

# Legislative Brief

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

The Bill was introduced in the Rajya Sabha on February 19, 2014.

It was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice on February 26, 2014. The Committee is scheduled to submit its Report on November 30, 2014.

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### Highlights of the Bill

- ◆ The Tribunals, Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014 seeks to establish uniform conditions of service for the chairpersons and members of 26 tribunals and authorities.
- ◆ These conditions of service include term of office, reappointment, age of retirement, allowances, and leave entitlement for chairpersons and members of the tribunals covered by the Bill.
- ◆ The Bill sets the age of retirement for chairpersons and members who are: (i) former Supreme Court judges at 70 years; (ii) former Chief Justices or judges of the High Court at 67 years; and (iii) any other person at 65 years.
- ◆ The Bill prohibits members from appearing before the tribunal that they were serving on, once their term of service with that tribunal ends.
- ◆ Other tribunals may be included within the ambit of the Bill if they have a Supreme Court or High Court judge as chairperson or member.

### Key Issues and Analysis

- ◆ The Bill permits reappointment of members for another term. This could affect the tribunal's independence in cases where the government is a litigant before it, and also has the power to reappoint its members.
- ◆ The Minister will sanction the chairperson's leave and foreign travel of chairperson and members. The government's involvement in such administrative matters may affect the independence of the members.
- ◆ The Bill specifies different ages of retirement for members of tribunals based on previous posts held by them. The rationale behind such differentiation between members qualified to serve on the same tribunal is unclear. This may also violate Article 14 of the Constitution.
- ◆ In order to include other tribunals within the Bill, their chairpersons or members should be judges of the higher courts. However, some of the tribunals currently covered by the Bill do not meet this condition.
- ◆ The Bill does not address issues of: a) bar on post tenure employment with enterprises that have appeared before the tribunal; b) grounds for removal of members; and c) conditions of services of a Vice Chairman.

## PART A: HIGHLIGHTS OF THE BILL<sup>1</sup>

### Context

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Tribunals are quasi judicial bodies, usually set up under a statute to decide disputes arising from that statute or questions under administrative law. Tribunals were introduced to serve as a means of speedy access to justice on specialized matters.<sup>2</sup> For example, the Central Administrative Tribunal was set up to settle disputes related to service matters of public sector employees. Disputes arising from certain other specialized matters like income tax are decided by the Income Tax Appellate Authority.

Typically, the Act that creates a tribunal also specifies its composition, qualification of its members, functions, grounds of removal etc. The conditions of service of members of that tribunal are laid down in the Act or in its Rules. At present, these conditions of service vary across tribunals.<sup>6</sup>

In 2009, the 232<sup>nd</sup> Report of the Law Commission suggested bringing about uniformity in retirement ages for chairpersons and members across all tribunals.<sup>3</sup> In 2012, the question of permitting different conditions of service for members of different tribunals was brought before the Supreme Court in the *Rajiv Garg* case. The government had assured the Court that the matter of uniform service conditions of members of tribunals would be addressed at the highest level of the government.<sup>4</sup>

The Tribunals, Appellate Tribunals and other Authorities (Conditions of Service) Bill, 2014 was introduced in Parliament in February 2014. It was referred to the Standing Committee in September 2014. This Bill seeks to ensure uniform service conditions for chairpersons and members of 26 national tribunals and other authorities.

### Key Features

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The Bill seeks to provide for uniform service conditions with regard to retirement age, tenure of appointment, reappointment, and allowances for chairpersons and members of tribunals, appellate tribunals and authorities.

#### Scope of the Bill

- The Bill covers 26 tribunals, appellate tribunals and other authorities that are specified in its First Schedule.
- These include tribunals and appellate tribunals like the Company Law Board, Central/State/Joint Administrative Tribunals, Income-Tax Appellate Tribunal, Armed Forces Tribunal and Intellectual Property Appellate Board.
- The other authorities covered by the Bill include the Press Council of India, the Authority for Advance Rulings, and the Coastal Aquaculture Authority.
- The central government may amend the First Schedule to only include such tribunals that have a sitting or retired Supreme Court (SC) or High Court (HC) Judge as chairperson or member.

#### Term of office

- Every member shall hold office for five years and be eligible for reappointment for another term, if he has not attained the age of retirement.
- The age of retirement of members of the tribunal who are: (a) former SC judges is 70 years, (b) former Chief Justice or judges of HCs is 67 years, and (c) any other person is 65 years.

#### Prohibition from arbitration and practice

- A member will not be permitted to act as an arbitrator in any matter.
- A member will not appear or plead before any tribunal of which he has been a chairperson or member, once he ceases to hold that post.

