

Bill No. CX of 2006

THE ADMINISTRATIVE TRIBUNALS (SECOND AMENDMENT)
BILL, 2006

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BILL

further to amend the Administrative Tribunals Act, 1985.

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

1. (1) This Act may be called the Administrative Tribunals (Second Amendment) Act, 2006. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

13 of 1985.

2. In section 3 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the principal Act),— Amendment of section 3.

(I) in clause (i) for the words "The Chairman or a Vice-Chairman" the words "The Chairman" shall be substituted.

(II) in clause (ia), the words "and a Vice-Chairman" shall be omitted.

(III) for clause (u), the following clause shall be substituted, namely:—

‘(u) “Vice-Chairman” means a Member who has been authorised by the appropriate Government to perform administrative functions at each of the places where Bench of the Tribunal have been set up.’

Amendment of
section 4.

3. In section 4 of the principal Act, in sub-section (4), for the words "Chairman, Vice-Chairman and other Members", the words "Chairman and other Members" shall be substituted.

Amendment of
section 5.

4. In section 5 of the principal Act,—

(a) in sub-section (1), for the words "a Chairman and such number of Vice-Chairman and Judicial and Administrative Members", the words "a Chairman and such number of judicial and Administrative Members" shall be substituted;

(b) in sub-section (4),—

(i) in clause (b), for the words "The Vice-Chairman or other Members", the words "a Member" shall be substituted;

(ii) in clause (c),—

(I) For the words "the Vice-Chairman or the Judicial Member", the words "the Judicial Member" shall be substituted;

(II) for the words "the Vice-Chairman or, as the case may be, the Judicial Member or the Administrative Member", the words “the Judicial Member or the Administrative Member, as the case may be” shall be substituted.

Substitution of
new section for
section 6.

5. For section 6 of the principal Act, the following section shall be substituted, namely:—

Qualifications
for appointment
as Chairman,
Vice-Chairman
and other
members.

"6. (1) A person shall be qualified for appointment as the Chairman unless he is, or has been, a Judge of a High Court:

Provided that a person appointed as Vice-Chairman before the commencement of this Act shall be qualified for appointment as Chairman if such person has held the office of the Vice-Chairman at least for a period of two years.

(2) A person shall not be qualified for appointment,—

(a) as an Administrative Member, unless he has held for atleast two years the post of Secretary to the Government of India or any other post under 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 atleast two years or held a post of Additional Secretary to the Government of India for atleast five years or any other post under the Central or State Government carrying the scale of pay which is not less than that of Additional Secretary to the Government of India atleast for a period of five years:

Provided 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 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;

(b) as a Judicial Member, unless he is or qualified to be a Judge of a High Court or he has for atleast two years 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 Commission of India or 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.

(3) The Chairman and every other Member of the Central Administrative Tribunal shall be appointed after consultation with the Chief Justice of India by the President.

(4) Subject to the provision of sub-section (3), the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

(5) The Chairman and every other Member of a Joint Administrative Tribunal shall, subject to the provisions of sub-section (3) and subject to the terms of the agreement between the participating State Governments published under sub-section (3) of section 4 of the principal Act, be appointed by the President after consultation with the Governors of the concerned States.

Explanation.— In computing for the purpose of this section, the period during which a person has held any post under the Central or State Government, there shall be included the period during which he has held any other post under the Central or State Government (including an office under this Act) carrying the same scale of pay as that of first mentioned post on a higher scale of pay."

6. In Section 7 of the principal Act, for the words "Vice-Chairman or, as the case may be, such one of the Vice-Chairman", the words "such one of the Members" shall be substituted. Amendment of section 7.

7. For section 8 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 8.

"8. (1) The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office: Term of office.

Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.

(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one or more term of five years:

Provided that no Member shall hold office as such after he has attained the age of sixty-five years.

(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court."

8. In section 9 of the principal Act, the word "Vice-Chairman" wherever it occurs shall be omitted. Amendment of section 9.

9. In section 10 of the principal Act,—

(i) the word "Vice Chairman" wherever it occurs shall be omitted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that where a serving Government officer is appointed as a Member, he shall be deemed to have retired from the service to which he belonged on the date on which he assumed the charge of the Member but his subsequent service as Member shall, at his option, be reckoned as a post-retirement, re-employment counting for pension and other retirement benefits in the service to which he belonged."

Amendment of section 10.

