



Administrative Tribunals in Bangladesh: Investigating Legal and Factual Challenges, and Remedies in Proper Dispensation of Justice

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https://riiopenjournals.com/index.php/society_sustainability/index

Doi: https://doi.org/10.38157/society_sustainability.v2i1.61

Citation: Sirazi, H.M.Y. & Aziz, M.I. (2020). Administrative Tribunals in Bangladesh: Investigating Legal and Factual Challenges, and Remedies in Proper Dispensation of Justice. *Society & Sustainability*, 2(1), 35-60. Doi: https://doi.org/10.38157/society_sustainability.v2i1.61

Research Article

Abstract

Administrative Tribunal in Bangladesh is a specialized adjudicating body established in order to ensure prompt, effective, inexpensive, flexible, and expert adjudication as well as expeditious disposal of service disputes of civil servants by ousting the jurisdiction of ordinary courts on such matter. However, this paper tries to explore that the adjudicating mechanism of such Tribunals are affected by intricate legislation, non-compliance to the Constitutional mandate, deviation from equality principles, unavailability of a dynamic procedure as to the recruitment of personnel of expertise, non-existence of any established system of appointing panel advocate, a variety of the jurisdictional lacking and faults as well as functional and procedural defects. To explore challenges related to the Administrative Tribunals in Bangladesh, this paper attempts to examine whether the legal provisions of the Administrative Tribunals Act, 1980 and Rules framed thereunder are adequate for the proper and expeditious disposal of the service litigants' grievances through the critical analysis of these provisions compared to, especially, that of India and Pakistan as well as the empirical scrutiny of the practical scenario of such Tribunals in Bangladesh. This paper, in fine, concludes with the necessity for serious modifications of those legal provisions and tackling those challenges, and therefore puts forward the ways out.

Keywords: Administrative tribunals, service disputes, legal and administrative challenges, ways out, Bangladesh.

1. Introduction

In this contemporary world, every successive government aims at making welfare to the people. With the increase of the population, there has been a significant increase in the functions and duties of the government. In consequence, the government executives have been granted

tremendous powers which has resulted in the increase of legislative powers and output, generated more and more litigations and also simultaneously restricted the freedom of the people which causes a constant frictional force and parallelism between the individual and executive (Subudhi & Sharma, 2017). The recent development of welfarism has created new rights and duties and contributed to unexpected augmentation in governmental activities which results in the creation of many new areas of disputes of special nature between individuals, community, and state agencies (Jain & Jain, 1986). Most of these disputes are different in nature and of the technical kind, which requires expert adjudication following a realistic approach rather than a theoretical or legalistic approach but the adjudicating mechanism of the ordinary courts is expensive and full of intricate legislations bristling with technicalities and formalities and their members are neither adequately trained nor equipped to deal with such technical matters at hand (Joshi, 1984). In this respect, Lord Denning aptly depicts, “the ordinary court is not a suitable forum” (Denning, 1949). Therefore, it was keenly felt to establish an appropriate and suitable forum to settle these disputes of special nature fairly and effectively, which ultimately led to the creation of Administrative Tribunals with the task of undertaking judicial and quasi-judicial functions (Kautilya, 1993), a proper forum to ensure cheapness, accessibility, freedom from technicality, informality, flexibility, expert knowledge, expedition, policy-oriented decision and privacy, if necessary, in the dispensation of justice (Seervai, 1967). Hood Phillips and Paul Jackson rightly encapsulate that “The reasons why parliament increasingly confers powers of adjudication on special tribunals rather than on the ordinary courts may be stated positively as showing the greater suitability of such tribunals, or negatively as showing the inadequacy of the ordinary courts for the particular kind of work that has to be done” (Phillips & Jackson, 1978, p. 577). Thus the growth and development of Administrative Tribunals represents an output of the reaction against the highly individualistic and utterly technical and formalistic approach of the Courts, progresses a movement from 'judicial justice' to 'administrative justice with a view to tackling the rigors of the judicial process and behavior (Concept and Evolution of Administrative Tribunals in India, n.d.), and portrays such adjudicating body of resolving disputes of special nature as is established to relieve the ordinary courts from the ever-mounting pressure of litigation (Gupta & Sharma, 2014). In fact, its development and proliferation are essentially a twentieth-century phenomenon (Talukder, 2011) as Robson reiterates, "Administrative Tribunals do their work more rapidly, more cheaply, more efficiently than ordinary courts...possess greater technical knowledge and fewer prejudices against Government...give greater heed to the social interests involved...decide disputes with a conscious effort at furthering social policy embodied in the legislation (Zafar, 1998, p. 61).”

Therefore, the Bangladesh Constitutionⁱ has mandated the setting up of Administrative Tribunals. By virtue of this mandate, Parliament has enacted the Administrative Tribunals Act, 1980ⁱⁱ for establishing Administrative Tribunals to deal exclusively with and resolve service litigations of the persons in the service of the Republic or of a statutory public authority and to play a monumental role in the redressal of their grievances. Administrative Tribunals exist not only in Bangladesh, but also in other countries such as India, Pakistan, French, and Germany,

etc. But Administrative Tribunals in Bangladesh become infected with a variety of legal and factual challenges in the performance of their jurisdictional functions despite having the constitutional mandate and legislative intent to ascertain pragmatic and expeditious disposal of service disputes.

This paper aims at investigating the legal as well as administrative challenges to the more efficient and proper operation of the functions of the Administrative Tribunals in Bangladesh. To fulfill the aim, the authors have attempted to search whether stringent adherence to the Constitutional mandate and principles has been fully observed by the Parliament in granting the jurisdictions of Administrative Tribunals in Bangladesh and to scrutinize the compliance with the reasons for which the Administrative Tribunal was established. The authors have also explored that the tribunals in Bangladesh suffer from unavailability of a dynamic procedure as to the recruitment of personnel of expertise, non-existence of any established system of appointing panel advocate, a variety of the jurisdictional lacking and faults as well as functional and procedural defects. This paper has taken the help of decided cases and critically analyzed, so far as practicable, the like provisions of India and Pakistan in a comparative context, as the case may be. In concluding this paper, the authors have tried to search the ways out in order to overcome the legal and other challenges.

2. Establishment of Administrative Tribunals in Bangladesh: A Critical Look

2.1. Constitutional Outline of Administrative Tribunals

During the post-independence period, Bangladesh has ushered in a new era of development of tribunal system through the adoption of its new constitution as the framers of the 1972 Constitution of Bangladesh incorporated in it for the first time provisions as to the establishment of Administrative Tribunals in order to ascertain speedy and efficacious disposal of cases relating to service matters, by ousting the jurisdiction of the ordinary courts in this connection (Talukder, 2011). Resultantly Article 117ⁱⁱⁱ of the Constitution of Bangladesh ventured a constitutional set up with regard to the establishment of Administrative Tribunals for resolving disputes as to the terms and conditions of service of civil servants throughout the country. Pursuant to such constitutional mandate, the Bangladesh legislature was empowered to enact a law providing for the establishment of Administrative Tribunals to exercise jurisdiction regarding matters related to the terms and conditions of persons in the service of the Republic; the acquisition, administration, management, and disposal of any property vested in or managed by the Government and service in any nationalized enterprise or statutory public authority; and any law mentioned in the First Schedule to the Constitution.^{iv} And the jurisdiction of any other court is ousted to entertain any proceedings or make any order concerning such matters falling within the jurisdiction of such tribunal save as the provisions for appeals from, or the review of, decisions of such tribunal.^v Therefore, it can be argued that Administrative Tribunal in Bangladesh is a specialized adjudicating body established in order to ensure prompt, effective, inexpensive, flexible, and expert adjudication as well as expeditious disposal of service disputes of civil servants by ousting the jurisdiction of ordinary courts on such matter.

2.2. Legislative set up of Administrative Tribunals

In fulfillment of the constitutional mandate, eight years later of the enforcement of the Constitution, the Parliament enacted the Administrative Tribunals Act, 1980 which empowered the Government to establish one or more Administrative Tribunals to deal with matters and disputes especially pertaining to service matters of civil servants. Not only this, in order to supplement the provisions of the Act to ensure the smooth operation as well as the fulfillment of the objectives of such tribunals in Bangladesh, under the provisions of section 12(1)^{vi} of the Act, the Government has adopted relevant rules i.e. the Administrative Tribunals Rules, 1982, the Officers and Staff (Administrative Tribunal) Recruitment Rules, 1985, and the Officers and Staff (Administrative Appellate Tribunal) Recruitment Rules, 1985.

