

In the present case, a technical member takes part on equal terms along with a judicial member in the decision making process. The qualification is also prescribed as 12 years of practice at the bar or 12 years experience in a State Judicial Service with a Degree in Law. With the above said qualification, along with other qualifications, there cannot be any difficulty in appointing such a person as a technical member. However, the problem would possibly arise when a person sought to be appointed as a technical member merely because he works in the Legal Department of a State Government or Central Government or involved in the process of applications for registration filed under the Trade Marks Act or Geographical Indications Act or in teaching law in a recognised University or Institute. Similarly, a Masters Degree in Law of a recognised University with ten years' experience in teaching law that may be a qualification for appointment of a Registrar cannot be termed as a qualification requisite for appointment of a technical member. The Scheme of the Act also provides for the appointment of a technical member as a Vice Chairman and then as Chairman. Therefore such persons cannot be made eligible. We are fortified in our views by the judgment rendered in *R.K.Jain Vs. Union of India*, ((1993) 4 SCC 119), wherein, the Honourable Supreme Court in paragraph 67 has held as follows:

"67. The Tribunals set up under Arts. 323A and 323B of the Constitution or under an Act of legislature are creatures of the Statute and in no case claim the status as Judges of the High Court or parity or as substitutes. However, the personnel appointed to hold those offices under the State are called upon to discharge judicial or quasi-judicial powers. So they must have judicial approach

and also knowledge and expertise in that particular branch of constitutional, administrative and tax laws. The legal input would undeniably be more important and sacrificing the legal input and not giving it sufficient weightage and teeth would definitely impair the efficacy and effectiveness of the judicial adjudication. It is, therefore, necessary that those who adjudicate upon these matters should have legal expertise, judicial experience and modicum of legal training as on many an occasion different and complex questions of law which baffle the minds of even trained judges in the High Court and Supreme Court would arise for discussion and decision.

The said judgment has also been taken note of in Madras Bar Association Vs. Union of India ((2014) 10 SCC 1) as held above. Accordingly, we hold that under Section 85(4)(a), a person holding the post of not less than the post of Joint Registrar can be qualified for appointment as Technical Member only when he was appointed in the said post of Joint Registrar with 12 years of practice in a State Judicial Service and not otherwise. The said reasoning has been arrived at in order to create a statutory harmony between the various provisions contained in Section 85. We believe by re-defining the qualification there may not be any difficulty for such a technical member with the qualification of a practising lawyer to be considered for a post of Vice-Chairman and then Chairman, being on par with the judicial member. As suggestions have already been made by the Supreme Court in S.P.Sampath Kumar Vs. Union of India (AIR 1987 SC 386) and Union of India Vs. R.Gandhi, President, Madras Bar Association, ((2011) 10 SCC 1) about the entitlement of a practicing lawyer with ten years and the parameters prescribed are also satisfied by adopting this methodology, this approach, we believe, would also uphold the confidence of public apart

from increasing the efficiency of the Tribunal. Thus, Section 85(4)(a) of the Trade Marks Act, 1999 will have to be read down to make eligible only those who held a post not lower than the post of Joint Registrar with the qualification of practice at bar or experience in the State Judicial Service as desired in the Notification dated 17.2.2011 issued by the Ministry of Commerce and Industry. Insofar as Section 85(4)(b) is concerned, there is neither challenge nor there can be any grievance. Therefore, we are not willing to go into the same.

Judicial Member:-

The concern expressed by the petitioner is only to Section 85(3)(a), which deals with appointment of judicial member. We find considerable force in the submission made. Both in *S.P.Sampath Kumar Vs. Union of India* (AIR 1987 SC 386) and *Union of India Vs. R.Gandhi, President, Madras Bar Association*, ((2011) 10 SCC 1) this issue has been addressed. In fact, a specific direction has also been issued in *R.Gandhi's* case in this regard. However high one may be in holding an Executive post, the role of a judicial member, being different, such a person cannot be asked to exercise the function particularly as a Judicial Member without any experience. The matter can be looked at a very different angle as well. Even an experienced lawyer with specialized knowledge and expertise is treated only as a technical member under Section 85(4)(b). If that is the case, merely because someone holds the post in a Government Department he cannot be bestowed with the eligibility of being appointed as a Judicial Member sans experience. Also such a person cannot be treated on par with a Judicial Officer. We do not understand as to how an Officer working with the Executive would satisfy the requirement of legal training and experience. In other words, when such an Officer cannot become a judge, he cannot also act in the said capacity. We only reiterate the reasoning assigned by

the Supreme Court in this regard. Therefore, we have no hesitation in holding that Section 85(3)(a) is unconstitutional, particularly, in the light of the directions (i) and (ii) rendered in *Union of India Vs. R.Gandhi, President, Madras Bar Association*, ((2011) 10 SCC 1). Insofar as Section 85(3)(b) is concerned, there is neither any challenge nor do we find any unconstitutionality in it.

Vice-Chairman:-

Sub-section 85(2)(b) provides for the qualification for appointment as a Vice-Chairman qua a member of Indian Legal Service, who held a post of Grade I of that service or any higher post for at least for five years. The reasons assigned by us in the preceding paragraphs would a fortiori apply to this provision as well. Here again, a judicial function is sought to be entrusted to an Officer of a Government. Accordingly, we hold that the said provision is unconstitutional, as such member do not have legal training and experience in discharging a judicial function.

Coming to Section 85(2)(a), which deals with the qualification for appointment as Vice-Chairman for a person with prescription of at least two years in the office of judicial Member or technical member. The definition of "judicial member" includes "Chairman and Vice-Chairman" as a deeming provision by which a Chairman and Vice Chairman as the case may be, will have to be construed as judicial member for the purpose of discharging functions in the said capacity. Perhaps, this definition has been introduced to get over clause (xiii) of the decision of *Union of India Vs. R.Gandhi, President, Madras Bar Association*, ((2011) 10 SCC 1). Thus, in the light of the interpretation given by us on the technical member as well as Section 85(3)(a) having been struck down we do not find any impediment in considering such technical members and judicial members for the post of

Chairman. With the said interpretation, we further come to the conclusion that such technical members, when they become Vice-Chairman, would also become judicial members. This is because the anomaly is being removed by the earlier part of our order.

Chairman:-

Section 85(1) speaks about the qualifications for appointment of a Chairman. No difficulty is expressed by any one qua Sub-section (1)(a) of Section 85. The challenge is only in respect of Clause (1)(b) of section 85. It is the main contention of the petitioner that a Vice- Chairman, without being a Judicial Member and without having sufficient legal training and experience as a lawyer would become a Chairman. By the yardstick adopted by us with respect to the qualification qua a Technical Member, Judicial Member and Vice-Chairman, the grievance of the petitioner would be addressed sufficiently. Therefore, the qualification of a Vice-Chairman to the post of Chairman will have to be read with the qualification of a Vice-Chairman, Judicial Member and Technical Member, as the case may be.

We have yet another issue on hand. Learned counsel appearing for the petitioner submitted that an attempt is being made to sit over the decision of the Chief Justice of India by subjecting it to the approval of the appointment Committee of the Cabinet. Again, at the cost of repetition, we reiterate that the principle, as we understand in the decision rendered in R.Gandhi's case, would govern this issue as well. The word "consultation" has got a different connotation on different fact situations. If we are to interpret the same on the touchstone of separation of powers, judicial independence and basic structure, then the only irresistible conclusion that could be arrived at is that the view of

the Chief justice of India in the appointment of Chairman should be taken note of in the proper perspective.

The Supreme Court in N.Kannadasan Vs. Ajay Khose and others, ((2009) 7 SCC 1) held that meaning of "consultation" may differ in different situations depending on the nature of statute. It was further held that the proposal for appointment of President of State Commission must be initiated by the Chief Justice. Before us, there is no material on the procedure governing the appointment of Chairman. Therefore, we are not in a position to go into its correctness. However, we have no hesitation in holding that the view of the Chief Justice of India on the choice of selection to the post of Chairman should be given due weightage. Thus, we hold that the procedure adopted in seeking "approval" by the appointment committee of Cabinet is illegal. From the counter affidavit it is seen that the word "consultation" has been taken as recommendations of the Chief Justice of India. Therefore, we can infer that the recommendations are being made by the Chief Justice of India. Thus, we hold that the recommendations of the Chief Justice of India should have primacy, subject to the approval of the President. Such a recommendation is required to be considered in its perspective in the normal circumstances. On further submissions:

Learned Additional Solicitor General made a submission that the Tribunal, being a creature of a statute, the decisions rendered therein are not applicable to the present case. A further submission has been made that as the power of judicial review is in tact under Articles 226 and 227 of the Constitution of India, the situation as that was prevalent in the decision rendered in (2014) 10 SCC 1 is not present in this case. The submissions made do not appeal to us. The determination before the IPAB is a judicial one. The IPAB is exercising judicial functions.

Therefore, the principles spelt out from the decisions referred supra are applicable on all fours. Merely because a discretionary power of judicial review is available under Article 226/227 of Constitution of India to test the decision making process, it would not mean that the respondents are at liberty to have the composition of the Tribunal as they like violating the basic structure of the Constitution. The High Court in its exercise of power either under Article 226 or Article 227 is not normally supposed to go into the inter se factual disputes between the parties, as the power of judicial review is required to be exercised only on the decision making process. Viewing from that angle, a decision of IPAB on the factual dispute acquires more significance. Therefore, the contentions raised are hereby rejected.

The IPAB plays a pivotal role in resolving the commercial disputes. A good adjudicatory process is a sine qua non for the development of the Society, more so, in the field of Commerce. With India being a rapidly developing Industrial nation, spreading its commercial activities, it is in national interest to have an adjudicatory forum satisfying the needs of various commercial entities. It also creates a good atmosphere of business development and industrial peace. It further enhances the reputation of our justice delivery system from the point of view of other countries. It brings forth an investor's confidence. Hence, from the context of public interest also, the IPAB has got an eminent role to perform.

The learned Senior Counsel for the petitioner submitted that lawyers with experience and knowledge ought to be included as Judicial Members. We are afraid that we cannot take the role of the Legislature. Incidentally, we may also note that even a lawyer with experience in the specialised field has been treated as only a "Technical Member" under Section 85(4)(b). The other

submission made regarding the discrepancy under the patent Act as well as the Trade Marks Act qua the qualification also cannot be a ground to declare the provision as unconstitutional. Further, a Court of law will have to do the act of synchronising various enactments to avoid a possible conflict.

10. Summation:-

(1) Sub-section 2(b) of Section 85, which provides for a qualification qua a member of Indian Legal Service who held the post of Grade I of service or of higher post at least five years to the post of Vice-Chairman is declared unconstitutional, being an affront to the separation of powers, independence of judiciary and basic structure of the Constitution.

(2) Section 85(3)(a) of the Trade Marks Act, 1999, which provides for the eligibility of a member of the Indian Legal Service and has held the post of Grade I of that Service for at least three years for qualification for appointment to the post of a Judicial Member in IPAB, is declared as unconstitutional, being contrary to the basic structure of the Constitution,

(3) The Constitution of the Committee for the appointment of members, both for the Vice-Chairman, Judicial Member and Technical Member is declared as contrary to the basic structure of the Constitution. In consequence thereof, the 1st respondent will have to re-constitute the Committee providing a predominant role in the selection process to the judiciary.

(4) A person, in the post of Joint Registrar or above with the qualification of 12 years of practice at bar or 12 years experience in a State Judicial Service with a Degree in Law, along with other qualifications alone is to be considered to be appointed as a Technical member.

(5) Only such a Technical Member with the qualification indicated in (4) above alone can be considered for the post of Vice-Chairman.

(6) For the post of Chairman, apart from a sitting or a Retired High Court Judge, only a person with a qualification mentioned in (4) above and as required for a Technical Member under Section 85(4)(b) can be considered as against a Judicial Member.