Insertion of new section 10A.	10. After section 10 of the principal Act, the following section shall be inserted, namely:—
Saving terms and conditions of service of Vice-Chairman.	"10A. The Chairman, Vice-Chairman and Member of a Tribunal appointed before the commencement of the Administrative Tribunals (Second Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Second Amendment) Act, 2006 had not come into force: Provided that, however, that such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Second 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 (Second 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."
Amendment of section 11.	11. In section 11 of the principal Act,— (I) in clause (b), the words "Vice-Chairman or" shall be omitted; (II) clause (c) and clause (d) shall be omitted; and (III) in clause (e), the words "or Vice-Chairman" at both the places where they occur shall be omitted: (IV) in clause (f), the word "Vice-Chairman" at both the places where they occur shall be omitted.
Substitution of new section for section 12.	12. For section 12 of the principal Act, the following section shall be substituted, namely:—
Financial and administrative powers of the Chairman.	"12. (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 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."
Amendment of section 31.	13. In section 31 of the principal Act, for the words "Chairman, Vice-Chairman and other Members", the words "Chairman and other Members" shall be substituted.
Amendment of section 32.	14. In section 32 of the principal Act, the word "Vice-Chairman" wherever it occurs shall be omitted.
Amendment of section 35.	15. In section 35 of the principal Act, in sub-section (2),— (i) in clause (b), for the words "Chairman, Vice-Chairman or other Member", the words "Chairman and other Members" shall be substituted; (ii) in clause (c), for the words "Chairman, Vice-Chairman and other Members", the words "Chairman and other Members" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

In pursuance of Article 323-A of the Constitution the Administrative Tribunals Act, 1985 (the Act for short) was enacted. Administrative Tribunals have been set up under the Act for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to Public Services and posts in connection with the affairs of the Union or any State or any local or other authority within the territory of India or under the control of Government of India or in Corporations owned or controlled by the Government.

The term of office of the Chairman, Vice-Chairmen and Members of the Tribunal is five years with eligibility for re-appointment for another term of five years. The upper age limit for holding the office of Chairman and Vice-Chairman is 65 years and that of the Member is 62 years.

Prior to the increase in the age of retirement from the services of the Government from 58 to 60 years in 1998, a person appointed as Member in an Administrative Tribunal would normally have a tenure of about four years which has effectively come down to two years now. The appointments in the Tribunals need to be made attractive for the most competent and deserving persons. Hence, it is proposed to revise the retirement age of Members from 62 to 65 years and enhance their status. It is also necessary to raise the retirement age of Chairman from 65 to 68 years so that the Chairman could serve for a full term of five years.

With the enhancement of status of Members, it would no longer be necessary to appoint Vice-Chairmen as all Members other Chairman would enjoy equal status. Consequently, the office of the Vice-Chairman is proposed to be abolished except as an executive arrangement to perform certain administrative functions.

As the purpose of the changes is to attract the experienced and deserving persons in future, the amendments are proposed to be given prospective effect applicable to those appointed thereafter.

Some consequential amendments are also proposed.

The Bill seeks to achieve the above objects.

NEW DELHI;

SURESH PACHOURI.

The 11th December, 2006.

FINANCIAL MEMORANDUM

All the expenses towards the Central Administrative Tribunal are borne by the Central Government and in respect of State Administrative Tribunal the same are borne by the respective State Government. The Bill involves financial consequences in future as and when new Members are appointed on expiry of the term of office of the existing Members since such new Members will be entitled to the service conditions as admissible to a sitting Judge of the High Court. The additional expenditure in this regard would be Rupees 2 lakhs (approximately) per Member per annum.

ANNEXURE

EXTRACTS FROM THE ADMINISTRATIVE TRIBUNALS ACT, 1985

(13 OF 1985)

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3. In this Act, unless the context otherwise requires,—

Definitions.

(i) "Judicial Member" means a Member of a Tribunal appointed as such under this Act, and includes the Chairman or Vice-Chairman who possesses any of the qualifications specified in sub-section (3) of section 6;

(ia) "Member" means a Member (whether Judicial or Administrative) of a Tribunal, and includes the Chairman and a Vice-Chairman;

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(u) "Vice-Chairman" means the Vice-Chairman of a Tribunal.

Explanation.—In the case of a Tribunal having two or more Vice-Chairmen, references to the Vice-Chairman in this Act shall be construed as a reference to each of those Vice-Chairmen.

CHAPTER II

ESTABLISHMENT OF TRIBUNALS AND BENCHES THEREOF

4. (1) The Central Government shall, by notification, establish an Administrative Tribunal, to be known as the Central Administrative Tribunal, to exercise the jurisdiction, powers and authority conferred on the Central Administrative Tribunal by or under this Act.

Establishment
of Administra-
tive Tribunals.

(2) The Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State to be known as the(name of the State) Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State by or under this Act.

(3) Two or more States may, notwithstanding anything contained in sub-section (2) and notwithstanding that any or all of those States has or have Tribunals established under that sub-section, enter into an agreement that the same Administrative Tribunal shall be the Administrative Tribunal for each of the States participating in the agreement, and if the agreement is approved by the Central Government and published in the Gazette of India and the Official Gazette of each of those States, the Central Government may, by notification, establish a Joint Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunals for those States by or under this Act.

(4) An agreement under sub-section (3) shall contain provisions as to the name of the Joint Administrative Tribunal, the manner in which the participating States may be associated in the selection of the Chairman, Vice-Chairman and other Members of the Joint Administrative Tribunal, the places at which the Bench or Benches of the Tribunal shall sit, the apportionment among the participating States of the expenditure in connection with the Joint Administrative Tribunal and may also contain such other supplemental, incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient for giving effect to the agreement.