In exercising the powers conferred by section 3(1)^{vii} of the Administrative Tribunals Act, 1980, the Government, by a notification, established an Administrative Tribunal in Dhaka on 01 February 1982, for the whole of Bangladesh, which was formed for the first time in the history of Bangladesh with undertaking the herculean task of resolving disputes regarding service matters of civil servants. Since the formation of the first tribunal, ten years later, the realization that the single tribunal could not be able to deal with the increasing number of cases expeditiously necessitated to establish the second Administrative Tribunal at Bogura on 30 May, 1992. Not being such tribunals enough to ensure speedy justice, nine years later, the Government established five more tribunals and as such, the total number of tribunals stands at seven in the whole of Bangladesh, whose territorial jurisdictions the Government in exercise of the powers conferred by section 3(2)^{viii} of the Act can specify the area within which each tribunal shall exercise jurisdiction and accordingly have been specified, altered, and re-fixed.^{ix}The seven Administrative Tribunals have been conferred territorial jurisdictions over 61 out of 64 administrative districts in Bangladesh with the exclusion of three administrative hilly districts i.e. Khagrachari, Rangamati, and Bandarban though, as claimed by the Registrar of the Administrative Appellate Tribunal in an interview with the authors, placed under the jurisdiction of Administrative Tribunal located at Chattogram.

2.3. Composition of Administrative Tribunals: Single Member Tribunal

Section 3(3) of the Administrative Tribunals Act, 1980 lays down provisions regarding the composition of Administrative Tribunals in Bangladesh and makes it a single member tribunal comprised of one member who shall be appointed by the Government from among persons who are or have been District Judges.^x Thus unlike the Service Tribunal of Pakistan comprised of a Chairman and such member or members not exceeding three as the President may from time to time appoint^{xi} and the Administrative Tribunal of India consisted of a Chairman and such number of Vice-Chairman and Judicial and Administrative Members as the Government may deem fit,^{xii} the Administrative Tribunal in Bangladesh is a single member tribunal. Furthermore, unlike the Service Tribunal of Pakistan^{xiii} or the Administrative Tribunal of India^{xiv} concerning the working of tribunals by benches, the Administrative Tribunal in Bangladesh has

no bench to perform its undertakings in an effective, fair, and efficient manner and to ensure its smooth and fruitful functioning in the disposal of cases.

2.4. Qualifications of the Members of Administrative Tribunals: Negation of Expertise and Special Skill

As per Section 3 (3) of the Administrative Tribunals Act, 1980, the Government can appoint as the member of the Administrative Tribunal only a person who is or has been a District Judge. So a single member tribunal is composed of a District Judge^{xv} who is expected to resolve relevant disputes in a satisfactory and efficient manner. But, it is pertinent to mention here that in Pakistan the Chairman of the Service Tribunal is required for being appointed from among the persons who are, or have been, or are qualified to be, judges of High Courts although there exist no prescribed basic qualifications of other members (not exceeding three) in the relevant Act.^{xvi} Likewise, Pakistan, the Chairman of the Administrative Tribunal of India is to be appointed from among the persons who is or has been, a judge of a High Court but the Vice-Chairman of the Tribunal, who has held that office for at least two years, can also be appointed as the Chairman of the Tribunal.^{xvii} Unlike Pakistan, in India the Judicial member of the Administrative Tribunal is required to be a person who is, or has been, or is qualified to be, a judge of a High Court; or has been a member of the Indian Legal Service and has held a Grade I post of that Service for at least three years.^{xviii} The Administrative Member of the Tribunal is to be a person who has held the post of an Additional Secretary to the Government of India for at least two years 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 has held the post of a Joint Secretary to the Government of India for at least three years.^{xix}

Unlike India and Pakistan, in Bangladesh, there is no legal provision as to the appointment of a person who is, or has been, a judge of the High Court Division of the Supreme Court as the member of the Administrative Tribunal, and only a District Judge who is actually qualified to be a judge of the Bangladesh Supreme Court^{xx} can be a member of such Tribunal. But it should be worthy of mention that in India if the Vice-Chairman of the Administrative Tribunal can be recruited as its Chairman then a carrier civil servant in the rank of Secretary or additional secretary, like a Judge of the High Court, becomes eligible for being appointed as the Chairman of such Tribunal whereas in Pakistan a civil servant with no academic legal qualification can be recruited as a judge of the High Court^{xxi} and as such, shall be qualified to be the Chairman of the Service Tribunal, but in Bangladesh, only a judicial officer having legal qualification can only be appointed to the single-member Tribunal. Resultantly the Administrative Tribunal in Bangladesh can suffer from the legal vacuum consisting of a carrier civil servant having expertise, skill, wisdom, and intellectuality on the administration to tackle legal challenges for pragmatic redressal of service grievances or resolve the administrative disputes especially service disputes expeditiously and in an efficient manner in proper dispensation of justice to service litigants.

3. Jurisdiction of Administrative Tribunals in Bangladesh: Exploring Jurisdictional Lacking

3.1. Non-observance in Full of the Constitutional Article 117-Mandate and Denial of Equality Principles

The preamble to, and section 4 of, the Administrative Tribunals Act, 1980, originally enacted, has confined the jurisdiction of the Administrative Tribunals as aforesaid in Article 117 of the Bangladesh Constitution merely to deal with disputes relating to the terms and conditions of persons in the service of the Republic and, as such, it precluded the Administrative Tribunals from exercising jurisdiction in respect of matters relating to or arising out of the terms and conditions of any person in the service of any nationalized enterprise or statutory public authority; the acquisition, administration management and disposal of any property vested in or managed by the Government; and any law mentioned in the First Schedule to the Constitution (Talukder, 2007). Thus the Administrative Tribunal exercised exclusive jurisdiction to decide disputes relating to service matters of merely Government servants. Such confining of the tribunal's jurisdiction led the judiciary to adjudge that Administrative Tribunals possess exclusive jurisdiction as to service matter of Government servants, and civil courts have no jurisdiction in this respect (Md. Habibur Rahman v. A G, Works and WAPDA, 1987) and thereby jurisdiction of civil courts has been ousted.

Subsequently, in 1984, the Administrative Tribunals Act, 1980 was amended by the Administrative Tribunals (Amendment) Ordinance, 1984^{xxiii} which only extended the jurisdiction of the tribunal to hear and determine disputes relating to the terms and conditions of persons in the service of the statutory public authorities. So still now the Administrative Tribunals have no jurisdiction to resolve disputes relating to the terms and conditions of any person in the service of any nationalized enterprise; the acquisition, administration management and disposal of any property vested in or managed by the Government and most of the laws mentioned in the First Schedule to the Constitution.^{xxiii} By amendment, the newly incorporated provision in section 2 of the original Act defined statutory public authority meaning an authority, corporation, or body specified in the schedule added for the first time to the Act^{xxiv} but the newly inserted schedule did not incorporate into it all the statutory public authorities, though the schedule was amended many times.^{xxv} At the very beginning, the Schedule included only some financial institutions and subsequently excluded^{xxvi} the Rupali Bank perhaps in the consideration of its privatization, and thus, at present, only persons in the service of some specified financial institutions,^{xxvii} with the exclusion of some other statutory public authorities^{xxviii} which are not financial institutions although the Bangladesh Civil Aviation Authority is included,^{xxix} as well as the exclusion of private financial institutions, are amenable to the jurisdiction of the Administrative Tribunals of Bangladesh. It is not clear respecting the rationale of such vesting the jurisdiction of the Tribunal with such exclusion of other statutory public authorities although Article 117 of the Bangladesh Constitution does not recognize any such differentiation, just given the very general expression of statutory public authority (Talukder, 2011). On the other hand, it is also evident that persons serving in the financial statutory public authorities, though entitled to prefer an appeal as to the correctness of the decision of the Administrative Tribunal to the Administrative Appellate Tribunal, are deprived of other remedies such as

review and revision, which are available to those who, in the service of non-financial statutory public authorities. (Talukder, 2007). Thus discrimination is being made among those persons and as such, these provisions are deviated from the constitutional equality principles and equal protection of the law as enshrined in Articles 27^{xxx} and 29^{xxxi} of the Bangladesh Constitution. In addition to this, the legislature of Bangladesh did not fully comply with the constitutional mandate with regard to vesting jurisdiction in the Administrative tribunals and resultantly, has empowered the tribunals with limited jurisdiction though there is larger scope in constitutional provisions.

