A.K. BEHERA

v.

UNION OF INDIA & ANR.

(W. P. (C) No. 261 of 2007) ETC.

MAY 6, 2010

[K.G. BALAKRISHNAN, CJI, DALVEER BHANDARI AND J.M. PANCHAL, JJ.]

Administrative Tribunals Act, 1985 – Administrative Tribunals (Amendment) Act, 2006:

Central Administrative Tribunal – Abolition of post of Vice-Chairman by the Amendment Act – Constitutionality of – Held: Cannot be regarded as unconstitutional – By abolition of post of Vice-Chairman no anomalous situation is sought to be introduced in the structure as well as functioning and administration of the Tribunals – Post of Vice-Chairman in Tribunal had created an avoidable three tier institution and resulted in anomalies in qualifications, age of retirement, service conditions – By the amending Act all Members of Central Administrative Tribunal have been elevated to the status of a High Court Judge – Amended qualifications for Member of Tribunal are nearly the same as Vice-Chairman of Tribunal.

s. 6(2) (as amended) – Modification in the qualification for appointment as Administrative Member in Tribunal – Challenge to, on the ground that except for an IAS officer no other civil servant would become eligible for appointment – Held: s. 6(2) not arbitrary and unsustainable – Officers belonging to All India Services have been made eligible to be appointed as Administrative Member subject to fulfillment of qualifications – Higher qualifications have been prescribed for better discharge of functions by Members of Tribunals and cannot be regarded as arbitrary or unreasonable.

A *s. 10A – Total tenure of Member of Administrative Tribunal restricted to 10 years – Held: Cannot be regarded as unconstitutional – Concept of security of tenure does not apply to such appointments.*

s. 10A – Prescribing different conditions of service for B *Members of Central Administrative Tribunal on basis of their appointment under unamended Rules and amended Rules – Requiring Members of Tribunal appointed before the coming into force of Amendment Act to seek fresh appointment by Selection Committee – Held: Is not arbitrary* C *– Eligibility conditions of Members appointed prior to and after February 19, 2007 are different – Members of Administrative Tribunals appointed prior to February 19, 2007 form a different class from those appointed or to be appointed after February 19, 2007 – Over a period of time, anomaly, if any, would get* D *cleared itself and after a period of 4-5 years all Members of Tribunal would be equal in status – Extension in service by Member appointed cannot be claimed as matter of right and would always be subject to fulfillment of qualifications and conditions stipulated in the Amended Act – Aggrieved* E *petitioner cannot claim, as a matter of right, automatic re-appointment as Judicial Member of State Administrative Tribunal after his first term of five years was over.*

s. 12(2) – Enabling the appropriate Government to designate one of the members to be Vice Chairman to F *exercise the financial and administrative powers – Constitutional validity of – Held: Is constitutionally valid and cannot be regarded as impinging upon the independence of judiciary.*

G **Certain amendments were carried out in the Administrative Tribunals Act, 1985 by the Administrative Tribunal (Amendment) Act, 2006. By the Amendment Act, the post of Vice Chairman in the Central Administrative Tribunal was abolished; that the newly inserted s. 10A of the Act prescribed different conditions of service for the**

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Members of the Central Administrative Tribunal on the basis of their appointment under the unamended Rules and under the amended Rules and that the members of the Administrative Tribunal, who were duly appointed as members prior to the commencement of the Amendment Act, i.e. 19.02.2007, were to be considered for reappointment by Selection Committee; that s. 10A stipulated that the total term of office of the member of the Central Administrative Tribunal shall not exceed 10 years though by the said amendment the age of superannuation for a member is raised from 62 to 65 years; that the newly inserted s. 6(2) modified the qualifications for appointment as administrative members; that the newly added s. 12(2) authorised the appropriate Government to designate one or more members to be the Vice Chairman for exercise of financial and administrative powers as impinging upon the independence of judiciary; and that the Members of the Administrative Tribunal appointed before the coming into force of the Amendment Act were to seek fresh appointment in accordance with the selection procedure laid down for such appointments. The present petitioners are aggrieved by the said amendments carried out in the Administrative Tribunal Act, 1985. Hence the writ petitions.

Dismissing the writ petitions, the Court

HELD: *Per Panchal J (For himself and Balakrishnan, CJI):*

1.1. It cannot be accepted that the abolition of the post of Vice-Chairman, which was in existence since inception of the Administrative Tribunals, is unconstitutional because it would create anomalous situation in the structure as well as administration of the Tribunals if any High Court Judge is appointed as Member of the Tribunal. The post of Vice-Chairman in the Tribunal had created an avoidable three tier institution

A and resulted in anomalies in qualifications, age of retirement, service conditions etc. The Members of the Tribunal had claimed equality with the Judges of the High Court or even the Vice-chairman of the Tribunal, in the matter of pay and superannuation. The Parliament, in
B exercise of powers under Article 323A of the Constitution, has amended the Administrative Tribunals Act, 1985 and equated its Members with Judges of High Court for the purposes of pay and superannuation. The Parliament, by enacting a law, has right to change the conditions of
C service of Members of the Administrative Tribunals. [Para 13] [367-F-H; 368-A-D]

M.B. Majumdar vs. Union of India (1990) 4 SCC 501, referred to.

D 1.2. While upgrading the conditions of service of the Members, the conditions of service of a Judicial Member are not changed to his detriment. By the amending Act all the Members of the Central Administrative Tribunal have been elevated to the status of a High Court Judge. The service conditions of the Members of the Tribunal
E have been upgraded to that of a High Court Judge, which cannot be regarded as illegal or unconstitutional. The qualifications of the Vice-chairman provided in Section 6(2)(a), 6(2)(b) and 6(2)(bb) in the unamended Act were also to a large extent qualifications prescribed for
F appointment of a person as an Administrative Member. The only addition made by the Amending Act is that now the Secretary to the Government of India, in the Department of Legal Affairs or the Legislative Department including Member-Secretary, Law Commission of India or
G a person who has held a post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years, are made eligible for appointment as a Judicial Member. Though under the unamended Act, it was not
H specifically provided but he was eligible to be appointed

as Administrative Member in view of the qualifications which were laid down for a person to be appointed as Administrative Member. However, by the Amendment, such a person is declared to be eligible for being appointed as Judicial Member having regard to his experience and opportunity to deal with legal issues in his respective department. Section 6(3) and 6(3)(a) of the earlier Act provided a much lower qualification for a Member of the Tribunal. The amended qualifications for a Member of the Tribunal are nearly the same as Vice-Chairman of the Tribunal, which clearly reflects the intention of the Government to upgrade the post of an Administrative Member. In such circumstances the need for having a Vice-Chairman was obviated and the Government, therefore, abolished the post of Vice-Chairman by the impugned enactment. [Para 13] [368-D-H; 369-A-D]

1.3. By abolition of the post of the Vice-Chairman no anomalous situation is sought to be introduced in the structure as well as functioning and administration of the Tribunals. A retired High Court Judge would be eligible for appointment as Member of the Tribunal and on such appointment would be eligible to all the facilities as a Judge of the High Court. The Chairman of the Tribunal is normally a retired Chief Justice of the High Court and very rarely a retired Judge is appointed as Chairman of the Tribunal. In any event the Chairman would be senior to a retired Judge, who is appointed as a Member of the Tribunal. [Para 13] [369-E-F]

1.4. The petitioner could not establish before the Court that by upgrading the status of the Administrative Member of the Tribunal to that of a High Court Judge a particular provision of the Constitution is infringed. The plea that abolition of post of Vice-Chairman will discourage a sitting or retired High Court Judge from joining the Tribunal cannot be appreciated. The

A composition of the Tribunal, after amendment of the Act, is such that there would be a Vice-Chairman if required as under Section 12, a Judicial Member and another member to be appointed from civil services. A High Court Judge, who opts for the post of judicial Member in the B Tribunal, would not be lowering his status after the amendment because all the service conditions applicable to him as a High Court Judge have been saved. [Para 13] [369-G-H; 370-A-C]

2.1. A reasonable reading of sub-Section (2) of C Section 6 of the Act makes it very clear that by no stretch of imagination it can be said that the qualifications for appointment as Administrative Member of the Tribunal are laid down in such a manner that except an IAS officer no other civil servant would become eligible for such D appointment. The newly amended provision requires that a person shall not be qualified for appointment as an Administrative Member unless he has held for at least two years the post of Secretary to the Government of India or any other post in the Central or State Government and E carrying the scale of pay, which is not less than that of a Secretary to the Government of India for at least two years or held post of Additional Secretary to the Government of India for at least five years or any other post under the Central or State Government carrying the F scale of pay which is not less than that of an Additional Secretary to the Government at least for a period of five years. The proviso to sub-Section (2) of Section 6 of the Act, stipulates that the officers belonging to All India Services, who were or are on Central deputation to a lower post shall be deemed to have held the post of G 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 H

date shall count for qualifying service for the purposes of this clause. [Para 14] [371-B; 370-D-H; 371-A]

2.2. It is necessary to notice that officers belonging to All India services have been made eligible to be appointed as Administrative Member subject to the fulfillment of qualifications stipulated in Section 6 of the Act. It is wrong to contend that All India Services comprise only of the IAS officers. All India Services comprise IAS, IFS, IRS, etc. Merely because higher qualifications have been prescribed one need not conclude that except an IAS servant, no other civil servant would be eligible for appointment as a Member. The higher qualifications have been prescribed for the benefit and interest of uniformity of the two level cadres contemplated by the amended provisions. There is no manner of doubt that Government of India took a policy decision to prescribe higher qualification for better discharge of functions by the Members constituting the Tribunals and the said policy decision cannot be regarded as arbitrary or unreasonable. The qualifications of the Vice-Chairman were provided in ss. 6(2)(a), 6(2)(b), 6(2)(bb) and 6(2)(c) of the unamended Act. To a large extent, the qualifications laid down in the unamended Act are almost the same as are laid down in the amended provisions. [Para 14] [371-B-F]

3.1. The plea that section 10A, which restricts the total term of the Member of the Administrative Tribunal to ten years should be regarded as unconstitutional, has also no substance at all. The age of retirement of a Government servant has been raised from 58 years to 60 years. Initially under the unamended provisions of the Act a retired Government servant had a tenure of only two years as a Member of the Tribunal and it was noticed that he was not able to contribute much while performing duties as a Member of the Tribunal. It was felt necessary that every Member of the Tribunal should have a tenure

A of five years. Therefore, the provisions relating to term of office incorporated in section 8 of the Act were amended in the year 1987 and provision was made fixing term of office of Chairman, Vice-chairman and Members at five years period. Now provision is made for extension of B term of office by a further period of five years. Thus the Government has decided to provide for extension in term of office by five years of a Member so that he can effectively contribute to speedy disposal of cases, on merits after gaining expertise in the service jurisprudence C and having good grip over the subject. Under the unamended provisions of the Act also the term of Vice-Chairman and Member was extendable by a further period of five years and under the unamended provisions also a Member of the Bar, who was appointed as Judicial D Member of the Tribunal, had maximum tenure of ten years. It is not the case of the petitioners that the unamended provisions of the Act, which prescribed total tenure of ten years for a Member of the Bar was/is unconstitutional. The provisions of Section 8 fixing maximum term of office of the chairman at sixty eight E years and of a Member of the Tribunal at 10 years, cannot be regarded as unconstitutional because concept of security of tenure does not apply to such appointments. Said provision cannot be assailed as arbitrary having effect of jeopardising security of tenure. [Paras 15] [371-F G-H; 372-A-C; E-H; 373-A-B]

S.P. Sampath Kumar vs. Union of India and others (1987) 1 SCC 124; *Durgadas Purkyastha vs. Union of India & others* (2002) 6 SCC 242, referred to.

G 3.2. An Advocate practising at the Bar is eligible to be appointed as Member of Tribunal subject to his fulfilling required qualifications. In all, such a Member would have term of office for ten years. On ceasing to hold office, a Member, subject to the other provisions of the H Act, is eligible for appointment as the Chairman of the

Tribunal or as the Chairman, Vice-chairman or other Member of any other Tribunal and is also eligible to appear, act or plead before any Tribunal except before the Tribunal of which he was Member. Under the circumstances, it cannot be appreciated as to how the amended provisions restricting the total tenure of a Member of the Tribunal to ten years would be unconstitutional. The unamended s. 6 of the 1985 Act, indicated that the Chairman, Vice-Chairman and other Members, held respective offices in one capacity or the other, had reasonably spent sufficient number of years of service in those posts before they were appointed in the Tribunal and, therefore, the concept of security of tenure of service in respect of those whose term was reduced was not regarded as appropriate. An option is reserved to the Government to re-appoint a Member on the expiry of the first term beyond five years. The outer limit for the Member is that he should be within the age of 65 years. Thus, it would not be in every case that the Government would put an end to the term of the office at the end of five years because such Chairman or Member is eligible for appointment for another period of five years after consideration of his case by a committee headed by a Judge of the Supreme Court to be nominated by the Chief Justice of India and two other Members, one of whom will be the Chairman of the Tribunal. [Para 15] [373-A-H]

4. The plea that s.10A of the Act requiring a sitting Member of the Tribunal, who seeks extension for second term to possess the qualifications laid down by the amended Act and get himself selected through Selection Committee is arbitrary, is devoid of merits. The selections to be made as an Administrative Member after February 19, 2007 are made applicable uniformly to those who would be appointed as Administrative Member after February 19, 2007. A Member, who was appointed prior

A to February 19, 2007, cannot claim that he has vested right of extension of his term for a further period of five years as per the qualifications laid down in the unamended Act and that qualifications prescribed by the amending Act should be ignored in his case while B considering his case for extension of term for a further period of five years. Over a period of time the anomaly, if any, would get cleared itself and after a period of 4-5 years all the Members of the Tribunal would be equal in status and that every Member to be appointed will have C to qualify himself as per the qualifications laid down in the Amended Act and will have to get himself selected through Selection Committee. The eligibility conditions of the Members appointed prior to and after February 19, 2007 are different. Since the Members of the D Administrative Tribunals appointed prior to February 19, 2007 form a different class from those appointed or to be appointed after February 19, 2007. Article 14 would stand violated if they are treated differently in the matter of appointment or extension of service as a Member after February 19, 2007. Extension in service by a Member E cannot be claimed as matter of right and would always be subject to fulfillment of qualifications and conditions stipulated in the Amended Act. The petitioner in second writ petition could not have claimed, as a matter of right, automatic re-appointment as Judicial Member of the State F Administrative Tribunal after his first term of five years was over. As is provided in the Amending Act, under the old provisions also a Member of the Administrative Tribunal was eligible to be re-appointed, which was considered to be a fresh appointment for all the practical G purposes. Under the provisions of unamended Act, at the end of five years, the Chairman, Vice-chairman and other Members were eligible for reappointment for another period of five years after consideration by a Committee headed by a Judge of the Supreme Court and two other H members, one of whom was Chairman of the Tribunal.