Composition of
Tribunals and
Benches
thereof.

5. (1) Each Tribunals shall consist of a Chairman and such number of Vice-Chairmen and other Member as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

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(4) Notwithstanding anything contained in sub-section (1) or sub-section (3), the Chairman—

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(b) may transfer the Vice-Chairman or other Member from one Bench to another Bench;

(c) may authorise the Vice-Chairman or the Judicial Member or the Administrative Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, the Judicial Member or the Administrative Member of another Bench; and

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Qualifications
for appointment
as Chairman,
Vice-Chairman
or other
Member.

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

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

(b) has, for at least two years, held the office of Vice-Chairman; or

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

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

(b) has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or

(bb) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or

(c) has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member.

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

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

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that service for at least three years.

(3A) A Person shall not be qualified for appointment as an Administrative Member unless he—

(a) has, for at least two years, held the post of an Additional secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to Government of India; or

(b) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India,

and shall, in either case, have adequate administrative experience.

(4) Subject to the provisions of sub-section (7), the Chairman, Vice-Chairman and every other Member of the Central Administrative Tribunal shall be appointed by the President.

(5) Subject to the provisions of sub-section (7), the Chairman, Vice-Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

(6) The Chairman, Vice-Chairman and every other Member of a Joint Administrative Tribunal shall, subject to the terms of the agreement between the participating State Governments published under sub-section (3) of section 4, and subject to the provisions of sub-section (7) be appointed by the President after consultation with the Governors of the concerned States.

(7) No appointment of a person possessing the qualifications specified in this section as the Chairman, a Vice-Chairman or a Member shall be made except of the consultation with the Chief Justice of India.

Explanation.— In computing, for the purposes of this section, the period during which a person has held any post under the Central or a State Government, there shall be included the period during which he has held any other post under the Central or a State Government (including an office under this Act carrying the same scale of pay as that of the first mentioned post or a higher scale of pay).

7. (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairman as the appropriate Government may, by notification, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairman as the appropriate Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

8. The Chairman, Vice-Chairman or other Member shall hold office is such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years:

Terms of office.

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

(a) in the case of the Chairman or Vice-Chairman, the age of sixty-five years, and

(b) in the case of any other Member, the age of sixty-two years.

9. (1) The Chairman, Vice-Chairman, or other Member may, by notice in writing under his hand addressed to the President, resign his office:

Resignation and removal.

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

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member referred to in sub-section (2).

Salaries, and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.

Provision as to the holding of offices by Chairman, etc., on ceasing to be such Chairman, etc.

10. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice-Chairman and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after the appointment.

11. On ceasing to hold office,—

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(b) the Chairman of a State Administrative Tribunal or a Joint Administrative Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman or any other Member of the Central Administrative Tribunal or as the Chairman of any other State Administrative Tribunal or Joint Administrative Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(c) the Vice-Chairman of the Central Administrative Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of the Tribunal or as the Chairman or Vice-Chairman of any State Administrative Tribunal or Joint Administrative Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(d) the Vice-Chairman of a State Administrative Tribunal or a Joint Administrative Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of that Tribunal or as the Chairman or Vice-Chairman of the Central Administrative Tribunal or of any other State Administrative Tribunal or Joint Administrative Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(e) a Member (other than the Chairman or Vice-Chairman) of any Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman of such Tribunal, or as the Chairman, Vice-Chairman or other Member of any other Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(f) the Chairman, Vice-Chairman or other Member shall not appear, act or plead before any Tribunal of which he was the Chairman, Vice-Chairman or other Member.

Explanation.—For the purposes of this section, employment under the Government of India or under the Government of a State includes employment under any local or other authority within the territory of India or under the control of the Government of India or under any corporation owned or controlled by the Government.

Financial and administrative powers of the Chairman.

12. The Chairman shall exercise such financial and administrative powers over the principal Bench and each of the additional Benches as may be vested in him under the rules made by the appropriate Government:

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

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Members and staff of Tribunal to be public servants.

31. The Chairman, Vice-Chairman and other Members and the officers and other employees provided under section 13 to a Tribunal shall be deemed to be public servants within the meaning of section 21 of the India Penal Code.

45 of 1860.

32. No suit, prosecution or other legal proceeding shall lie against the Central or State Government or against the Chairman, Vice-Chairman or other Member of any Central or Joint or State Administrative Tribunal, or any other person authorised by such Chairman, Vice-Chairman or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of
action taken in
good faith.

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35. (1) * * * * *

Power of the
Central
Government to
make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

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(b) the procedure under sub-section (3) of section 9 for the investigation of misbehaviour or incapacity of Chairman, Vice-Chairman or other Members;

(c) the salaries and allowances payable to, and the other terms and conditions of, the Chairman, Vice-Chairman and other Members;

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further to amend the Administrative Tribunals Act, 1985.

*(Shri Suresh Pachouri, Minister of State for Parliamentary Affairs and Personnel,
Public Grievances and Pensions)*