

NATIONAL JUDICIAL ACADEMY



National Seminar for Members of the Central Administrative Tribunal

at NJA, Bhopal

16th to 17th December, 2017

**Report on SE - 08 to be submitted to Hon'ble Additional Director, NJA,
Bhopal.**

Submitted by

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INTRODUCTION

The National Judicial Academy organized a National Seminar for Members of the Central Administrative Tribunal on 16th and 17th December 2017. The entire Programme was divided into **Five Sessions** over the duration of these **two days**. The participants of the seminar came from the Administrative Tribunals across the country viz., Kolkata Bench, Chennai Bench, Jabalpur Bench, Principal Bench, etc.

The objective of the programme was explore the scope, contours and limits of the judicial review in the Tribunal; to deliberate on Constitutional and Administrative law principles relevant to adjudication at the level of the tribunal. The seminar also facilitated deliberations on the processes and procedures that ought to be integrated into CAT working as a consequence of the move towards e-Courts by introduction of Information and Communications Technology into administration of justice. Sessions provided a forum for learned members to share experiences, develop robust professional harmony between technical/service Members and learned judicial Members; and identify good that enable speedier and efficacious disposal of cases in CAT.

SESSION-1

CAT: Contours of Jurisdiction; Relevant Constitutional & Administrative Law Principles

Speakers: Justice P.P. Naolekar and Justice Mukundakam Sharma

The first session commenced with the welcome address by Additional Director, National Judicial Academy, Bhopal. He said that the purpose of holding this seminar is knowledge sharing wherein not only the speakers but the other participants may also contribute. Then he gave a brief introduction of both the speakers for the day and handed over the floor to them.

Justice Naolekar welcomed all the Participants and asked each participant to introduce themselves. After the introduction, Justice Naolekar started his session. Talking about the Jurisdiction of Central Administrative Tribunal, he said that it is well settled that the CAT has the exclusive jurisdiction over the service related matters and no other court can exercise its jurisdiction, but some exceptions can be found under the 1985 Act, in relation to particular matters. Thereafter, he went through a number of Sections in The Administrative Tribunals Act, 1985 and analyzed each section relating to the exceptions to the exclusive jurisdiction of the Central Administrative Tribunal. Two main judgments of the Supreme Court were discussed to understand the jurisdiction of the Central Administrative Tribunal viz. *S.P. Sampat Kumar v. Union of India* and *L. Chandra Kumar v. Union of India*. As the Sampat Kumar case was overruled by *L. Chandra Kumar*, the latter was analyzed in details.

Justice Mukundakam Sharma supplemented to Justice Naolekar's views by adding that in UK, there is no written constitution and the Parliament is supreme. But in India, the Constitution is the supreme and the Parliament is a product of the Constitution. Constitution speaks of establishment of different organs and each one of them is given separate powers. Judiciary includes various

tribunals. Both Judiciary and Quasi-Judicial authority has been empowered to dispense justice and also to check the legality of executive action. Then he enunciated some Administrative Law Principles i.e. Principles of Natural Justice, Fairness etc. and opined that Justice should not only be done but also seem to have been be done. With this he concluded this session.

SESSION-2

Judicial Discretion in Adjudication

Speakers: Justice P.P. Naolekar and Justice Mukundakam Sharma

The Second session commenced with a series of questions raised by the participants regarding the topic of the first session. Most of the participants asked the questions to the resource persons relating to the jurisdiction of CAT and other related topics. Resource persons tried to clear their doubts. After a brief discussion on the similar line, Justice Mukundakam Sharma commenced his speech on the theme of the session 'Discretion'. He stated that every alternate probabilities you have, they should be legal probabilities also. From those you have to choose one, by applying your mind with reasonableness, which is fair and just. That is the discretion of a judicial mind. Unless extreme, you have to apply and accept the discretion exercised by the Administrative authority. Justice Sharma read out some guidelines to exercise discretion, viz. facts must be clearly understood, know the law well and apply it to the facts, when a hazy picture comes in your mind about the case do not take a decision, research on those matters, when you take a decision out of all the alternatives, ask yourself again if your decision is right and fair? Then only you will be able to take a judicial decision in the proper perspective. He quoted Lord Mansfield saying - *Discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful but legal and regular.*

Justice P. P. Naolekar then narrated his personal experience when he felt difficulty in coming to the conclusion in one case and to exercise his discretion. He also opined that the court can also take into consideration the social needs while passing orders citing the example of other jurisdictions where 'Community service' orders are passed as punishment. He asserted that the society is changing, thus the interpretation should also be changed in a manner where they can serve the social needs. Then the session was left open for the questions from the participants and resource persons answered their queries.

SESSION-3

The Art, Craft and Science of Judgment Writing

Speakers: Justice P.P. Naolekar and Justice Mukundakam Sharma

Justice Sharma commenced the session by acknowledging that the theme is interesting and by asking a question to all the participants, i.e. whether the judgment writing is an Art? Craft? Or Science? After a brief discussion, he concluded that the judgment writing is all of the above. He gave the example of Justice Krishna Iyer, whose judgements are tough to understand, but

beautifully written. He added that judgment is the creation of judge, which is like giving birth to a child. One can improve his judgment writing with time, but for that he should read as many judgments as possible.

