

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 2
PART II — Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० ४१] नई दिल्ली, सोमवार, दिसम्बर ८, २००३ / अग्रहायण १७, १९२५
No. ४१] NEW DELHI, MONDAY, DECEMBER ८, २००३ / AGRAHAYANA १७, १९२५

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 8th December, 2003:—

BILL NO. 77 OF 2003

A Bill to amend the Prevention of Terrorism Act, 2002.

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

1. (1) This Act may be called the Prevention of Terrorism (Amendment) Act, 2003.

Short title
and
commence-
ment.

(2) It shall be deemed to have come into force on the 27th day of October, 2003.

15 of 2002.

2. In section 60 of the Prevention of Terrorism Act, 2002, after sub-section (3), the following sub-sections shall be inserted, namely:—

Amendment
of section 60.

“(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a *prima facie* case for proceeding against the accused under this Act and issue directions accordingly.

(5) Any direction issued under sub-section (4),—

(i) by the Review Committee constituted by the Central Government shall be binding on the Central Government, the State Government and the police officer investigating the offence; and

(ii) by the Review Committee constituted by the State Government shall be binding on the State Government and the police officer investigating the offence.

(6) Where the reviews under sub-section (4) relating to the same offence under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail.”

Repeal and
saving.

3. (1) The Prevention of Terrorism (Amendment) Ordinance, 2003, is hereby repealed.

Ord.
4 of 2003.

(2) Notwithstanding such repeal, anything done or any action taken under the Prevention of Terrorism Act, 2002, as amended by the said Ordinance, shall be deemed to have been done or taken under the said Act, as amended by this Act.

15 of 2002.

STATEMENT OF OBJECTS AND REASONS

The Prevention of Terrorism Act, 2002 has been enacted to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith. Sub-section (1) of section 60 of the said Act provides that the Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of the said Act. Sections 19, 40 and 46 of the said Act assign the specific functions to the Review Committee. At present, the recommendations or directions of the Review Committee except those explicitly provided in the said Act are not binding on the Central Government and the State Governments and are only advisory in nature. In order to have an effective safeguard against the likely misuse of the powers conferred by the said Act, it was considered necessary that the mechanism of the Review Committee needs to be strengthened.

2. Keeping in view the above, section 60 of the Prevention of Terrorism Act, 2002 was amended by the Prevention of Terrorism (Amendment) Ordinance, 2003 (Ord. 4 of 2003) and was promulgated on 27th October, 2003 by which new sub-sections (4), (5) and (6) in section 60 of the said Act were inserted. The new sub-sections empower the Review Committee to review, on an application by any aggrieved person, whether there is a *prima facie* case for proceeding against the accused under the said Act and issue directions accordingly. The directions of the Review Committee shall be binding on the Central Government, the State Government and the police officer investigating the offence. Where the directions relating to the same offence under the said Act, have been made by a Review Committee constituted by the Central Government and the Review Committee constituted by the State Government, the directions of the Central Review Committee shall prevail over those of the State Review Committees.

3. The Bill seeks to replace the said Ordinance.

NEW DELHI;
The 27th November, 2003.

L. K. ADVANI.

BILL NO. 80 OF 2003

A Bill to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the National Tax Tribunal Act, 2003.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 16th day of October, 2003.

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

Definitions.

(a) "Bench" means a Bench of the National Tax Tribunal;

54 of 1963.

(b) "Board of Direct Taxes" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

54 of 1963.

(c) "Board of Excise and Customs" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

1 of 1944.

(d) "Central Excise Act" means the Central Excise Act, 1944;

5 of 1986.

(e) "Central Excise Tariff Act" means the Central Excise Tariff Act, 1985;

(f) "Chairperson" means the Chairperson of the National Tax Tribunal;

7 of 1964

(g) "Companies (Profits) Surtax Act" means the Companies (Profits) Surtax Act, 1964;

52 of 1962.

(h) "Customs Act" means the Customs Act, 1962;

52 of 1962.

(i) "Customs, Excise and Service Tax Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962;

51 of 1975.

(j) "Customs Tariff Act" means the Customs Tariff Act, 1975;

35 of 1987.