(7) Recommendation of the Chief Justice of India to the post of Chairman should be given due consideration by the Appointment Committee of the Cabinet and the process does not involve any "approval".

The writ petition stands disposed of accordingly. However, there is no order as to costs.

(S.K.K., CJ.) (M.M.S.,J.)
10.03.2015

W.P.No.1256 of 2011

The Hon'ble The Chief Justice
and
M.M.Sundresh,J

After passing orders on 10.3.2015, a letter dated 12.3.2015 was circulated by the learned counsel for the petitioner stating that the order passed did not specifically deal with the effect of Section 116(2) of the Patents Act, 1970 qua a technical member for the purpose of appointment to the post of Vice Chairman. Based upon the said letter, the case is posted for being mentioned today.

2. Though the learned Senior Counsel for petitioner as well as learned Additional Solicitor General submitted that Section 116(2) of the Patents Act, 1970 has to be interpreted in the light of the decision rendered already by us, it is submitted by the learned Senior Counsel appearing for the petitioner that Section 116(2) has to be set aside, while the learned Additional Solicitor General submitted that it has to be read in consonance with the decision rendered and keeping in mind the legislative intent.
3. During the course of arguments made earlier, counsels appearing for the respective parties largely focussed on the provisions of the Trade Marks Act, 1999 to the extent, the relevant provisions of the Patents Act, 1970 escaped our scrutiny assessment. However, we do have the advantage of the earlier order passed by us qua Section 85 of the Trade Marks Act in our endeavour to understand the issues governing the Section 116(2) of the Patents Act, 1970.
4. Chapter XIX of Patents Act, 1970 stipulates that subject to the provisions of the Act, the Appellate Board established under Section 83 of the Trade Marks Act, 1999 shall be the Appellate Board for the purpose of the Patents Act, 1970. Therefore there is no difficulty in importing the qualification of Chairman, Vice-

Chairman and Judicial Member as discussed in our order dated 10.3.2015 from the Trade Marks Act, 1999 and apply the same to the Patents Act, 1970. Section 116(1) provides for such a borrowal qua an adjudicatory process, inclusive of qualification prescribed for Chairman, Vice-Chairman and Judicial Member.

5. Now, we are concerned with the qualification of a Technical Member under the Patents Act, 1970. The proviso to Section 116(1) leads us to the qualification of a Technical Member of the Appellate Board, which is prescribed under Section 116(2). Section 116(2) deals with two different qualifications, one with respect to a person who has held a post of Controller or has exercised the functions as such for a period of five years and another for atleast ten years functioned as a registered patent Agent and possesses a degree in engineering or technology or a masters degree in Science from any University established under law for the time being in force or equivalent.
6. Thus, there is a marked and fundamental difference between the qualifications prescribed for Technical Member in both the enactments. While under the Trade Marks Act, even a Technical Member is required to have a legal knowledge as a basis, the same is dispensed with and replaced with technical knowledge alone under Section 116(2)(a), though a Controller or any one exercising the functions of such Controller can become Technical Member. Our view gains strength on a reading of the qualification prescribed in Section 116(2)(b). The object and rationale behind the qualification is to throw light on technical matters. Thus, notwithstanding an element of legal knowledge required for a Controller, the thrust is towards expertise in the technical field. Thus, we need to respect the object and rationale behind both the enactments. The legislative intent qua the role of a Technical Member under the Trade Marks Act, 1999 cannot be read in parity with the one stipulated under the Patents Act,

1970. It was a conscious decision to infuse more technical knowledge into the Board through the Technical Member under the Patents Act than the Trade Marks Act. It will be unwise and illogical to engage into an interplay between the qualifications prescribed in both the enactments.

7. On a necessary fall out of the technical qualification under the two enactments, a Technical Member appointed to the Board under the Patents Act, 1970 with his qualification cannot act as a one while deciding a lis arisen under the Trade Marks Act, 1999 and vice versa. This is the legislative intent behind the qualification prescribed. The qualification of a Technical Member has been prescribed under Section 116(2) subsequently in the year 2007, by taking note of the qualification prescribed under the Trade Marks Act, 1999. A Technical Member under the Trade Marks Act, 1999 has got a greater role in the decision making process than the one under the Patents Act, 1970, whose role is primarily designed to supply his technical knowledge.
8. Learned counsel for the petitioner has brought to our knowledge one alarming fact. Technical Members appointed under the Patents Act, 1970 are functioning in the said capacity in the Appellate board for deciding the disputes emanated under the Trade Marks Act, 1999. This is totally abhorrent to the legislative object and intent enshrined in both enactments. A Technical Member appointed with the qualification prescribed under the Patents Act, 1970 can be a part of the Board only while deciding the dispute under the said Act. Similar is the case with the Technical Member appointed under the Trade Marks Act, 1999. It would be totally inappropriate and traversity of justice to interchange their rolls, which the law has not authorised. Such a situation is totally unconstitutional without the authority of law.

9. The other question, which comes for consideration is, the eligibility of a Technical Member under the Patents Act, 1970 to the post of Vice- Chairman and Chairman. As discussed by us in the preceding paragraphs, the role of a Technical Member under the Patents Act, 1970 is restricted to the technical aspects. The qualification prescribed for the Vice-Chairman and Chairman are different as held by us in our Order dated 10.3.2015. These posts deal with judicial functions. Therefore, a Technical Member with the qualification prescribed under section 116(2) shall not be appointed to the post of Vice-Chairman and then as a Chairman.
10. Coming to the post of the Controller, there cannot be any difficulty in considering a Technical Member, who was appointed under Section 116(2)(a) to the post of Vice-Chairman, provided he has a requisite qualification as dealt with by us in our Order dated 10.3.2015.

Summation:-

11. The following additional conclusions are arrived at:-

"(i) the prescription of the qualification of a Technical Member under Section 116(2) of the Patents Act, 1970 is constitutionally valid;

(ii) Such Technical Members can function as such only to decide a dispute under the Patents Act, 1970 alone and not under the Trade Marks Act, 1999.

(iii) a Technical Member, as dealt with by us under the Trade Marks Act, 1999, cannot act as such to decide a dispute under the Patents Act, 1970.

(iv) For the post of Vice-Chairman, the qualification prescribed in paragraph 10(5) of our Order dated

10.3.2015 is required from a Technical Member under the Patents Act, 1970.

(v) A Technical Member having qualification mentioned in 10(5) of our Order dated 10.3.2015 and having other qualifications under Section 116(2)(b) of the Patents Act, 1970 can also be considered to the post of Vice Chairman.

(vi) For the post of Chairman and Judicial Member, the qualification prescribed under the Trade Marks Act, 1999 as dealt with by us would govern a Technical Member appointed under the Patents Act, 1970 also."

(S.K.K., C.J) (M.M.S.,J.)
18.03.2015

To

1. The Secretary,
Department of Industrial Policy & Promotion,
Ministry of Industry & Commerce,
Government of India, Union of India,
Udyog Bhavan,
New Delhi – 110 011
2. The Registrar,
Intellectual Property Appellate Board,
Annex-I, Guna Complex, II Floor,
443, Anna Salai, Teynampet,
Chennai – 600 018.
3. The President,
Intellectual Property Rights Bar Association
(Regn.No.48/2011), III Floor, YMCA Building,
No.223, NSC Bose Road, Chennai – 600 001

The Hon'ble Chief Justice
and
M.M.Sundresh,J

TRUE COPY

ANNEXURE P-6

ITEM NO. 25

COURT NO. 8

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 18142/2015

(Arising out of impugned final judgment and order dated 10/03/2015 in
WP No. 1256/2011 passed by the High Court Of Madras)

UNION OF INDIA

Petitioner(s)

VERSUS

SHAMNAD BASHEER & ORS.

Respondent(s)

(With appln. (s) for permission to file lengthy list of dates)

Date : 27/07/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Mr. Tushar Mehta, ASG.
Ms. Geeta Luthra, Sr.Adv.
Mr. Ajay Sharma, Adv.
Mr. Abhishek Attrey, Adv.
Mr. Ujjwal Jain, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. Arvind Datar, Sr.Adv.
Ms. Liz Mathew, Adv.
Mr. R.Basant, Adv.
Mr. Sai Vinod, Adv.
Ms. Malavika Prasad, Adv.
Mr. M.R. Philip, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Heard the learned counsels for the parties and perused the relevant material.

We do not find any legal and valid ground for interference. The special leave petition is dismissed.

(MADHU BALA)
COURT MASTER

(ASHA SONI)
COURT MASTER

TRUE COPY

ANNEXURE P-7

LAW COMMISSION OF INDIA
(REPORT NO. 232)

RETIREMENT AGE OF CHAIRPERSONS
AND MEMBERS OF TRIBUNALS –
NEED FOR UNIFORMITY

Submitted to the Union Minister of Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 22nd day of August, 2009. The 18th Law Commission was constituted for a period of three years from 1st September, 2006 by Order No. A.45012/1/2006-Admn.III (LA) dated the 16th October, 2006, issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi.

The Law Commission consists of the Chairman, the Member-Secretary, one full-time Member and seven part-time Members.

Chairman
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Any enquiries relating to this Report should be addressed to the Member-Secretary and sent either by post to the Law Commission of India, 2nd Floor, ILI Building, Bhagwan Das Road, New Delhi-110001, India or by email to lci-dla@nic.in

Dr. Justice AR. Lakshmanan
(Former Judge, Supreme Court of India),
Chairman, Law Commission of India

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Tel. 91-11-23384475
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D.O. No. 6(3)/173/2009-LC (LS)

August 22, 2009

Dear Dr Veerappa Moily ji,

Subject: Retirement Age of Chairpersons and Members of
Tribunals – Need for Uniformity

I am forwarding herewith the 232 nd Report of the Law
Commission of India on the above subject.

2. It is noticed that the longevity or life expectancy of our citizens is now nearly comparable to that in the developed countries and, therefore, fresh proposals on the subject generally envisage enhanced age of retirement but in the absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the country, different Ministries of the Government adopt different yardsticks. The practice being followed in fixing the age of retirement of Chairpersons and Members of various Tribunals functioning in the country reveals that there exists no rationale in fixing different retirement age-limits.
3. We have, therefore, recommended that the age of retirement of Chairpersons should be uniformly fixed at 70 years for all the Tribunals. Likewise, the age of retirement of Members of all the Tribunals should be fixed uniformly at 65 years.

With warm regards,

Yours sincerely,
(Dr AR. Lakshmanan)

Dr M. Veerappa Moily,
Union Minister of Law and Justice,
Government of India,
Shastri Bhawan, New Delhi – 110001.

I. INTRODUCTION

There is a general trend to provide for enhanced age of retirement of Chairpersons and Members of various Tribunals constituted by the Government in the country and also of the employees in various spheres e.g. Universities and government undertakings etc. vis-à-vis the normal age of retirement of judges and government servants. It is noticed that the longevity or life expectancy of our citizens¹ is now nearly comparable to that in the developed countries and, therefore, fresh proposals on the subject generally envisage enhanced age of retirement but in the absence of clear-cut guidelines for prescribing retirement age of Chairpersons or Members of various Tribunals in the country, different Ministries of the Government adopt different yardsticks.

It needs no mention that enhanced age of retirement is prescribed in the higher echelons of the administrative and judicial services because the professional experience gained by those working in them needs to be fully tapped for the good of the society. It may be pointed out that the Government incurs a lot of expenditure on orientation-training of its employees, especially, at the senior level, and, therefore, their enriched professional experience in running the affairs of the government could be utilized for the good of the common man. In the present liberalized economic era, the experience gained by government employees after their retirement is being fruitfully tapped by many multinational companies. These private enterprises pay hefty salaries to the retired government employees because their valuable

¹According to the "2006 World Population Data Sheet", life expectancy of Indians reached to 63 years which was about 50 years three decades ago. There are now available better health care facilities and health standards of our citizens have improved

professional experience gained during their service in the government is put to profitable use. In such a scenario, the government should utilize the services of their retired employees to the fullest extent possible.