The petitioner can only be considered for appointment as a Member as per the fresh selection procedure provided by the Amended Act. The Selection Committee has to choose the best candidate available for the post. It is not the requirement of the law that the Selection Committee should inform the petitioner the reasons for not recommending his name. Merely, because there is a vacancy in the post of Member (Judicial) in the Maharashtra Administrative Tribunal, the petitioner cannot claim a right to be appointed to the said post irrespective of the provisions of the amended Act. The petitioner can be appointed only if Selection Committee recommends his appointment and the recommendation is accepted by the President, after the consultation with the Governor of the State. [Para 16] [374-B-H; 375-A-E]

5.1. The submission that s. 12(2) of the amended Act enabling the appropriate Government to nominate one of the Members of the Tribunal to perform financial and administrative functions destroys independence of the Tribunal which is a Judicial Forum and, therefore, the said provision should be regarded as unconstitutional, is devoid of merits. It is clear from the provisions of s. 12 of the Amended Act, that the Chairman of the Tribunal has to exercise all financial and administrative powers over the Benches. Essentially the provision for delegating financial and administrative powers to one of the Members of a Bench is made, to lessen administrative burden lying on the shoulders of the Chairman who normally sits at Delhi and for effective and better administration of the Benches of the Tribunal located in different and far flung States of the country. It is not difficult to visualise the problems, complications, obstacles, delay, etc., faced by the Chairman, while exercising financial and administrative powers over the Benches. The decentralisation of financial and administrative powers to tackle local needs and

A problems, in favour of a Member of Tribunal, for effective administration of the Tribunals, cannot be regarded as destroying the basic feature of the Constitution, namely independence of judiciary. [Para 17] [375-F-H; 376-A-C]

5.2. The designation of the Vice-Chairman by the B Central Government u/s. 12(2) of the Act would obviously be in concurrence with the Chairman. Further, the Vice-Chairman would discharge such functions of the Chairman as the Chairman may so direct. It is absolutely, completely and entirely for the Chairman to recommend C to the Government as to designate which Member of the Tribunal as Vice-Chairman. The said provision is an enabling provision, which is clear from the use of the expression "may" in the said provision. If the Chairman of the Tribunal feels that no Member should be D designated as Vice-Chairman, the Government suo motu cannot and would not be in a position to make designation contemplated by the said provision. The designation as Vice-Chairman would not entitle the Member so designated to any special benefits in service E conditions. The only purpose of the said provision is to help the Chairman in discharge of his administrative functions as the Benches of the Tribunal are situated in different parts of the country. Section 12(2) of the Act, which enables the appropriate Government to designate F one or more Members as Vice-Chairman and entitles the Members so designated to exercise such powers and perform such functions of the Chairman as may be delegated to him by the Chairman by general or special order in writing cannot be regarded as destroying the G principle independence of judiciary or of the Administrative Tribunals. It cannot be understood as to how the appropriate Government would be able to destroy the independence of Tribunals by designating one or more Members to be the Vice-Chairman for the purposes of performing the functions of the Chairman to H

be delegated to him by the Chairman. The jurisdiction, powers and authority of the Central Administrative Tribunal are defined in the Act and, more particularly, in ss. 14, 15, 16, 17 and 18 of the Act. The petitioners have failed to demonstrate that by authorizing appropriate Government to designate one or more Members to be the Vice-Chairman for the purpose of performing financial and administrative powers of the Chairman, the independence of the Tribunals secured by the provisions is in any manner eroded. [Para 17] [376-C-H; 377-A-C]

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Per Bhandari, J (Dissenting) :

1. There is no anathema in the Tribunal exercising jurisdiction of High Court and in that sense being supplemental or additional to the High Court but, at the same time, it is our bounden duty to ensure that the Tribunal must inspire the same confidence and trust in the public mind. This can only be achieved by appointing the deserving candidates with legal background and judicial approach and objectivity. [Para 54] [400-F]

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S.P. Sampat Kumar v. *Union of India and Ors.* **(1987) 1 SCC 124;** *Minerva Mills Ltd. and Ors. v. Union of India and Ors.* **(1980) 3 SCC 625;** *L. Chandra Kumar v. Union of India and Ors.* **(1997) 3 SCC 261, relied on.**

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R.K. Jain v. Union of India **(1993) 4 SCC 119;** *Bidi Supply Co. v. Union of India and Ors.* **1956 SCR 267;** *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr.* **(1973) 4 SCC 225;** *M.L. Sachdev v. Union of India and Anr.* **(1991) 1 SCC 605, referred to.**

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2.1. In view of the constitutional principles in the Equal Remuneration Act, 1976 and Directive Principles of State Policy under the Constitution and the statutory and mandatory provisions of overriding the 1976 Act, the following principles are evolved for fixing the governmental pay policy, whether executive or legislative

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A on the recommendation of the Pay Commissions, Pay Committees by Executive Governments: (i) the governmental pay policy, whether executive or legislative, cannot run contrary to constitutional principles of constitutional law; (ii) the governmental pay B policy, whether executive or legislative, cannot run contrary to the overriding provisions of the 1976 Act; (iii) the governmental pay policy must conform to the overriding statutory command under ss. 13 and 14 read with s. 1(2) of the 1976 Act which supports for uniformity C between the pay policy of the State Governments and the Central Government in the whole of India and such uniformity in the pay policy of the State Governments and the Central Government in the whole of India. Where all things are equal that is, where all relevant considerations D are same, persons holding identical posts may not be treated differentially of their pay. [Para 66] [406-D-H; 407-A]

2.2. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable E to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. [Para F 84] [412-H; 413-A]

2.3. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be G arbitrary, artificial or evasive. The classification must not be arbitrary but must be rational. It should be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must H have a reasonable relation to the object of the legislation.

In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the Act. [Paras 85 and 86] [413-B-D]

2.4. In the instant case, one fails to comprehend and understand why the respondents are perpetuating discrimination even for a period of four to five years. [Para 88] [413-G]

2.5. The High Court Judges are appointed from two streams-2/3rd from the Bar and 1/3rd from the Subordinate Judicial Service. After appointment, they are assigned the task of discharging judicial functions. The direct and inevitable impact of the amendment is to dissuade and discourage both the members of the Bar and Judiciary from becoming members of the Tribunal. The Tribunal is discharging purely judicial work which were earlier discharged by the judges of the High Courts. The people's faith and confidence in the functioning of the Tribunal would be considerably eroded if both the members of the Bar and judiciary are discouraged from joining the Tribunal. In a democratic country governed by rule of law, both the lawyers and judges cannot be legitimately discouraged and dissuaded from manning the Tribunal discharging only judicial work.[Para 89] [413-H; 414-A-C]

Randhir Singh v. Union of India and Ors. **(1982) 1 SCC 618;** *State of West Bengal* **v.** *Anwar Ali Sarkar* **(1952) SCR 284;** *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and Ors.* **(1959) 1 SCR 279;** *The State of Jammu & Kashmir* **v.** *Triloki Nath Khosa and Ors.* **(1974) 1 SCC 19;** *Indira Nehru Gandhi v. Raj Narain and Anr.* **(1975) Supp. SCC 1;** *Maneka Gandhi v. Union of India and Anr.* **(1978) 1 SCC 248;** *Surinder Singh and Anr.* **v.** *Engineer-in-Chief, CPWD and Ors.* **(1986)**

A 1 SCC 639; *Mackinnon Mackenzie & Co. Ltd.* v. *Audrey D' Costa and Anr.* (1987) 2 SCC 469; *Bhagwan Dass and Ors.* v. *State of Haryana and Ors.* (1987) 4 SCC 634; *Inder Singh and Ors.* v. *Vyas Muni Mishra and Ors.* 1987 (Supp) SCC 257; *Haryana State Adhyapak Sangh and Ors.* v. *State of* B *Haryana and Ors.* (1988) 4 SCC 571; *U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd.* v. *Workmen* 1989 Supp (2) SCC 424; *Sita Devi and Ors.* v. *State of Haryana and Ors.* (1996) 10 SCC 1; *Sube Singh & Ors. v. State of Haryana and Ors.* (2001) 7 SCC 545; *John Vallamattom and Anr.* v. *Union of* C *India* (2003) 6 SCC 611; *State of Mizoram and Anr. v. Mizoram Engineering Service Association and Anr.* (2004) 6 SCC 218; *Union of India v. Dineshan K.K.* (2008) 1 SCC 586, referred to.

3.1. There is no rationale or justification in providing D different conditions of service for the members of the Tribunal on the basis of their appointment under the amended and the unamended rules, when even according to the respondents it is nowhere denied that both the categories of members are not discharging the E same duties, obligations and responsibilities. [Para 94] [414-H; 415-A]

3.2. Section 10A of the amended Act is declared discriminatory, unconstitutional and *ultra vires* of the Constitution so far as it does not provide uniform pay F scales and service conditions on the basis of amended and unamended rules. Consequently, all the members of the Tribunal would be entitled to get the same pay scales and service conditions from June 2010. [Para 95] [415-B-C]

G 3.3. Section 10A of the amended Act is also declared discriminatory because the direct and inevitable impact of insertion of s. 10A is to prescribe different age of retirement for the judicial and other members. On the one hand, the age of superannuation of the members has H

been increased from 62 to 65 years and according to the amended Act, the administrative members would now retire at the age of 65 years. The members can now get maximum of two terms of 5 years each. A lawyer appointed at the age of 45 years will have to retire at the age of 55 years. Therefore, by this amendment, administrative member would retire at the age of 65 whereas judicial member may retire even at the age of 55. This is clearly discriminatory and violative of the fundamental principle of equality. Consequently, s. 10A of the amended Act is declared discriminatory and violative of Article 14 of the Constitution and is declared *ultra vires* of the Constitution, to the extent that it places embargo of two terms of five years each leading to different ages of retirements of the members of the Tribunal. Consequently, henceforth, all the members of the Tribunal shall function till the age of 65 years. There would be a uniform age of retirement for all the members of the Tribunal. [Para 96] [415-D-G]

4.1. There is no logic, rationale or justification in abolishing the post of Vice-Chairman in the Central Administrative Tribunal. No reason for such abolition has been spelt out by the respondents even at the time of introducing the Bill. Before the amendment, ordinarily, the retired judges of the High Courts used to be appointed to the post of Vice-Chairman. It used to be in consonance with the status and positions of the retired judges. In the larger public interest the post of Vice-Chairman is restored and the procedure for appointment would be in accordance with the unamended rules of the Act. [Paras 98 and 102] [416-B-C; 417-B]

4.2. One fails to comprehend that on the one hand, the post of Vice-Chairman has been abolished and on the other hand under the newly inserted s. 12(2), the power to designate Vice-Chairman has been given to the appropriate government. This is per se untenable and

A unsustainable. The executive has usurped the judicial functions by inserting s. 12(2). The direct and inevitable consequence of the amendment would affect the independence of judiciary. [Para 99] [416-D-E]

4.3. In the race of becoming the Vice-Chairman there B would be erosion of independence of judiciary. A judicial member who is looking forward to promotion to the post of Vice-Chairman would have to depend on the goodwill and favourable instance of the executive and that would directly affect independence and impartiality of the C members of the Tribunal impinging upon the independence of judiciary. [Para 100] [416-F-G]

S.P. Sampat Kumar v. *Union of India and Ors.* (1987) 1 SCC 124, referred to.

D 4.4. The judicial work which the members of the Tribunal discharge is one, which was earlier discharged by the Judges of the High Court. The work is totally judicial in nature, therefore, dispensation of justice should be left primarily to the members of the Bar and Judges E who have, by long experience and training acquired judicial discipline, understanding of the principles of law, art of interpreting laws, rules and regulations, legal acumen, detachment and objectivity. Unless extreme care is taken in the matter of appointments of the F members of Tribunal, the justice delivery system may not command confidence, credibility, acceptability and trust of the people. [Para 103] [417-C-D]

4.5. Under s. 12(2) of the amended Act, the entire power of designating Vice-Chairman has been usurped G by the appropriate government. The amendment also has the potentiality of disturbing the separation of powers. The power pertaining to judicial functioning of the Tribunal which was earlier exercised by the judiciary has been usurped by the executive. Thus, the newly inserted H s. 12(2) is per se untenable and is declared null and void

[Para 101] [416-G-H; 417-A] A

5.1. All the members of the Tribunal appointed either by amended or unamended rules would be entitled to get uniform pay scales and service conditions from 01.06.2010. However, they would not be entitled to claim any arrears on account of different pay scales and service conditions. [Para 104] [417-F] B

5.2. All the members of the Tribunal would have uniform age of retirement from 01.06.2010, meaning thereby that all members of the Tribunal shall be permitted to function until they attain the age of superannuation of 65 years. Hence, s. 10A is quashed and set aside. [Para 104] [417-G-H; 418-A] C

5.3. The post of Vice-Chairman in the Central Administrative Tribunal is restored from 01.06.2010. However, the Vice-Chairmen, if already designated by the Government is not disturbed, and permit them to continue in their respect posts till they attain the age of superannuation. Thereafter, the Vice-Chairman shall be appointed in accordance with the unamended rules. Consequently, the newly inserted s. 12(2) of the amended Act is also quashed and set aside. [Para 104] [418-B-C] D E

Indira Nehru Gandhi v. Raj Narain and Anr. **(1975) Supp. SCC 1;** *I.R. Coelho (dead) by Lrs. v. State of Tamil Nadu and Ors.* **(2007) 2 SCC;** *Minerva Mills Ltd. and Ors. v. Union of India and Ors.* **(1980) 3 SCC 625;** *Ashoka Kumar Thakur and Ors. v. Union of India and Ors.* **(2008) 6 SCC 1;** *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr.* **(1973) 4 SCC 225;** *Subhash Sharma and Ors.* v. *Union of India* **1991 Sup (1) 574;** *Pareena Swarup* v. *Union of India* **(2008) 14 SCC 107, referred to.** F G

Case Law Reference:

In the judgment of Panchal J:

(1990) 4 SCC 501	**Referred to**	**Para 13**

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A	(1987) 1 SCC 124	Referred to.	Para 15
	(2002) 6 SCC 242	Referred to.	Para 15
	In the judgment of Bhandari J:		
B	(1987) 1 SCC 124	Relied on.	Para 21, 30, 32, 33, 35, 36, 37, 39, 52, 100
	(1980) 3 SCC 625	Relied on.	Para 34, 52, 58, 62
C	(1997) 3 SCC 261	Relied on.	Para 42, 46
	(1993) 4 SCC 119	Referred to.	Para 43
	1956 SCR 267	Referred to.	Para 44
	(1973) 4 SCC 225	Referred to.	Para 45, 61
D	(1991) 1 SCC 605	Referred to.	Para 50
	(1975) Supp. SCC 1	Referred to.	Para 56, 70
	(2007) 2 SCC 1	Referred to.	Para 57
E	(2008) 6 SCC 1	Referred to.	Para 59
	1991 Sup (1) 574	Referred to.	Para 63
	(2008) 14 SCC 107	Referred to.	Para 64
F	(1982) 1 SCC 618	Referred to.	Para 66, 72
	(1952) SCR 284	Referred to.	Para 67
	(1959) 1 SCR 279	Referred to.	Para 68
	(1974) 1 SCC 19	Referred to.	Para 69
G	(1978) 1 SCC 248	Referred to.	Para 71
	(1986) 1 SCC 639	Referred to.	Para 73
	(1987) 2 SCC 469	Referred to.	Para 74
H	(1987) 4 SCC 634	Referred to.	Para 75

1987 (Supp) SCC 257	**Referred to.**	**Para 76**
(1988) 4 SCC 571	**Referred to.**	**Para 77**
1989 Supp (2) SCC 424	**Referred to.**	**Para 78**
(1996) 10 SCC 1	**Referred to.**	**Para 79**
(2001) 7 SCC 545	**Referred to.**	**Para 80**
(2003) 6 SCC 611	**Referred to.**	**Para 81**
(2004) 6 SCC 218	**Referred to.**	**Para 82**
(2008) 1 SCC 586	**Referred to.**	**Para 83**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 261 of 2007.

