

A DETAILED ANALYSIS OF INDUSTRIAL TRIBUNALS

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ABSTRACT

Industrial Tribunals have been at the forefront of dispute resolution in industrial matters. In recent years, the effectiveness of tribunals as a whole has come into question, as the pileup of cases does not seem to be any closer to reducing, and the process itself is unnecessarily tedious and drawn out. While the judiciary's dependence on tribunals and other forms of alternative dispute resolution processes has seen an increase recently, questions on the effectiveness of tribunals are worrisome. Industrial Tribunal as an adjudicating mechanism is seldom recognized in the various discussions in the legal diaspora. This article examines the place and relevance of tribunals in the Code on Industrial Relations, 2020 (hereinafter referred to as 'Code'). It seeks to point out various intricacies with regard to the powers, composition, and nature of industrial tribunals. Through landmark judgments, the article clarifies the powers and the place of Industrial Tribunals in the adjudicating hierarchy and concludes that they indeed play a significant role in industrial dispute resolution.

Keywords: Industrial Tribunals, Dispute Resolution, Industrial Disputes

INTRODUCTION

Industries are the product of the Industrial Revolution that happened in the 18th century. Since then, industries have come a long way in providing for the needs of the public. The need for legislation focused on industries arose as soon as industries opened their doors for business. As communism shed light on how laborers or the working class were exploited, legislation that ensured the non-exploitation of workers was deemed necessary. In that light, the United Kingdom brought about Factory Acts, a series of legislations aimed at regulating the industrial sector in the 18th century. Similarly, the British enacted the Trade Unions Act, of 1926, to organize Trade Unions under a single banner, and to give them legitimacy and a voice. The Industrial Disputes Act (hereinafter referred to as 'Act') was enacted in 1947 to provide for the various kinds of industrial disputes and the resolution mechanisms for the same. The Act¹ was

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¹ Law Commission of India, One Hundred Twenty Second Report (1987)

passed with the dual goal of giving the state the ability to intervene in industrial disputes that, if left to warring parties to resolve through direct action and confrontation, would undoubtedly impede and thwart the nation's economic recovery. The act also provided a mode and machinery for arbitration/compulsory adjudication between two segments of society among whom conflict of interest was inherent. The Code was given presidential assent on 28th September 2020. It seeks to bring together various enactments pertaining to trade unions, employment in industrial establishments, industrial disputes, and their modes of resolution, and other matters connected with industries. The Code seeks to amalgamate, rationalize, and simplify the following three Acts, namely: -

1. The Trade Unions Act, of 1926
2. The Industrial Disputes Act, of 1947
3. The Industrial Employment (Standing Orders) Act, 1946

This article seeks to provide a bird's eye view of Industrial Tribunals through an analysis of various provisions pertaining to it in the Code and through various landmark judgments. Through this, the article aims at providing a comprehensive understanding of Industrial Tribunals. It is to be noted that the Code is yet to be implemented in the country.

INDUSTRIAL TRIBUNALS

There is no proper definition provided by the Code or the Industrial Disputes Act, of 1947 on what an Industrial Tribunal is. Wikipedia² defines a tribunal as any person or institution with the authority to judge, adjudicate on, or determine claims or disputes. Thus, a tribunal is an institution that is not a court but does the functions of a court. Depending on the powers conferred by the specific Act on the tribunal, the powers of a tribunal may vary. Usually, it has the power to call upon any person as a witness, call upon any executive authority as witnesses, can administer oath on those called upon, pass orders providing compensation, or direct specific authority to do or abstain from doing any action it deems within its jurisdiction, or as provided by the mother Act. An industrial tribunal is specifically set up to adjudicate disputes relating to the industrial sector.