The practice being followed in fixing the age of retirement of Chairpersons and Members of various Tribunals functioning in the country reveals that there exists no rationale in fixing different retirement age-limits. A chart indicating the names of the Tribunals, the Acts under which they have been established, eligibility criteria adopted for appointment of their Chairpersons and Members, their tenures and the different ages of their retirement, has been prepared which is at Appendix. It may be seen that there is neither any uniformity in the age of retirement, nor any cogent reasons have been given in the respective Acts justifying the criteria adopted for the purpose.

The question of increasing the retirement age of Judges of the higher judiciary i.e. High Court and Supreme Court Judges from 62 to 65 and from 65 to 70 years, respectively, has also been a matter of serious discussion/consideration at different levels of the Government. Retirement age in many government departments/disciplines, particularly, educational and scientific/research institutions, has already been increased.

A High Court Judge is normally considered for appointment as a Member of the Central Administrative Tribunal (CAT) on his retirement at the age of 62. After the amendment of the Administrative Tribunals Act 1985 by Act 1 of 2007, a retired High Court Judge if appointed as Chairman of CAT he can hold office as such till the age of 68 years, but if appointed as its Judicial Member then he holds office until attaining the age of 65 years.

There is an imperative need to fix the age of retirement of Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively.

It may be recalled that the retirement age of Central and State Government employees was first increased from 55 to 58 years and then from 58 to 60 years. For Judges of High Courts the retirement age was increased only once from 60 to 62 and for the Supreme Court Judges the retirement age since inception has been 65 years. Judges of High Courts and the Supreme Court retiring at the age of 62 and 65, respectively, need to have a substantial tenure in various Tribunals to which they are appointed after their retirement as in that event only they would be able to substantially improve upon the system. If an incumbent is to retire within two-three years of his joining a Tribunal, then by the time he might have full acquaintance of its working he would be retired, surely then he shall not be able to contribute much in advancing and improving upon the working of the Tribunal.

For selection and appointment in Tribunals, a set procedure is prescribed where the time spent in inviting applications up to the selection and then clearance from the Government at various levels, is six months to a year. The past experience clearly shows that whenever eligibility for appointment as Chairpersons and Members of Tribunals includes former or sitting Judges of High Courts or the Supreme Court or Chief Justices of such Courts, there may be not more than 5-7 instances where the sitting Judges may have, during their tenure of service, opted to become Chairpersons or Members of Tribunals. They seek consideration for such appointments either on the eve of their retirement or after their retirement, and if the period of selection and appointment would take time, they might not serve for more than 2 – 2½ years, where the retirement age is 65 or 68 years.

A perusal of Appendix would manifest that by and large eligibility for appointment as Chairperson is of those who are or have been Judges of the Supreme Court, Chief Justices of High Courts or Judges of High Courts, but the retirement age in different Tribunals is different viz. 65 years, 67 years, 68 years, and in some it is 70 years. There is no uniform prescription of age of retirement. Judges and Chief Justices of High Courts have the same retirement age i.e. 62 years. It is too well known that functions and duties carried out by the Judges at any level are the same. There has already been a lot of debate as to whether the retirement age of the Supreme Court and High Court Judges should be the same for the precise reason that the functions and duties carried out by them are of the same nature and, therefore, if the age of retirement of a Supreme Court Judge is 65 years, the same should be so with regard to High Court Judges. If the Judges or Chief Justices of the High Courts, who retire at the age of 62 years, wish to take up assignment in Tribunals, which is, as mentioned above, taken by them after their retirement, their work-period in Tribunals may be 2-3 years. Obviously, when Judges of the Supreme Court are appointed in any Tribunal, their retirement age must at the least be 70 years, their date of retirement as a Supreme Court Judge being 65 years. A view has been expressed that there should also be no difference in the retirement ages for Chairpersons and Members, who come from the judicial stream i.e. High Courts or the Supreme Court, and it should uniformly be 70 years. A distinction may be made insofar as Members are concerned from another perspective. Members in Tribunals have two streams – judicial and administrative. The retirement age from the government, of those who join the administrative stream is 60 years and the term of 5 years as a Member of Tribunal may be sufficient in their case. However, no distinction can be made in the retirement age of the Members – whether coming from judicial stream or administrative stream.

Irrespective of the stream, the retirement age needs to be uniformly fixed. It may also be mentioned that whereas Judges are so many, Chief Justices of High Courts are few. On number of occasions, appointments of Chairpersons had to wait for want of availability of the Chief Justices or Judges of the Supreme Court, but insofar as Judges of High Courts are concerned, there has been no problem of that kind. It would thus be expedient and in the fitness of things to have a uniform retirement age of Chairpersons of Tribunals as 70 years and uniform age of retirement of Members as 65 years.

II. RECOMMENDATION

It is felt that the age of retirement of Chairpersons should be uniformly fixed at 70 years for all the Tribunals. Likewise, the age of retirement of Members of all the Tribunals should be fixed uniformly at 65 years.

We recommend accordingly.

(Dr Justice AR. Lakshmanan)
Chairman

(Prof. Dr Tahir Mahmood)
Member

(Dr Brahm A. Agrawal)
Member-Secretary

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ANNEXURE P-8

ITEM NO.49

COURT NO.5

SECTION X

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

WRIT PETITION (CIVIL) NO(s). 120 OF 2012

RAJIV GARG

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.
(With appln(s) for directions)

Respondent(s)

Date: 20/04/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI
MUKHOPADHAYA

Amicus Curiae Mr.P.P.Rao, Sr.Adv.

For Petitioner(s) Mr.Altaf Ahmed, Sr.Adv.
Mr. Annam D.N. Rao,Adv.
Mr.Annam Venkatesh, Adv.
Ms.Keerthi Kiran, Adv.

For Respondent(s) Mr.G.E.Vahanvati, AG
Ms.Indira Jaisingh, ASG
Mr.Abhinav Mukerji, Adv.
Ms.Sonam Anand, Adv.
Mr.B.V.Balram Das, A.O.R.(Not Present)

UPON hearing counsel the Court made the following

O R D E R

Learned Attorney General requests for an adjournment by saying that the question raised in the petition needs to be deliberated at the highest level of the Government.

The request of the learned Attorney General is accepted and the case is adjourned to 27.08.2012.

The counter affidavit may be filed on behalf of the respondents within 12 weeks. A copy of the counter affidavit be made available to the assisting counsel of Shri P.P.Rao, learned amicus curiae apart from counsel for the petitioner.

(Satish K. Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

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ANNEXURE P-9

Bill No. VII of 2014

THE TRIBUNALS, APPELLATE TRIBUNALS AND OTHER
AUTHORITIES (CONDITIONS OF SERVICE) BILL, 2014

A

BILL

to provide for uniform conditions of service of the Chairman and Members, by whatever name called, of certain Tribunals, Appellate Tribunals and other authorities and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

Short title of commencement

- (1) This Act may be called the Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Act, 2014.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Definitions

2. In this Act, unless the context otherwise requires,—
 - (a) “Appellate Tribunal” means appellate tribunal mentioned in column (2) of the First Schedule established or constituted under the provisions of any of the corresponding specified Acts mentioned in column (3) of the said Schedule;
 - (b) “Authority” means an authority mentioned in column (2) of the First Schedule established or constituted under the provisions of

any of the corresponding specified Acts mentioned in column (3) of the said Schedule;

- (c) “Board” means a board mentioned in column (2) of the First Schedule established or constituted under the provisions of any of the corresponding specified Acts mentioned in column (3) of the said Schedule;
- (d) “Chairman” means a Chairman of a Tribunal, Appellate Tribunal, Board, Commission or Authority, by whatever name called, appointed under the provisions of the specified Acts;
- (e) “Commission” means a Commission mentioned in Column (2) of the First Schedule, established or constituted under the provisions of any of the Corresponding specified Acts mentioned in column (3) of the said Schedule;
- (f) “Member” means a Member, other than ex officio Member, of a Tribunal, Appellate Tribunal, Board, Commission or Authority, appointed under the provisions of the specified Acts;
- (g) “Schedule” means any of the Schedules annexed to this Act;
- (h) “specified Acts” means Acts specified in column (3) of the First Schedule;
- (i) “Tribunal” means a tribunal mentioned in column (2) of the First Schedule established or constituted under the provisions of any of the corresponding specified Acts mentioned in column (3) of the said Schedule.

CHAPTER II CONDITIONS OF SERVICE

Application of Act

3. Notwithstanding anything to the contrary contained in the provisions of the specified Acts, the provisions of this Act shall

apply to the Chairman and Members appointed under the specified Acts:

Provided that the provisions of this Act shall not apply to the Chairman and other Members, as the case may be, holding such office immediately before the commencement of the said Act.

Term of office

4. The Chairman and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for another term:

Provided that no Chairman or other Member shall hold office as such after he has attained,—

- (a) in the case of Chairman or Member who has been a Judge of the Supreme Court, the age of seventy years;
- (b) in the case of the Chairman or Member who has been a Chief Justice or Judge of a High Court, the age of sixty-seven years;
- (c) in the case of any other Chairman or Member, the age of sixty-five years.

Chairman and Members deemed to retire from service

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

Suspension of pension

6. If a person who, immediately before the date of assuming office as the Chairman or other Member, as the case may be, was in

receipt of, or being eligible so to do, has opted to draw, a pension, other than a disability or wound pension, in respect of any previous service under the Government, his salary in respect of service as the Chairman or other Member, as the case may be, shall be reduced—

- (a) by the amount of that pension; and
- (b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

Prohibition of acting as arbitrator

- 7. No person while holding office as the Chairman or Member shall act as an arbitrator in any matter:

Provided that the Central Government may, on a request made in this behalf and after examining the request on a case to case basis, permit a Chairman or Member to complete his uncompleted arbitration work at the time of his appointment.

Prohibition of practice.

- 8. On ceasing to hold office, the Chairman or a Member, as the case may be, shall not appear, act or plead before the Tribunal, Appellate Tribunal, Board, Commission or Authority of which he has been such Chairman or Member.

Allowances of Chairman and Members

- 9. Notwithstanding anything contained in section 3, the Chairman and Members shall be entitled to the allowances specified in the Second Schedule and travelling allowance specified in the Third Schedule.

Medical facilities

10. The Chairman or Member who is not a sitting or retired Judge or a retired Central Government servant shall also be eligible to avail the benefit of Central Government Health Scheme for the duration of his tenure as Chairman or Member of such bodies.

Oath of office and secrecy

11. The Chairman or Member shall, before entering upon his office, make and subscribe to an oath of office and secrecy in the form specified in the Fourth Schedule.

Declaration of financial and other interests

12. The Chairman and Member shall, before entering upon his office, declare his assets and liabilities and financial and other interests.

Power to amend schedules

13. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may by notification published in the Official Gazette, amend the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly:

Provided that only such Tribunal, Appellate Tribunal, Board, Commission or Authority, shall be included in the First Schedule which has a sitting or retired Supreme Court or High Court Judge as Chairman or Member.

- (2) A copy of every notification issued under sub-section (1) shall be laid before each House of Parliament as soon as may be after it is issued.

CHAPTER III
LEAVE

Kinds of leave admissible

14. (1) Subject to the provisions of this Act, leave granted to a Chairman or Member may be at his option either,—

- (a) leave on full allowances (including commuted leave on half allowances on medical certificate); or
- (b) leave on half allowances; or
- (c) leave partly on full allowances and partly on half allowances.

(2) For the purposes of this Chapter, any period of leave on full allowance shall be reckoned as double that period of leave on half allowance.

15. (1) A leave account shall be kept showing therein the amount of leave due to the Chairman or Member in terms of leave on half allowance.