#### Allowances, other benefits, leave and sanctioning authority

- The Bill standardises pensions, leave, allowances and medical benefits for chairpersons and members. Allowances and travelling allowances are specified in the Second and Third Schedules respectively.
- The chairperson shall sanction leave for members of that tribunal. The Minister of the relevant Ministry will sanction: a) the chairperson's leave; b) leave of members, in the absence of the chairperson; and c) foreign travel of the chairperson and members.

## PART B: KEY ISSUES AND ANALYSIS

### Role of the executive in the functioning of tribunals

#### Reappointment of chairpersons and members for another term

Clause 4 The Bill provides for a five year tenure for members of tribunals. Further, it permits their reappointment for another term. It may be argued that providing for reappointment could affect the independence of members in their functioning during the first term.

Tribunals are quasi judicial bodies, while the government is part of the executive. There may be instances where the government is a litigant before a tribunal like the Central Administrative Tribunal (CAT) or the Income Tax Appellate Tribunal (ITAT). There would be conflict of interest if the government were to be a litigant before the tribunal as well as have the power to determine reappointment of its members.

The Supreme Court had examined the issue of reappointments of members of the National Tax Tribunal (NTT) in September 2014. It had held that a provision for reappointment would have the effect of undermining the independence of the members. It reasoned that a member of the tribunal would be constrained to decide matters in a manner that would ensure his reappointment.<sup>5</sup>

#### Sanctioning authority for leave of chairpersons of tribunals or other authorities

Clause 20 The Bill states that the leave sanctioning authority for the chairperson of the tribunals would be the relevant Minister. The Minister also sanctions foreign travel of the chairperson and members of tribunals. The involvement of the executive in administrative matters such as sanctioning leave and foreign travel, could affect the independence of the members of the tribunals.

The Supreme Court, in the NTT judgment, examined the role of the executive in the functioning of the NTT. It stated that it would be inappropriate for the central government to have any administrative dealing with the NTT or its members as this would impinge upon the independence and fairness of the members of the NTT.<sup>5</sup>

At present, the leave sanctioning authority for the chairpersons of some tribunals including the CAT, National Green Tribunal (NGT), and Telecom Disputes Settlement and Appellate Tribunal (TDSAT) is the President of India.<sup>6</sup> However, this is not a uniform practice as, in the case of the Competition Appellate Tribunal (CompAT), the Minister of Corporate Affairs sanctions the Chairman's leave.<sup>7</sup>

### Age of retirement of members of tribunals or other authorities

Clause 4 The Bill specifies different ages of retirement for members of tribunals based on previous posts held by them. The age of retirement for a member who is: a) formerly a SC Judge would be 70 years, b) formerly a Chief Justice or Judge of the HC would be 67 years, and c) any other person would be 65 years. It is unclear why the Bill differentiates between members of a tribunal on the basis of previous posts held by them.

Also, this provision may violate Article 14 of the Constitution. That Article allows unequal treatment between persons only if it serves a public purpose. However, the public purpose served in differentiating between members based on prior posts held by them is not evident.

Currently, the NGT and the Armed Forces Tribunal (AFT) specify different ages of retirement for its members based on the previous post held by them, similar to that in the Bill.<sup>8</sup>

In its 232<sup>nd</sup> Report, the Law Commission of India (2009) had recommended that the age of retirement for: (i) chairpersons be uniformly fixed at 70 years, and (ii) members be uniformly fixed at 65 years for all tribunals.<sup>3</sup> In 2013, the Draft Indian Financial Code (IFC) presented by the Financial Sector Legislative Reforms Commission suggested a uniform age of retirement at 70 years for both chairpersons and members of the appellate tribunal to be set up under the IFC.<sup>9</sup>

### Inclusion of certain tribunals within the ambit of the Bill

Clause 13(1), First Schedule The Bill states that the central government may add a tribunal, appellate tribunal or authority to the First Schedule of the Bill only if it has a sitting or retired SC or HC judge as chairperson or member. However, of the 26 tribunals already covered in the First Schedule of the Bill, certain bodies do not meet these criteria.

For example, the CAT, which is amongst the 26 tribunals, permits a Vice Chairperson with two years experience to become the Chairperson. Further, the Vice Chairperson need only have been a civil servant for a certain

period, to qualify for that post. Certain other tribunals like the Cyber Appellate Tribunal (CbAT) and Debt Recovery Appellate Tribunal (DRAT) permit a person *qualified to be* a HC Judge to be appointed as Chairperson.<sup>10</sup> In each of these cases, the criteria specified in the Bill do not apply.