Under Article 32 of the Constitution of India.

WITH

W.P. (C) No. 539 of 2007.

A.Saran, ASG, Raju Ramachandran, A.K. Behra, Lalit M. Harichandan, Saurabh Suman Sinha (for Satya Mitra Garg), Nitin S. Tambwekar, B.S. Sai. K. Rajeev, S. Wasim A. Qadri, P, Parmeswaran, B. Krishna Prasad, Sanjay V. Kharde, Asha G. Nair, Advocates with them for appearing parties.

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. In the Writ Petition (C) No. 261 of 2007, the petitioner, who is a practicing lawyer and Honorary Secretary of the Central Administrative Tribunal, Principal Bench, Bar Association, prays (1) to quash the decision of the respondents to abolish the post of Vice Chairman in the Central Administrative Tribunal as reflected in the Administrative Tribunal (Amendment) Act, 2006 and to direct the respondents to restore the said post in the Central Administrative Tribunal, (2) to declare that the newly inserted Section 10A of the Administrative

A Tribunals Act, 1985 to the extent it prescribes different conditions of service for the Members of the Central Administrative Tribunal on the basis of their appointment under the unamended Rules and under the amended Rules, as unconstitutional, arbitrary and not legally sustainable, (3) to B direct the respondents to accord all conditions of service as applicable to the Judges of High Court to all the members of the Central Administrative Tribunal irrespective of their appointment under the unamended or amended Rules, (4) to declare that the newly inserted Section 10A of the C Administrative Tribunals Act, 1985 as unconstitutional to the extent it stipulates that the total term of office of the member of the Central Administrative Tribunal shall not exceed 10 years, (5) to direct the respondents to continue all the members appointed under the unamended or amended Rules till they D attain the age of superannuation of 65 years, (6) to declare, the newly inserted qualifications for appointment as administrative members as reflected in the amended Section 6(2), as arbitrary and unsustainable, and (7) to quash the newly added Section 12(2) of the Administrative Tribunals Act, 1985 authorising the appropriate Government to designate one or more members E to be the Vice Chairman for exercise of financial and administrative powers as impinging upon the independence of judiciary.

2. Writ Petition (C) No. 539 of 2007 is filed by a judicial F member of Maharashtra Administrative Tribunal and he prays to set aside the decision of the respondents requiring Members of the Administrative Tribunal appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006 to seek fresh appointment in accordance with the selection G procedure laid down for such appointments as being arbitrary and violative of Articles 14 and 16 of the Constitution. He also prays to declare that newly introduced Section 10A, so far as it relates to consideration of members of the Administrative Tribunal for reappointment by Selection Committee, is not H applicable to those, who were duly appointed as members prior

to February 19, 2007. Another prayer made by him is to direct the respondents to restore his continuance as Member of Maharashtra Administrative Tribunal till he attains the age of superannuation of 65 years and to direct the respondents to accord all conditions of service, as applicable to the Judges of the High Court, to him.

3. Article 323A of the Constitution, stipulates that Parliament may by law, provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and the conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government. The establishment of Administrative Tribunals under the aforesaid provisions of the Constitution had become necessary since the large number of cases relating to service matters were pending before the various courts. It was expected that the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons coming under the jurisdiction of Administrative Tribunals, speedy relief in respect of their grievances. Therefore, a Bill was introduced in the Parliament for setting up the Central Administrative Tribunal. The Bill sought to give effect to Article 323A by providing for the establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for a State or a joint Administrative Tribunal for two or more States. The Bill inter alia provided for – (a) the jurisdiction, powers and authority to be exercised by each Tribunal, (b) the procedure to be followed by the State Tribunals, (c) exclusion of the jurisdiction of all courts, except that of the Supreme Court under Article 136 of the Constitution relating to service matters, and (d) the transfer to each Administrative Tribunal of any suit or

A other proceedings pending before any court or other authority immediately before the establishment of such Tribunal as would have been within the jurisdiction of such Tribunal the causes of action on which such suits or proceedings were based had arisen after such establishment.

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4. The Parliament, thereafter enacted The Administrative Tribunals Act, 1985. It received the assent of the President on February 27, 1985.

5. The Central Administrative Tribunal with five Benches C was established on November 1, 1985 in pursuance of the provisions of the Administrative Tribunals Act, 1985. Prior to its establishment, writ petitions were filed in various High Courts as well as in the Supreme Court challenging the constitutional validity of Article 323A of the Constitution and the provisions D of the Administrative Tribunals Act. The main contention in the writ petitions was that the writ jurisdiction of the Supreme Court under Article 32 of the Constitution as well as that of the High Courts under Article 226 of the Constitution could not have been taken away even by an amendment of the Constitution. E Although the Supreme Court, by an interim order stayed the transfer of writ petitions filed in the Supreme Court under Article 32 of the Constitution to the Central Administrative Tribunal, it did not stay transfer of writ petitions under Article 226 of the Constitution subject to the condition that the Government would F make certain amendments in the Act. One of the amendments suggested by the Supreme Court was that each case in the Tribunal must be heard by a Bench consisting of one judicial member and one non-judicial member and the appointment of judicial members should be done in consultation with the Chief G Justice of India. An undertaking was given to the Supreme Court that a Bill to make suitable amendments in the Act would be brought before the Parliament as early as possible. The Central Administrative Tribunal had also started functioning in Benches in accordance with the above directions of the Supreme Court. As the writ petitions referred to above were

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to come up for hearing in January, 1986, the President promulgated the Administrative Tribunals (Amendment) Ordinance, 1986 on January 22, 1986 so as to give effect to the assurance given to the Supreme Court and to make some other amendments found necessary in the administration of the Act. The Ordinance inter alia provided for the following matters, namely: -

(a) The concept of Judicial Member and Administrative Member was introduced in the Act. The Bench of Administrative Tribunal was to consist of one Judicial Member and one Administrative Member instead of three members Bench to be presided over by the Chairman or by the Vice Chairman. It was also provided that the appointment of a Judicial Member would be made after consultation with the Chief Justice of India.

(b) The jurisdiction of the Supreme Court in service matters under Article 32 of the Constitution was preserved. The Principal Act had intended to confer this jurisdiction also on the Tribunals.

(c) A provision was included to designate, with the concurrence of any State Government, all or any of the members of the Bench or Benches of the State Administrative Tribunal established for that State as Members of the Bench or Benches of the Central Administrative Tribunal in respect of that State.

(d) The jurisdiction of the Tribunal was also extended to persons, who were governed by the provisions of the Industrial Disputes Act, 1947 without affecting the rights of such persons under the Act.

Subsequent to the promulgation of the Ordinance, few doubts were expressed in respect of some of the provisions of the Act and the Ordinance. It was, therefore, proposed to include in the

A Bill a few clarificatory amendments, to make certain provisions included in the Ordinance retrospective from the date of establishment of the Central Administrative Tribunal and to validate certain actions taken by the said Tribunal. The amendments included in the Bill were explained in the B memorandum attached to the Bill. Accordingly, the Act of 1985 was amended by Act 19 of 1986 which was deemed to have come into force on January 22, 1986. By the amendment in the Act of 1985 it was proposed (1) to exclude from the jurisdiction of an Administrative Tribunal the powers to adjudicate disputes C with respect to officers and employees of the subordinate courts and to make a provision for transfer of cases pending in the Administrative Tribunals to the Courts concerned; (2) that the appointment of the Chairman, Vice-Chairman and other Members of the Administrative Tribunals would be made in D consultation with the Chief Justice of India. The Act, before its amendment, provided for consultation with the Chief Justice of India only in respect of Judicial Members; (3) that the Chairman, Vice-Chairman and other Members of the Administrative Tribunals would be eligible for re-appointment for a second term of office; (4) that the Central Government and the appropriate E Government should be empowered to frame rules relating to salary, allowances and conditions of service of the Chairman and other Members of the Tribunals and their officers, etc.

6. It may be mentioned that a writ petition under Article 32 F of the Constitution was filed by a member of the Central Administrative Tribunal, contending that the decision in *S.P. Sampath Kumar vs. Union of India and others* [(1987) 1 SCC 124], equated the Central Administrative Tribunal with the High Court and, therefore, its Chairman should be equated with the G Chief Justice of a High Court and the Vice-Chairman and Members must be equated with the sitting Judges of the High Court in all respects. It was also contended that while the Vice-Chairmen have been equated with sitting Judges of the High Courts, the Members have not been so equated in their pay H and other conditions of service and that a distinction was made

in the conditions of service, particularly, the pay and age of superannuation between the Vice-Chairmen and the Members, which was arbitrary, as a result of which the Members also should be given the same pay as that of the Vice-Chairmen and their age of superannuation should also be the same, i.e., 65 years as that of the Vice-Chairmen. On interpretation of Article 323A of the Constitution, this Court took the view that Administrative Tribunals constituted thereunder are distinct from the High Courts and dismissed the writ petition.

7. The Administrative Tribunals Act, 1985 came to be amended by the Administrative Tribunals (Amendment) Act, 2006. By the said amendment the post of Vice-Chairman in the Administrative Tribunal is abolished. A new provision, i.e., Section 6(2) is introduced which modifies the qualifications for appointment as Administrative Member in the Tribunal. Section 10A is inserted in the main Act, which provides that the conditions of services of the Judges of the High Court would be applicable only to the Members appointed after February 19, 2007. The newly inserted Section 10A restricts the total term of the Members of the Administrative Tribunals to ten years though by the said amendment the age of superannuation for a Members is raised from 62 to 65 years. Further, Section 10A postulates consideration of a case of a Member for re-appointment by Selection Committee after February 19, 2007. Section 12(2) of the Administrative Tribunals Act, 1985 is amended and power is conferred on the appropriate Government to designate a Vice-Chairman for the purpose of performing certain duties and functions of the Chairman.

8. The case of the petitioner is that the post of Vice-Chairman was in existence in the Administrative Tribunals since its inception which enabled the Judges of various High Courts to opt for the Central Administrative Tribunal and provided an opportunity, in the nature of promotion to the Members of the Administrative Tribunals to the post of Vice-Chairman. According to the petitioner, the abolition of the said post now

A would create anomalous situation in the structure as well as administration of the Tribunals, if any High Court Judge is to be appointed only as a Member and, therefore, the abolition of the post of the Vice-Chairman is unconstitutional. The petitioners have mentioned that the newly introduced Section B 6(2) of the Administrative Tribunals Act, 1985 modifies the qualifications for appointment as Administrative Member in the Tribunal in such a manner that except the IAS officers no other civil servant would ever become eligible for such appointment and as zone of consideration for appointment of Administrative C Members has been confined to only IAS officers by colourable exercise of power, the said provision should be regarded as unconstitutional. What is asserted by the petitioner is that Section 10A does not extend the benefit of the conditions of service applicable to the Judges of the High Court, to all the D Members of the Tribunals appointed prior to the appointed date, which is February 19, 2007, but confines the same to the Members, who would be appointed in future, i.e., after February 19, 2007 as Members of the Tribunals and as the Members appointed before February 19, 2007 would also be discharging the same duties and responsibilities, the provision stipulating E that the conditions of service of the Judges of the High Court would be applicable only to the Members to be appointed after February 19, 2007 has no rational basis or nexus with any defined objective and, therefore, should be declared to be ultra vires. It is contended that Section 10A restricting the total term F of the Members of the Administrative Tribunals to ten years is arbitrary because the said provision has no objective nor any rational basis nor any nexus with defined objective of the Act. According to the petitioner a number of Judicial Members in the Tribunals have been appointed from the Bar at the age of G 45 years or so, but now their tenure is sought to be curtailed only to ten years, which would discourage the members of the Bar from joining the Tribunals as a Member. What is claimed is that the Judicial Members appointed from the Bar since inception, have played a pivotal role in the judicial H administration of the Tribunals and, therefore, the newly inserted

Section 10A restricting the total term of the Members of the Administrative Tribunals to ten years should be struck down as arbitrary, unconstitutional and legally not sustainable. A

9. The grievance by the petitioner in writ petition No. 539 of 2007 is that the decision of the respondents to subject a Member to a fresh selection procedure is arbitrary and violative of Articles 14 and 16 of the Constitution because, according to him, the provision requiring consideration of his case for re-appointment as Member of the Administrative Tribunal by Selection Committee should not have been made applicable to those, who were duly appointed as Members prior to February 19, 2007. The petitioner also claims that introduction of Section 12(2) in the Administrative Tribunals Act, 1985, which empowers the State Government to designate a Member as a Vice-Chairman for performing financial and administrative powers destroys the judicial independence of the Tribunals and as uncontrolled, unguided and unregulated power has been conferred on the Government to nominate a Member of the Tribunal as Vice-Chairman for performing those functions, the said provision should also be struck down. Under these circumstances the petitioners have filed above numbered petitions and claimed reliefs to which reference is made earlier. B C D E

10. On service of notice, counter affidavit has been filed on behalf of the respondents by Ms. Manju Pandey, Under Secretary in the Ministry of Personnel, Government of India. In the counter affidavit it is stated that the Administrative Tribunals (Amendment) Act, 2006 was intended to achieve the following objects: - F

(i) To abolish the post of Vice-Chairman in the Tribunals as it was creating an avoidable three tier institution and resulting in anomalies in qualifications, age of retirement, service conditions, etc. The Act was passed so that all the Members of the Central Administrative Tribunal can be elevated to the same status as of a High Court G H

A Judge and, therefore, the service conditions of the Members of the Tribunals were upgraded to that of a Judge of the High Court, i.e., the same as was of a Vice-Chairman under the unamended Act.