(k) "Expenditure-tax Act" means the Expenditure-tax Act, 1987;

18 of 1958.

(l) "Gift-tax Act" means the Gift-tax Act, 1958;

43 of 1961.

(m) "Income-tax Act" means the Income-tax Act, 1961;

43 of 1961.

(n) "Income-tax Appellate Tribunal" means the Income tax Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961;

45 of 1974.

(o) "Interest-tax Act" means the Interest-tax Act, 1974;

(p) "Judicial Member" means a Member of the National Tax Tribunal and includes the Chairperson;

(q) "law officer" means the Attorney-General for India, the Solicitor General of India or the Additional Solicitor General of India;

(r) "Member" means a Member (whether Judicial or Technical) of the National Tax Tribunal and includes the Chairperson;

(s) "National Tax Tribunal" means the National Tax Tribunal established under section 3;

(t) "notification" means a notification published in the Official Gazette;

(u) "prescribed" means prescribed by rules made under this Act;

(v) "Supreme Court" means the Supreme Court of India;

(w) "Technical Member" means a Member of the National Tax Tribunal who is not a Judicial Member within the meaning of clause (p);

27 of 1957.

(x) "Wealth-tax Act" means the Wealth-tax Act, 1957;

32 of 1994.

(y) words and expressions used in this Act but not defined herein and defined in the Central Excise Act, Central Excise Tariff Act, Customs Act, Customs Tariff Act (hereinafter referred to as indirect taxes) or the rules made thereunder or in Chapter V of the Finance Act, 1994 shall have the meanings respectively assigned to them in the said such Acts or the rules made thereunder;

(z) words and expressions used in this Act but not defined herein and defined in the Income-tax Act, the Wealth-tax Act, the Gift-tax Act, the Expenditure-tax Act, the Interest-tax Act or the Companies (Profits) Surtax Act (hereinafter referred to as direct taxes) or the rules made thereunder shall have the meanings respectively assigned to them in the said Acts or the rules made thereunder.

CHAPTER II

ESTABLISHMENT OF THE NATIONAL TAX TRIBUNAL

Establishment
of National Tax
Tribunal.

3. The Central Government shall, by notification in the Official Gazette, establish with effect from such date as may be specified therein, a Tax Tribunal to be known as the National Tax Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Composition
of National
Tax Tribunal.

4. The National Tax Tribunal shall consist of a Chairperson and such number of Judicial and Technical Members as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

Constitution
and
jurisdiction of
Benches.

5. (1) The jurisdiction of the National Tax Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson.

(2) In case of an appeal filed against an order passed by the Income-tax Appellate Tribunal, a Bench shall consist of a Judicial Member and a Technical Member (Direct Tax).

(3) In case of an appeal filed against an order of the Customs, Central Excise and Service Tax Appellate Tribunal, a Bench shall consist of a Judicial Member and a Technical Member (Indirect Tax).

(4) The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of seat.

(5) The Central Government shall notify the areas in relation to which each Bench of the National Tax Tribunal may exercise its jurisdiction.

(6) The Central Government shall determine the number of Benches required for Direct Taxes or Indirect Taxes in consultation with the Chairperson.

(7) The Central Government may in consultation with the Chairperson transfer a Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State.

Qualifications
for
appointment
of
Chairperson
and Members.

6. (1) The Chairperson of the National Tax Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court.

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

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

(b) has, for at least twenty years, been an Advocate of a High Court or has partly held a Judicial Office or has partly been in practice as an Advocate for a total period of twenty years; or

(c) is, or has been, a member of the Indian Legal Service and has held the post of Additional Secretary or above for at least one year;

(d) is, or has been, a Judicial Member of the Income-tax Appellate Tribunal and has held the post of either President or Senior Vice-President or has held the post of Vice-President for at least two years or has held the post of Judicial Member for at least seven years;

(e) is, or has been, a Judicial Member of the Customs, Excise and Service Tax Appellate Tribunal and has held the post of either President or has held the post of Vice-President for at least two years or has held the post of Judicial Member for at least seven years.