## Issues not addressed by the Bill

The Bill seeks to provide for uniform conditions of service across the 26 tribunals. This includes tenure, age of retirement, leave, allowances etc. However, it does not address certain issues discussed below.

- **Post tenure restrictions on employment that poses a conflict of interest:** The Bill prohibits members from appearing or practicing before a tribunal after their tenure on that tribunal ends. However, the Bill is silent on whether members of a tribunal can take up post tenure employment in an enterprise that had appeared before the tribunal that they served on. Permitting post retirement employment in such an enterprise immediately after serving on a tribunal may affect the decision making of the members during their tenure.

Currently, members of the NGT and CompAT are barred from being employed by any person connected with a company or institution that appeared before it, for two years after serving on the tribunal. The Chairpersons of the AFT and CAT are ineligible for further employment under the government.<sup>11</sup>

- **Grounds for removal of chairpersons and members:** The Bill does not provide for the grounds under which a member may be removed from office. At present, the grounds for removal of members vary across different tribunals. Certain tribunals like the CAT, SAT, AFT and IPAB state that members may be removed on grounds of proved misbehaviour or incapacity.<sup>12</sup> However, certain others like the NGT and TDSAT lay down five grounds for removal: (i) insolvency; (ii) conviction for moral turpitude; (iii) physical or mental incapacity; (iv) acquiring interests prejudicial to his functions; or (v) abusing his position in a manner that is against public interest.<sup>13</sup>
- **Conditions of service of a Vice Chairperson:** Certain tribunals like the CLB, AFT, CAT, ITAT etc. provide for the post of a Vice Chairperson, whose qualifications are different from that of the other members.<sup>14</sup> The Bill does not provide uniform conditions of service for this post.

### Notes

1. This Brief has been written on the basis of the Tribunals, Appellate Tribunals and other Authorities (Conditions of Service) Bill, 2014 which was introduced in the Rajya Sabha on February 19, 2014.
2. Union of India vs. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1.
3. “Retirement age of Chairpersons and Members of Tribunals – Need for uniformity” Report No. 232, Law Commission of India, August 22, 2009, <http://lawcommissionofindia.nic.in/reports/report232.pdf>.
4. Rajiv Garg vs. Union of India, (Civil Writ Petition No. 120 of 2012), February 8, 2013.
5. Madras Bar Association vs. Union of India, Transfer Case No. 150 of 2006, Supreme Court of India, September 25, 2014.
6. **CAT:** S. 7, The CAT (Salaries & Conditions of service) Rules, 1985; **NGT:** S. 8 (5), NGT (Conditions of Service and Procedure for Inquiry) Rules, 2010; **TDSAT:** S. 4, TDSAT (Salaries and other Conditions of Service) Rules, 2000.
7. S. 8, Competition Appellate Tribunal (Salaries and Allowances and Other Terms and Conditions of Service) Rules, 2009.
8. **CLB:** S. 8, CLB (Qualifications and other conditions of service of members) Rules, 1993; **NGT:** S. 7, The National Green Tribunal Act, 2010; **AFT:** S.8, Armed Forces Tribunal Act, 2007.
9. S. 423 (1), Indian Financial Code: Draft Law, Report of the Financial Sector Legislative Reforms Code, Vol. 2, 2013, [http://finmin.nic.in/fslrc/fslrc\\_report\\_vol2.pdf](http://finmin.nic.in/fslrc/fslrc_report_vol2.pdf).
10. **CAT:** S. 6, The Administrative Tribunals Act, 1985; **CbAT:** S. 50, The Information Technology Act, 2000; **DRAT:** S.10, The Recovery of Debts due to Banks and Financial Institutions Act, 1993.
11. **NGT:** S. 5(4), The National Green Tribunal Act, 2010; **CompAT:** S. 53L, Competition Act, 2002; **AFT:** S. 11 (a), Armed Forces Tribunal Act, 2007; **CAT:** S. 11, The Administrative Tribunals Act, 1985.
12. **CAT:** S. 9, The Administrative Tribunals Act, 1985; **SAT:** S.15Q (2), The Securities and Exchange Board of India Act, 1992; **AFT:** S. 9, Armed Forces Tribunal Act, 2007; **IPAB:** S. 89 (2), The Trade Marks Act, 1999.
13. **NGT:** S. 10, The NGT Act, 2010; **TDSAT:** S. 14 G, TRAI Act, 1997.
14. **CLB:** S.8, Company Law Board (Qualifications, and other conditions of service of members) Rules, 1993; **CAT:** S.6, The Administrative Tribunals Act, 1985; **ITAT:** S. 252 (4), The Income Tax Act, 1961.

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