B (ii) Only for discharging certain administrative functions, some of the Members in different Benches are to be designated as Vice-Chairmen, but the said designation is not to confer any special benefit to the Member so designated.

C (iii) Since the age of retirement of a Government servant was raised from 58 years to 60 years, a retired Government servant had a tenure of only two years as a Member of the Tribunal and he was not able to contribute much to the disposal of the cases. D Therefore, it was felt that every member of the Tribunal should have tenure of five years. Though it was not mentioned in the Statement of Objects and Reasons, it was also understood that since retired High Court Judges would be considered for E appointment as Members of the Central Administrative Tribunal, the age of retirement should be increased to 65 years and correspondingly the age of retirement of the Chairman should be increased to 68 years so that the Chairman of the F Tribunal could have a full term of five years.

(iv) The post of Vice-Chairman under the Amended Act is only an executive designation for discharging administrative powers and though the Government has been given the power to nominate one of the G members as Vice-Chairman of the Tribunal, said designation would obviously be made with the concurrence of the Chairman of the Tribunal.

After emphasizing the intended objects sought to be achieved H by the Amending Act, it is stated in the reply that the post of

Vice-Chairman of the Tribunal resulted in three different levels of functionaries in the Tribunal and, therefore, the Government of India took a policy decision that it would be beneficial and in the interest of uniformity of service that the hierarchy be reduced to just two posts, i.e., the Chairman and the Members of the Tribunal, which cannot be said to be either discriminatory or arbitrary or illegal. It is further mentioned in the counter affidavit that Section 8 of the unamended Act provided that the maximum tenure of the Chairman, Vice-Chairmen or a member of the Administrative Tribunal would be ten years subject to the age of retirement, which was 65 years in the case of Chairman or Vice-Chairman and 62 years in the case of any other Member and it is not correct to say that Section 10A inserted by the Amending Act, for the first time restricts the term of the Members of the Tribunal to ten years. It is explained in the counter affidavit that the reason for raising the retirement age from 62 to 65 years was because the retirement age of Government servants had been increased from 58 years to 60 years and a retired Government servant had a tenure of only two years as a Member of the Tribunal as a result of which he was not able to contribute much while being Member of the Tribunal. As per the counter affidavit the qualifications required for being selected as Administrative Member were the same as required for being chosen as Vice-Chairman of the Tribunal in the pre-amended Act and as no change by the amendment is effected so far as selection of a Member is concerned, the new provision should not be regarded as unconstitutional. What is asserted in the counter affidavit is that as per Section 12 of the Amended Act, the Chairman of the Tribunal would have all financial and administrative powers over the Benches, but the Vice-Chairman can be designated by the Central Government, obviously with concurrence of the Chairman, and a Member so designated would discharge such functions of the Chairman as the Chairman may direct and, therefore, it is wrong to contend that by introduction of Section 12(2) of the Act, the independence of judiciary and independence of Tribunal is sought to be curtailed by the Executive. It is explained in the

A counter affidavit that earlier the post of Vice-Chairman was not a promotional post for a Member of the Tribunal and the qualifications of the Vice-Chairman were different from a Member of the Tribunal, but, by amendment the qualifications of Members of the Tribunal have been raised to that of the Vice-
B Chairman and this change in qualifications neither affects the status of a retired High Court Judge nor confers arbitrary benefits on the non-Judicial Members and, therefore, the said provision is perfectly legal. It is further pointed out in the counter affidavit that except the change in the nomenclature, a retired
C High Court Judge would get exactly the same facilities, if he is appointed today as Member of the Tribunal instead of designating him as Vice-Chairman of the Tribunal under the unamended Act and, therefore, it is wrong to contend that the amendments are violative of the provisions of the Constitution.
D It is explained in the reply that in the parent Act also the Members were eligible for re-appointment for a second term of five years and not further whereas in the Amended Act, appointment of a Member is for a period of five years extendable by one more term of five years provided he has not attained the age of 65 years, and this provision does not infringe
E any of the rights of the Members of a Tribunal, who seek extension for a second term. It is stated in the counter that the qualifications for appointment as an Administrative Member of the Tribunal, prior to its amendment were on the lower side and a need was felt that persons, who were appointed as
F Administrative Members, should have sufficient experience of high posts so as to enable them to understand the complexities of service jurisprudence and, therefore, certain additional qualifications have been prescribed, which cannot be termed as affecting the independence of the Tribunals. What is stated
G in the counter affidavit is that as a matter of policy it is now provided that all officers, who are in the pay-scale of Secretary or Additional Secretary, would be eligible for appointment and the Selection Committee would invariably choose the most eligible person for the said post. It is pointed out that the
H Amended Act substantially changes the qualifications for

appointment as a Member of the Tribunal and now the post of a Member of the Tribunal is equivalent to the post of the Vice-Chairman as it existed prior to the amendment and, therefore, in terms of status and service conditions the Members appointed after February 19, 2007 have been granted the status available to a Vice-Chairman before the amendment. What is stressed is that though the present Members and Members to be appointed in future would discharge similar functions, there is a marked distinction between the eligibility criteria and, therefore, it is wrong to contend that the two form one class and the provisions are arbitrary. A B C

11. Similarly, on service of notice in Writ Petition (C) No. 539 of 2007, affidavit in reply has been filed on behalf of respondent Nos. 1 and 2 by Ms. Manju Pandey, Director in the Ministry of Personnel, Government of India. In the said petition affidavit in reply on behalf of Government of Maharashtra is filed by Mr. Vijay Dattatraya Shinde, Under Secretary, General Administration Deptt., State of Maharashtra. It may be mentioned that in both the above referred to two replies it is stated that a member appointed prior to February 19, 2007 and seeking extension for second term has to fulfill qualifications prescribed by the Amended Act, which cannot be termed as arbitrary or unconstitutional. D E

12. This Court has heard the learned counsel for the parties at length and in great detail. F

13. The contention that the abolition of the post of Vice-Chairman, which was in existence since inception of the Administrative Tribunals, is unconstitutional because it would create anomalous situation in the structure as well as administration of the Tribunals if any High Court Judge is appointed as Member of the Tribunal, cannot be accepted. As explained in the reply affidavit the post of Vice-Chairman in the Tribunal had created an avoidable three tier institution and resulted in anomalies in qualifications, age of retirement, G H

A service conditions etc. It is worth noticing that Members of the Tribunal had claimed equality with the Judges of the High Court or even the Vice-chairman of the Tribunal, in the matter of pay and superannuation. That claim was rejected by this Court in *M.B. Majumdar v. Union of India* [(1990) 4 SCC 501] with an B observation that it is for the Parliament to enact a law for equating Members of the Tribunal with Judges of High Court for the purposes of pay and superannuation. The Parliament, in exercise of powers under Article 323A of the Constitution, has amended the Administrative Tribunals Act, 1985 and C equated its Members with Judges of High Court for the purposes of pay and superannuation. The Parliament, by enacting a law, has right to change the conditions of service of Members of the Administrative Tribunals. While upgrading the conditions of service of the Members, the conditions of service D of a Judicial Member are not changed to his detriment. By the amending Act all the Members of the Central Administrative Tribunal have been elevated to the status of a High Court Judge. The service conditions of the Members of the Tribunal have been upgraded to that of a High Court Judge, which cannot be regarded as illegal or unconstitutional. The qualifications of the E Vice-chairman provided in Section 6(2)(a), 6(2)(b) and 6(2)(bb) in the unamended Act were also to a large extent qualifications prescribed for appointment of a person as an Administrative Member. The only addition made by the Amending Act is that now the Secretary to the Government of India, in the Department F of Legal Affairs or the Legislative Department including Member-Secretary, Law Commission of India or a person who has held a post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years, are made eligible G for appointment as a Judicial Member. It is to be noted that though under the unamended Act, it was not specifically provided that person who held the post of a Secretary to the Government of India in the Department of Legal Affairs or the Legislative Department including Member-Secretary, Law H Commission of India for at least two years or persons who held

post of Additional Secretary to the Government of India in the Department of Legal Affairs and Legislative Department at least for a period of five years, was eligible to be appointed as an Administrative Member, but he was eligible to be appointed as Administrative Member in view of the qualifications which were laid down for a person to be appointed as Administrative Member. However, by the Amendment, such a person is declared to be eligible for being appointed as Judicial Member having regard to his experience and opportunity to deal with legal issues in his respective department. Section 6(3) and 6(3)(a) of the earlier Act provided a much lower qualification for a Member of the Tribunal. The amended qualifications for a Member of the Tribunal are nearly the same as Vice-Chairman of the Tribunal, which clearly reflects the intention of the Government to upgrade the post of an Administrative Member. In such circumstances the need for having a Vice-Chairman was obviated and the Government, therefore, abolished the post of Vice-Chairman by the impugned enactment. By abolition of the post of the Vice-Chairman no anomalous situation is sought to be introduced in the structure as well as functioning and administration of the Tribunals. A retired High Court Judge would be eligible for appointment as Member of the Tribunal and on such appointment would be eligible to all the facilities as a Judge of the High Court. The Chairman of the Tribunal is normally a retired Chief Justice of the High Court and very rarely a retired Judge is appointed as Chairman of the Tribunal. In any event the Chairman would be senior to a retired Judge, who is appointed as a Member of the Tribunal. Therefore, this Court finds that no anomaly, as contended by the petitioners, would take place at all on the abolition of the post of Vice-Chairman. The petitioner could not establish before the Court that by upgrading the status of the Administrative Member of the Tribunal to that of a High Court Judge a particular provision of the Constitution is infringed. The plea that abolition of post of Vice-Chairman will discourage a sitting or retired High Court Judge from joining the Tribunal cannot be appreciated. The

A B C D E F G H

A composition of the Tribunal, after amendment of the Act, is such that there would be a Vice-Chairman if required as under Section 12, a Judicial Member and another member to be appointed from civil services. A High Court Judge, who opts for the post of judicial Member in the Tribunal, would not be
B lowering his status after the amendment because all the service conditions applicable to him as a High Court Judge have been saved. Therefore, the first contention that abolition of the post of Vice-Chairman except for the purposes of Section 12 of the Act would create anomalous situation in the structure as well
C as administration of the Tribunal, if any High Court Judge is appointed as a Member has no substance and is hereby rejected.

14. The argument that Section 6(2) of the Administrative Tribunals Act, 1985 modifies the qualifications for appointment
D as an Administrative Member of the Tribunal in such a manner that except the IAS officers no other civil servant would ever become eligible for such appointment is without any factual basis. The newly amended provision requires that a person shall not be qualified for appointment as an Administrative
E Member unless he has held for at least two years the post of Secretary to the Government of India or any other post in the Central or 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 two years or held post of Additional Secretary
F to the Government of India for at least five years or any other post under the Central or State Government carrying the scale of pay which is not less that that of an Additional Secretary to the Government at least for a period of five years. What is relevant to notice is the proviso to sub-Section (2) of Section
G 6 of the Act, which stipulates that the officers belonging to 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
H 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 purposes of this clause. A reasonable reading of sub-Section (2) of Section 6 of the Act makes it very clear that by no stretch of imagination it can be said that the qualifications for appointment as Administrative Member of the Tribunal are laid down in such a manner that except an IAS officer no other civil servant would become eligible for such appointment. It is necessary to notice that officers belonging to All India services have been made eligible to be appointed as Administrative Member subject to the fulfillment of qualifications stipulated in Section 6 of the Act. It is wrong to contend that All India Services comprise only of the IAS officers. All India Services comprise IAS, IFS, IRS, etc. Merely because higher qualifications have been prescribed one need not conclude that except an IAS servant, no other civil servant would be eligible for appointment as a Member. The higher qualifications have been prescribed for the benefit and interest of uniformity of the two level cadres contemplated by the amended provisions. There is no manner of doubt that Government of India took a policy decision to prescribe higher qualification for better discharge of functions by the Members constituting the Tribunals and the said policy decision cannot be regarded as arbitrary or unreasonable. The qualifications of the Vice-Chairman were provided in Sections 6(2)(a), 6(2)(b), 6(2)(bb) and 6(2)(c) of the unamended Act. To a large extent, the qualifications laid down in the unamended Act are almost the same as are laid down in the amended provisions. Therefore, the contention that the amended provisions lay down qualifications for appointment as Administrative Member in such a manner that except IAS officers no other civil servant would ever become eligible for such appointment cannot be accepted.

15. The plea that Section 10A, which restricts the total term of the Member of the Administrative Tribunal to ten years should be regarded as unconstitutional has also no substance at all. The age of retirement of a Government servant has been raised

A from 58 years to 60 years. Initially under the unamended provisions of the Act a retired Government servant had a tenure of only two years as a Member of the Tribunal and it was noticed that he was not able to contribute much while performing duties as a Member of the Tribunal. It was felt B necessary that every Member of the Tribunal should have a tenure of five years. Therefore, the provisions relating to term of office incorporated in Section 8 of the Act were amended in the year 1987 and provision was made fixing term of office of Chairman, Vice-chairman and Members at five years period. C This Court, in *S.P. Sampath Kumar vs. Union of India and others* [(1987) 1 SCC 124], expressed the view that the term of five years, for holding the posts mentioned in Section 8 of the Act was so short that it was neither convenient to the person selected for the job nor expedient to the scheme. This Court D found that it became a disincentive for well qualified people as after five years, they had no scope to return to the place from where they had come. The constitutional validity of the provisions of Section 8, fixing term of office of Chairman, Vice-chairman and Members of the Tribunal at five years period was upheld by this Court in *Durgadas Purkyastha vs. Union of India* E *& others* [(2002) 6 SCC 242]. Therefore, now provision is made for extension of term of office by a further period of five years. Thus the Government has decided to provide for extension in term of office by five years of a Member so that he can effectively contribute to speedy disposal of cases, on merits F after gaining expertise in the service jurisprudence and having good grip over the subject. Under the unamended provisions of the Act also the term of Vice-Chairman and Member was extendable by a further period of five years and under the unamended provisions also a Member of the Bar, who was G appointed as Judicial Member of the Tribunal, had maximum tenure of ten years. It is not the case of the petitioners that the unamended provisions of the Act, which prescribed total tenure of ten years for a Member of the Bar was/is unconstitutional. The provisions of Section 8 fixing maximum term of office of H the chairman at sixty eight years and of a Member of the

Tribunal at 10 years, cannot be regarded as unconstitutional because concept of security of tenure does not apply to such appointments. Said provision cannot be assailed as arbitrary having effect of jeopardising security of tenure. An Advocate practising at the Bar is eligible to be appointed as Member of Tribunal subject to his fulfilling required qualifications. In all, such a Member would have term of office for ten years. On ceasing to hold office, a Member, subject to the other provisions of the Act, is eligible for appointment as the Chairman of the Tribunal or as the Chairman, Vice-chairman or other Member of any other Tribunal and is also eligible to appear, act or plead before any Tribunal except before the Tribunal of which he was Member. Under the circumstances, this Court fails to appreciate as to how the amended provisions restricting the total tenure of a Member of the Tribunal to ten years would be unconstitutional. The unamended Section 6 of the Administrative Tribunals Act, 1985 indicated that the Chairman, Vice-Chairman and other Members, held respective offices in one capacity or the other, had reasonably spent sufficient number of years of service in those posts before they were appointed in the Tribunal and, therefore, the concept of security of tenure of service in respect of those whose term was reduced was not regarded as appropriate. The impugned provision, therefore, cannot be assailed on the ground of arbitrariness having the effect of jeopardizing the security of tenure of Members of the Bar beyond reasonable limits. An option is reserved to the Government to re-appoint a Member on the expiry of the first term beyond five years. The outer limit for the Member is that he should be within the age of 65 years. Thus, it would not be in every case that the Government would put an end to the term of the office at the end of five years because such Chairman or Member is eligible for appointment for another period of five years after consideration of his case by a committee headed by a Judge of the Supreme Court to be nominated by the Chief Justice of India and two other Members, one of whom will be the Chairman of the Tribunal. Under the circumstances, it is difficult to conclude that the

A B C D E F G H

A provision restricting the total tenure of a Member to ten years is either arbitrary or illegal.