3.2. Confusion over Jurisdiction to Grant Interim Order

Though the power to grant interim order^{xxxii} or injunction as an exceptional measure, whose absence results mostly in making the purpose of seeking relief futile, carries much more significance to the proper dispensation of justice (Talukder, 2011); Administrative Tribunal in Bangladesh has, under the existing laws, no power to grant interim relief regarding a case pending before it for final adjudication (Kamrul Hasan v. Bangladesh and Others, 1997). Because neither does the Administrative Tribunals Act, 1980, nor the Administrative Tribunals Rules, 1982, confer on the Administrative Tribunal any such power (Chowdhury, 1998). But in India, the Administrative Tribunals have been empowered to make interim orders in proper cases subject to fulfillment of certain legal requirements.^{xxxiii} Furthermore, in Pakistan, though there exist no specific provisions empowering the Service Tribunal to pass orders suspending the operation of the challenged action or decision, the tribunal suspended the operation of the impugned order till the decision of the appeal in a notable case (Munawar Hussain Bhatti v. WAPDA, 1983). Therefore, the Indian and Pakistani administrative adjudication in different ways in this respect is more comprehensive than that of Bangladesh so far as it is associated with the issuance of interim orders in emergent cases with a view to preserving the subject matter of the litigation in status-quo for the time being.

Despite the jurisdictional absenteeism or silence as to any provision giving the Tribunal the power to grant any interim order, the Tribunal is not said to be powerless since it possesses all the powers of a civil court. And in proper cases, it may invoke its inherent power.^{xxxiv} This power outfits the legislative recognition of a well-settled principle that every tribunal has inherent power to act *ex debito justitiae* i.e. to do that real and substantial justice. Such power can be exercised to act in accordance with justice, equity and good conscience when in any case grave injustice results from the ordinary rules of procedure and there is no other remedy or when no other power is available under the procedural law or if any legislation contains no definite provisions to meet the necessity of any case (Government of Bangladesh and others v. Sontosh Kumar Shaha and others, 2016). Therefore, though the Administrative Tribunals Act did not specifically empower the tribunal to issue an interim order, it can exercise its inherent power and thereby it can pass an interim order in appropriate cases i.e. to prevent the abuse of the process of court or the mischief being caused to the applicant affecting his right i.e. right to promotion or other benefits. But the Tribunal shall give the opposite party an opportunity of being heard before granting such order (Sinha, 2018). However, in urgent cases, which

necessitates making an interim order with a view to preventing the abuse of the process and such loss as is irrecoverable by means of pecuniary compensation in the incident of not passing such order, the Tribunal can grant interim order as an extraordinary measure for a limited period not exceeding fifteen days from the date of the order unless the aforesaid conditions have been complied with before the expiration of the duration, and the Tribunal having all the trappings of a civil court shall pass any further order upon hearing the parties.

3.3. Ambiguity on Jurisdiction to Redress Grievances due to Administrative Inaction

Generally, an Administrative Tribunal in Bangladesh can admit no application unless the aggrieved person has exhausted all other remedies available to him under the relevant service laws (*Moulvi Gholam Moula v. Bangladesh, 1992*). So the legal requirement is that a person aggrieved by any order of any administrative authority has to challenge such order to the higher administrative authority which exists to set aside, vary or modify any action or order under any law for the time being in force as to the terms and conditions of the service of the republic or of any statutory public authority. No application can be entertained to the Administrative Tribunal until such appropriate higher authority has taken a decision on the matter.^{xxxv} Only after the decision has been taken by such higher authority which requires to dispose of the matter within six months^{xxxvi} from the date of making an order or making a decision, he can go to the Administrative Tribunal for redressing his grievances (*Md. Osman Gani v. Government of Bangladesh, 1997*). There is also a time limit of two months^{xxxvii} from the date of preferring the application within which the higher authority takes the decision, whereas such time limit is three months in Pakistan^{xxxviii} and six months in India.^{xxxix} If no decision or order is made by the higher authority within the prescribed period, it can be interpreted as administrative inaction. After the expiry of such a period in an unresolved state, that application is deemed to have been disallowed by the higher authority for the purpose of moving the Administrative Tribunal.^{xl} To file an application against inaction, the aforesaid six month-periods also would not be attracted, since the period of limitation would not commence unless an order is made.

Now the question is whether the Administrative Tribunal has jurisdiction to redress grievances caused to a person in the service of the Republic or of any statutory public authority due to such administrative inaction of the higher authority. In this context, the observations given by the Indian judiciary keep relevancy to mention here in which the court reasoned that an application made to the Tribunal by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal for the redressal of his grievance should not ordinarily be entertained unless he had exhausted all the remedies available under the service rules. But if the higher administrative authority didn't pass any order on the appeal or representation preferred under the relevant rules within six months after the presentation, such application could be made invoking the jurisdiction of the tribunal against such administrative inaction in which the complaint is not against any order made by the higher authority. These provisions being procedural cannot have the upshot of curtailing the jurisdiction of the Tribunal (*Dr. Kshama Kapur v. Union of India, 1986*). Therefore, taking such Indian jurisprudence into account,

tribunals in Bangladesh may entertain application against administrative inaction. However, the decision of other Jurisdictions is persuasive, not mandatory to follow.

3.4. Power of Administrative Tribunals to Punish for Obstructing in the Performance of its Function and for Contempt of itself

Every authority or body exercising judicial functions can invoke jurisdiction to punish a person who intervenes with or intends to obstruct the administration of justice by any means so that that judicial authority can be able to undertake its functions in a pragmatic and desired fashion. For this, the Administrative Tribunals Act, 1980 has empowered the tribunal^{xli} by its section 9 to punish those who obstruct it in the performance of its functions without any reasonable justification and lawful excuse.^{xlii} Resultantly, the Administrative Tribunal or the Administrative Appellate Tribunal shall invoke the power to sentence a person liable for creating obstructions in carrying out its undertakings with simple imprisonment up to one month, or with fine up to five hundred taka, or with both.^{xliii}

It should be emphatically mentioned here that like Pakistan, there existed no legal provisions in the Administrative Tribunals Act, 1980, as originally enacted, as to the power of the Administrative Tribunal or the Administrative Appellate Tribunal to penalize an act of scandalizing or prejudicing its proceedings. Subsequently, by the Administrative Tribunals (Amendment) Ordinance, 1988, section 10 A was newly inserted to the original Act empowering only the Administrative Appellate Tribunal to punish a person for contempt of its authority or that of any Administrative Tribunal as if it were the High Court Division of the Supreme Court.^{xliv} But, unlike the Administrative Tribunal in India which has been authorized to exercise the same jurisdiction and powers regarding contempt as that of the High Court,^{xlv} the Administrative Tribunal in Bangladesh has not been conferred the powers and authority to punish for contempt of itself (Talukder, 2007). Furthermore, it is also pertinent to stress here that Unlike India,^{xlvi} as the Administrative Tribunals Act, 1980, is silent on the procedure which is to be followed in case of contempt proceedings and on the matter as to which form of punishment will be inflicted on the convicted persons, it appears that in dealing with such a contempt case, the relevant provisions of the Contempt of Courts Act, 2013^{xlvii} should be followed by the Administrative Appellate Tribunal in Bangladesh.

3.5. Silence as to Power of the Tribunals to Reduce the Penalty Imposed in the Disciplinary Proceedings

Like India, in Bangladesh, the Administrative Tribunals Act, 1980, is silent on the jurisdiction of the Administrative Tribunal to intervene with the quantum of a penalty and reduce the penalty inflicted by a higher or competitive administrative authority when found excessive or disproportionate having regard to the gravity of the misconduct proved in the departmental proceedings. In the absence of such legal provision investing the power to interfere with the quantum of penalty, the question arises as to whether the administrative tribunals can intervene with the quantum of punishment imposed in the disciplinary matters (Administrative

Tribunals, n.d.)? In searching for the answer to this monumental question, the observations made by the Indian Supreme Court are worthy of enunciation that

"The tribunal has ordinarily no power to interfere with the punishment awarded by the competent authority in departmental proceedings on the ground of penalty being excessive or disproportionate to the misconduct proved, if the punishment is based on evidence and is not arbitrary, mala fide or perverse. It was further observed that the jurisdiction of the tribunal to interfere with the disciplinary matters or punishment could not be equated with appellate jurisdiction. The tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse" (Union of India v. Parma Nanda, 1989, p. 177).