(2) In the leave account,—

- (a) there shall be credited to such Chairman and Member—
 - (i) one-fourth of the time spent by him on actual service;
 - (ii) where by reason of his having been detained for the performance of duties not connected with the Tribunal, Appellate Tribunal, Board, Commission or Authority, he could not enjoy any vacation which he would otherwise have been entitled to enjoy had he not been so detained, a period equal to double the period by which the vacation enjoyed

by him in any year falls short of one month as compensation for the vacation not enjoyed;

- (b) there shall be debited to him all leave with allowances taken by him.

Explanation.—For the purposes of this section the expression “actual service” shall include—

- (a) time spent by a Chairman or Member on duty;
- (b) vacations, excluding any time during which the Chairman or Member is absent on leave.

Leave encashment

- 16. A Chairman or Member shall be entitled in his entire service including the period of service rendered in a pensionable post under the Union or State or on re-employment, if any, to claim the cash equivalent of leave salary on full allowances on his retirement in respect of the period of earned leave at his credit to the extent of maximum period of three hundred days.

Leave not due

- 17. Leave on half allowances, not exceeding more than six months, may be granted in excess of the amount at his credit during the whole period of his service:

Provided that no such leave shall be granted if he is not expected to return to duty at the end of such leave and earned leave so granted.

Extra-ordinary leave

- 18. Extraordinary leave may be granted for a period not exceeding six months, during the whole period of his service in excess of any leave permissible under the provisions of this Chapter, but

no salary or allowances shall be payable during, or in respect of, such leave.

Casual leave

19. Casual leave not exceeding fourteen days may be granted in a calendar year.

Sanctioning authority for leave and foreign travel

20. (1) Leave sanctioning authority for Members shall be Chairman and for Chairman, it shall be the Minister of the concerned Ministry, who will also be the sanctioning authority for Members, in case of absence of Chairman.
- (2) Sanctioning authority for foreign travel shall be the Minister of the concerned Ministry.

FIRST SCHEDULE

[See section 2 (a), (b), (c), (e), (g) and (i)]

S. No.	Tribunal/Appellate Tribunal /Authority/Board/Commission	Specified Acts
(1)	(2)	(3)
1	Company Law Board	The Companies Act, 1956 (1 of 1956)
2	Cyber Appellate Tribunal	The Information Technology Act, 2000 (21 of 2000)
3	Central Administrative Tribunal	The Administrative Tribunals Act, 1985 (13 of 1985)
4	State Administrative Tribunal	The Administrative Tribunals Act, 1985 (13 of 1985)
5	Joint Administrative Tribunal	The Administrative Tribunals Act, 1985 (13 of 1985)
6	Income-Tax Appellate Tribunal	The Income-tax Act, 1961 (43 of 1961)
7	Authority for Advance Rulings	The Income-tax Act, 1961(43 of 1961)
8	Telecom Disputes Settlement and Appellate Authority	The Telecom Regulatory Authority of India Act, 1997 (24 of 1997)
9	Coastal Aquaculture Authority	The Coastal Aquaculture Authority Act, 2005 (24 of 2005)
10	Appellate Tribunal for Electricity	The Electricity Act, 2003 (36 of 2003)
11	Appellate Tribunal for Foreign Exchange	The Foreign Exchange Management Act, 1999 (42 of 1999)
12	Film Certification Appellate Tribunal	The Cinematograph Act, 1952 (37 of 1952)
13	National Green Tribunal	The National Green Tribunal

		Act, 2010 (19 of 2010)
14	Securities Appellate Tribunal	The Securities and Exchange Board of India Act, 1992 (15 of 1992)
15	Customs, Excise and Service Tax Appellate Tribunal	The Customs Act, 1962 (52 of 1962)
16	Authority for Advance Rulings (Central Excise, Customs and Service Tax)	The Customs Act, 1962 (52 of 1962)
17	Armed Forces Tribunal	The Armed Forces Tribunal Act, 2007 (55 of 2007)
18	Competition Appellate Tribunal	The Competition Act, 2002 (12 of 2003)
19	National Consumer Disputes Redressal Commission	The Consumer Protection Act, 1986 (68 of 1986)
20	Debts Recovery Appellate Tribunal	The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993)
21	Intellectual Property Appellate Board	The Trade Marks Act, 1999 (47 of 1999)
22	Railway Claims Tribunal	The Railway Claims Tribunal Act, 1987 (54 of 1987)
23	National Industrial Tribunal	The Industrial Disputes Act, 1947 (14 of 1947)
24	Press Council of India	The Press Council Act, 1978 (37 of 1978)
26	National Highways Tribunal	The Control of National Highways (Land and Traffic) Act, 2002 (13 of 2003)
26	Airports Economic Regulatory Authority Appellate Tribunal	The Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008)

SECOND SCHEDULE

[See section 9]

**ALLOWANCES OF CHAIRMAN AND MEMBERS OF
TRIBUNALS, ETC.**

Allowances	Chairman	Members
(1)	(2)	(3)
Free furnishing at official residence	Consolidated sum of Rs. 3,00,000	Consolidated sum of Rs. 2,00,000
Sumptuary allowance	Rs. 5,000 per month	Rs. 2,000 per month
Water and electricity	3,600 kilo litres per annum and 10,000 units per annum	3,600 kilo litres per annum and 10,000 units per annum
Conveyance facility	Staff car with up to 200 litres of fuel per month	Staff car with up to 200 litres of fuel per month
Leave Travel Concession	Twice a year	Twice a year
Telephone facility	Rs. 2,800 per month (exclusive of taxes) with permission to reimburse up to thirty per cent. additional	Rs. 2,800 per month (exclusive of taxes) with permission to reimburse up to thirty per cent. additional.

THIRD SCHEDULE

[See section 9]

TRAVELLING ALLOWANCE OF CHAIRMAN AND MEMBERS OF TRIBUNALS, ETC.

S.No.	Type	Admissibility
1	Air	Business/Club class
2	Rail	A reserved two-berth compartment of the highest class, and take his wife along with him without payment of the fare if such a compartment is provided; or actual fare paid, whichever is less.
3	Daily Allowance	Not exceeding Rs. 5,000 per day for hotel/guest house accommodation and food bill not exceeding Rs. 500 per day or actual expenses whichever is less. Note.— The daily allowance shall be increased by 25 per cent. as and when the Dearness Allowance reaches fifty per cent. of the basic salary.
4	Ship	One reserved first class cabin, if available or the fair actually paid for himself.
5	Mileage allowance	Actual air conditioned taxi fare.

FOURTH SCHEDULE

[See section 11]

FORM OF OATH OF OFFICE AND SECRECY

“I, _____, having been appointed as the Chairman/ Member (strike out which is not applicable) do solemnly affirm and do swear in the name of God that I will faithfully and conscientiously discharge my duties as the Chairman/Member (strike out which is not applicable), of the Tribunal, Appellate Tribunal, Board, Commission or Authority (strike out which is not applicable) namely _____, to the best of my ability, knowledge and judgment without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws of the land.

Dated:

(Signatures and name of the Chairman/Member)
Tribunal, Appellate Tribunal, Board, Commission or
Authority (strike out which is not applicable), namely
_____”.

STATEMENT OF OBJECTS AND REASONS

The question of having uniform service conditions of the Chairpersons and Members of the various Tribunals at the national level has been engaging attention of the Government for quite some time. Recently, the Supreme Court, in the case of Rajiv Garg vs. Union of India (Civil Writ Petition No. 120/2012), has also passed an order that decision in this regard may be taken at the highest level.

2. The Government considered all issues relating to uniform service conditions particularly with regard to retirement age, tenure of appointment, re-appointment and provisions concerning residential and office accommodation for Tribunals, Appellate Tribunals and other Authorities performing quasi-judicial functions manned by the sitting or retired Judges of the Supreme Court or High Courts and also the ones manned by persons who are not the sitting or retired Judges of the Supreme Court and High Courts keeping in view all related aspects including the issues that have arisen in different cases before the Supreme Court and functions entrusted to such bodies.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 11th February, 2014.

KAPIL SIBAL

MEMORANDUM

Clause 9 of the Bill provides that the Chairman and Members shall be entitled to the allowances specified in the Second Schedule and travelling allowance specified in the Third Schedule. The total recurring annual expenditure towards the allowances of the Chairman and Members is estimated at rupees 3 crore. The administrative Ministries or Departments bear the expenditure in respect of the Tribunals, etc., under their control.

2. The Bill does not involve any other recurring or non-recurring expenditure.

RAJYA SABHA

A

BILL

to provide for uniform conditions of service of the Chairman and Members, by whatever name called, of certain Tribunals, Appellate Tribunals and other authorities and for matters connected therewith or incidental thereto.

(Shri Kapil Sibal, Minister of Law and Justice)

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ANNEXURE P-10

REPORT NO 74

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW
AND JUSTICE**

SEVENTY-FOURTH REPORT

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

(Presented to the Rajya Sabha on 26th February, 2015)
(Laid on the Table of Lok Sabha on 26th February, 2015)

Rajya Sabha Secretariat, New Delhi
February, 2015/Phalguna 1936 (Saka)

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Seventy-fourth Report of the Committee on The Tribunals, Appellate Tribunals & Other Authorities (Conditions of Service) Bill, 2014 (Annexure I).

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 19th February, 2014 to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 24th February, 2014, for examination and report to Parliament within two months i.e. by the 24th April, 2014. The Committee, however, in view of busy schedule of Members during the General Elections to the Sixteenth Lok Sabha, could not complete consideration of the Bill during its term. The Committee was reconstituted w.e.f. the 1st September, 2014. After its reconstitution, extension of time for presentation of its report was granted till the 27th February, 2015.
3. In order to solicit the views of stakeholders, the Committee issued a Press Communiqué on 8th March and 13th September, 2014. In response thereto the Committee received several memoranda containing suggestions from various organizations/ individuals / experts. Comments of the Department of Justice on the views/suggestions so received, were obtained for consideration of the Committee. The Committee heard the views of Secretary, Department of Justice on 13th March, 2014 and Additional Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions,

Additional Secretary, Ministry of Environment and Forests, representatives of the Department of Justice, Ministry of Law and Justice on 24th March 2014.

4. The Committee after its reconstitution again heard the views of Secretary, Department of Justice, Ministry of Law and Justice on the Bill in its sittings held on 26th September, 2014. The Committee heard. Shri K. Ashokan, Presiding Officer, Debt Recovery Tribunal-II, New Delhi; Shri Ashish Kalia, Presiding Officer, Debt Recovery Tribunal-III, New Delhi, Shri Sudhir Kumar, Former Member, Central Administrative Tribunal and Shri M.R. Madhavan, President PRS Legislative Research, New Delhi on 16th December, 2014 as non-official witnesses.
5. In its meeting held on 30th December, 2014, the Committee heard Customs, Excise & Service Tax Appellate Tribunal (CESTAT), National Consumer Disputes Redressal Commission (NCDRC), Income Tax Appellate Tribunal (ITAT), National Green Tribunal (NGT) and representatives of the respective nodal Ministries of Environment, Forests and Climate Change, Consumer Affairs (Department of Consumer Affairs), Food & Public Distribution and Law and Justice (Department of Legal Affairs). On 22nd January, 2015 the Committee heard Armed Forces Tribunal, Appellate Tribunal for Electricity and representatives of Ministry of Defence, Ministry of Power, Ministry of Corporate Affairs and Ministry of Labour and Employment
6. In its meeting held on 17th February, 2015, the Committee heard the Secretary, Department of Legal Affairs, Chairman, Law Commission of India and Shri Arvind P. Datar, Senior Advocate, Supreme Court of India.
7. The Committee during its Study-visit from the 31st October to the 6th November, 2014 interacted with Regional Benches of

Central Administrative Tribunal, Railway Claims Tribunal, Assam State Administrative Tribunal, Company Law Board, Customs, Excise and Service Tax Appellate Tribunal and Income Tax Appellate Tribunal at Guwahati and Kolkata. During its Study-visit to Chennai from 27th January to 4th February, 2015 it interacted with Intellectual Property Appellate Board, Company Law Board, Coastal Aquaculture Authority and Debt Recovery Appellate Tribunal and Associations of Cost Accountants.