(3) A person shall not be qualified for appointment as Technical Member (Direct Tax), unless he—

(a) is, or has been, an Accountant Member of the Income-tax Appellate Tribunal and has held the post of either President or Senior Vice-President or has held the post of Vice-President for at least two years or has held the post of Accountant Member for at least seven years;

(b) is, or has been, a Chairman or a Member of the Board of Direct Taxes or has held the post of Chief Commissioner or equivalent post for at least one year;

(c) is, or has been, a Chairman, Vice-Chairman or a Member of the Income Tax Settlement Commission; or

(d) has been for at least twenty years in practice as a Chartered Accountant under the Chartered Accountants Act, 1949 and is a person of ability, integrity and standing having special knowledge and professional experience in the field of direct taxes.

(4) A person shall not be qualified for appointment as Technical Member (Indirect Taxes) unless he—

(a) is, or has been, a Technical Member of the Customs, Excise and Service Tax Appellate Tribunal and has held the post of Vice-President for at least two years or has held the post of Technical Member for at least seven years; or

(b) is, or has been, a Chairman, Vice-Chairman or a Member of the Customs and Central Excise Settlement Commission; or

(c) is, or has been, a Chairman or a Member of the Board of Excise and Customs; or

(d) is, or has been, a Member of the Indian Customs and Central Excise Service (Group 'A') and has held the post of Chief Commissioner of Customs or Chief Commissioner of Central Excise or an equivalent post for at least one year.

7. (1) Subject to the provisions of sub-section (2), the Chairperson and every Member shall be appointed by the Central Government.

Appointment
of
Chairperson
and Members.

(2) The Chairperson and Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—

(a) the Chief Justice of India or his nominee;

(b) the Chairperson of the National Tax Tribunal;

(c) the Secretary in the Ministry of Law and Justice (Department of Legal Affairs);

(d) the Secretary in the Ministry of Finance and Company Affairs (Department of Revenue).

(3) No appointment of the Chairperson or of a Member shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

8. The Chairperson and every Member of the National Tax Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment:

Terms of
office of
Chairperson
and Members.

Provided that no Chairperson or Member shall hold office as such after he has attained—

- (a) in the case of Chairperson, the age of sixty-eight years; and
- (b) in the case of any other Member, the age of sixty-five years.

Resignation
of Chairper-
son and other
Members.

9. The Chairperson or a Member of the National Tax Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office.

Salary and
allowances.

10. (1) Subject to the provisions of this Act, the salary and allowances and other terms and conditions of the Chairperson shall be the same as applicable to a sitting Judge of the Supreme Court, but no vacation shall be allowed:

Provided that if a person who, immediately before the date of assuming the office as the Chairperson was in receipt of or being eligible so to do, had elected to draw, a pension in respect of any previous service or office held by such person under the Government of the Union or of a State, his salary in respect of service as Chairperson shall be reduced by the amount of that pension.

(2) A Member shall draw salary of a High Court Judge and other allowances and the terms and conditions of his service shall be the same as applicable to a Secretary to the Government of India:

Provided that if a person who, immediately before the date of assuming the office as Member was in receipt of or being eligible so to do, had elected to draw, a pension in respect of any previous service held by such person in connection with the affairs of the Union or of a State, his salary in respect of service as Member shall be reduced to the extent of that pension.

(3) The salary and allowances and other terms and conditions of service of Chairperson or a Member of the Tribunal shall not be varied to his disadvantage after appointment.

Removal and
suspension of
Chairperson
and other
Members.

11. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence, which in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such Chairperson or Member of the National Tax Tribunal; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Chairperson or Member of the National Tax Tribunal; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

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

(3) The Central Government may suspend from office the Chairperson or a Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

12. (1) The Central Government shall provide the National Tax Tribunal with such officers and employees as it may deem fit.

Officers and employees of National Tax Tribunal

(2) The salaries and allowances and other conditions of service of officers and employees of the National Tax Tribunal shall be such as may be prescribed.

(3) The officers and employees of the National Tax Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(4) The officers and the other employees shall be appointed on the recommendations of a Selection Committee constituted by the Central Government.

13. (1) A party to an appeal other than Government may either appear in person or authorise one or more chartered accountants or legal practitioners or any person duly authorised by him or it to present his or its case before the National Tax Tribunal.

Appearance before National Tax Tribunal.