The same observations were followed in the cases Union of India v. J.R. Dhamin (1999) SCC 403 as well as Commandant, T.N. Special Police, 9th Battalion v. D Paul (1999) SCC 789. However, in a recent case, the apex court of India has taken a slightly different stand and observed: It is undoubtedly open to the tribunal to replace one punishment by another, but it is also stereotyped that the jurisdiction of the Tribunal is confined in this behalf. The Tribunal can exercise the jurisdiction to reduce, or interfere with, the quantum of punishment only when, inter alia, it appears to be grossly disproportionate. Such kind of intervention by the tribunal should be on arriving at an unearthing that no reasonable person could impose such punishment. Furthermore, the Tribunal may exercise its jurisdiction when the competent authority didn't consider the relevant facts, as a result of which could have a direct bearing on the question of quantum of punishment (Hombe Gowda Education Trust v. the State of Karnataka, 2006). Nonetheless, in order to provide service litigants for appropriate remedy and proper dispensation of justice, the Administrative Tribunals in Bangladesh should also be rendered the jurisdiction to intervene with the quantum of a penalty and reduce the penalty inflicted by a higher or competitive administrative authority when found excessive or disproportionate having regard to the gravity of the misconduct proved in the departmental proceedings.

3.6. Does the Jurisdiction of Administrative Tribunals Extend to Civil Servants in the Defense Services?

Section 4(3) of the Administrative Tribunals Act, 1980, as originally enacted, excluded a person in the defense services of Bangladesh from the expression 'person in the service of the Republic'. It is also noticeable that as a person in the defense services of Bangladesh is excluded from the jurisdiction of the Administrative Tribunals, the disputes relating to service matters of a person in Bangladesh Rifles [presently the changed name 'Border Guards of Bangladesh (BGB)], which is a para-military force not under the Defense Ministry but under the Home Ministry of Bangladesh, could be resolved by the Administrative Tribunal (Talukder, 2007). But subsequently through amending the original Act by section 2 of the Administrative Tribunals (Amendment) Ordinance, 1982^{xlvi}, a person in the service of Bangladesh Rifles placed in the exclusion clause of section 4(3) of the Administrative Tribunals Act, 1980. So the jurisdiction of the Administrative Tribunal is ousted to resolve service disputes of a person in both the defense services and BGB.

Although the Administrative Tribunal was excluded to resolve service disputes of a person in the defense services of Bangladesh, the Tribunal's jurisdiction to deal with disputes as to the terms and conditions of the civilian employees in defense services was not barred. In this respect, the observation made by the Appellate Division of the Bangladesh Supreme Court is worthy of elucidation as the court adjudged that civilian employees in defense services can well invoke the jurisdiction of the Administrative Tribunal for legal remedies in service matters (Md. Ishaquddin Ahmed v. Commandant, School of Armour and Center, Bogra Cantonment, Bogra and Others, 1999). In another case (Sirajul Islam Thakur v. Bangladesh, 1994), the court more clearly reasoned that civilian employees in the defense services not being any member of the defense services hold civil posts and as such, now they have to move the Administrative Tribunal for a redress of their grievances and cannot move the High Court Division of the Bangladesh Supreme Court in writ jurisdiction.

4. The procedure of Administrative Tribunals in Bangladesh: Any Procedural Barrier to Get Quick Remedy?

Tribunals don't require applying the court procedures and, as such, they are not bound to follow the procedure requisite for civil courts unless so enumerated in the enabling Act. They can adopt their own procedures for smoothly undertaking their functions. Accordingly, the procedure to be adhered to by the Administrative Tribunal in Bangladesh to resolve disputes pertaining to service matters of civil servants has been enshrined in the 1980 Administrative Tribunals Act and the 1982 Administrative Tribunals Rules framed thereunder.

4.1. The precondition to be fulfilled for invoking the Tribunal's Jurisdiction

In Bangladesh, the right to go to Administrative Tribunals is only available to those people who are employed in the service of the Republic or of any statutory republic authority. But, before a person in the service of the Republic or of any statutory republic authority can move to the Administrative Tribunal for a redress of his grievance, he should fulfill these criteria- i) he should have availed all the remedies available to him under service laws; and ii) he should have a *locus standi* in the subject matter.^{xlix} Therefore, an Administrative Tribunal shall not ordinarily admit an application unless that person has exhausted all other remedies available to him under the relevant service laws. Similarly in Pakistan and India, there also exists such a precondition of exhausting all available departmental remedies. But in deciding on the departmental appeals or revisions, the higher departmental authority is permitted to take the time of two months in Bangladesh whereas three months^l in Pakistan and six months^{li} in India. Such legal requirement to invoke a departmental remedy before going to administrative courts is nowhere in France and Germany (Rashid, 1998). This is because, in most of the cases, service litigants become victimized due to legally unwanted delay of two months of the departmental authority in giving the authorization to file a service suit and ousting the right to direct access to justice before the Administrative Tribunal. Resultantly, the Tribunal is whittled down in proper dispensation of justice to service litigants.

In recent years, insofar as the writ petitions filed in public interest^{lii}, a tendency has grown up to extend the scope of the expression '*locus standi*' though, the Administrative Tribunal, being the creature for the specific purposes of service matters under the Act of 1980, cannot admit cases filed in the public interest (Talukder, 2011). In this regard, the court observed that nobody other than a person in the service of the republic or of any statutory public authority can prefer an application pertaining to service matters before Administrative Tribunals (Kazi Shamsunnahar & others v. Commandant PRF, Khulna and others, 1997).

4.2. Filing and Disposal of Application as to Service Disputes

Like India^{liii} and Pakistan,^{liv} in Bangladesh, a person in the service of the Republic or of any statutory public authority is entitled to make an application in writing to the Administrative Tribunal in person or through a duly authorized legal practitioner.^{lv} Such application can be rejected by the Tribunal if it is submitted strictly not complying with the proper manner enumerated in sub-rules (1), (2), (3), (4) and (5) of rule 3^{lvi} of the Administrative Tribunals Rules, 1982, and is not barred by the Administrative Tribunal Act, 1980; but before rejecting it, the Tribunal may give an opportunity to those who failed to make the application as per those rules (Ali Emdad v. Labour Director and Others, 1998). The Tribunal has also been empowered, under section 7B as inserted by a subsequent amendment to the original Act, to alter or amend the pleadings at any stage of the proceedings and even at the stage before the Appellate Division of the Supreme Court,^{lvii} though there was no scope to alter or amend the application in spite of any fatal defect disclosed aftermath.

It is pertinent to mention here that after the application being admitted and on the day fixed for hearing of the application if neither of the parties to the dispute appears but notices to appear have duly been served upon the parties, the Tribunal may make an order dismissing the application.^{lviii} If on the date so fixed, notwithstanding the duly service of notice, the applicant appears but the opposite party does not appear, the Tribunal may hear the application *ex parte*.^{lix} Again, if the opposite party appears but the applicant does not appear, the Tribunal may make an order dismissing the application but shall make an order granting relief to such extent as it deems fit where it seems that the relief claimed by the applicant should be permitted in response to the admission made by the opposite of the claim of the applicant.^{lx} These provisions are similar to the provisions of Order IX of the Code of Civil Procedure, 1908 as well as those of Rules 15 and 16 of the 1982 Administrative Tribunal (Procedure) Rules of India^{lxi} and Rule 19 of the 1974 Service Tribunals (Procedure) Rules of Pakistan.^{lxii} Furthermore, the Tribunal, being satisfied with the sufficient cause presented for the parties' non-appearance, may make, on the application made by the aggrieved, an order setting aside these orders^{lxiii} which are identical with the provisions of Rule 13 of Order IX of the Code of Civil Procedure, 1908. The Tribunal, in appropriate cases, may postpone the hearing of the application to a fixed future day.^{lxiv} Anyway, the Tribunal shall give its decision in writing with reasons therefor,^{lxv} and shall not alter or modify such decision or order once given or made except for the purpose of correcting a clerical or arithmetical mistake or any error arising from any accidental omission.^{lxvi} It is also evident that under the prevalent laws, Administrative Tribunal in Bangladesh doesn't hold the power to

grant interim relief concerning a case pending before it for final adjudication (Kamrul Hasan v. Bangladesh and Others, 1997). And also neither do the existing laws confer on the Administrative Tribunal any such power.

In adjudicating disputes, the tribunals are not bound by the procedure enshrined by the Code of Civil Procedure, 1908. The tribunals are vested with the same powers as of the civil courts under the Code of Civil Procedure 1908. In order to hear an application, the Administrative Tribunals in Bangladesh may summon and enforce the attendance of any person and examine him on oath, the discovery and production of any document, require evidence on affidavit, requisition any public record or a copy thereof from any office, issue commissions for the examination of witnesses or documents and such other matters as may be prescribed by the Act or rules made thereunder.^{lxvii} But the Administrative Tribunal is not empowered to determine its procedure in the absence of specific provisions in the Act or in the rules framed thereunder.^{lxviii} Despite this, the procedure to be laid down by the Appellate Tribunal must comply with the principles of natural justice^{lxix} since these principles are part of the law of the country (Abdul Latif Mirza v. Government of Bangladesh, 1982). Moreover, an Administrative Tribunal can strike down an order for infringement of the principles of natural justice, though it cannot strike down any bar or rule on the ground of its constitutionality.