² Wikipedia, Tribunal, <https://en.wikipedia.org/wiki/Tribunal>

Chapter VII of the Code³ deals with Industrial Tribunals. Section 44 lays down that the appropriate government may constitute one or more tribunals for the adjudication of disputes and to perform other functions assigned to them by this Code or any other Act at the time being in force. The Code requires the appointment of two members to be part of the tribunal, a judicial and an administrative member. The Industrial Disputes Act only had one member in a tribunal, making it apparent that the new Code seeks to streamline the dispute resolution process. Clauses 4, 5, and 6 of Section 44 lay down the qualifications, salary, and allowances for the judicial and administrative members of the tribunal and give the State Government wide powers to frame and amend the same. Section 44(7) lays down the jurisdiction of the industrial tribunal. It lays down that a bench consisting of a judicial and administrative member shall entertain the following matters alone, namely: -

1. The application and interpretation of standing order
2. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen dismissed
3. The illegality of a strike or lockout, or otherwise
4. Retrenchment of workmen and closure of the establishment
5. Trade Union disputes

The remaining cases shall be entertained by a bench consisting of either a judicial member or an administrative member alone. The powers of an Industrial Tribunal have been specified in Section 49(3) of the Code⁴, which provides that the industrial tribunal shall have powers that are vested in a civil court under the Code on Civil Procedure, 1908, when handling a matter, with respect to the following four matters, namely:

1. Enforcing attendance of any person and examining him under oath
2. Compelling production of documents and material objects
3. Issuing commissions for examining witnesses
4. Other matters as may be prescribed

Every investigation or inquiry made by a tribunal or National Industrial Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

³ Code on Industrial Relations, 2020, § 44

⁴ Code on Industrial Relations, 2020, § 49

Section 55⁵ deals with awards pronounced by an Industrial Tribunal. It states that the award delivered shall be in writing and must be signed by both the Judicial and Administrative Members, or by one of them by whom the award is delivered. The award must be communicated to the appropriate government and the parties to the dispute. Interestingly, clause three adds that an award becomes enforceable within thirty days from its date of communication, and it does not mention anything about publishing the award. However, if the appropriate government or the Central Government is of the opinion that giving effect to the award might affect public morality or national economy, or social justice, then the Central Government may declare via a notification that the award shall not become enforceable on the expiry of thirty days. Once a such declaration is made, the government must, within ninety days, make an order rejecting or modifying the award, and must lay the award along with a copy of the order before the State Government or the Parliament, as the case may be. After the award is laid, as mentioned under clause five, it shall become enforceable upon the expiration of fifteen days from the date it is laid. If the government makes no order, it shall become enforceable upon the expiry of ninety days. In normal circumstances, the award shall become operational from the date specified. Where no date is so specified, then it comes into operation on the date it becomes enforceable under clause 3 or 5, as the case may be.

Section 58⁶ declares that an award remains in operation for a period of one year from the date on which it becomes enforceable under Section 55. However, it gives the appropriate government powers to reduce the period and extend the period of operation of an award, provided that it does not exceed three years from the date on which it came into operation.

Sub-section 4 to Section 58 empowers the appropriate government to refer the award or a part of it to the tribunal if the party bound by the award or the government itself considers that there has been a material change in the circumstances upon which the award was based.

LABOUR COURTS TO BE SCRAPPED OFF?

The Code intends to end the concept of Labour Courts entirely. Section 51 of the Code⁷ states the following: -

⁵ Code on Industrial Relations, 2020, § 55

⁶ Code on Industrial Relations, 2020, § 58

⁷ Code on Industrial Relations, 2020, § 51

“(1) On and from the date of commencement of this Code, the cases pending immediately before such commencement— (a) in the Labour Court and the Tribunal constituted under the Industrial Disputes Act, 1947, shall be transferred to the Tribunal having the corresponding jurisdiction under this Code; (b) in the National Tribunal constituted under the Industrial Disputes Act, 1947 shall be transferred to the National Industrial Tribunal having the corresponding jurisdiction under this Code.

(2) The cases transferred under sub-section (1) to the Tribunal, or the National Industrial Tribunal shall be dealt with de novo or from the stage at which they were pending before such transfer, as it may deem fit.”

While the rationale behind removing labor courts is not explicitly provided in the legislation, it is to be seen as to whether this move would make industrial dispute resolution effective or would just add to the burden of the existing resolution mechanisms.