A judgment should be written in the following parts:

- a. State the facts of the case. Understand it well and write it clearly, so u can analyze the law later on the basis of those facts.
- b. Laws, which are brought to the notice of the court.
- c. Issues framed, or points for determination should be delineated.
- d. Apply the law to the facts of the case.
- e. Refer, to some extent, contentions of the counsels.
- f. Appreciation of these contentions, and reasons for accepting or rejecting the contentions.
- g. Conclusion

Justice Sharma gave some practical suggestions to the members for writing a judgment that you have to do research on the applicable law as well. He urged to not to take cases as mere statistics and not to treat them as disposable commodities. They are sacred, as they are coming to the judges for their decision. Sometimes you become disposal minded, which should not be the perception.

Justice P. P. Naolekar then added that the proper and best judgments can be created by judges not after hearing the matter, but the preparation for that starts before the argument commences. If you read the file before hearing the argument, you will be clear with the facts, pleading of the parties, and the response given by the respondent. Then it will be easy to analyze and decide the issue. Once the initial preparation is made out, then you will understand the counsel better and you will be better prepared for forming points involved in the case for determination. That will save your time and will not require the lawyers to repeat things. Please note down the arguments advanced by the counsel in your own language. When a particular law or rule is to be analyzed, quote down the relevant judgment, and then analyze according to the pleading of the parties. Then it will be easy for the higher court to understand whether the rule has been analyzed and it will also look precise, and to the point. Best way to cite a judgment is to quote the principal enunciated in it, rather than merely quoting the paragraphs; then the judgment would become precise. If the law is settled by the decision of Supreme Court or your High Court, then you need not quote the other relevant judgments. Thereafter, participants asked their questions on the topics which were dealt with by the panelists. With this day – 1 of the seminar was concluded.

SESSION-4

Precedents: Identifying the *Ratio Decidendi*

Speakers: Justice Rajive Bhalla and Justice K. Kannan

Additional Director, NJA commenced the session with the welcome address. He mentioned in brief about the discussions which took place the previous day. Then he introduced the topic for the fourth and fifth session as well as both the speakers for the day, and handed over floor to them.

Justice Bhalla commenced the session by explaining hierarchy of Courts, distinguishing between facts and the law, reason, obiter and stare decisis. He mentioned that the Supreme Court judges feel that the subordinate judges disregard the precedents. Justice K. Kannan shared his personal experience saying that while being in High Court, he realized that he never made a law at all. Talking about the theme of the session, he began by telling about the evolution of precedents. He said it started in England in the 13th century. What was decided by judges over a period of time was collected, and that was made the basis for further decisions. In India, law is governed by precedents. To emphasize on his point, he read Art. 141 and 142 of the Constitution of India and observed that Supreme Court has jurisdiction over the whole of India and all the subordinate courts are bound by its decisions. Talking about the stare decisis, he mentioned that Stare Decisis is rooted in policy. We should decide some issues in same manner in which someone else before us is likely to, which gives a kind of certainty and impartiality of approach. Non-speaking orders will not be a precedent.

From this point, Justice Bhalla continued by enunciating that Ratio Decidendi literally means Reason for the decision. The reason does not necessarily mean the facts. Each judgment contains findings, statement of principle of law and the judgment. The judgment is what the parties are concerned with. Principle of law is the ratio, which is binding on parties and the subordinate courts. Subsequently the floor was left open for the questions and participants raised many questions relating to the binding nature of judgement of high court at some other jurisdictions as well as within the same jurisdictions. They also raised the questions about the inconsistency between the two High Court judgements and also in between High Court and Supreme Court. Panelists answered their questions saying that all these problems are there because after the judgement of Supreme Court in L. Chandrakumar's case, the law has not been suitably amended by the legislature to accommodate the changes, which could have solved many problems. With this session 4 was concluded.

SESSION-5

Courtroom Technology: Moving towards “e-courts”

Speakers: Justice Rajiv Bhalla and Justice K. Kannan

Considering the length of issues to be covered from the previous session and the present issue having relatively lesser points to cover, the speakers decided to continue the discussion from the previous session. Justice Bhalla continued, that the Ratio Decidendi means the reason for deciding; or the principle or law in which the ruling opinion is founded. Ratio Decidendi and binding precedents are different. ‘Declaration of law’ is the key which we have to look for. Many judgments may not have ‘declaration of law’, but there cannot be any judgment without law. The enforcement part is always a judgment. Talking about the Obiter Dictum, not every statement of law in a judgment is binding. Statements which are not based on law is not binding, and is described as Obiter Dictum. Obiter has a persuasive value. There is a theory that even the obiter of the Supreme Court is binding, but we will not go deep into that.

Now moving to the present theme of 'E-Courts', a participant opined that this is an issue in which a work is in progress. Developments in CAT in this regard cannot be compared to that of in the Supreme Court and High Courts. Justice Bhalla suggested that he can write a letter to his Chairman for some initiative to be taken. Justice Bhalla also suggested that the High Courts are far ahead with regard to E-Court facilities. So you can make a request to your respective High Court.

After a brief discussion on the poor condition of E-Courts in the Administrative Tribunals all over the country, Justice Bhalla briefly enquired about the developments of Administrative Tribunals with regard to the E-courts and suggested some measures to improve the same. He said that today or tomorrow the tribunals have to accept the technology which is going to change the entire court system. Then he gave his write up to the participants on the use of ICT in courts and concluded the session. Consequently, the session got over with the Coordinator proposing a vote of thanks and announcing the conclusion of the seminar.