(2) The Government may authorise one or more legal practitioners or any of its officers to present its case before the National Tax Tribunal.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause

(b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

14. (1) In the event of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Central Government may designate the senior-most Member to act as the Chairperson until the day on which a Chairperson or a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Member to act as Chairperson or to discharge his functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Central Government may authorise the senior-most Member to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) The senior-most member designated to act or to discharge functions of the Chairperson under sub-sections (1) and (2) shall continue to draw salary and allowances of a Member.

CHAPTER III

JURISDICTION, POWERS AND FUNCTIONS OF THE NATIONAL TAX TRIBUNAL

15. (1) An appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law.

Appeal to National Tax Tribunal.

(2) The Chief Commissioner or the Commissioner of Income-tax or the Chief Commissioner or Commissioner of Customs and Central Excise, as the case may be, or an assessee aggrieved by any order passed by the Income-tax Appellate Tribunal or any person aggrieved by any order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as aggrieved person), may file an appeal to the National Tax Tribunal and such appeal under this sub-section shall—

(a) be filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the aggrieved person or the Chief Commissioner or Commissioner, as the case may be;

(b) be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved; and

(c) be accompanied by such fees as may be prescribed:

Provided that separate form of memorandum of appeal shall be filed for matters involving direct and indirect taxes:

Provided further that the National Tax Tribunal may entertain the appeal within sixty days after the expiry of the said period of one hundred and twenty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal in time.

(3) Where an appeal is admitted under sub-section (1), the National Tax Tribunal—

(a) shall formulate the question of law for hearing the appeal; and

(b) may also determine any relevant issue in connection with the question so formulated—

(i) which has not been so determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal; or

(ii) which has been wrongly determined by the Income-tax Appellate Tribunal or by the Customs, Excise and Service Tax Appellate Tribunal,

and shall decide the question of law so formulated and the other relevant issue so determined and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(4) Where in any appeal under this section, the decision of the Income-tax Appellate Tribunal or the Customs, Excise and Service Tax Appellate Tribunal involves the payment of any tax or duties, the assessee or the aggrieved person, as the case may be, shall not be allowed to prefer such appeal unless he deposits at least twenty-five per cent. of such tax or duty payable on the basis of the order appealed against:

Provided that where in a particular case the National Tax Tribunal is of the opinion that the deposit of tax or duty under this sub-section would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the interest of revenue.

Procedure and
powers of
National Tax
Tribunal.

16. (1) The National Tax Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

5 of 1908.

(2) Subject to the other provisions of this Act, the National Tax Tribunal shall have powers to regulate its own procedure.

(3) The National Tax Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) requiring the discovery and production of books of account and other documents;

(b) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;

1 of 1872.

(c) dismissing an appeal for default or deciding it, *ex parte*;

(d) setting aside any order of dismissal of any appeal for default or any order passed by it, *ex parte*;

(e) rectifying any mistake or error apparent on the face of record; and

(f) any other matter which may be prescribed.

(4) All proceedings before the National Tax Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the National Tax Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

17. Any order passed by the National Tax Tribunal shall be final and shall be given effect to accordingly and no civil court shall have or be entitled to exercise any jurisdiction, power or authority with respect to any of the matters falling within the jurisdiction of the National Tax Tribunal.

Finality of orders of National Tax Tribunal.

18. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson, who shall hear the point or points himself or nominate any other Member for such hearing and such point or points shall be decided according to the opinion of the majority, who have heard the case including those who first heard it.

Decision by majority.

19. Where a judgment pronounced on a question of law by a Bench subsequently comes up for hearing before any Bench, and the latter Bench is of the opinion that the question of law requires reconsideration, then the latter Bench shall make a reference to the Chairperson of the Tribunal to constitute a Special Bench consisting of three Judicial Members and two Technical Members to hear and decide such question of law.

Special Bench.

20. Notwithstanding anything contained in any other provisions of this Act or any other law for the time being in force, no interim order (whether by way of injunction or stay or otherwise) shall be made in relation to any appeal under this Act, unless—

Interim Order.

(a) copies of such appeal and all documents in support of the plea for such interim order are furnished to the party against whom the appeal is preferred; and

(b) opportunity is given to such party to be heard in the matter.