16. The plea that Section 10A of the Act requiring a sitting Member of the Tribunal, who seeks extension for second term to possess the qualifications laid down by the amended Act and get himself selected through Selection Committee is arbitrary, is devoid of merits. The selections to be made as an Administrative Member after February 19, 2007 are made applicable uniformly to those who would be appointed as Administrative Member after February 19, 2007. A Member, who was appointed prior to February 19, 2007, cannot claim that he has vested right of extension of his term for a further period of five years as per the qualifications laid down in the unamended Act and that qualifications prescribed by the amending Act should be ignored in his case while considering his case for extension of term for a further period of five years. Over a period of time the anomaly, if any, would get cleared itself and after a period of 4-5 years all the Members of the Tribunal would be equal in status and that every Member to be appointed will have to qualify himself as per the qualifications laid down in the Amended Act and will have to get himself selected through Selection Committee. The eligibility conditions of the Members appointed prior to and after February 19, 2007 are different. Since the Members of the Administrative Tribunals appointed prior to February 19, 2007 form a different class from those appointed or to be appointed after February 19, 2007. Article 14 of the Constitution would stand violated if they are treated differently in the matter of appointment or extension of service as a Member after February 19, 2007. Extension in service by a Member cannot be claimed as matter of right and would always be subject to fulfillment of qualifications and conditions stipulated in the Amended Act. As observed earlier, the petitioner in Writ Petition (C) 539 of 2007 could not have claimed, as a matter of right, automatic re-appointment as Judicial Member of the State Administrative Tribunal after his first term of five years was over. As is provided in the Amending

Act, under the old provisions also a Member of the Administrative Tribunal was eligible to be re-appointed, which was considered to be a fresh appointment for all the practical purposes. Under the provisions of unamended Act, at the end of five years, the Chairman, Vice-chairman and other Members were eligible for reappointment for another period of five years after consideration by a Committee headed by a Judge of the Supreme Court and two other members, one of whom was Chairman of the Tribunal. The petitioner can only be considered for appointment as a Member as per the fresh selection procedure provided by the Amended Act. The Selection Committee has to choose the best candidate available for the post. It is not the requirement of the law that the Selection Committee should inform the petitioner the reasons for not recommending his name. Merely, because there is a vacancy in the post of Member (Judicial) in the Maharashtra Administrative Tribunal, the petitioner cannot claim a right to be appointed to the said post irrespective of the provisions of the amended Act. The petitioner can be appointed only if Selection Committee recommends his appointment and the recommendation is accepted by the President, after the consultation with the Governor of the State. In view of this position of law emerging from the provisions of the unamended and amended Act, the Writ Petition (C) No. 539 of 2007 filed by the petitioner will have to be rejected.

17. The argument that Section 12(2) of the amended Act enabling the appropriate Government to nominate one of the Members of the Tribunal to perform financial and administrative functions destroys independence of the Tribunal which is a Judicial Forum and, therefore, the said provision should be regarded as unconstitutional, is devoid of merits. As is clear from the provisions of Section 12 of the Amended Act, the Chairman of the Tribunal has to exercise all financial and administrative powers over the Benches. Essentially the provision for delegating financial and administrative powers to one of the Members of a Bench is made, to lessen

A administrative burden lying on the shoulders of the Chairman who normally sits at Delhi and for effective and better administration of the Benches of the Tribunal located in different and far flung States of the country. It is not difficult to visualise the problems, complications, obstacles, delay, etc., faced by
B the Chairman, while exercising financial and administrative powers over the Benches. The decentralisation of financial and administrative powers to tackle local needs and problems, in favour of a Member of Tribunal, for effective administration of the Tribunals, cannot be regarded as destroying the basic
C feature of the Constitution, namely independence of judiciary. The designation of the Vice-Chairman by the Central Government under Section 12(2) of the Act would obviously be in concurrence with the Chairman. Further, the Vice-Chairman would discharge such functions of the Chairman as the
D Chairman may so direct. It is absolutely, completely and entirely for the Chairman to recommend to the Government as to designate which Member of the Tribunal as Vice-Chairman. The said provision is an enabling provision, which is clear from the use of the expression "may" in the said provision. If the
E Chairman of the Tribunal feels that no Member should be designated as Vice-Chairman, the Government suo motu cannot and would not be in a position to make designation contemplated by the said provision. The designation as Vice-Chairman would not entitle the Member so designated to any special benefits in service conditions. The only purpose of the
F said provision is to help the Chairman in discharge of his administrative functions as the Benches of the Tribunal are situated in different parts of the country. Section 12(2) of the Act, which enables the appropriate Government to designate one or more Members as Vice-Chairman and entitles the
G Members so designated to exercise such powers and perform such functions of the Chairman as may be delegated to him by the Chairman by general or special order in writing cannot be regarded as destroying the principle independence of judiciary or of the Administrative Tribunals. This Court fails to
H understand as to how the appropriate Government would be

able to destroy the independence of Tribunals by designating one or more Members to be the Vice-Chairman for the purposes of performing the functions of the Chairman to be delegated to him by the Chairman. The jurisdiction, powers and authority of the Central Administrative Tribunal are defined in the Act and, more particularly, in Sections 14, 15, 16, 17 and 18 of the Act. The petitioners have failed to demonstrate that by authorizing appropriate Government to designate one or more Members to be the Vice-Chairman for the purpose of performing financial and administrative powers of the Chairman, the independence of the Tribunals secured by the above referred to provisions is in any manner eroded. The challenge to the constitutional validity of Section 12(2) of the Act to say the least is misconceived and without any basis and, therefore, must fail.

18. For the reasons stated in the Judgment, this Court does not find any merits in any of the abovementioned writ petitions and they are liable to be dismissed. Accordingly, both the writ petitions fail and are dismissed. There shall be no order as to costs.

DALVEER BHANDARI, J. 1. I have had the benefit of going through the judgment of my Brother Hon'ble Mr. Justice J.M. Panchal. Though Hon'ble Mr. Justice K.G. Balakrishnan, Chief Justice of India has agreed with his decision, however, I express my inability to agree with him, therefore, I am writing a separate judgment.

2. Writ Petition No. 261 of 2007 under Article 32 has been filed by a practicing Advocate and the President of the Central Administrative Tribunal, Principal Bench, Bar Association, New Delhi. The connected Writ Petition No. 539 of 2007 under Article 32 has been filed by a Member (Judicial) in the Maharashtra Administrative Tribunal, Maharashtra. Most of the issues involved in both the petitions are identical, therefore, both these petitions are being disposed of by this common judgment.

A 3. The petitioners are aggrieved by certain amendments carried out in the Administrative Tribunal Act, 1985 (for short, 'the Act').

4. The petitioners are particularly aggrieved by the abolition of the post of Vice-Chairman in the Central B Administrative Tribunal by the Administrative Tribunal (Amendment) Act 2006 (for short, 'Amendment Act') which came into force by Act No.1/2007 dated 19.2.2007. According to the petitioners, the said Amendment Act is constitutionally and legally untenable and unsustainable because no reason for C such abolition has been spelt out by the respondents at any point of time while introducing the said Amendment Bill.

5. The petitioners are also aggrieved by the newly inserted Section 10A of the Act which creates a hostile discrimination D in the matter of conditions of service between the members of the Tribunal appointed before and after 19.2.2007 inasmuch as "conditions of service" of a High Court Judge have been granted to members appointed after 19.2.2007 while the same have been denied to other members appointed before 19.2.2007.

E 6. According to the petitioners, the newly inserted section 10A is discriminatory and arbitrary inasmuch as, on the one hand, vide section 8(2) of the Amendment Act, the age of retirement for members has been increased from 62 years to 65 years and, on the other hand, by the newly inserted Section F 10A, the total tenure of members of the Administrative Tribunals has been restricted to ten years (two terms), in other words, compelling them to retire at the age of fifty five years is wholly irrational and discriminatory and has been designed to discourage promising and otherwise deserving, competent and G successful members of the Bar from joining the Tribunal. The age of appointment as a judicial member of the Tribunal is 45 years and any member who is appointed at that age necessarily has to retire at the age of 50 or 55 years, whereas other members retire at the age of 65 years. Insertion of section H 10A would seriously discourage, deter and dissuade deserving

members of the Bar from joining the Tribunal because it would totally frustrate their career planning. The member after demitting the office is debarred from practicing before any Bench of the Tribunal. A

7. The petitioners also submitted that the judicial members appointed from the Bar since the inception of the Tribunal have played a pivotal role in the judicial functioning of the Tribunal. They have been in fact the backbone of the Tribunal. Thus the present amendment would greatly affect the efficiency, efficacy and credibility of the Tribunal. No reason, rationale or logic has been spelt out as to why the ceiling of ten years has been imposed particularly when the age of superannuation has been increased from 62 years to 65 years for other members. B C

8. The petitioners submitted that the amended section 12(2) of the Act amounts to interference of executive in the affairs of the judiciary by which the power to designate one or more members as "Vice-Chairman" to exercise certain powers and perform certain functions of the Chairman in the outlying Benches of the Tribunal has been conferred upon the Government whereas, previously such powers were vested with the Chairman of the Tribunal. D E

9. The petitioners further submitted that the Amendment Act has abolished the post of "Vice-Chairman" in the Administrative Tribunals. The post of Vice-Chairman had been in existence in the Administrative Tribunal since its inception in 1985. The said post enabled the retired or retiring judges of various High Courts to join the Central Administrative Tribunal. Besides, it also provided an opportunity in the nature of promotion for the members of Administrative Tribunals. By abolition of the post of Vice-Chairman, the retired High Court judges would not find it attractive to join the Tribunal and, consequently, the judicial character of the Tribunal would suffer a serious setback. F G

10. It was also submitted that the newly introduced section H

A 6(2) of the Administrative Tribunals Act, 1985 modifies the qualifications for appointment as Administrative Members in the Tribunal in such a manner that for all practical purposes, except for the officers of the Indian Administrative Service (for short, 'IAS'), hardly any other civil servant would ever become eligible
B for such appointment. Earlier, even the Income Tax, Postal and Customs Officers etc. used to become members of the Tribunal. Now, after the amendment, they would hardly have any chance of becoming members of the Tribunal. In other words, by the 2006 Amendment, the zone of consideration for
C appointment of Administrative Members has been essentially confined only to IAS officers by a colourable exercise of power by depriving all other categories of civil servants for such appointment. The petitioners have not placed sufficient material on record to decide this controversy, therefore, I refrain from
D commenting on this grievance of the petitioners. However, I direct the respondents to look into the grievance of members of other services and if any merit is found in the grievance then take appropriate remedial steps so that members of other services may get proper representation.

E 11. The petitioners further submitted that by introducing section 12(2) in the Act, the power to designate a "Vice-Chairman" in the Benches for the purposes of certain duties and functions of the Chairman has been usurped by the government. Previously such powers were vested with the
F Chairman of the Tribunal. Such a provision has the potentiality of destroying the judicial independence of the Tribunal particularly when such uncontrolled, unguided and unregulated powers have now been given to the Government.

G 12. In order to properly comprehend the controversy involved in the case, relevant newly inserted sections 10A and 12(2) along with unamended section 12 are reproduced as under:-

Newly Inserted Section 10A of the Amended Act

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"10A. *Saving terms and conditions of service of Vice-Chairman.* – The Chairman, Vice-Chairman and Members of a Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:

Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006, may on completion of their term or attainment of the age of sixty-five or sixty-two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as amended by the Administrative Tribunals (Amendment) Act, 2006 be considered for a fresh appointment in accordance with the selection procedure laid down for such appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years."

SECTION 12 (BEFORE AMENDMENT)	**SECTION 12 (2)** (AFTER AMENDMENT)
"12.Financial and administrative powers of the Chairman.- The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the appropriate Government:	12. Financial and administrative powers of the Chairman.- (1) The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the
Provided that the	

A Chairman shall have authority to delegate such of his financial and administrative powers as he may think fit to the B Vice-Chairman or any officer of the Tribunal, subject to the condition that the Vice-Chairman or such officer shall, while C exercising such delegated powers, continue to act under the direction, control and supervision of the D Chairman."

appropriate Government.

(2)The appropriate Government may designate one or more Members to be the Vice-Chairman or, as the case may be, Vice-Chairman thereof and the Members so designated shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

13. In pursuance to the show cause notice issued by this Court, the respondents, through the Under Secretary in the E Ministry of Personnel, Government of India, have filed counter affidavit incorporating therein that abolishing the post of Vice-Chairman in the Tribunal was intended as it was creating an avoidable three tier-system resulting in anomalies in qualifications, age of retirement, service conditions etc. It is F further incorporated in the counter affidavit that the abolition of the post of Vice-Chairman and upgrading the post of members or increase of retirement age do not in any manner impinge upon the working of the Tribunal.