8. While considering the Bill, the Committee took note of the following documents/information placed before it:-
 - (i) Background note on the Bill submitted by the Department of Justice, Ministry of Law and Justice;
 - (ii) Relevant Acts/Rules under which Tribunals/Commissions were set-up;
 - (iii) Two Hundred Thirty Second Report (2009) on Retirement Age of Chairpersons and Members of Tribunals - Need for Uniformity) of Law Commission of India;
 - (iv) Views/suggestions contained in the memoranda received from various organizations / institutions / individuals / experts on the provisions of the Bill and the comments of the Department of Justice thereon;
 - (v) Views expressed during the oral evidence tendered before the Committee by various Tribunals other official and non-official witnesses; and
 - (vi) Replies of Tribunals/Commissions to the Common Questionnaire prepared by the Secretariat on the issues dealt with by the Bill.
 - (vii) Tribunals, Courts and Enforcement Act, 2007;

- (viii) Leggatt Committee Report (2001); and
- (ix) Supreme Court of India Judgments/orders in the matter of:-
- (i) L. Chandra Kumar vs. Union Of India and Others (AIR 1997 S.C. 1125 to 1155);
 - (ii) Union Of India vs R. Gandhi, President, Madras Bar Association (Civil Appeal No. 3067 of 2004);
 - (iii) Rajiv Garg Vs Union of India (Civil Writ Petition No.120/2012); and
 - (iv) Madras Bar Association vs. Union of India (C) No. 150 of 2006;
9. The Committee considered and adopted its Report in its meeting held on the 25th February, 2015.
10. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
25th February, 2015

(Dr. E.M. SUDARSANA NATCHIAPPAN)
Chairman, Department-related Parliamentary
Standing Committee on Personnel, Public
Grievances, Law and Justice

REPORT

The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 intends to provide uniform service conditions with regard to retirement age, tenure of appointment, reappointment, housing allowance, travelling allowance, sumptuary allowance, Leave Travel Concession, leave, conveyance and telephone facility, etc. for Chairpersons and Members of twenty-six Tribunals/Commissions/statutory bodies enumerated in First Schedule of the Bill. Second and Third Schedules of the Bill contain details of perquisites to be provided to the Chairpersons and Members of those entities.

2. The Bill is intended to be an overarching legislation introduced pursuant to the order passed by Hon'ble Supreme Court on 4th December, 2012 on the Civil Writ Petition No.-120/2012 in the matter of Rajiv Garg Vs. Union of India which is still pending in the apex court.
3. The attempt of Government to bring in uniformity in service conditions of Chairpersons and Members of Tribunals / Commissions / statutory bodies is, however, limited to the aforesaid areas; while eligibility conditions and manner of appointment of Chairperson, Vice-Chairperson (if any) and Members (Judicial/Technical), pay and remuneration, grounds and manner of their removal, provisions of supporting staff and infrastructure facilities are precluded from the scope of the Bill . In these respects, there will be no uniformity and Tribunals would continue to be regulated by the respective statute under which they were established.
4. The Committee notes that the Bill is at best only a half baked attempt to bring uniformity in various aspects of the Tribunals constituted under different Acts of the Parliament. The

Committee feels that the Government should have used the opportunity provided by the order of Hon'ble Supreme Court in the Rajiv Garg's case to take a holistic look on factors that hamper efficient and independent functioning of Tribunals in the country and come out with a comprehensive Bill that while ensuring uniformity in various aspects amongst Tribunals falling in the same category should have paved the way for independent and efficient functioning of these Tribunals by providing them with independence, security and capacity associated with Courts. The Bill, Committee feels, sadly lacks in providing a blue print for an independent and efficient functioning of the Tribunals in the country.

Bodies/Tribunals in the First Schedule

5. The statutory bodies included in the First Schedule of the Bill have different purposes, nature, composition, status of Chairperson and Members, etc. Bodies included in the First Schedule of the Bill, thus, differ in various respects and there seems to be no intelligible differentia based on which Tribunals have been included in the First Schedule as would be evident from the following paras:

The Committee was informed that the commonality which run through all those bodies is that all of them are headed either by a retired Judge of the Supreme Court or the High Court. About one-third of Tribunals enumerated in First Schedule to the Bill are headed by a retired judge of Supreme Court or Chief Justice of High Court. Those Tribunals are – National Green Tribunal, National Consumer Disputes Redressal Commission, Competition Appellate Tribunal, Appellate Tribunal for Electricity, Press Council of India, Telecom Disputes Settlement and Appellate Authority, Securities Appellate Tribunal, Authority for Advance Ruling, Armed Forces Tribunal, Airports

Economic Regulatory Authority Appellate Tribunal. The Committee, however, finds that in some Tribunals listed in the First Schedule of the Bill, even persons other than a retired Judge of the Supreme Court or a High Court, are eligible to become Chairperson. The Committee was informed that the Presiding Officer of Debt Recovery Tribunals is of the rank of a District Judge but a Presiding Officer of DRT having three years experience could become the Presiding Officer of DRAT. Similarly, National Industrial Tribunal is headed by a District Judge having three years experience.

The order of Supreme Court in the Rajiv Garg case relates to bringing in uniformity amongst Tribunals/Commissions operating at the national level. The Schedule on the other hand includes certain bodies such as Coastal Aquaculture Authority and Press Council of India which are not per se Tribunal and do not decide lis between the parties even though some of the functions to be performed by them are quasi-judicial functions. On the other hand, even certain of the appellate bodies have been excluded from the Schedule of the Bill. Some of these bodies are:

- a. Appellate Authority for Industrial and Financial Reconstruction;
- b. Appellate Tribunal for Forfeited Property;
- c. Appellate Tribunal under Prevention of Money Laundering;
- d. Central Information Commission;
- e. Employees' Provident Fund Appellate Tribunal; and
- f. Inter-State Water Dispute Tribunals

While some of the Tribunals are single Bench bodies (Debt Recovery Appellate Tribunal, National Industrial Tribunal, National Highways Tribunal), other Tribunals are multi-Bench bodies (Income Tax Appellate Tribunal, Customs Excise and Service Tax Appellate Tribunal, Telecom Disputes Settlement and Appellate Authority).

Some Tribunals are manned by a sole member (judicial) while others are manned by judicial and technical members.

The National Industrial Tribunal is within the system of regular court but has been included under the First Schedule of the Bill.

While some of the Tribunals are first appellate bodies some others are second appellate bodies, rest are authorities of first instance or regulatory bodies. The Coastal Aquaculture Authority has only regulatory power.

Except Income Tax Appellate Tribunal and National Industrial Tribunal all other statutory bodies under the First Schedule have been set up after 1976, while most of them having been constituted by Acts of Parliament under enabling Articles of 323A and 323B of the Constitution which were inserted by 42nd Constitutional Amendment.

The status of Armed Forces Tribunal is different from other Tribunals in view of the Articles 227(4) and 136(2) of the Constitution.

Appeal against the orders of Armed Forces Tribunal, National Green Tribunal, National Consumer Disputes Redressal Commission and Telecom Disputes Settlement and Appellate Authority lies to the Supreme Court, while appeals against the orders of Central Administrative Tribunal/State Administrative

Tribunal lie to Division Bench of High Court after L. Chandra Kumar case (1997).

6. Tribunals are not part of regular judicial system but are alternate dispute resolution mechanisms created mainly for expeditious disposal of cases under the concerned Act under which those have been set up. Even though some of them are complementary and supplemental to the High Court, they are within the supervisory/writ jurisdiction of the concerned High Court under Articles 226 and 227 of the Constitution.
7. Press Council of India (PCI) in their written submission have maintained that in view of its composition, function and mandate it should not be placed at par with other autonomous regulatory bodies in the Bill. They, therefore, have desired that service conditions of Chairman and Members of PCI should be out of the Bill to honour legislative intent associated with creation of PCI.
8. The Presiding Officers of Debt Recovery Tribunals, New Delhi who appeared as non-official witnesses, in their deposition submitted that both the Debt Recovery Appellate Tribunal (DRAT) as well as Debt Recovery Tribunal (DRT) are single bench quasi-judicial bodies set up under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. While DRAT has been included under the First Schedule to the Bill. DRTs have been excluded from the First Schedule of the Bill for the purpose of uniformity in service conditions and perquisites. They submitted that the Presiding Officer of DRT is equivalent to the rank of District Judge and Judicial Members of other Tribunals viz. Central Administrative Tribunal (CAT), Company Law Board (CLB), National Industrial Tribunal (NIT) and Income Tax Appellate Tribunal (ITAT) are also of the same rank and have been included in the First Schedule the Bill for uniformity

purpose. Even a Presiding Officer of DRT having three years experience could become Presiding Officer of DRAT. Currently, Presiding Officer of DRT, Mumbai has been discharging the additional responsibility of Presiding Officer of DRAT, Chennai. The DRT has appellate power and hear appeals from Recovery Officers under Section 30 of the Recovery of Debt due to Banks and Financial Institutions Act, 1993. They have cited that the National Industrial Tribunal which is also headed by a District Judge having three years experience has also been included under the Schedule to the Bill for uniformity purpose. They, therefore, appealed to the Committee to include DRTs under Schedule to the Bill for the sake of parity.

9. Clause 13 of the Bill enables Government to include any other Tribunals/Commissions by Gazette Notification by amending the First Schedule of the Bill.
10. The Chairman of Law Commission has opined that all Tribunals deemed to be having the same status irrespective of whether they are exercising appellate jurisdiction or original jurisdiction, need to be treated uniformly.
11. The Committee, is in agreement with the view that all the Tribunals of similar status should be entitled to similar service conditions. The committee is of the view that for purpose of uniform service conditions, the classification of Tribunals may be based on an intelligible differentia. The committee feels that for purpose of uniform service conditions etc., the Tribunals headed by a Supreme Court Judge and where appeal against the order of the Tribunal lies to the Supreme Court may form a category distinct from the Tribunal/Commission whose order is appealable to the concerned High Court. The former Tribunals may form the category-I Tribunals while the latter may form category-II Tribunals. The first category may include Tribunals

such as Armed Forces Tribunals, National Green Tribunal, National Consumer Disputes Redressal Commission, Telecom Disputes Settlement and Appellate Authority. The second category may include Tribunals/Commissions headed by Supreme Court Judge or Chief Justice of High Court where appeal against their orders goes to High Court. It may include Central Administrative Tribunal/State Administrative Tribunal. The Tribunals headed by a District Judge with certain experience or a person who qualifies to be a District Judge may form the third category.

12. The Committee further notes that the Schedule needs to be revisited and comprehensively revised. All Tribunals created under the Acts of Parliament which fall in any of the three categories should be included and those who do not qualify to be called Tribunals in the strict sense should be excluded from the Bills.
13. The Committee is not in favour of inclusion of regulatory bodies within the Tribunals for purpose of bringing uniformity in service conditions.

Differential Age of Retirement

14. Clause 4 of the Bill prescribes tenure appointment within following three sets of age of superannuation:-
 - (i) Seventy years in the case of Chairperson and Members who have been a Judge of Supreme Court;
 - (ii) Sixty seven years in the case of Chairperson and Members who have been a Judge of High Court;
 - (iii) Sixty five years in the case of Chairperson and Members who have been qualified to be a Judge of High Court or a domain expert.