It is also noteworthy here that the newly incorporated section 7A to the original Act has efficaciously served humanitarian cause rendering the legal representatives of the deceased applicant the right to sue and continue the proceedings in order to obtain pensionary benefit which, in the event, the order of dismissal or removal is declared illegal, will entitle the applicant as if he retired or died while in service.^{lxx}

4.3. The procedure as to Execution of Decrees and Orders of the Tribunals

The Administrative Tribunal shall execute its decisions and orders as per the provisions of the Code of Civil Procedure, 1908 as far as practicable.^{lxxi} In this respect, the court adjudged that the Tribunal can function as an executing court and as such, can execute its own decisions or orders and also the decisions and orders of the Administrative Appellate Tribunal adhering to the decree-execution related provisions of the Civil Procedure Code (Munshi Mozammel Hossain v. Post Master, Faridpur, 1991). This provision renders procedural exhaustiveness for the Tribunals to ensure proper dispensation of justice for service litigants.

4.4. Legal Representation through Inspection of any Record or Document

With the permission of the Tribunal, any party to a dispute may inspect any record or document in the custody of the Tribunal, other than a record or document as to which the state may claim privilege and such inspection shall be made in the presence of the officer of the Tribunal as it may specify.^{lxxii} This provision is undoubtedly conducive to ensure proper representation by any party to a dispute.

4.5. Appeal against the Decisions of Administrative Tribunals in Bangladesh

4.5.1. Establishment and Composition of the Administrative Appellate Tribunal

The Administrative Tribunals Act, 1980 also empowers the Government to establish an Administrative Appellate Tribunal. This Tribunal is required to be established by a gazette notification.^{lxxiii} The Appellate Tribunal consists of one chairman and two other members to be appointed by the Government.^{lxxiv} The requisite qualifications and experiences for the appointment of chairman and members are also reiterated in the Act. The chairman has to be a person who is, or has been, or is qualified to be a judge of the Supreme Court of Bangladesh. As for the two members, one has to be a person who is or has been an officer in the service of the Republic not below the rank of Joint Secretary to the Government, and the other member has to be a person who is or has been a District Judge.^{lxxv} These provisions ensure the majority of the judicial officers including chairman in the Appellate Tribunal. However, the inclusion of a carrier civil servant with professions judges in the Appellate forum holding the features of a mixed-up tribunal is more likely to be conducive since it brings expertise and inside information of the working of the administrative departments.

It is pertinent to mention here that the provision of the Administrative Tribunals Act, 1980, as it is, made the Appellate Tribunal dependent on the Government for their terms and conditions of service which adversely affects their personal independence in determining the appeals and cannot enable them to perform their functions without fear or favor (Talukder, 2008) as the Government determines the terms and conditions of their appointment.^{lxxvi} So it can undoubtedly be admitted that such provisions intervening with the personal independence of the Tribunals' judges as well as creating fear in their minds by the government and facilitating favor and pity for the government leads the Tribunals astray to ascertain proper dispensation of justice for service litigants.

4.5.2. Jurisdiction of the Administrative Appellate Tribunal

The Administrative Tribunals Act, 1980, Section 6 invests the Administrative Appellate Tribunal with the jurisdiction (which is of not original jurisdiction but of appellate nature) to hear and determine an appeal against any order or decision of the Administrative Tribunal.^{lxxvii} Unlike in India^{lxxviii}, where only the Supreme Court of India has been empowered to hear and determine an appeal against the decisions of the Administrative Tribunal on the grounds of, as case law suggests, illegality, the error of law and infringement of principles of natural justice, the Supreme Court of Bangladesh has not been empowered to exercise the appellate jurisdiction over the Administrative Tribunal. Even in this respect, Bangladesh has not followed the example of Pakistan where an appeal against the decisions of the Service Tribunal lies before the Supreme Court subject to granting leave to appeal only on a substantial question of law of public importance.^{lxxix} Apart from this, the existing laws i.e. the Act of 1980 and the Rules of 1982 are silent on whether all orders are appealable or not. It may be argued that all orders are not appealable as the provisions of the Code of Civil Procedure, 1908,^{lxxx} has been made applicable to the proceedings before the Administrative Tribunals and the Administrative Appellate Tribunal.^{lxxxi} It will be incompatible with the legislative intent if all orders are regarded as appealable. Where not explicitly depicted, it will be congruent with the purpose of the law to adjudge that only the orders which are substantive in nature or finally made are

appealable and the orders which are not substantive and in no manner affect the interest of any party in determining the main dispute or merit of the cases are not appealable (Bakar, 1998). The Administrative Appellate Tribunal has also the jurisdiction to hear and determine an appeal against the order of punishment passed by the Administrative Tribunal^{lxxxii} but an appeal against the order of punishment passed by the Administrative Appellate Tribunal lies before the Appellate Division of the Supreme Court of Bangladesh.^{lxxxiii} Furthermore, the Appellate Tribunal enjoys wide powers as it may, on appeal, confirm, vary, modify or set aside any order or decision of the Administrative Tribunal^{lxxxiv} subject to the provisions of section 6A of the Act of 1980 by which Article 103^{lxxxv} of the Bangladesh Constitution has been made applicable to the decision of the Appellate Tribunal, meaning that the Appellate Division of the Supreme Court possesses the power on leave to hear and determine appeals from decisions or orders or sentences of the Appellate Tribunal. In this respect, the Apex Court of Bangladesh adjudged that under the modern dispensation that Article 103 of the Bangladesh Constitution shall apply in relation to Administrative Appellate Tribunal, the petitioners have only the right to seek leave for appeal (Bangladesh Bank v. Administrative Appellate Tribunal, 1992). Thus, the decision of the Appellate Tribunal becomes final subject to the provisions of section 6A of the Act and thereby a civil servant has got an opportunity to ascertain the appropriateness of the decisions or orders given or made by the Appellate Tribunal as to service matters through the higher judiciary.

4.5.3. Time Limits for Filing Appeal Application

Sections 6(2) and 6(2A) of the Administrative Tribunals Act, 1980, provides for the time limit for appeal. An appeal to the Administrative Appellate Tribunal may be preferred by any person aggrieved by an order or decision of the Administrative Tribunal within four months from the date of making of the order or decision.^{lxxxvi} This time limit can be relaxed as after the expiry of that fixed time an appeal may be admitted within six months from the decision or order of the Administrative Tribunal and not later than that if the appellant satisfies the Appellate Tribunal on showing sufficient cause of delay.^{lxxxvii} However, the Tribunals have legal force to bind all the parties by their decisions and orders. Such legal force is derived from the provisions of section 8 of the Administrative Tribunals Act, 1980. It entails that subject to the decisions and orders of the Appellate Division, all decisions and orders of the Administrative Appellate Tribunal shall be binding upon the Administrative Tribunals and the parties concerned.^{lxxxviii} It also reiterates that all decisions and orders of an Administrative Tribunal shall be binding on the parties concerned subject to the decisions and orders of the Appellate Division or of the Administrative Appellate Tribunal, as the case may be.^{lxxxix} It is also pertinent to mention here that like Bangladesh, there is no Administrative Appellate Tribunal in India and Service Appellate Tribunal in Pakistan to hear and determine an appeal against the decision or order of the Administrative Tribunal respectively. However, Administrative Tribunals in Bangladesh are heavily burdened to some extent and the rate of disposal of cases is not high.^{xc} The disposal rate of the Appellate Tribunal is also very low.^{xcii} It is seen that 80% of the decisions of the Administrative Appellate Tribunal prevails in the decision of the Appellate Division of the

Supreme Court of Bangladesh.^{xcii} So it can be uttered that the Tribunals, being affected with different drawbacks as earlier explicated and faced with a variety of factual challenges are not functioning properly and efficaciously.