14. It is also incorporated in the counter affidavit that the G post of Vice-Chairman under the amended Act is only an executive designation for discharging the administrative powers. Though the Government has been given the power to nominate one of the members as Vice-Chairman of the Tribunal, it is obvious that the said designation of a member H as Vice-Chairman would obviously be made with the

concurrence of the Chairman of the Tribunal. A

15. In the counter affidavit, it is also stated that a retired High Court judge would be eligible for appointment as member of the Tribunal. Usually a retired Chief Justice of the High Court is appointed as the Chairman of the Tribunal and very rarely, a retired judge may also be appointed as the Chairman of the Tribunal. In any event, the Chairman would be a senior retired judge who is appointed as a member of the Tribunal. Hence, there is no anomaly. B

16. In the counter affidavit, it is specifically admitted that there is some substance in the contention of the petitioners that members appointed prior to 19.2.2007 would be at disadvantage in terms of their service conditions inasmuch as they would not get the same benefits as the High Court judge. However, this is a temporary anomaly. Over a period of time, the same anomaly would correct itself and after a period of 4-5 years, all the members of the Tribunal would be treated in an equal manner. C D

17. In the counter affidavit it is denied that ceiling on the terms has the effect of stopping members of the Bar from being appointed for the post of Vice-Chairman. In the counter affidavit it is also incorporated that the tenure of ten years was prescribed way back in the year 1985. E

18. The petitioners have also filed the rejoinder affidavit. It is reiterated that under the un-amended Act, members of the Tribunal were eligible for multiple terms and it was not restricted to two terms. In fact, a number of members were given multiple extensions under the unamended Act. Thus the restriction of ten years has been imposed for the first time under the amended Act. F G

19. In the rejoinder affidavit, it is reiterated that the discriminatory treatment being given to the members of Administrative Tribunal appointed prior to 19.2.2007 is H

A untenable and unsustainable. Law does not allow temporary discrimination even for a few years. It is clearly violative of Articles 14 and 16 of the Constitution.

20. In the rejoinder, it is further asserted that under the unamended Act the High Court Judges were being appointed as Vice-Chairman and, therefore, they enjoyed higher status than that of the members. Thus, when a Bench was being constituted consisting of a High Court Judge as Vice-Chairman and other members, the High Court Judge used to preside over the Bench as the Vice-Chairman. Now under the Amended Act the posts of Vice-Chairman having been abolished, the High Court Judges are also appointed as Member (Judicial) and the seniority among members has to be on the basis of date of appointment as a member. In such an eventuality, many High Court Judges who would be appointed as Member (Judicial) could be lower in the seniority creating an anomalous situation for the constitution of Benches in the Tribunal. Besides, if for any reason a retired High Court Judge presides over the Bench as the Vice-Chairman, even though he may have joined as a member much later, it would create a lot of heart-burning amongst all previously appointed members as the class of members has now been made one.

21. It is also incorporated in the rejoinder that the amendment has placed the members of the Bar in a totally disadvantageous position as previously the members of the Bar were being selected as Member (Judicial), but with the amendment now the retiring and retired High Court Judges are competing for the post of Member (Judicial) thereby the members of the Bar are totally ignored. Theoretically, the members of the Bar are eligible for appointment as Member (Judicial), practically competent and otherwise deserving lawyers have been eliminated from the scene. The Tribunal which is discharging judicial powers which were earlier exercised by the High Courts should be predominantly manned by the members of the Bar and Judiciary but after the

amendment till date only two members have been appointed from the Bar in so many years. This is the direct and inevitable impact of the amendment. This goes against the letter and spirit of the law declared in the case of *S.P. Sampat Kumar v. Union of India & Others* (1987) 1 SCC 124.

22. The petitioners further submitted in the rejoinder that the designation of Vice-Chairman is still in existence under Amended Act also but the power of nomination for the said post in all additional Benches under the amended Act has been given to the appropriate Government which is not a healthy development and thus needs to be quashed.

23. The petitioners submitted that the effort of the Central Government to increase the age of retirement of the members of Tribunal from 62 to 65 years is undoubtedly a welcome step. However, by this effort every member of Tribunal will not have a tenure of 5 years as asserted by the respondents. The High Court Judges retire at the age of 62 years. Under the amended Act members of the Tribunal retire at the age of 65 years thereby effectively serving the Tribunal only for a maximum period of three years. The increase in the age of retirement will give a minimum tenure of 5 years to the Administrative Members but not to the retired High Court Judges who are appointed as Judicial Members. They would get maximum of three years only.

24. The petitioners also made grievance that as to why it became imperative to snatch the powers of the Chairman to delegate his financial and administrative powers to any Vice-Chairman/Member. In the rejoinder, it is submitted that the respondents have clearly admitted that the discriminatory treatment is being given to the members of the Administrative Tribunal appointed prior to 19.2.2007.

25. The respondents have nowhere denied that both the categories of members are not discharging the same duties, obligations and responsibilities, therefore, the conditions of

A service for both of them are different. This is a clear discrimination and violation of Articles 14 & 16 of the Constitution of India. Thus, even on the basis of reply given by the respondents it is proved beyond any shadow of doubt that section 10A of the amended Act is clearly discriminatory and
B unsustainable.

26. The contention of the respondents that the 'temporary anomaly' would not make the provision unconstitutional is clearly wrong and is denied. Discrimination even for a temporary period of 4 to 5 years is also violative of Articles 14
C and 16 of the Constitution of India. There is no law under which a temporary discrimination can be saved.

27. It is also stated that because of this discriminatory provision anomalous situation has already arisen in the Central
D Administrative Tribunal. The petitioners have given an example that under the unamended Act, only the Secretaries and the Additional Secretaries to the Government of India were eligible for appointment as Member (Administrative). Under the said unamended provisions, a number of former Secretaries to
E Government of India were appointed as Member (Administrative). They have been continuing as such till date and have acquired experience of a number of years. They are till now continuing under the old conditions of service. Now under the amended provisions, selection has already been held
F and a number of retired judges and officers at the level of the Additional Secretaries to Government of India have been selected and appointed as members under the new conditions of service. Thus, while retired Judges and Secretaries to the Government of India now working as members are not given
G the benefit of the 'conditions of service' of a High Court Judge but subsequently appointed retired Additional Secretaries to the Government of India now appointed as Member (Administrative) are given service conditions of a High Court Judge. The Administrative Members, though junior both while in the government service as well as an Administrative Member are
H

entitled to get service conditions of a High Court Judge. A

28. The situation is becoming more and more acute with more and more newly selected Members (Administrative) joining the Tribunal. Similar situation is prevailing amongst Member (Judicial) also. While persons appointed as Member (Judicial) and senior to some newly appointed Member (Judicial) would not get the benefit of the service conditions of a High Court Judge and the later appointees would get service conditions of a High Court Judge. B

29. The petitioners are aggrieved by the newly inserted section 10A of the Act to the extent it postulates different conditions of service for the members of the Central Administrative Tribunal on the basis of their dates of appointments under the amended and the unamended Rules as unconstitutional, arbitrary and legally unsustainable. C D

30. A Constitution Bench of this Court in *Sampath Kumar's* case (supra) has clearly laid down that the Central Administrative Tribunal has been created in substitution of the High Court. This Court in para 15 of the judgment observed as under: E

> "..... As the pendency in the High Courts increased and soon became the pressing problem of backlog, the nation's attention came to be bestowed on this aspect. Ways and means to relieve the High Courts of the load began to engage the attention of the Government at the centre as also in the various States. As early as 1969, a Committee was set up by the Central Government under the chairmanship of Mr. Justice Shah of this Court to make recommendations suggesting ways and means for effective, expeditious and satisfactory disposal of matters relating to service disputes of Government servants as it was found that a sizable portion of pending litigations related to this category. The Committee recommended the setting up of an independent Tribunal to handle the F G H

A pending cases before this Court and the High Courts. While this report was still engaging the attention of Government, the Administrative Reforms Commission also took note of the situation and recommended the setting up of Civil Services Tribunals to deal with appeals of
B Government servants against disciplinary action....."

31. The judicial work which is now being dealt with by the members of the Tribunal was earlier discharged by the judges of the High Court before the Tribunal was established. In most of the High Courts, a large number of cases had got piled up
C awaiting adjudication. The High Courts were taking years and in some cases decades in deciding these cases. The Union of India had an option either to suitably increase the strength of the High Courts or to create a separate Tribunal for expeditious disposal of these cases. The Union of India
D decided to create a separate Tribunal. Once the Tribunal is discharging the functions of the judiciary, then both judges and members of the Bar have to be an integral part of the Tribunal. The functioning of the Tribunal may become difficult in case Members of Judiciary and Bar have no incentive to join the
E Tribunal or they are deliberately discouraged and dissuaded from joining the Tribunal because of newly inserted amendments in the Act. The non-descript and otherwise non-deserving candidates would always be available but in order to have public trust and confidence in the functioning of the
F Tribunal, it is absolutely imperative that the respondents must endeavour to attract really deserving, competent and promising members of the Bar with high caliber and integrity to join the Tribunal. In order to attract such talent, the service conditions have to be improved and made attractive because these
G members are discharging the functions of the High Court.

32. In *Sampath Kumar's* case (supra), the Constitution Bench has dealt with this aspect of the matter in some detail. This Court in para 21 observed as under:

H ".....So far as the Chairman is concerned, we are of the

view that ordinarily a retiring or retired Chief Justice of a High Court or when such a person is not available, a Senior Judge of proved ability either in office or retired should be appointed. That office should for all practical purposes be equated with the office of Chief Justice of a High Court. We must immediately point out that we have no bias, in any manner, against members of the Service. Some of them do exhibit great candour, wisdom, capacity to deal with intricate problems with understanding, detachment and objectiveness but judicial discipline generated by experience and training in an adequate dose is, in our opinion, a necessary qualification for the post of Chairman....."

Similarly, other members also discharge the same judicial functions. In order to preserve public confidence, acceptability and trust, members of the Bar and Judiciary must be encouraged to man the Tribunal. Discouraging or killing the incentive of members of the Bar and Judiciary to accept the appointment of the Tribunal would have serious repercussions about the credibility, confidence, trust and acceptability of the Tribunal particularly when according to *Sampath Kumar's* case (supra), the High Court is being supplanted by the Administrative Tribunal. In a democratic country governed by the rule of law no institution discharging judicial functions can properly survive without public confidence, credibility, trust and acceptability.

33. The Constitution Bench in *Sampath Kumar's* case (supra) observed that what we really need is the judicial Tribunal. The judicial functions which, before setting up of the Central Administrative Tribunal, were discharged by the judges of the High Courts, would now be discharged by the members of the Tribunal, therefore, it is imperative that the judicial work of the Tribunal should be handled by talented and competent members who have legal background and judicial experience. Any amendment of the Statute which discourages the members

A of the Bar and Judiciary from joining the Administrative Tribunal deserves to be discarded.

34. The Tribunal has the power of judicial review. It is now well settled by this Court in the case of *Minerva Mills Ltd. & Ors. v. Union of India & Ors.* (1980) 3 SCC 625 that judicial B review is a basic and essential feature of the Constitution and no law passed by the Parliament in exercise of its constituent power can abrogate it or take it away. If the power of judicial review is abrogated or taken away, the Constitution will cease to be what it is. It is a fundamental principle of our constitutional C scheme that every organ of the State and every authority under the Constitution derives its power and authority from the Constitution and has to act within the limits of such powers.

35. In *Sampath Kumar's* case (supra) the court observed D as under:

"3 ....The Constitution has, therefore created an independent machinery for resolving these disputes and this independent machinery is the judiciary which is vested with the power of judicial review to determine the legality E of executive action and the validity of legislation passed by the legislature. The judiciary is constituted the ultimate interpreter of the Constitution and to it is assigned the delicate task of determining what is the extent and scope of the power conferred on each branch of Government, F what are the limits on the exercise of such power under the Constitution and whether any action of any branch transgresses such limits. It is also a basic principle of the rule of law which permeates every provision of the Constitution and which forms its very core and essence G that the exercise of power by the executive or any other authority must not only be conditioned by the Constitution but also be in accordance with law and it is the judiciary which has to ensure that the law is observed and there is compliance with the requirements of law on the part of the H executive and other authorities. This function is discharged

by the judiciary by exercise of the power of judicial review which is a most potent weapon in the hands of the judiciary for maintenance of the rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no Government or laws and the rule of law would become a teasing illusion and a promise of unreality....."

36. Bhagwati, CJ in a concurring judgment in *Sampath Kumar's* case (supra) observed as under:

"3. .....The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, another alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court. Then, instead of the High Court, it would be another institutional mechanism or authority which would be exercising the power of judicial review with a view to enforcing the constitutional limitations and maintaining the rule of law. Therefore, if any constitutional amendment made by Parliament takes away from the High Court the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the parliamentary amendment is no less effective than the High Court."

Justice Bhagwati, in the said judgment, effectively reminded us that the Administrative Tribunal is to carry out the functions of the High Court. In order to inspire confidence in the public mind it is essential that it should be manned by people who have judicial and/or legal background, approach and objectivity. This court in *Sampath Kumar (supra)* further observed as under:

A "5. We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. Of course, I must B make it clear that when I say this, I do not wish to cast any reflection on the members of the Civil Services because fortunately we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome C administrative problems of great complexity. But what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience..."

37. Justice Bhagwati, in his judgment in *Sampath Kumar's* case has also cautioned that in service matters, the Government D is always the main contesting or opposite party, therefore, it would not be conducive to judicial independence to leave unfettered and unrestricted discretion to the executive in the matter of appointments of Chairman, Vice-Chairman and Administrative Members. The court observed as under:

E "7. .... Now it may be noted that almost all cases in regard to service matters which come before the Administrative Tribunal would be against the Government or any of its officers and it would not at all be conducive to F judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice-Chairmen and administrative members; if a judicial member or an administrative member is looking forward to promotion as Vice-Chairman or Chairman, he would have to depend on the goodwill and favourable stance of G the executive and that would be likely to affect the independence and impartiality of the members of the Tribunal. The same would be the position vis-à-vis promotion to the office of Chairman of the Administrative Tribunal. The administrative members would also be likely

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to carry a sense of obligation to the executive for having been appointed members of the Administrative Tribunal and that would have a tendency to impair the independence and objectivity of the members of the Tribunal. There can be no doubt that the power of appointment and promotion vested in the executive can have prejudicial effect on the independence of the Chairman, Vice-Chairmen and members of the Administrative Tribunal, if such power is absolute and unfettered. If the members have to look to the executive for advancement, it may tend, directly or indirectly, to influence their decision-making process particularly since the Government would be a litigant in most of the cases coming before the Administrative Tribunal and it is the action of the Government which would be challenged in such cases..."

38. In order to inspire public confidence, it is imperative that the deserving persons with competence, objectivity, impartiality and integrity with judicial and/or legal background are appointed as members of the Tribunal.