A tenure of five years has been prescribed within the age of superannuation in the Bill. A Chairperson and a Member can be re-appointed for another term of five years also. In effect a Chairperson and Members can serve in a Tribunal/Commission for maximum period of ten years. The extant Statutes currently prescribe one retirement age for Chairperson and another retirement age for Vice-Chairperson and Members (except Company Law Board where retirement age for Vice-Chairperson is 65 years and for judicial and technical Members 62 years). Further, retirement age of Chairperson in extant Statutes varies from seventy to sixty two years. The retirement age of Chairperson of seven bodies under the First Schedule of the Bill is seventy years. In respect of the three bodies viz., Central Administrative Tribunal/State Administrative Tribunal, Securities Appellate and Competition Appellate Tribunal, the retirement age for Chairperson is 68 years. For the rest of the bodies under the Schedule, the retirement age for Chairperson is 65 years except Company Law Board and National Highways Tribunal, where retirement age is 67 years for Chairman and 62 years for Members. The retirement age of Members in the Statutes is mostly 65 or 62 years except National Consumer Disputes Redressal Disputes Commission where 70 years is prescribed as retirement age for Members as well as Chairperson. A table showing comparative statement of tenure and superannuation age of Chairperson, Vice-Chairperson and Members of quasi-judicial entities enumerated in First Scheduled of the Bill is placed at Annexure-II.

15. The statutes also provide tenure appointment of three to five years for some of the bodies and regular appointment for Chairperson and Members in other bodies i.e., Income Tax Appellate Tribunal, Custom Excise and Service Tax Appellate Tribunal. Nine bodies under the First Schedule of the Bill has a

provision for re-appointment for second tenure except for Coastal Aquaculture Authority where re-appointment can be done for two consecutive terms.

16. Three sets of retirement age as proposed in the Bill are based upon the retirement age of Judge of Supreme Court (65 years), Judge of High Court (62 years) and Secretary to Government of India (60 years) by adding period of one term of proposed tenure (i.e., 5 years) as a policy decision of the previous Government of India which was considered by Group of Ministers of that Government.
17. The Committee does not appreciate the policy of making the retirement age individual-centric rather than post-centric. It apprehends serious flaws therein as a Chairperson or a Member of a Tribunal or Commission would have to retire at age of 70 years if he is a retired judge of Supreme Court or 67 years if he is a retired judge of High Court or 65 years if he qualifies to be a judge of High Court (those who come from the Bar) and those who are domain experts. It would amount to treating same class of individuals differently even though they perform same functions, belong to the same Tribunal, and have the same designation. The retirement age needs to be invariably associated with the post or position to which an individual is appointed and not otherwise. Linking the retirement age to the source of appointment does not appear to be a sound proposition and may not stand judicial scrutiny.
18. The Committee feels that the age of retirement should be to be the same for persons holding same positions in the Tribunals in a category as referred to in para 11 above. The Committee further suggests that the retirement age may be uniform for Chairperson and Members of Tribunals included in the same category as in the case of National Consumer Dispute Redressal Commission

and Supreme Court and High Court. The Committee notes the Chairman and Members of the Tribunals shall hold office as such for a term of 5 years and shall be eligible for reappointment for another term subject to the conditions that they would cease to hold the office of the Chairman or Members as the case may be on attaining the age of retirement. The Hon'ble Supreme Court in Madras Bar Association case has favoured a term of seven or five years for National Company Law Tribunal on the ground that considerable time is required to achieve expertise in the concerned field and a shorter tenure often leads to a situation that by the time the Members achieve the required knowledge, expertise and efficiency their term will be over. The Committee is of the view that a longer term of 7 years may be provided so that knowledge expertise gained by the Members may be gainfully utilized. The retirement age of Chairperson and Members of all Tribunals/Commissions should be 70 years.

Issue of Reappointment

19. On the issue of reappointment, the Committee took note of decision of Hon'ble Supreme Court in the matter of Madras Bar Association vs. Union of India (2014) where Section 8 of National Tax Tribunal Act, 2005 has been declared as unconstitutional as it may impinge upon independent functioning of the Tribunal. The Supreme Court observed as under:

"....a provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of the NTT. Every Chairperson/Member appointed to the NTT, would be constrained to decide matters, in a manner that would ensure his reappointment in terms of Section 8 of the NTT Act. His decisions may or may not be based on his independent understanding. We are satisfied, that the

above provision would undermine the independence and fairness of the Chairperson and Members of the NTT. Since the NTT has been vested with jurisdiction with earlier lay with the High Courts, in all matters of appointment, and extension of tenure, must be shielded from executive involvement."

The Clause 4 of the Bill is a replica of Clause 8 of the National Tax Tribunal Act, 2005. The Committee took note that reappointment provisions exists in some of the existing Acts under which Tribunals and Commissions have been set up.

20. The Committee apprehends that Clause 4 of the Bill is susceptible to be challenged and struck down, in view of aforesaid decision of the Supreme Court. Most of the stake holders have expressed similar apprehension in their written as well as oral submissions. Even the Chairman of Law Commission of India has expressed a similar view. The Secretary, Department of Legal Affairs in his oral submission has, however, stated that for reappointment, the selection process is the same as provided for the fresh appointment in the relevant statute and as such, in his view Clause 4 of the Bill appears not to be unconstitutional as some of the extant statutes already have similar provisions. The Committee, therefore, is of the view that the provision relating to reappointment may be omitted particularly as the Committee has already recommended a uniform tenure upto seventy years for Chairman and Members of the Tribunals.
21. Committee also dwelt upon at length on the need of making regular appointments in the Tribunals in place of tenure appointments. The Committee noted that system of regular appointment is in existence in Income Tax Appellate Tribunal, Customs Excise and Service Tax Appellate Tribunal. It was felt

that such appointments may be needed to make Tribunals more vibrant and to facilitate induction of young and talented experts and judicial officers with a reasonable length of experience in the related field. The tenure posting appears to be less attractive to the Advocates and other professionals.

22. The Committee, however, notes that lack of promotional prospects in system of regular recruitment may hinder the prospects of attracting best available talent in the field. The Committee, therefore, would like the Government to examine the possibility of making regular appointments in all Tribunals after suitably addressing the issue of career progression of such directly recruited Chairperson/Members. Committee feels that the expertise and experience of the Chairperson and Members of Tribunal/Commission can be utilised in the concerned High Court as appeal against the order of Tribunal invariably goes to High Court except for Armed Forces Tribunal, National Green Tribunal, National Consumer Dispute Redressal Commission and Telecom Disputes Settlement and Appellate Authority.
23. Although the existing statutes have provision for a sitting or retired judge of Supreme Court or High Court to become Chairperson or Member of certain Tribunals/Commissions, only retired judges have been manning the positions of Chairperson or members of the Tribunals. The Committee appreciates that sitting judges of the Supreme Court and High Courts, in view of their higher status conferred by the Constitution may not like to come to Tribunals, which certainly are not at par with the Supreme Court or the High Courts even though salary and allowances may be same in Tribunals and Supreme Court/High Courts. Even bureaucrats opt for the Tribunal at the fag end of their career or after retirement. Consequently, the Tribunals/Commissions have become a haven for retired judges

and bureaucrats. The tenure appointment in those bodies gives impetus to the prevalent practice.

24. The post retirement assignment appears to be impinging upon independent functioning of judicial and quasi-judicial bodies as there is no cooling off period for judges and bureaucrats before taking up post retirement assignment in Tribunal/Commission.

Applicability of the Act to incumbent Chairpersons and Members

25. Clauses 3 and 9 relate to applicability of the provisions of Act, to incumbent Chairperson and Members of the statutory body in the First Schedule of Bill. The provisions in the Bill relating to new tenure and retirement age would not be applicable to incumbent Chairperson and Members in view of proviso to Clause 3 of the Bill. However, the new perquisites as proposed under Second and Third Schedules of the Bill would be applicable to the incumbent Chairperson and Members due to over-riding effect of Clause 9 upon Clause 3 of the Bill.
26. The retirement age of Members of Tribunal is proposed to be 67 or 65. The existing retirement age of Members of Income Tax Appellate Tribunal, Customs, Excise & Service Tax Appellate Tribunal, Securities Appellate Tribunal, Railway Claim Tribunal, Authority for Advance Ruling, Company Law Board, and Appellate Tribunal for Foreign Exchange is 62 years and, therefore, as per provision of the Bill, the existing Members of these Tribunals would not get the benefit of enhanced retirement age.
27. As per Clause 9, however, allowance are being made uniform for Chairpersons and Members of all Tribunals. This is resulting in reduced housing and sumptuary allowances for some existing Chairpersons and Members who are retired Judges of Supreme

Court or High Court as compared to what they are entitled to at present. On the other hand, some existing Members/Chairpersons would be entitled to higher allowances than what they are getting at present.

28. A suggestion has been made that provisions of this Bill may be made applicable to only Members and Chairpersons who join after coming in force of the provisions of the Bill and existing incumbent to the office of the Chairpersons and Members of various Tribunals may be given an option either to be regulated by the provisions of the Bill or the extant provisions as applicable to them. The Committee feels that the Government may consider the suggestion.

Leave Sanctioning Authority

29. The leave sanctioning authority for the Chairman and for Members in the absence of Chairman has been proposed in the Bill to be the Minister in-charge under Clause 20. The Committee noted that the President of India is leave sanctioning authority in respect of Chairman of some of the Tribunals e.g., Telecom Disputes Settlement and Appellate Authority, National Consumer Disputes Redressal Commission and Railway Claims Tribunal. In case, the proposed provision in the Bill is agreed to, it would supersede the provisions of these Acts where President is the leave sanctioning authority. The Committee is not in agreement with the Clause 20 of Bill mainly for two reasons. Firstly, if leave sanctioning authority remains with the ministry-in-charge it would affect the independence of the Tribunal as the concerned Ministry is one of the parties to the disputes that come for adjudication before the Tribunal and secondly, it affects the status of Tribunals. The Committee wishes that such an authority should rest with an independent agency, like National

Commission for Tribunal, which has been dealt with in the later part of this Report.

Inclusion of grounds of removal under the Bill

30. The Committee has been apprised that differential grounds of removal exist in the respective Acts/Rules for the twenty-six Tribunals covered under the Schedule of the Bill. Some, like CAT, Securities Appellate Tribunal, Armed Forces Tribunal, Intellectual Property Law Board, provide for only two grounds for removal, i.e. proven misbehavior or incapacity. Some others, such as the National Green Tribunal, TDSAT provide for five grounds- insolvency, conviction for moral turpitude, physical or mental incapacity, acquiring interest prejudicial to its functions and abusing his position in a manner that is against public interest. The Committee feels that the grounds for removal of Chairman and Members need to be uniform and be included in the present Bill. The Law Secretary in his oral evidence has also agreed to such proposal. The Government may consider including grounds of removal in the present Bill.

Need for a comprehensive Bill

31. Majority of Tribunals have been created as alternative disputes resolution mechanism for expeditious disposal of cases and also to reduce pressure upon concerned High Courts. But backlog of cases have been mounting in those bodies. As on 31st December, 2014 position of cases pending in certain Tribunal of Commissions is given below:-

Pendency of cases as on 31st December, 2014

S. No.	Name of quasi-judicial entity	Pendency
1	Central Administrative Tribunal	1,55,118
2	Income Tax Appellate Tribunal	99349
3	Customs, Excise and Service Tax	96039

	Appellate Tribunal	
4	Railway Claim Tribunal	44756
5	Armed Forces Tribunal	15603
6	Company Law Board	4201
7	National Green Tribunal	2875
8	Debt Recovery Appellate Tribunal	1010
9	National Industrial Tribunal	750
11	Competition Appellate Tribunal	162
12	Cyber Appellate Tribunal	34

32. Some of the Tribunals i.e., National Highway Tribunals, Cyber Appellate Tribunal and Airport Economic Regulatory Appellate Authority are dys-functional due to vacancies therein. The post of Presiding Officer in all eight Benches of National Highway Tribunal (which is a single Member Bench) located at Chandigarh, Lucknow, Kolkata, Mumbai, Jabalpur, Bengluru, Chennai and Guwahati are lying vacant. The post of Presiding Officer in Cyber Appellate Tribunal is vacant since July, 2011. Therefore, it cannot function in the absence of its Chairperson in view of Section 49 of Information, Technology Act, 2000. The Competition Appellate Tribunal was assigned additional charge of Airport Economic Regulatory Appellate Authority since its inception till 20th August, 2014. Now it is dys-functional.
33. The vacancies position as on 31st December, 2014 in certain Tribunals under First Scheduled to the Bill (Annexure-III). The pendency in those Tribunals has defeated the purpose for which those Tribunals have been created as parallel to High Courts. It is due to the fact that those bodies have not been provided with the requisite manpower and/or infrastructure facilities, as a result of which Tribunals system could not achieve the objective for which those have been created.
34. The Chairman Law Commission while deposing before the Committee has drawn the attention of the Committee to the

change made in the Tribunals system in United Kingdom on the basis of Leggat Committee. On the basis of recommendations of Leggat Committee (2001), the Tribunals, Courts and Enforcement Act, 2007 was enacted by the British Parliament. Under that Act an independent body called Judicial Appointment Commission (JAC) has been created to select candidates for Tribunal for appointment by Law Chancellor. The Law Chancellor is also responsible for providing administrative and staff support to all Tribunals. A permanent Tribunal service has also been created for manning the Tribunals in UK.