4.5.4. Understanding Practical Scenario and Factual Challenges in the Functioning of Administrative Tribunals

The authors have visited Administrative Tribunal -01, 02, 03, Dhaka in several occasions in 2014, and have taken interviews from the learned judges of the Tribunals, Registrar of the Dhaka Administrative Tribunal 01, Sections officers of the Tribunals, parties to the Tribunals, and from the learned lawyers of the Supreme Court of Bangladesh who are presently practicing in the Tribunals. The authors had examined the pros and cons of several cases during that time. The authors' venture was to experience problems and prospects of the Tribunal in respect of the operation practically. Moreover, an attempt was made to find out how many cases prevailed the remedies. It was witnessed that panel advocate filed the time petition again and again for submitting a written statement or adjournment of the hearing, as a result of which it causes dilatory in the disposal of cases which brings failure to the atmosphere of enforcing rights of the litigants and the reasons of creating such special adjudicating body. The authors' observation can be summed up in the following points:

- Administrative Tribunals in Bangladesh are heavily burdened to some extent and the rate of disposal of cases is not high. The disposal rate of the Administrative Appellate Tribunal is also very low. However, it is seen that 80% of the decisions of the Administrative Appellate Tribunal prevails in the decision of the Appellate Division of the Supreme Court of Bangladesh.
- There are no specific laws or rules regulating the appointment of panel advocates. At present they are appointed by the Ministry of Laws, Justice, and Parliamentary Affairs. Therefore, political identity, in contrast to merit and qualifications, becomes a decisive factor in the case of appointing panel advocates.
- For every working day of the suit, a panel advocate gets only 300/= taka. Actually, this lower fee is a core factor in the trend of excessively filing time petition for submitting a written statement or adjournment of hearing as delay makes money for them.
- Another significant defect that needs to be mentioned here is the absence of interaction between panel advocate and government department or ministry etc. When a case is filed against a department or ministry of the Government and tribunal issued notice to such department or ministry, they inform solicitor wing of the Ministry of Law, Justice and Parliamentary Affairs about this, and then solicitor wing selects a panel advocate to defend such department or ministry, etc. One Deputy Commissioner of Audit, Khulna opined that this procedure of selecting a panel advocate is also against the spirit of establishing tribunal because the selected advocate may not have the expertise or may not be aware of departmental proceedings of a particular department.
- Lack of proper logistic support like inadequate support staff is also a problem in the proper functioning of Tribunals. For example, The Dhaka Administrative Tribunal-02

had only 4 staff in 2014 and the situation has not improved yet. Although, there is an option to appoint staffs on the basis of "No work, No Pay" but the amount of payment for such work is very low, namely 120 taka per day, consequently no one is interested to work on the basis of "No work, No Pay". One member of the Dhaka Administrative Tribunal-02, in a personal interview with the authors, said that she wrote to the authority to increase the amount to 200 Taka at least, but the authority didn't respond to her proposal.

- The Government of Bangladesh is yet to initiate an ambitious Plan Project modernizing and computerizing the activities of the Administrative Tribunals in Bangladesh through a new dynamic website, Case Information System, Video Conferencing, etc.

5. Ways Out and Concluding Observations

From the aforesaid enumeration, it is evident that at present, the Administrative Tribunals are moving with a lack of far-reaching goal and ambition along with the unexpected burden of a good deal of legal and administrative challenges. So the unsatisfactory position of the legislation pertaining to Tribunals calls for urgent reforms to install prompt, effective, and expeditious means of adjudication with full strength in order to overcome those challenges. It is high time to step in and introduce modifications by way of amending the Administrative Tribunals Act, 1980 at least with the line of the following ways out.

5.1. Ways Out to Tackle Legal Challenges

- As service litigants become victimized due to legally unwanted delay of two months of the departmental authority in giving the authorization to file a service suit and ousting the right to direct access to justice before the Administrative Tribunal resulting the Tribunal's proper dispensation of justice to service litigants frustrated, the legal requirement of exhausting all available departmental remedies before going to the Administrative Tribunals by an aggrieved person should be abrogated with a view to assuring quick settlement of cases in line with the provisions of France and Germany in that respect.
- In contrast to the Service Tribunal in Pakistan or the Administrative Tribunal in India, Administrative Tribunal in Bangladesh, being a single member Tribunal, has no scope to perform its undertakings in Benches and cannot always be desired for assuring fair justice, effective and expeditious disposal of cases. Therefore, the Administrative Tribunals Act, 1980 should be amended with a view to enabling all Administrative Tribunals in Bangladesh to discharge their functions in Benches.
- In the absence of the legal provisions as to the qualifications of a District Judge who should be appointed as a Member of the Tribunal, the Bangladesh Government legally enjoys unfettered powers in such an appointment. Therefore, the Act should be amended keeping the provisions of appointing the most efficient, learned, expert, and impartial District Judges in order to ensure fair and expeditious justice as a denial of speedy disposal of cases by such specialized personnel would amount to adopting a blinkered and narrow-minded approach.

- As only the Government service holders and specified statutory public authority service holders are entitled to go to the Administrative Tribunal, it is the violation of the constitutional rights to equality as guaranteed for all the persons including the persons in the service of statutory public authorities. Therefore, the Schedule to the Act should be amended to eradicate discrimination.
- By amending the Act pursuant to the Constitutional mandate, the Administrative Tribunals should be granted the jurisdiction to resolve disputes relating to the terms and conditions of any person in the service of any nationalized enterprise; the acquisition, administration management and disposal of any property vested in or managed by the Government; and any law mentioned in the First Schedule to the Constitution.
- A public service litigant can only prefer an appeal as to the correctness of the decision of the Administrative Tribunal to the Administrative Appellate Tribunal and, as such, is deprived of the other remedies, such as a review. Therefore, the Act should be amended by inserting such other remedies for a service litigant.
- Since only seven Administrative Tribunals are over-burdened with a huge backlog of cases which causes dilatory in the disposal of cases, a substantial number of Administrative Tribunals covering a separate Tribunal in the hilly districts of Khagrachari, Rangamati, and Bandarban should be established in order to facilitate the smooth functioning of the Appellate Tribunal and ensure effective and expeditious justice.
- As the Administrative Tribunal cannot give any relief to a person in the service of the Republic or of any statutory public authority who is aggrieved because of administrative inaction as earlier enumerated, the Act should contain such remedial measures by an amendment in order to develop service jurisprudence.
- As the Administrative Tribunals Act is silent on the exercise of jurisdiction of the Administrative Tribunal to intervene with the quantum of a penalty and reduce the penalty inflicted by a higher administrative authority when found excessive or disproportionate having regard to the gravity of the misconduct proved in the departmental proceedings, the Act should be amended by incorporating such provision in order to provide service litigants for appropriate remedy and proper dispensation of justice.
- Unlike India, the Administrative Tribunals in Bangladesh have no power to grant stay or injunction as an ad-interim measure of which absence makes remedy jurisprudence frustrated. Though the Tribunal enjoys inherent powers in the absence of such an ad-interim measure, invoking the power to grant interim order or injunction plays a monumental role for the appropriate dispensation of justice. Therefore, the Act should be amended by granting such power to the Tribunal.
- In order to assure pragmatic judgment on appeal, it is recommended that the judicial member of the Administrative Appellate Tribunal should be recruited from amongst the District Judges who are of acute intellect, high legal acumen, integrity, and impartiality. Furthermore, the Supreme Court should be made the authority in place of the executive authority for the transfer, posting, and promotion of Members of the Tribunals so that they

can discharge their functions without any fear or favor by stringently complying with their professional conduct.

- As earlier elucidated, the provisions and mechanisms which are intervening with the personal independence of the Tribunals' judges as well as creating fear in their minds by the government and facilitating favor and pity for the government leading the Tribunals astray to ascertain proper dispensation of justice for service litigants should be done away with and for that, the Tribunal's judges should be made free from all kinds of interference by the executive in arriving at their decision impartially and in unbiased way in order to ensure fair and expeditious justice.
- Like the Administrative Appellate Tribunal in Bangladesh, the Administrative Tribunal should be given the power to punish for contempt of its authority in order to ascertain prompt, effective, and desired materialization of its decisions because this power commands utmost respect both from all persons appearing before the Tribunals and their lawyers. Apart from this, as the government authorities are being accused in most of the contempt cases, a liaison officer may be appointed in the Ministry of Public Administration of the Bangladesh Government like Pakistan in order to supervise the materialization of the decisions of the Tribunals. Alternatively, a watchdog committee that must be independent, autonomous, and a permanent body consisting of men of the highest integrity, legal background, and deep knowledge of administration should be constituted to oversee the working of the Tribunals.

5.2. Ways Out to Tackle Other Challenges

- Specific laws or rules regulating the appointment of panel advocates should be made. The merit and qualifications, not political identity should be the determining factor in such an appointment, which can be hoped to facilitate the proper functioning of the Administrative Tribunals. The procedure of selecting a panel advocate should be changed because the selected advocate may not have the expertise or may not be aware of departmental proceedings of a particular Department against which a case is filed. In addition, the reasonable fees should be fixed for panel advocates, which can restrain them from filing excessively time petition and thereby can make prompt and expeditious disposal of cases.
- Proper logistic support covering reasonable wages should be provided to the staff in the proper functioning of the Tribunals.
- The Government of Bangladesh should initiate an ambitious Plan Scheme in order to massively modernize and computerize the activities of the Administrative Tribunals in Bangladesh through a new dynamic website, Case Information System, Video Conferencing, etc. On the completion of this project, the service litigants, lawyers, and public, in general, will get access to the orders and decisions of the Tribunals on just time besides the efficient management and maintenance of records and expeditious disposal of cases.