39. Ranganath Misra, J. who wrote the main judgment of the Constitution Bench in *Sampath Kumar (supra)* observed as under:

"18. The High Courts have been functioning over a century and a quarter and until the Federal Court was established under the Government of India Act, 1935, used to be the highest courts within their respective jurisdiction subject to an appeal to the Privy Council in a limited category of cases. In this long period of about six scores of years, the High Courts have played their role effectively, efficiently as also satisfactorily. The litigant in this country has seasoned himself to look up to the High Court as the unfailing protector of his person, property and honour. The institution has served its purpose very well and the common man has thus come to repose great confidence therein. Disciplined, independent and trained Judges well-versed in law and

A working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the Court— the social mechanism to act as the arbiter—not under legal obligation but under the belief and faith that justice shall B be done to them and the State's authorities would implement the decision of the Court. It is, therefore, of paramount importance that the substitute institution—the Tribunal—must be a worthy successor of the High Court in all respects. That is exactly what this Court intended to C convey when it spoke of an alternative mechanism in *Minerva Mills'* case."

40. In the later part of the judgment, while clarifying that this court has no bias against the members of service, the court observed as under:

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"21. ....We must immediately point out that we have no bias, in any manner, against members of the Service. Some of them do exhibit great candour, wisdom, capacity to deal with intricate problems with understanding, E detachment and objectiveness but judicial discipline generated by experience and training in an adequate dose is, in our opinion, a necessary qualification for the post of Chairman..."

41. While commenting on section 8, the court further F observed as under:

"22. Section 8 of the Act prescribes the term of office and provides that the term for Chairman, Vice-Chairman or members shall be of five years from the date on which he G enters upon his office or until he attains the age of 65 in the case of Chairman or Vice-Chairman and 62 in the case of member, whichever is earlier. The retiring age of 62 or 65 for the different categories is in accord with the pattern and fits into the scheme in comparable situations. We H would, however, like to indicate that appointment for a term

of five years may occasionally operate as a disincentive for well qualified people to accept the offer to join the Tribunal. There may be competent people belonging to younger age groups who would have more than five years to reach the prevailing age of retirement. The fact that such people would be required to go out on completing the five year period but long before the superannuation age is reached is bound to operate as a deterrent..."

42. In *L. Chandra Kumar v. Union of India & Others* (1997) 3 SCC 261, the Court dealt with the origin of judicial review. The origin of the power of judicial review of legislative action may well be traced to the classic enunciation of the principle by Chief Justice John Marshall of the US Supreme Court in *Marbury v. Madison.* (But the origins of the power of judicial review of legislative action have not been attributed to one source alone). So when the framers of our Constitution set out their monumental task, they were well aware that the principle that courts possess the power to invalidate duly-enacted legislations had already acquired a history of nearly a century and a half.

43. In *R.K. Jain v. Union of India* (1993) 4 SCC 119 (para 8) the court observed as under:-

"...(T)he time is ripe for taking stock of the working of the various Tribunals set up in the country after the insertion of Articles 323A and 323B in the Constitution. A sound justice delivery system is a sine qua non for the efficient governance of a country wedded to the rule of law. An independent and impartial justice delivery system in which the litigating public has faith and confidence alone can deliver the goods..."

44. In *Bidi Supply Co. v. Union of India & Ors.* 1956 SCR 267, the Court observed as under:

"The heart and core of democracy lies in the judicial

process, and that means independent and fearless judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty of freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi executive bodies even if they exercise quasi judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom, of action, it is evident that it cannot invest lesser authorities with that power."

45. In *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr.* (1973) 4 SCC 225, Khanna, J. (at para 1529 at page 818) observed as under:

"...The power of judicial review is, however, confined not merely to deciding whether in making the impugned laws the Central or State Legislatures have acted within the four corners of the legislative lists earmarked for them; *the courts also deal with the question as to whether the laws are made in conformity with and not in violation of the other provisions of the Constitution.* .....As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by those rights are not contravened... *Judicial review has thus become an integral part of our constitutional system and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of provisions of statutes.* If the provisions of the statute are found to be violative of any article of the Constitution, which is touchstone for the validity of all laws, the Supreme Court

and the High Courts are empowered to strike down the said provisions." A

46. In *L. Chandra Kumar's* case (supra), the Court observed as under:

"81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution. It is to be remembered that, apart from the authorization that flows from Articles 323-A and 323-B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts..." B C D E

47. The Report of the Arrears Committee (1989-90) popularly known as the Malimath Committee Report, in Chapter VIII of the second volume under the heading "Alternative Modes and Forums for Dispute Resolution" dealt with the functioning of the Tribunals in the following words: F

"*Functioning of Tribunals*

8.63. Several tribunals are functioning in the country. *Not all of them, however, have inspired confidence in the public mind.* The reasons are not far to seek. *The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and* G H

A *method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of caliber are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive*
B *subordination in matters of administration and political interference in judicial functioning.* For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals."

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48. The Tribunals were established to inspire confidence in the public mind for providing speedy and quality justice to the litigants. The Tribunals were set up to reduce the increasing burden of the High Courts. The High Courts' judicial work was in fact entrusted to these Tribunals. The judicial work should be
D adjudicated by legally trained minds with judicial experience or at least by a legally trained mind. The public has faith and confidence in the judiciary and they approach the judiciary for just and fair decisions. Therefore, to maintain the trust and confidence in the judicial system, the government should ensure
E that the person adjudicating the disputes is a person having legal expertise, modicum of legal training and knowledge of law apart from an impeccable integrity and ability. The persons who have no legal expertise and modicum of legal training may find it difficult to deal with complicated and complex questions of
F law which at times even baffle the minds of well trained lawyers and judges. Therefore, dispensation of justice should be left primarily to the members of the Bar and the Judges who have by long judicial and legal training and experience have acquired understanding, objectivity and acumen. Unless we take utmost
G care in the matter of appointments in the Tribunal, our justice delivery system may not command credibility, confidence and the trust of the people of this country.

49. In all constitutional matters where amendments of
H certain legislations have been challenged, the approach of this

Court has always been to examine the constitutional scheme of every enactment of the State. It is clear that the Court had never tried to pick holes or searched for defects of drafting but has sustained the enactments if found fit on the anvil of truth and has struck down the enactments only whenever an enactment was found wholly unsustainable. The Courts have always been very conscious of the demarked functions of the three organs of the State. The Courts have also recognized the concept of checks and balances under the Constitution.

50. The Courts constitute an inbuilt mechanism within the framework of the Constitution for purposes of social audit and to ensure compliance of the Rule of Law. This Court seeks only to ensure that the majesty of this great institution may not be lowered and the functional utility of the constitutional edifice may not be rendered ineffective. This principle was articulated by this Court in the case of *M.L. Sachdev v. Union of India & Another* (1991) 1 SCC 605.

51. There are plethora of cases where challenges have been made to various enactments of the State constituting expert bodies/Tribunals on the ground that in such Tribunals the positions required to be occupied by the persons of judicial background are being filled in by those who are bureaucrats and others who are not having judicial expertise and objectivity. In such cases, it has been a ground of challenge that the bodies/ Tribunals being judicial forums having adjudicatory powers on the questions of importance and legalistic in nature and in the background of the doctrine of separation of powers recognized by the Indian Constitution, the head of the judiciary should always be consulted for such appointments and the main substance behind such challenge has been that the persons who are appointed to such bodies should belong to the judiciary because those members have to discharge judicial functions.

52. In *Sampath Kumar's* case (supra), Bhagwati, C.J. relying on *Minerva Mills'* case declared that it was well settled

A that judicial review was a basic and essential feature of the Constitution. If the power of judicial review is taken away, the Constitution would cease to be what it is. The court further declared that if a law made under Article 323-A(1) were to exclude the jurisdiction of the High Court under Articles 226 and B 227 without setting up an efficient alternative institutional mechanism or arrangement for judicial review, it would violate the basic structure and hence outside the constituent power of Parliament.

53. The Parliament was motivated to create new C adjudicatory fora to provide new, inexpensive and fast-track adjudicatory systems and permitting them to function by tearing of the conventional shackles of strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews - creating hurdles in fast flow of stream D of justice. The Administrative Tribunals as established under Article 323-A and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended constitutional scheme but at the same time not to E negate judicial review jurisdiction of the constitutional courts.

54. I am, therefore, clearly of the opinion that there is no anathema in the Tribunal exercising jurisdiction of High Court and in that sense being supplemental or additional to the High F Court but, at the same time, it is our bounden duty to ensure that the Tribunal must inspire the same confidence and trust in the public mind. This can only be achieved by appointing the deserving candidates with legal background and judicial approach and objectivity.

G 55. I deem it appropriate to briefly discuss the theory of basic structure and separation of power in the Constitution to properly comprehend the controversy involved in this case.

EQUALITY AND BASIC STRUCTURE

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56. Initially when the doctrine of basic structure was laid down there was no specific observation with respect to whether Article 14 forms part of basic structure or not. In fact the confusion was to such an extent as to whether fundamental rights as a whole form part of basic structure or not? It was in this light that *Khanna, J.,* had to clarify in his subsequent decision in *Indira Nehru Gandhi v. Raj Narain & Anr.* (1975) Supp. SCC 1 in the following words:-

> ".....What has been laid down in that judgment is that no article of the Constitution is immune from the amendatory process because of the fact that it relates to a fundamental right and is contained in Part III of the Constitution.....The above observations clearly militate against the contention that according to my judgment fundamental rights are not a part of the basic structure of the Constitution. I also dealt with the matter at length to show that the right to property was not a part of the basic structure of the Constitution. This would have been wholly unnecessary if none of the fundamental rights was a part of the basic structure of the Constitution". **[Paras 251-252]**

Further, though not directly quoting Article 14 of the constitution Chandrachud, J. in the above mentioned case held that,

> "I consider it beyond the pale of reasonable controversy that if there be any unamendable features of the Constitution on the score that they form a part of the basic structure of the Constitution, they are that: (*i*) Indian sovereign democratic republic; (*ii*) Equality of status and opportunity shall be secured to all its citizens; (*iii*) The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion and that (*iv*) the nation will be governed by a Government of laws, not of men. These, in my opinion, are the pillars of ou. constitutional philosophy, the pillars, therefore, of the basic

A structure of the Constitution." **[Para 664]**

57. Thus, from the above observations it is very clear that at no point of time there was the intention to exclude the mandate of equality from the basic structure. The *I.R. Coelho (dead) by Lrs. v. State of Tamil Nadu & Others* (2007) 2 SCC B 1 rightly observed that in *Indira Gandhi's* case, Chandrachud, J. posits that equality embodied in Article 14 is part of the basic structure of the constitution and, therefore, cannot be abrogated by observing that the provisions impugned in that case are an outright negation of the right of equality conferred by Article 14, C a right which more than any other is a basic postulate of our constitution **[Para 108]**

58. In the above case relying on the observations in the ***Minerva mills's case*** the question of Article 14 coming under D the purview of Basic structure has been brought at rest. Since it has been a settled question *per* the judgment of ***I.R. Coelho*** that the arbitrariness of a legislation, Rules, Policies and amendment would be subject to the test of reasonableness, rule of law and broad principle of equality as per Article 14.

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59. In *Ashoka Kumar Thakur & Ors. v. Union of India & Ors.* (2008) 6 SCC 1, Balakrishnan, CJ. observed that,

"118. Equality is a multicolored concept incapable of a single definition as is also the fundamental right under F Article 19(1)(*g*). The principle of equality is a delicate, vulnerable and supremely precious concept for our society. It is true that it has embraced a critical and essential component of constitutional identity. The larger principles of equality as stated in Articles 14, 15 and 16 may be G understood as an element of the "basic structure" of the Constitution and may not be subject to amendment, although, these provisions, intended to configure these rights in a particular way, may be changed within the constraints of the broader principle. The variability of H changing conditions may necessitate the modifications in

the structure and design of these rights, but the transient characters of formal arrangements must reflect the larger purpose and principles that are the continuous and unalterable thread of constitutional identity. It is not the introduction of significant and far-reaching change that is objectionable, rather it is the content of this change insofar as it implicates the question of constitutional identity." A B

SEPARATION OF POWERS

60. The Constitution has very carefully separated the powers of executive, judiciary and legislature and maintained a very fine balance. C

61. Sikri, C.J. in *Kesavananda Bharati's* case (supra) stated that separation of powers between the legislature, executive and the judiciary is basic structure of the constitution. The learned judge further observed that, D

"The above structure is built on the basic foundation i.e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed." (Para 293) E

"The above foundation and the above basic features are easily discernible not only from the preamble but the whole scheme of the Constitution, which I have already discussed." [Para 294] F

62. In *Minerva Mills Ltd.* (supra), the court observed thus:-

"87.....every organ of the State, every authority under the Constitution, derives its power from the Constitution and has to act within the limits of such power. But then the question arises as to which authority must decide what are the limits on the power conferred upon each organ or instrumentality of the State and whether such limits are transgressed or exceeded. Now there are three main departments of the State amongst which the powers of G H

A government are divided; the executive, the legislature and the judiciary. Under our Constitution we have no rigid separation of powers as in the United States of America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain
B degree of overlapping is inevitable. The reason for this broad separation of powers is that "the concentration of powers in any one organ may" to quote the words of Chandrachud, J., (as he then was) in *Indira Gandhi case* (supra) "by upsetting that fine balance between the three
C organs, destroy the fundamental premises of a democratic government to which we are pledged".

63. This court in *Subhash Sharma & Ors. v. Union of India* 1991 Sup (1) 574 observed as under:-

D ".....The constitutional phraseology would require to be read and expounded in the context of the constitutional philosophy of separation of powers to the extent recognised and adumbrated and the cherished values of judicial independence." **[Para 31]**

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64. In *Pareena Swarup v. Union of India* (2008) 14 SCC 107 the court observed as under:-

"9. It is necessary that the court may draw a line which the executive may not cross in their misguided desire to
F take over bit by bit and (*sic*) judicial functions and powers of the State exercised by the duly constituted courts. While creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and
G independence of the judicial function."

In the said case, it was also observed as under:-

"10.....The Constitution guarantees free and independent judiciary and the constitutional scheme of
H separation of powers can be easily and seriously

undermined, if the legislatures were to divest the regular courts of their jurisdiction in all matters, and entrust the same to the newly created Tribunals which are not entitled to protection similar to the constitutional protection afforded to the regular courts. The independence and impartiality which are to be secured not only for the court but also for Tribunals and their members, though they do not belong to the "judicial service" but are entrusted with judicial powers. The safeguards which ensure independence and impartiality are not for promoting personal prestige of the functionary but for preserving and protecting the rights of the citizens and other persons who are subject to the jurisdiction of the Tribunal and for ensuring that such Tribunal will be able to command the confidence of the public. Freedom from control and potential domination of the executive are necessary preconditions for the independence and impartiality of Judges. To make it clear that a judiciary free from control by the executive and legislature is essential if there is a right to have claims decided by Judges who are free from potential domination by other branches of Government. With this background, let us consider the defects pointed out by the petitioner and amended/proposed provisions of the Act and the Rules."