35. He has suggested for setting up of a National Tribunal Commission and also to introduce a common cadre based Tribunal service to be selected by that Commission and to be appointed by Law Minister/President of India. He also suggested that all Tribunals service should be placed under Ministry of Law and Justice for independent functioning of those bodies. Similar view has been expressed by the apex court in L. Chandra Kumar Case. At present, Income-Tax Appellate Tribunal and Appellate Tribunal for Foreign Exchange are under the Ministry of Law and Justice (Department of Legal Affairs). Other Tribunals are under their nodal Ministries for the sake of convenience. Some of the Tribunals like Income-Tax Appellate Tribunal, Railway Claims Tribunal, Company Law Board, Telecom Disputes Settlement and Appellate Authority, Appellate Tribunal for Foreign Exchange, National Green Tribunal have favoured the observation of Supreme Court of India in the interest of independent functioning of those bodies.
36. The Committee expresses its concern over the sad state of affairs in the Tribunals/Commissions. Some of them are dysfunctional due to large scale vacancies. Some of the bodies cannot function without the presiding officer in view of the position in the respective Acts. The post of presiding officer of Cyber Appellate

Tribunal is vacant therefore the body is dysfunctional in view of Section 49 of Information Technology Act, 2000.

37. The Committee has been apprised that most of these Tribunals have not been provided with adequate residential accommodations, proper office infrastructure or adequate supporting staff, many of the posts of those bodies are lying vacant and also cases are mounting in those bodies and the purpose for which those bodies were created have been defeated.
38. It is time for Government to provide necessary infrastructure, human and financial resource to the Tribunals for speedy delivery of Justice. The Committee, therefore, endorses the view of Law Commission of India for creation of National Tribunals Commission to oversee selection process, eligibility criteria for appointment introduction of common eligibility criteria for removal of Chairman and Members as also for meeting the requirement of infrastructural and financial resources. The Government may improve the Bill by bringing in a comprehensive legislation proposing uniform condition of service with regard to eligibility conditions for appointment, ground of removal, uniform retirement age, allowances and other perquisites for Chairperson and Members of Tribunals/Commissions belonging to the same category and these functions and responsibilities be vested in the National Tribunal Commission may be created for the purpose.
39. The Committee also feels that NTC should deal with Tribunals only. The regulatory Bodies which do not perform quasi-judicial function, should be kept out of purview of this Bill and may be dealt with separately.

40. While considering this Bill, the Committees attention was drawn to the following issues which are very essential to the efficient and independent functioning of quasi judicial bodies :-
- (i) The authority in decision making of Government should endeavour to deliver fair justice in their day to day functioning and decision taking by proper application of rules, regulations, judicial precedents, directions, etc., as a result of which appeals against their decision could be reduced to minimum and cases before Tribunals will substantially go down.
 - (ii) Appeals before the tribunals involves cost which is borne out of tax payers money. Presently no cost is levied as court fee in the tribunal proportionate to the quantum of relief sought. The Government should contemplate to impose fee for regulating appeals as well as generating revenue to meet expenditure required for infrastructure, supporting staff, etc.
 - (iii) It should be imperative upon the Government to categorically mention in the Financial Statement of the Bill proposing to create a quasi-judicial body, the cost of setting up of a quasi judicial body including provision of infrastructure and salary. Committee wishes that in the future Bills the nodal ministry as well as the Ministry of Law and Justice should ensure that such details in the Financial Statement appended to the Bill are invariably given.
41. The Committee strongly feels that it is high time for the Government to positively look into the issues raised above.

ANNEXURE P-11

ITEM NO. 501

COURT NO. 2

SECTION PIL(W)

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Writ Petition(s)(Civil) No(s). 267/2012

MADRAS BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.
(with office report)

Respondent(s)

Date : 18/01/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s)

Mr. Nikhil Nayyar, Adv.
Mr. N. Sai Vinod, Adv.
Mr. Dhananjay Baijal, Adv.

For Respondent(s)

Mr. Ranjit Kumar, SG
Mr. P.S. Patwalia, ASG
Ms. Madhvi Diwan, Adv.
Ms. Binu Tamta, Adv.
Ms. Natasha Vinayak, Adv.
Ms. Sushma Suri, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Heard the learned Counsel for the parties.

We have considered the contents of the Tribunal, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014. We feel that it would be more appropriate if observations made in Union of India vs. R. Gandhi, President, Madras Bar Association (2010) 11 SCC 1 (in paras 64 to 70) are also considered by the Government.

List on 11th April, 2016 so as to know the action taken by the Government.

(NEELAM GULATI)
COURT MASTER

(SNEH BALA MEHRA)
ASSISTANT REGISTRAR

TRUE COPY

ANNEXURE P-12

**GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS**

LOK SABHA

STARRED QUESTION NO 297

**TO BE ANSWERED ON WEDNESDAY, THE 22nd March
2017**

Merger of Tribunals

***297. SHRI P. NAGARAJAN:**

DR. C. GOPALAKRISHNAN:

Will the Minister of LAW AND JUSTICE be pleased to state:

- (a) whether the Union Government plans to merge the existing 36 tribunals in the country and bring down their number to 17 as recommended by the Indian Law Institute;
- (b) if so, the details thereof and the time by which the plan is likely to be executed;
- (c) whether the Government has consulted various Ministries under which the said tribunals are functioning in this regard and received their responses;
- (d) if so, the details thereof; and
- (e) the steps taken/proposed to be taken by the Government in this regard?

ANSWER

**MINISTER OF LAW AND JUSTICE AND ELECTRONICS AND
INFORMATION TECHNOLOGY**

(SHRI RAVI SHANKAR PRASAD)

(a) to (e): A Statement is laid on the Table of the House.

**STATEMENT REFERRED TO IN REPLY TO PARTS (A) TO
(E) OF THE LOK SABHA
STARRED QUESTION NO.297 FOR 22.03.2017.**

Mushrooming of Tribunals and their powers, privileges, functions and authority were critically examined by the Apex Court in its several judgments and also by the Law Commission in its various reports. The issue of merger/convergence of various Tribunals has been under consideration of the Government for quite some time. The matter was discussed at various levels including Indian Law Institute (ILI) and exhaustive study was undertaken for better laws and better governance. ILI in its report considered 36 Tribunals and after assessing the purpose, function and scope of all these Tribunals, recommended that the identified 36 Tribunals can be reduced to 17.

2. To further examine the report of the ILI, an Inter-Ministerial Group (IMG) under the chairmanship of Law Secretary was constituted which examined the merger/convergence of 36 Tribunals on three parameters of their (i) functional requirements; (ii) qualifications, and (iii) workload. Thereafter, a phased-wise Action Plan for the proposed merger of the aforesaid Tribunals including few other Tribunals and authorities was prepared in consultation with all the concerned administrative Ministries/Departments.

3. However, during the study undertaken on Merger/ Conversion of Tribunals, the number of Tribunals have been reduced by 5. The Company Law Board, Board for Industrial and Financial Reconstruction and Appellate Authority for Industrial and Financial Reconstruction have been subsumed into National Company Law Tribunal and National Company Law Appellate Tribunal and two Appellate Tribunals, namely the Appellate Tribunal for Prevention of Money Laundering and Appellate Tribunal for Forfeited Property (NDPS) have been converged by providing for those appeals to be heard by the Appellate Tribunal under Smugglers and Foreign Exchange Manipulators (Forfeiture of

Property) Act, 1976 (SAFEMA) through the Finance Act, 2016. Further, Ministry of Water Resources has already introduced a Bill in the Lok Sabha to amend the Inter-State River Water Disputes Act, 1956 which inter-alia proposes to provide for a single standing Tribunal (with multiple benches) instead of multiple Tribunals.

4. To prevent duplicity, reduce burden on public exchequer, address multiplicity of agencies working in connection with Tribunals, rationalization and distribution of work as some of the Tribunals did not have sufficient work, delay in appointment and also facilitate 'ease of doing business', it has been proposed to merge/converge 17 Tribunals, Appellate Tribunals and other Authorities into 8 Tribunals, Appellate Tribunals or other Authorities (Annexure) by amending the respective laws through Finance Bill, 2017.

(Annexure)

1. To merge Authority for Advance Ruling – Customs Excise and Service Tax with the Authority for Advance Rulings – Income Tax.
2. Competition Appellate Tribunal with the National Company Law Appellate Tribunals.
3. National Highways Tribunal with the Airport Appellate Tribunal.
4. Appellate Tribunal under Foreign Exchange Management Act, 1999 with the Appellate Tribunal under Smuggles and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
5. Railway Rates Tribunal with the Railway Claims Tribunal.
6. Cyber Appellate Tribunal and Airport Economic Regulatory Authority Appellate Tribunal with the Telecom Disputes Settlement and Appellate Tribunal.
7. Employees Provident Fund Appellate Tribunal with the Central Government Industrial Tribunal.
8. Copyright Board with the Intellectual Property Appellate Board.

TRUE COPY

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I. A. NO. OF 2017

IN

WRIT PETITION (CIVIL) NO. OF 2017

IN THE MATTER OF:

Revenue Bar Association ... PETITIONER

VERSUS

Union of India & Others ... RESPONDENTS

AND IN THE MATTER OF:

AN APPLICATION FOR *EX-PARTE* INTERIM STAY

To,

The Hon'ble Chief Justice of India
and His Companion Judges of
the Hon'ble Supreme Court of India

The Humble Petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH

1. The accompanying Petition under Article 32 of the Constitution of India seeks to challenge the constitutional validity of PART XIV of the Finance Act, 2017 [ACT No. 7 of 2017] titled '**Amendments to Certain Acts to Provide for Merger of Tribunals & Other Authorities and Conditions of Service of Chairpersons, Members, etc.,**' and also the validity of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 ('**Tribunal Rules**') made by the Central Government by virtue of powers delegated under Section 184 thereunder.

2. The Finance Bill, 2017 was introduced as a 'Money Bill' in the Lok Sabha in accordance with Clauses (1) & (3) of Article 117. A Member of the Lower House raised a Point of Order to question the validity of various provisions (including the insertion of PART XIV) sought to be enacted as a 'Money Bill'. The Hon'ble Speaker, however, ruled that the impugned provisions were incidental to financial proposals of the Central Government in exercise of special jurisdiction under Clause 4 of Article 110. On 22.03.2017, the Finance Bill was passed by the Lok Sabha and transmitted to Rajya Sabha for recommendations. On 31.03.2017, the President gave his assent to the Finance Bill. Thereafter, PART XIV and the Tribunal Rules were brought into force on 26.05.2017 and 01.06.2017, respectively.
3. At the outset, it is submitted that the passage of the Finance Act in the form of a 'Money Bill' is in complete derogation of substantive provisions of the Constitution and smacks of constitutional impropriety. The PART XIV of the Finance Act deals with appointment, selection, eligibility and other service conditions of Members of Scheduled Tribunals, which broadly fall within the realm of (a) administration of justice; (b) jurisdiction and powers of courts; and (c) access to justice. Whilst Article 110 does not *per se* bar the inclusion of non-fiscal proposals in a Finance Bill, such a proposal must be an incidental measure to enable other substantive provisions which have direct fiscal effect as specified in Sub-clauses (a) to (f). In other words, the inclusion of non-fiscal provision in Money Bill would be permissible if and only if (i) it is an 'incidental' ancillary provision and (ii) necessary to enable the State to create or obviate fiscal charge or regulate fiscal duties such as borrowings, withdrawal or discharge financial obligations. Mere incidental burden on the Consolidated Fund is insufficient to qualify proposed legislation as a 'Money Bill'. The dominant effect of

the impugned provisions, on the other hand, are far from being a fiscal measure.