In fine, it can be logically explicated that the legislative intent behind the establishment of Administrative Tribunals in Bangladesh is to provide effective, inexpensive, flexible, fair,

efficient adjudication as well as expeditious and public-oriented justice in the redressal of the grievances of the civil servants with a view to easing the congestion of pending litigations in the ordinary civil courts. Nonetheless, the adjudicating system of such tribunals is affected by intricate legislations bristling with different types of legal pitfalls and factual challenges, as mentioned above in detail. Therefore, it requires stringent adherence to those aforesaid ways out in order to adjudicate the service disputes as per the underlying philosophy of establishing such tribunals. Resultantly such bold steps would develop service jurisprudence and facilitate the establishment of a true welfare state making benefits for the individuals and the society at large. These Tribunals would go a long way as an effective and supplementary dispute resolution mechanism for resolving service disputes and at the same time, would gain public confidence as well as herald the era of quick settlement mechanism by delivering prompt legal justice to the individuals including the service litigants in expert, efficient and expeditious manner.

Author Contributions: Both the authors gave equal contributions in formulating, articulating, and writing the paper.

Conflict of interest: The authors declare no conflict of interest.

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Endnote

ⁱAdopted by the Bangladesh Constituent Assembly on 04 November 1972 and came into force on 16 December 1972. To gather a useful knowledge of the history of Bangladesh's Constitution-making, see Huq, A. F. (1973). Constitution-making in Bangladesh, *Pacific Affairs*, 46(1), 59-76.

ⁱⁱ Act No. VII of 1981. This Act entered into force on 01 February 1982. See Vide Notification No. S.R.O. 30-L/82/JIV/1T- 3/81, Dhaka, 12 January 1982.

ⁱⁱⁱArticle 117(1) of the Bangladesh Constitution postulates- "Notwithstanding anything hereinbefore contained, Parliament may by law establish one or more administrative tribunals to exercise jurisdiction in respect of a matter relating to or arising out of-

(a) the terms and conditions of persons in the service of the Republic, including the matters provided for in Part IX and the award of penalties or punishment;

(b) the acquisition, administration, management and disposal of any property vested in or managed by the Government by or under any law, including the operation and management of, and service in any nationalized enterprise or statutory public authority;

(c) any law to which clause (3) of Article 102 applies."

iv Though the Constitution provides for the establishment of Administrative Tribunals to deal with different matters as mentioned in article 117, but Administrative Tribunals dealing only with service matters have been established.

v Article 117(2) of the Bangladesh Constitution provides that 'Where any administrative tribunal is established under this article, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal: Provided that Parliament may, by law, provide for appeals from, or the review of, decisions of any such tribunal.

vi Section 12(1) of the Administrative Tribunals Act, 1980 says-"The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act."

vii Section 3(1) of the Administrative Tribunals Act, 1980 reiterates thus "The Government may by notification in the Official Gazette, establish one or more Administrative Tribunals for the purpose of this Act."

viii Section 3(2) of the Administrative Tribunals Act, 1980 provides, "When more than one Administrative Tribunal is established, the Government shall, by notification in the Official Gazette, specify the area within which each Tribunal shall exercise jurisdiction."

ix Notification S.R.O. No. 288-Law/2001, dated 22 October 2001.

x Please see section 3(3) of the Administrative Tribunals Act, 1980.

xi Please see section 3(3) of the Service Tribunals Act, 1973.

xii Please see section 5(1) of the Administrative Tribunals Act, 1985. It is also pertinent to mention here that as per section 4 of the Act, the Central Government and State Government may establish the Central Administrative Tribunal and the State Administrative Tribunal respectively.

xiii Initially, there was no legal provision as to the working of the service tribunal by benches in the Service Tribunals Act, 1973. In 1978, a new section 3A was inserted to the Act by the Service Tribunals (Amendment) Ordinance, 1978. It depicts that "The powers and functions of a Tribunal may be exercised or performed by Benches consisting of not less than two members of Tribunal, including the Chairman, constituted by the Chairman.

xiv Section 5(1) read together with section 5(2) of the Administrative Tribunals Act, 1985, provides that "...subject to the other provisions of this Act, the jurisdiction, powers, and authority of the Tribunal may be exercised by Benches thereof. A Bench shall consist of one Judicial Member and one Administrative Member.

xv In the judicial sphere, a district Judge is the head of the Judiciary at the district level having, indeed, at least 15 years' experience in the judicial service. Please see the Civil Courts Act, 1887 (Act no. xii of 1887).

xvi Unlike the Chairman, the basic qualifications of the members of the Service Tribunal of Pakistan have been determined by the Service Tribunals Act, 1973. This issue has been kept in the hands of the President. See sec. 3(3), Service Tribunals Act, 1973.

xvii Please see section 6(2) of the Administrative Tribunals Act, 1985.

xviii *Ibid.*

xix *Ibid.*

xx Article 95(2)(b) of the Bangladesh Constitution says that a person shall be qualified for appointment as a judge of the Bangladesh Supreme Court if he or she has held judicial office for not less than 10 years in the territory of Bangladesh.

xxi Please see Article 193(2) (b) of the Constitution of Pakistan, 1973.

xxii Ordinance No. LX of 1984, published in the Bangladesh Gazette 25 September 1984.

xxiii The Preamble to the Administrative Tribunals Act, 1980 provides that An Act to provide for the establishment of Administrative Tribunals to exercise jurisdiction in respect of matters relating to or arising out of the terms and conditions of service of persons in the service of the Republic or of any statutory public authority. And section 4(1)

of the Act says that “An Administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by any person in the service of the Republic or of any statutory public authority.....”

^{xxiv} Please see section 2(aa) of the Administrative Tribunals Act, 1980.

^{xxv} The Schedule was added by section 5 of the Administrative Tribunals (Amendment) Ordinance, 1984 (Ordinance No. LX of 1984). The Schedule was subsequently amended by the Administrative Tribunals (Second Amendment) Act, 2006 (Act No. XLI of 2006), and the Administrative Tribunals (Amendment) Act, 2011 (Act no.VI of 2011).

^{xxvi} The pending cases relating to the persons of the service of the Rupali Bank were to be returned for presenting the proper courts by ousting the jurisdiction of the Administrative Tribunals on the commencement of the Administrative Tribunals (Amendment) Ordinance, 1988 (Ordinance No. 20 of 1988).

^{xxvii} Please see schedule to the Administrative Tribunals Act, 1980.

^{xxviii}, these excluded non-financial statutory public authorities are, among others, Bangladesh Water Development Board, Bangladesh Power Development Board, Bangladesh Inland Water Transport Authorities, and Bangladesh Rural Development Board.

^{xxix} Only one non-financial public authority i.e. the Bangladesh Civil Aviation Authority established under the Civil Aviation Authority Ordinance, 1985 (Ordinance No. XXXVIII of 1985) was included in section 2 of the Administrative Tribunals (Amendment) Act, 2006 (Act no. XXXI of 2006).

^{xxx} Article 27 of the Bangladesh Constitution provides that "All citizens are equal before the law and are entitled to equal protection of the law."

^{xxxi} Article 29(1) of the Bangladesh Constitution says that “There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.”

^{xxxii} Interim order is an extraordinary remedy given in emergent cases with the intent of preserving the subject matter of the litigation in status-quo for the time being. Equitable considerations necessitate the issuance of such order which, in general, is granted pursuant to reasons and sound judicial principles. It is not a grace or on default of an individual and hence it is granted for the ends of justice, which is indispensable with a view to preventing the abuse of the process of law, or preventing wastage or maintaining the circumstance as on a date or from recurrence of certain incidents which were existing as on the date of submitting such application. See *Government of Bangladesh and others v. Sontosh Kumar Shaha and others*, SCOB 2016 AD. The author judge of the judgment of this case was Justice Surendra Kumar Sinha, the former Chief Justice of Bangladesh. Justice Sinha has reiterated a major part of this Judgment in his recently published book. Please see, Sinha, S.K. (2018). *A Broken Dream: Rule of Law, Human Rights and Democracy*, Kindle Edition, pp.168-169.

^{xxxiii} Please see section 24 of the Administrative Tribunals Act, 1985.