LANDMARK JUDGEMENTS ON INDUSTRIAL TRIBUNALS: -

- *Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Odisha & ors.*⁸

This is a leading judgment pertaining to the jurisdiction of industrial tribunals. The facts of this case are that there was a dispute between the appellant and its workers, and that dispute was referred to the industrial tribunal. The tribunal issued notice to the appellant its workers and Hindustan Steel Ltd, as a copy of the reference of the dispute to the tribunal was served to Hindustan Steel Ltd also. Hindustan Steel Ltd appeared before the tribunal and requested not to be impleaded as a party to the case as it was not interested in or concerned about the dispute. The appellant contended that the interests of Hindustan Steel Ltd and itself were common and urged the tribunal to implead Hindustan Steel Ltd as a party. The Tribunal decided to consider it at a later time and asked Hindustan Steel Ltd to be present in the proceedings. Aggrieved that the tribunal did not implead Hindustan Steel Ltd as a party, the appellant filed a writ under Article 226 of the Constitution in the High Court. The Court dismissed the writ, holding that the petition was too premature as the tribunal had not arrived at a decision yet. The appellant appealed to the Supreme Court.

⁸ *Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa, and Ors.*, (AIR 1964 SC 1746)

The Supreme Court held that an Industrial Tribunal while adjudicating disputes referred to it by the appropriate government, may direct the parties of the dispute to appear before it, and if the parties feel that some persons need to be brought before the tribunal, then the tribunal can make an order in that behalf. If the tribunal thinks that the parties who were summoned to appear were summoned without proper cause, it may record its opinion to that effect, and the award shall not be binding on them. The test, according to the court, “*is the addition of the parts necessary to make the adjudication itself effective and enforceable?*” This test must be applied by the tribunals while impleading a third party to its proceedings. Consequently, the Court held that the question as to who the employer is is a substantial dispute between the appellant and Hindustan Steel and cannot be regarded as incidental. Hence, the appeal failed.

- Grindlays Bank Ltd v. Central Government Industrial Tribunal⁹

In this case, two issues arose. The first was whether an industrial tribunal had the jurisdiction to set aside an ex-parte award, particularly when it was on merits. Secondly, whether the tribunal had no authority to set aside the order, as thirty days had passed since the order as per Sec 17 of the Act, and only the Central Government had the authority to do so. The Supreme Court held that the power of industrial tribunals to fix a procedure of adjudication is of the widest amplitude and is subject to the rules made by the appropriate government. It also noted that quasi-judicial bodies objectively determining matters must exercise their discretion in a judicial manner, following the principles of justice, equity, and good conscience. If a tribunal makes an award without notice to one of the parties to the dispute, the court contended that the award is null and void. In such circumstances, the tribunal has the power and a duty to set aside the award and direct the matter to be heard afresh.

Most importantly, the court brought about the two prominent senses in which the expression ‘review’ is used. Firstly, a procedural review is inherent or implied in a tribunal to set aside an order that is erroneous due to a misjudgment by the court. Secondly, a review on merits, where the error is one of law and is evident on record. Finally, the Court held that the tribunal had the authority to set aside the order, as the date of the jurisdiction of the tribunal has to be seen not from the date of the order passed by it, but from the date on which the application was placed

⁹ Grindlays Bank Ltd v. Central Industrial Tribunal, (AIR 1964 SC 1746)

before it. It added that if sufficient cause is shown, then an ex-parte award can always be set aside.

CONCLUSION

Industrial Tribunals, as an institution, perform a rather irreplaceable role in adjudicating disputes in the industrial sector. The one criticizing an aspect of the adjudicating mechanisms set in the Act as well as the Code is that there is no appellate authority specifically set up to hear appeals from Industrial Tribunals or any of the other adjudicating mechanisms¹⁰, where tribunals such as the Income Tax Appellate Tribunal and the National Company Law Appellate Tribunal exist specifically to hear appeals from the Income Tax Tribunal and the National Company Law Tribunal respectively. This means that appeals that lie for an award could be brought to the High Court under Article 226 or 227, and to the Supreme Court under Article 136. This would lead to an increase in the number of cases filed to an already overburdened judicial system. Despite this, Industrial Tribunals continue to be an effective mode of settling industrial disputes.



¹⁰ Law Commission of India, One Hundred Twenty Second Report