4. Furthermore, the adoption of special legislative procedure – under Article 109 – at whim by the Lower House has rendered the substantive procedure for Ordinary Bills under Articles 107 and 108 entirely redundant and nugatory. Consequently, the views and approval of the Upper House on legislative subjects other than fiscal measures have been muzzled and their role rendered futile. Such colourable exercise of powers to bypass the Upper House, is impressible and amounts to fraud on the Constitution.
5. Notwithstanding the above, the Finance Act completely undermines the stature, efficacy and judicial independence of the Scheduled Tribunals. The Finance Act has delegated essential legislative functions, and more egregiously without providing discernible legislative policy to guide rule-making powers. Previously, each of the service conditions such eligibility, tenure, appointment process etc., have been expressly codified under each of the Scheduled Acts. Section 184, on the other hand, has conferred unfettered powers to the Central Government to prescribe/alter the service conditions at whim and without specifying reasonable parameters for exercise of powers.
6. The Tribunal Rules are a testament to the unbridled and unguided powers conferred under Section 184, apart from being manifestly arbitrary and irrational. Furthermore, the Tribunal Rules blatantly contravene binding principles laid down by this Hon'ble Court to ensure independence of tribunals and proper administration of justice. Some of the glaring violations are enumerated below:

(h) **Eligibility Criteria:** RULE 3 read with Column (3) of the Schedule, which provides eligibility conditions for members of the Scheduled Tribunals, are thoroughly arbitrary, irrational and fails to secure its stature equivalent to that of a High Court. Furthermore, the qualifications prescribed therein are starkly contrary to the binding directions issued by this Hon'ble Court in plethora decisions. For instance,

i. **CHAIRPERSON/PRESIDENT:** In **Sampath Kumar** (supra), this Hon'ble Court unequivocally held that a Chairperson or Presiding Officer of a Judicial Tribunal is equivalent to the Chief Justice of High Courts. 13 out of 19 Scheduled Tribunals fails to meet the said criteria. The qualifications prescribed therein allows persons merely 'qualified' to hold the post of Judge of this Hon'ble Court or a High Court to be appointed as the Chairperson/President, without having ever served as a Judge of High Court. Furthermore, 14 out of 19 Scheduled Tribunals permit Technical/Specialist Member without any expertise in law to be appointed as the Chairperson. More egregiously, RULE 10 allows the Central Government to appoint any member (including Specialist Member) as the Acting Chairperson/President in case of any casual vacancy, contrary to **R. Gandhi** (supra).

ii. **JUDICIAL MEMBERS:** In **R. Gandhi** (supra), this Hon'ble Court categorically held that only Judges and Advocates must be considered for appointment as Judicial Members. [**Pr. 120(i)**] The Madras High Court in **Shamnad Basheer** (supra) struck down Section 85(3)(a) of the Trade Marks Act precisely

on this count, holding that an Indian Legal Service ('ILS') officers [Grade I] is ineligible for appointment to the post of Judicial Officer. 5 out of 19 Scheduled Tribunals could have ILS Officers to be appointed as Judicial Members. Few other Tribunals permit 'Judicial Officers' with 10 years of experience to be considered for appointment, although the categories of officers eligible to be considered for such appointment is vague and undefined.

iii. **TECHNICAL/SPECIALIST MEMBERS:** This Hon'ble Court in **R. Gandhi** (supra) held that direct relevant experience in the subject – and not merely incidental knowledge - is a precondition for persons to be considered for appointment as Technical Member. [Pr. 120(iii)] Furthermore, this Hon'ble Court held that bureaucrats may be considered for the post of Technical Members if and only if they have held the rank of Secretaries/Add. Secretaries. The Tribunals such as the Securities Appellate Tribunal ('SAT') and Intellectual Property Appellate Board ('IPAB') have not only appointed bureaucrats below the rank of Add. Secretary, but permit persons without no relevant expertise on the subject to be appointed.

(i) **Selection Process:** RULE 4 read with Column (4) of the Schedule provide for appointment of members of the Scheduled Tribunals by the Central Government based on the recommendations of the Search-cum-Selection Committee setup for each Tribunal. However, the composition of such Committees and their appointments are manifestly arbitrary and violative of basic structure of

the Constitution. This Hon'ble Court has categorically stated that (a) composition of Selection Committee must give primacy to Judiciary, (b) must be headed by the Chief Justice or his nominee; and (c) the Chief Justice or his nominee should have a casting vote. However, the Selection Committees prescribed by the Central Government falls short of the said stipulation on all counts.

- i. **First**, the Selection Committees for none of the Scheduled Tribunals give primacy to the Judiciary. The Selection Committees for all appointments to Industrial Disputes Tribunals ('**IDT**') and Film Certification Appellate Tribunal ('**FACT**') do not contain any representation from the Judiciary. In others, such as Income Tax Appellate Tribunal ('**ITAT**'), Appellate Tribunal for Forfeited Property ('**ATFP**'), Central Administrative Tribunal ('**CAT**'), Railway Claims Tribunal ('**RCT**'), SAT, IPAB, Telecom Disputes and Settlement Appellate Tribunal ('**TDSAT**'), Authority for Advanced Ruling ('**AAR**'), Appellate Tribunal for Electricity ('**APTEL**') and National Green Tribunal ('**NGT**'), the Selection Committees for appointing Judicial/Technical and other Members of the Tribunal does not include any representation from the Judiciary.
- ii. **Second**, the Selection Committees of few Scheduled Tribunals – such as IDT, CESTAT, SAT and AAR - comprise of even members. However, the Impugned Rules do not provide any procedure for resolving conflicts if any. Moreover, the composition for every other Selection Committee has completely

undermined the primacy of the Judiciary, inasmuch it fails to ensure equal representation alongside the Executive. Therefore, the opinion of the Chief Justice or his nominee could be entirely disregarded.

- iii. **Third**, the criteria and procedure for nomination of 'Experts' included as part of the Selection Committees, in the cases of IDT, ITAT, CAT, RCT, AAT, TDSAT, IPAB, FCAT, APTEL and NGT, has not been specified howsoever. As a result, the Central Government has complete discretion to appoint 'Experts' of their choice.
 - iv. **Fourth**, the Secretary of the relevant/parent Ministry acts as the convener of their respective Search-cum-Selection Committees, as per RULE 4(2). As a result, the meetings, deliberations, advertisements and other secretarial aspects of appointments are entirely under the control of the parent Ministry/Department.
- (j) **Tenure of Office**: Proviso to Clause (1) of Section 184 provides that the tenure of appointment shall not exceed five (5) years and permits reappointment. Furthermore, the Proviso has fixed an age limit of 70 and 67 years for Chairperson and Members, respectively. Pursuant thereto, RULE 9 read with Column (5) of the Schedule has prescribed a uniform tenure of 3 years for all Scheduled Tribunals with eligibility for reappointment. Once again, the Respondent has ignored the dictum of this Hon'ble Court in **R. Gandhi** (supra) wherein the term of office of 3 years was struck down. Similarly, this Hon'ble Court in **Madras Bar Assn.** (supra) observed that reappointment would undermine independence of judiciary, and struck

down the corresponding provision under the National Tax Tribunal Act, 2005.

- (k) **Age:** RULE 9 read with Column (5) of the Schedule has prescribed retirement age for members of the Tribunals. However, the age limit is not uniform and without any rational basis. The Rule has ignored the 232nd Report of the Law Commission which recommended that “**There is an imperative need to fix the age of retirement of Chairpersons and Members of various Tribunals up to the age of 70 and 65, respectively.**” On the other hand, the Standing Committee in their 74th Report opined that retirement age should be fixed at the age of 70 years for all members. Be that as it may, the Impugned Rules have failed to maintain uniformity across the Tribunals, and is entirely arbitrary.
- (l) **Removal:** RULES 7 and 8 which provide for the procedure for removal of members of the Tribunals is entirely illegal and undermines independence of Tribunals. The Rules allows the Central Government to initiate an enquiry merely on written complaint without the requirement for consultation or concurrence from the Chief Justice or his nominee. The composition of the Committee entrusted to conduct an enquiry has not been specified, and once again leaving wide and unguided discretion to the Central Government. Furthermore, the Central Government can remove the Member of the Tribunal based on the recommendation of the Committee, and without any necessity to consult or receive concurrence from the Chief Justice (with the exception to NCLAT). It is submitted the removal process creates a master-servant relationship between the Central Government and Members of the

Tribunals, and casts a huge shadow on impartiality and fairness in their adjudication process.

- (m) **Salaries & Allowances:** RULES 11, 12, 13, 15, 16 and 18 provides for service conditions, such as salaries, leave pay, travel allowance ('TA'), house rent allowance ('HRA') and other benefits admitted to Members of the Scheduled Tribunals. As it is evident, the emoluments and other service benefits conferred on the Members is equal to Group 'A' officers of the Government of India of a corresponding status. However, this Hon'ble Court has repeatedly stated that the service conditions admitted to Members of such Tribunals should be equivalent or comparable to that of High Court Judges.
- (n) **Leave Sanctioning Authority:** RULE 14 has conferred the responsibility on the Central Government to act the Leave Sanctioning Authority of various members of the Tribunals. In view of the Business Allocation Rules, the concerned in-charge/parent Ministry or Department would act as concerned Leave Sanctioning Authority. This has reinforced master-servant relationship between the concerned Ministry/Department and the Tribunal. It is instructive to note that the similar provision was included in the draft Tribunals Bill, and the Standing Committee several criticized the provision in the following words: "... **The Committee is not in agreement with the Clause 20 of Bill mainly for two reasons. Firstly, if leave sanctioning authority remains with the ministry-in-charge it would affect the independence of the Tribunals as the concerned Ministry is one of the parties to the disputes that come for adjudication**

before the Tribunal and secondly, it affects the status of Tribunals.”

- (o) **Nodal Ministry:** This Hon’ble Court in **L. Chandra Kumar** (supra) noted that “**The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.**” In more than two decades, no steps have been initiated by the Ministry of Law & Justice to take over the functioning of the tribunals. On the contrary, the Tribunal Rules are *ex-facie* contemptuous to the directions issued by this Hon’ble Court.

7. In the above premises, it is submitted that Part XIV of the Finance Act and Tribunal Rules are liable to struck down for violation of Articles 14, 21, 50, 107, 110, 117 and 323B of the Constitution and for failure to take steps to preserve and protect the basic features of the Constitution embodied therein. Thus, the balance of convenience is in favour of the Petitioner.

8. It is humbly submitted that the present application is bona fide it would therefore be in the interest of justice if this Hon’ble Court grants interim reliefs as prayed for. No prejudice will be caused to the Respondent, if the instant application is allowed.

PRAYER

In the premises, it is most respectfully prayed that this Hon’ble Court may be pleased to –

- A. Stay the effect and operation of PART XIV of Finance Act, 2017 [ACT No. 7 of 2017];

- B. Stay the effect and operation of Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017;
- C. Pass an ad interim ex parte order of stay in terms of Prayers (a) and (b) above and confirm the same after notice to the Respondent; and
- D. Pass such other and further orders as this Hon'ble Court may deem fit in the instant facts and circumstances.

FILED BY:

Drawn on : 05.08.2017
Filed on : 25.08.2017

NIKHIL NAYYAR
ADVOCATE FOR THE PETITIONER