^{xxxiv} Inherent power is the power to make such order as may be necessary for the ends of justice and to prevent the abuse of the process of the court or tribunal. This power can be exercised to fill up the lacuna left by the legislature while enacting a law or where the legislature is unable to foresee any circumstance which may arise in a particular case resulting in miscarriage of justice or where no other remedy is available. Nothing can limit or affect such inherent power of the court or tribunal'. See the observations given in the case of the *Government of Bangladesh and others v. Sontosh Kumar Shaha and others*, SCOB 2016 AD. See also, *supra* note 32, pp. 165-170.

^{xxxv} Please see the first proviso to section 4(2) of the Administrative Tribunals Act, 1980.

^{xxxvi} *Ibid*, third proviso to section 4(2).

^{xxxvii} *Ibid*, second proviso to section 4(2).

^{xxxviii} Please see section 4(1) of the Service Tribunals Act, 1973.

^{xxxix} Please see section 20(2) of the Administrative Tribunals Act, 1985.

^{xl} *Supra* note 47.

- xii Section 2(b) of the Administrative Tribunals Act, 1980, has defined the term "Tribunal" to mean an Administrative Tribunal or the Administrative Appellate Tribunal established under this Act.
- xiii Section 9 of the Administrative Tribunals Act, 1980 enunciates that "A Tribunal shall have the power to punish any person who, without lawful excuse, obstructs it in the performance of its functions with simple imprisonment which may extend to one month, or with fine which may extend to five hundred Taka, or with both."
- xiii Please see section 9 of the Administrative Tribunals Act, 1980.
- xiv Section 10A of the Administrative Tribunals Act, 1980, provides that "The Administrative Appellate Tribunal shall have the power to punish for contempt of its authority or that of any Administrative Tribunal as if it were the High Court Division of the Supreme Court."
- xv Please see section 17 of the Administrative Tribunals Act, 1985.
- xvi Ibid.
- xvii This legislation was replaced by the Contempt of Courts Act, 1926.
- xviii Ordinance No. XXIII of 1982.
- xix Please see section 4(2) of the Administrative Tribunals Act, 1980.
- ¹ Please see section 4(1) of the Service Tribunals Act, 1973.
- li Please see section 20(2) of the Administrative Tribunals Act, 1985.
- lii In the legal sphere, public interest litigation theory recognizes the maintainability of legal actions by a third party (not personally aggrieved) in unique situations.
- liii, An application can be filed to the Administrative Tribunal either by the applicant in person or by a duly authorized legal practitioner. Please see Rule 4(1), Central Administrative Tribunal (Procedure) Rules, 1985.
- liv Either the appellant in person or his advocate can file a memorandum to the Service Tribunal. Please see Rule 5(1), Service Tribunals (Procedure) Rules, 1974.
- lv Please see Rule 3(1) of the Administrative Tribunals Rules, 1982.
- lvi The filing of application and contents thereof are laid down mainly in Sub-rules (1), (2), (3), (4) and (5) of Rule 3 of the Administrative Tribunals Rules, 1982.
- lvii The Administrative Tribunals (Amendment) Act, 1997 has newly added section 7B to the original Act, which provides that "The Tribunal may, at any stage of the proceedings, allow the applicant to alter or amend his application in such manner and on such terms as it thinks fit."
- lviii Please see Rule 6(4) of the Administrative Tribunal Rules, 1982.
- lix Ibid, Rule 6(5).
- lx Ibid, Rule 6(6).
- lxi Rules 15 and 16 deal with the procedure required for disposal of application by the Administrative Tribunal.
- lxii Rule 19 deals with the procedure required for disposal of appeal by the Service Tribunal.
- lxiii Please see Rule 6(7) of the Administrative Tribunals Rules, 1982.
- lxiv Ibid, Rule 6(8).
- lxv Ibid, Rule 6(9).
- lxvi Ibid, Rule 6(10).
- lxvii Please see section 7(1) of the Administrative Tribunals Act, 1980.
- lxviii Section 7(8) of the Administrative Tribunals Act, 1980 provides that "where, in respect of any matter no procedure has been prescribed by this Act or by rules made thereunder, a Tribunal shall follow the procedure in respect thereof as may be laid down by the Administrative Appellate Tribunal."
- lxix. Natural Justice is a concept of common law and is expressed as 'procedural due processes in the American context. Generally, it is explained in two basic principles namely i) nobody shall be a judge in his own cause, ii)

Nobody shall be condemned without giving an opportunity of hearing. Afterward, a third rule as reflected in *A.K. Kripak vs. Union of India*, A.I.R. 1970 S.C. 150 was enshrined, which implies that quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily or unreasonably. In addition, in legal parlance there are also some ancillary rules i.e. right to notice, right to present case and evidence, no evidence taken at the back of the other party, reasoned decisions, a rule against dictation. Please see, Talukder, S. H. (2011). *Administrative Tribunals in Bangladesh: A Legal Analysis*. Dhaka: Bangladesh Law Research Centre. P. 10.

^{lxx} Please see section 7(A) of the Administrative Tribunals Act, 1980. The Administrative Tribunals Act, 1980, as originally enacted, did not provide for such right of pensionary benefits. Afterward, in 1997, this Act was amended by the Administrative Tribunals (Amendment) Act, 1997 inserting section 7A to the Act, 1980 to rectify the situation.

^{lxxi} Please see Rule 7 of the Administrative Tribunals Rules, 1982.

^{lxxii} *Ibid*, Rule 8.

^{lxxiii} Please see section 5(1) of the Administrative Tribunals Act, 1980. Such notification establishing Tribunal was, for the first time, issued on 22 August 1983. See notification No. S.R.O. 58-L.82-JIV/1T-1/81.

^{lxxiv} Please see section 5(2) of the Administrative Tribunals Act, 1980.

^{lxxv} *Ibid*.

^{lxxvi} Please see section 5(4) of the Administrative Tribunals Act, 1980. This sub-section was not originally enacted provision. The original provision clearly fixed the term of office of the Chairman and members of the Administrative Appellate Tribunal as three years or until the attainment of the age of sixty years and as such they could be able to carry out their undertakings without fear or favor and not interfering with their personal independence.

^{lxxvii} Please see section 6(1) of the Administrative Tribunals Act, 1980.

^{lxxviii} Please see section 14(1) of the Administrative Tribunals Act, 1985.

^{lxxix} Please see Article 212(3) of the Constitution of Pakistan, 1973.

^{lxxx} Under the Code of Civil Procedure, 1908, all orders are not appealable and the lists of appealable orders are contained in Order 43 of the first Schedule to this Code.

^{lxxxi} Please see section 7(1) of the Administrative Tribunals Act, 1980.

^{lxxxii} *Ibid*, section 6(2).

^{lxxxiii} *Ibid*, section 6A.

^{lxxxiv} *Ibid*, section 6(3).

^{lxxxv} Article 103 of the Bangladesh Constitution provides-

(1) The Appellate Division shall have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.

(2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division- (a) certifies that the case involves a substantial question of law as to the interpretation of this constitution; or (b) has sentenced a person to death or to 62 imprisonment for life, or (c) has imposed punishment on a person for contempt of that division; and in such other cases as may be provided for by Act of Parliament.

(3) An appeal to the Appellate Division for a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal.

(4) Parliament may by law declare that the provisions of this Article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

^{lxxxvi} Please see section 6(2) of the Administrative Tribunals Act, 1980. The original Act provided for the time limit of two months which has been extended to three months by the Administrative Tribunals (Amendment) Act, 1997. Finally, four months has been specified by the Administrative Tribunals (Amendment) Ordinance, 2008.

^{lxxxvii} Please see section 6(2A) of the Administrative Tribunals Act, 1980.

^{lxxxviii} Administrative Tribunals Act 1980, s 8(1).

^{lxxxix} Administrative Tribunals Act, 1980, s 8(2).

^{xc} For instance, the number of filing cases in the Dhaka Administrative Tribunal is 215, 191, 177 and 133 in 2009, 2010, 2011 and 2012 (till July) respectively. Among these cases, 200 cases have been disposed in 2009, 95 in 2010, and 60 in 2011.

^{xcⁱ} For instance, the number of filing appeals in the Administrative Appellate Tribunal is 319, 256, 293, 162 in 2009, 2010, 2011, 2012 (till July).

^{xcⁱⁱ}. The authors have visited Administrative Tribunal -01, 02, 03, Dhaka in several occasions in 2014, and have taken interviews from the learned judges of the Tribunals, Registrar of the Dhaka Administrative Tribunal 01, Sections officers of the Tribunals, parties to the Tribunals, and from the learned lawyers of the Supreme Court of Bangladesh as to the decisions of the Administrative Appellate Tribunal.