EQUAL PAY FOR EQUAL WORK

65. The Equal Remuneration Act, 1976 and in particular its preamble declares the Act to provide for payment of equal remuneration and prevention of any kind of discrimination on the ground of sex or otherwise in the matter of employment. The Equal Remuneration Act, 1976 extends to the whole of India by virtue of Section 1(2) and there cannot be different pay scales for different employees carrying out exactly same work. Section 4(3) states that "where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the

A same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such B commencement, to such men and women workers."

66. In view of the above constitutional principles and Directive Principles of State Policy under the Constitution and the statutory and mandatory provisions of overriding Equal Remuneration Act, 1976, the following principles are evolved C for fixing the governmental pay policy, whether executive or legislative on the recommendation of the Pay Commissions, Pay Committees by Executive Governments, which are broadly stated as under:-

D (1) The governmental pay policy, whether executive or legislative, cannot run contrary to constitutional principles of constitutional law;

(2) The governmental pay policy, whether executive or E legislative, cannot run contrary to the overriding provisions of Equal Remuneration Act, 1976.

xxx xxx xxx

(12) The governmental pay policy must conform to the F overriding statutory command under Sections 13 and 14 read with Section 1(2) of the Equal Remuneration Act, 1976, which supports for uniformity between the pay policy of the State Governments and the Central Government in the whole of India and such uniformity in the pay policy of G the State Governments and the Central Government in the whole of India has already found further support from the Judgment of this Court in the case of *Randhir Singh v. Union of India & Others* (1982) 1 SCC 618. I must hasten to say that where all things are equal that is, where all relevant considerations are same, persons holding H

identical posts may not be treated differentially of their pay. A

67. As early as in 1952, in a celebrated case decided by this court in *State of West Bengal v. Anwar Ali Sarkar v.* (1952) SCR 284, this court laid down that in order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that said differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. B C

68. In 1959, in a celebrated case of *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Others* (1959) 1 SCR 279 at p.296, this Court observed as under: D

> ".....It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question....." E F

69. In *The State of Jammu & Kashmir v. Triloki Nath Khosa and Ors.* (1974) 1 SCC 19, this court observed as under:-

> ".....Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis....." G

70. In *Indira Nehru Gandhi (supra),* the court observed as under:- H

A "This Court, at least since the days of *Anwar Ali Sarkar's* case, has consistently taken the view that the classification must be founded on an intelligible differentia which distinguishes those who are grouped together from those who are left out and that the differentia must have a *rational* B *relation to the object sought to be achieved by the particular law.* The first test may be assumed to be satisfied since there is no gainsaying that in our system of Government, the Prime Minister occupies a unique position. But what is the nexus of that uniqueness with the C law which provides that the election of the Prime Minister and the Speaker to the Parliament will be above all laws, that the election will be governed by no norms or standards applicable to all others who contest that election and that a election declared to be void by a High Court judgment D shall be deemed to be valid, the judgment and its findings being themselves required to be deemed to be void? Such is not the doctrine of classification and no facet of that doctrine can support the favoured treatment accorded by the 39th Amendment to two high personages. It is the common man's sense of justice which sustains E democracies and there is a fear that the 39th Amendment, by its impugned part, may outrage that sense of justice. Different rules may apply to different conditions and classes of men and even a single individual may, by his uniqueness, form a class by himself. But in the absence F of a differentia reasonably related to the object of the law, justice must be administered with an even hand to all.

71. In *Maneka Gandhi v. Union of India & Anr.* (1978) 1 SCC 248 it was observed as follows:

G "....Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in state action and ensures fairness and quality of treatment. The principle of reasonableness, which

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legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence." A

72. In *Randhir Singh* (supra), it was held as under:

"8. .....Article 39(*d*) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.....Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principle 'Equal pay for Equal work' is 'deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do identical work under the same employer." B C D E

73. In *Surinder Singh & Anr. v. Engineer-in-Chief, CPWD & Others* (1986) 1 SCC 639 it was observed that the Central Government like all organs of State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. F

74. In *Mackinnon Mackenzie & Co. Ltd. v. Audrey D' Costa & Another* (1987) 2 SCC 469 it was observed that the term "same work" or "work of similar nature" under Section 2(h) of the Act that "whether a particular work is same or similar in nature as another work can be determined on the three G H

A considerations. In deciding whether the work is same or broadly similar, the authority should take broad view; next in ascertaining whether any differences are of practical importance, the authority should take an equally broad approach for the very concept of similar work implies
B differences in detail, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed, not those theoretically possible. In making comparison the authority should look at the duties generally performed by men and women."

C

75. In *Bhagwan Dass & Others v. State of Haryana & Others* (1987) 4 SCC 634 this court held that the mode of selection and period of appointment is irrelevant and immaterial for the applicability of equal pay for equal work once it is shown that the nature of duties and functions discharged and work
D done is similar.

76. In *Inder Singh & Others v. Vyas Muni Mishra & Others* 1987 (Supp) SCC 257 this court also held the view that when two groups of persons are in the same or similar posts
E performing same kind of work, either in the same or in the different departments, the court may in suitable cases, direct equal pay by way of removing unreasonable discrimination and treating the two groups, similarly situated, equally.

77. In *Haryana State Adhyapak Sangh & Others v. State*
F *of Haryana & Ors.* (1988) 4 SCC 571 this court enforced the principle of equal pay for equal work for Aided School teachers at par with government school teachers and held that the teachers of Aided Schools must be paid same pay scale and dearness allowance as teachers of the government schools.

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78. In *U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. v. Workmen* 1989 Supp (2) SCC 424, this court observed as under:-

H "The Tribunal's finding that both the groups were doing the

same type of work has rightly not been challenged by the employer Bank as it is a pure finding of fact. If irrespective of classification of junior and senior groups, the same work was done by both, the principle of equal pay for equal work is definitely attracted and on the finding of fact the Tribunal was justified in applying the principle to give the same benefit to those who had been left out." A B

79. In the case of *Sita Devi & Others v. State of Haryana & Others* (1996) 10 SCC 1 this court held: "The doctrine of "equal pay for equal work" is recognized by this Court as a facet of the equality clause contained in Article 14 of the Constitution." C

80. In *Sube Singh & Ors. v. State of Haryana & Ors.* (2001) 7 SCC 545 (para 10), this court observed as under:-

"....whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held arbitrary and discriminatory". D

81. In *John Vallamattom & Another v. Union of India* (2003) 6 SCC 611, the constitutionality of Section 118 of the Indian Succession Act, 1925 was challenged. Section 118 was declared unconstitutional and violative of Article 14 of the Constitution. In that case, this court observed thus:- E

"Although Indian Christians form a class by themselves but there is no justifiable reason to hold that the classification made is either based on intelligible differentia or the same has any nexus with the object sought to be achieved. The underlying purpose of the impugned provision having adequately been taken care of by Section 51, the purport and object of that provision must be held to be non-existent." F G

82. In *State of Mizoram & Another. v. Mizoram Engineering Service Association & Another* (2004) 6 SCC 218 while dealing with case of this nature, this court observed H

A as under:-

> "The fact that the revised pay scale was being allowed to Mr Robula in tune with the recommendations of the Fourth Central Pay Commission, shows that the State Government had duly accepted the recommendations of the Fourth Central Pay Commission. Having done so, it cannot be permitted to discriminate between individuals and not allow the same to the rest."

B

In this case, this Court clearly stated that the State cannot be C permitted to discriminate similarly placed persons.

83. This court in *Union of India v. Dineshan K.K.* (2008) 1 SCC 586 at page 591 (para 12) observed as under:-

> "The principle of "equal pay for equal work" has been D considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the directive principles of the State policy in Article 39(*d*) of the Constitution. In *Randhir Singh* v. *Union of India* a Bench of three learned E Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This F decision was affirmed by a Constitution Bench of this Court in *D.S. Nakara* v. *Union of India*. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" G has assumed status of a fundamental right."

84. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies H should be made available to them irrespective of differences

of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. A

85. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive. B

86. The classification must not be arbitrary but must be rational, that is to say, it should be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. C D

87. In the instant case, in the counter-affidavit the respondents admitted clear discrimination, but I fail to comprehend why the respondents are perpetuating discrimination. I deem it proper to quote the relevant portion from the counter affidavit as under: E

> "However this is a temporary anomaly. Over a period of time, the said anomaly would correct itself and after a period of 4-5 years all the members of the Tribunal would be treated in an equal manner." F

88. One fails to comprehend and understand why the respondents are perpetuating discrimination even for a period of four to five years. G

89. The High Court Judges are appointed from two streams – 2/3rd from the Bar and 1/3rd from the Subordinate Judicial Service. After appointment, they are assigned the task H

A of discharging judicial functions. The direct and inevitable impact of the amendment is to dissuade and discourage both the members of the Bar and Judiciary from becoming members of the Tribunal. The Tribunal is discharging purely judicial work which were earlier discharged by the judges of the High Courts. B The people's faith and confidence in the functioning of the Tribunal would be considerably eroded if both the members of the Bar and judiciary are discouraged from joining the Tribunal. In a democratic country governed by rule of law, both the lawyers and judges cannot be legitimately discouraged and dissuaded C from manning the Tribunal discharging only judicial work.

90. The petitioners are aggrieved by the decision of the respondents to abolish the post of Vice-Chairman in the Central Administrative Tribunal and pray that it should be restored.

D 91. The petitioners are further aggrieved by the newly inserted Section 10A of the Administrative Tribunal Act, 1985 to the extent that it postulates different pay scales and conditions of service for the members of the Central Administrative Tribunal on the basis of their appointment under E the amended and the unamended rules and pray that uniform conditions of service be made applicable to all members.

92. The petitioners are also aggrieved by the newly inserted Section 10A that it is unconstitutional to the extent that it stipulates that the total term of the office of the members of F the Tribunal shall not exceed 10 years. They pray that this embargo be removed.

93. The petitioners further pray that all members be permitted to function till they attain the age of superannuation G of 65 years.

NEWLY INSERTED SECTION 10A

94. I see no rationale or justification in providing different conditions of service for the members of the Tribunal on the H basis of their appointment under the amended and the

unamended rules, particularly when even according to the respondents it is nowhere denied that both the categories of members are not discharging the same duties, obligations and responsibilities.

95. Amended Section 10A is clearly discriminatory and violative of basic principles of equality. Section 10A of the amended Act is declared discriminatory, unconstitutional and *ultra vires* of the Constitution so far as it does not provide uniform pay scales and service conditions on the basis of amended and unamended rules. Consequently, all the members of the Tribunal would be entitled to get the same pay scales and service conditions from June 2010.

96. Section 10A of the amended Act is also declared discriminatory because the direct and inevitable impact of insertion of Section 10A is to prescribe different age of retirement for the judicial and other members. On the one hand, the age of superannuation of the members has been increased from 62 to 65 years and according to the amended Act, the administrative members would now retire at the age of 65 years. The members can now get maximum of two terms of 5 years each. A lawyer appointed at the age of 45 years will have to retire at the age of 55 years. Therefore, by this amendment, administrative member would retire at the age of 65 whereas judicial member may retire even at the age of 55. This is clearly discriminatory and violative of the fundamental principle of equality. Consequently, section 10A of the amended Act is declared discriminatory and violative of Article 14 of the Constitution and is declared *ultra vires* of the Constitution, to the extent that it places embargo of two terms of five years each leading to different ages of retirements of the members of the Tribunal. Consequently, henceforth, all the members of the Tribunal shall function till the age of 65 years. In other words, there would be a uniform age of retirement for all the members of the Tribunal.

97. The petitioners pray that the newly added Section 12(2)

A be quashed as it impinges upon the independence of judiciary.

NEWLY INSERTED SECTION 12(2)

98. I see no logic, rationale or justification in abolishing the post of Vice-Chairman in the Central Administrative Tribunal. B No reason for such abolition has been spelt out by the respondents even at the time of introducing the Bill. Before the amendment, ordinarily, the retired judges of the High Courts used to be appointed to the post of Vice-Chairman. It used to be in consonance with the status and positions of the retired C judges.

99. There seems to be no basis or rational explanation of abolishing the post of Vice-Chairman. I fail to comprehend that on the one hand, the post of Vice-Chairman has been D abolished and on the other hand under the newly inserted section 12(2) the power to designate Vice-Chairman has been given to the appropriate government. This is per se untenable and unsustainable. The executive has usurped the judicial functions by inserting section 12(2). The direct and inevitable consequence of the amendment would affect the independence E of judiciary.

100. In the race of becoming the Vice-Chairman there would be erosion of independence of judiciary. As aptly observed in *Sampath Kumar's* case (supra) that a judicial F member who is looking forward to promotion to the post of Vice-Chairman would have to depend on the goodwill and favourable instance of the executive and that would directly affect independence and impartiality of the members of the Tribunal impinging upon the independence of judiciary.

G

101. Now, under section 12(2) of the amended Act, the entire power of designating Vice-Chairman has been usurped by the appropriate government. This amendment also has the potentiality of disturbing the separation of powers. The power H pertaining to judicial functioning of the Tribunal which was

earlier exercised by the judiciary has been usurped by the executive. On the aforesaid considerations, the newly inserted section 12(2) is per se untenable and consequently declared null and void.

102. In the larger public interest the post of Vice-Chairman is restored and the procedure for appointment would be in accordance with the unamended rules of the Act.

103. It must be clearly understood by all concerned that the judicial work which the members of the Tribunal discharge is one, which was earlier discharged by the Judges of the High Court. The work is totally judicial in nature, therefore, dispensation of justice should be left primarily to the members of the Bar and Judges who have, by long experience and training acquired judicial discipline, understanding of the principles of law, art of interpreting laws, rules and regulations, legal acumen, detachment and objectivity. Unless extreme care is taken in the matter of appointments of the members of Tribunal, our justice delivery system may not command confidence, credibility, acceptability and trust of the people.

104. I deem it appropriate to reiterate the impact of conclusions of my judgment:

(i) All the members of the Tribunal appointed either by amended or unamended rules would be entitled to get uniform pay scales and service conditions from 01.06.2010. However, in the facts of this case, they would not be entitled to claim any arrears on account of different pay scales and service conditions.

(ii) All the members of the Tribunal would have uniform age of retirement from 01.06.2010, meaning thereby that all members of the Tribunal shall be permitted to function until they attain the age of superannuation of 65 years. Hence, Section 10A is

A quashed and set aside.

(iii) The post of Vice-Chairman in the Central Administrative Tribunal is restored from 01.06.2010. However, I do not want to disturb the Vice-Chairmen, if already designated by the Government, and permit them to continue in their respect posts till they attain the age of superannuation. Thereafter, the Vice-Chairman shall be appointed in accordance with the unamended rules. Consequently, the newly inserted section 12(2) of the amended Act is also quashed and set aside.

105. The Writ Petitions are accordingly allowed in aforementioned terms and disposed of, leaving the parties to D bear their own costs.

N.J. Writ Petitions dismissed.