21. The National Tax Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise such power or authority, for this purpose under the provisions of the Contempt of Courts Act, 1971, which shall have effect subject to the modification that—

Power to punish for contempt.

(a) any reference therein to a High Court shall be construed as including a reference to the National Tax Tribunal;

(b) any reference to the Advocate General in section 15 of the said Act shall be construed as a reference to such law officer as the Central Government may specify in this behalf:

Provided that such matters shall be heard by a Special Bench consisting of three Judicial and two Technical Members constituted by the Chairperson.

22. The National Tax Tribunal may, after giving the parties to any proceedings before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

Order of National Tax Tribunal.

23. (1) On and from such date as the Central Government may, by notification, specify, all matters and proceedings including appeals and references under the direct taxes and indirect taxes pending before any High Court immediately before that date shall stand transferred to the National Tax Tribunal.

Transfer of pending cases from High Court.

(2) Where any matter or proceeding including appeals and references stand transferred from the High Court to the National Tax Tribunal under sub-section (1),—

(a) the High Court shall, as soon as may be after such transfer, forward the records pertaining to such matter or proceeding to the National Tax Tribunal;

(b) the National Tax Tribunal shall, on receipt of such records, proceed to deal with such matter or proceeding from the stage at which it is transferred or from an earlier stage or *de novo* as it may deem fit;

(c) the Chairperson shall constitute a Bench consisting of such number of Judicial and Technical Members as he deems fit for hearing cases transferred under this section.

24. Any person including any department of the Government aggrieved by any decision or order of the National Tax Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the National Tax Tribunal to him:

Appeal to Supreme Court.

Provided that the Supreme Court may, if it is satisfied that the appellant was

prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within such time as it may deem fit.

CHAPTER IV

MISCELLANEOUS

Members, etc.,
to be public
servants.

25. The Chairperson, Members and other officers and employees of the National Tax Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection of
action taken
in good faith.

26. No suit, prosecution or other legal proceedings shall lie against the National Tax Tribunal or its Chairperson, Member, officer or other employee in the discharge of any function for any loss or damage caused or likely to be caused by any act which is, in good faith, done or intended to be done in the discharge of any function under this Act.

Power to
remove
difficulties.

27. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

Power to
make rules.

28. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

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

(a) the procedure under sub-section (4) of section 11 for the investigation of charges of misbehaviour or incapacity against the Chairperson or other Members;

(b) the salaries and allowances and other conditions of service of officers and other employees of the National Tax Tribunal under sub-section (2) of section 12;

(c) the amount of fees payable under clause (c) of sub-section (2) of section 15;

(d) the other matters in respect of which the National Tax Tribunal may exercise the powers of a civil court under clause (f) of sub-section (3) of section 16;

(e) any other matter which may be prescribed or in respect of which rules are required to be made by the Central Government.

Laying of
rules before
Parliament.

29. Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Consequential
amendments.

30. On and from such date as the Central Government may, by notification, specify, the enactments mentioned in the Schedule shall stand amended in the manner specified therein.

Repeal and
Saving.

31. (1) The National Tax Tribunal Ordinance, 2003 is hereby repealed.

Ord. 3 of
2003.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See section 30)

AMENDMENT OF CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

1. In section 2, after clause (29C), the following clause shall be inserted, namely:—

‘(29D) “National Tax Tribunal” means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2003;’.

2. In Chapter XX,—

(i) in section 254, in sub-section (4), for the words, figures and letter “Save as provided in section 256 or section 260A”, the words and figures “Save as provided in the National Tax Tribunal Act, 2003” shall be substituted;

(ii) sub-heading “C.—Reference to High Court” and sections 256, 258 and 259 shall be omitted;

(iii) for section 260, the following section shall be substituted, namely:—

“260. (1) The Supreme Court upon hearing any reference made to it by the Appellate Tribunal under section 257 shall decide the question of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conforming to such judgment.

Effect to the
decisions of
Supreme
Court and of
the National
Tax Tribunal.

(2) Where the National Tax Tribunal delivers a judgment in an appeal filed before it or in any matter transferred to it under the National Tax Tribunal Act, 2003, effect shall be given to the order of that Tribunal by the assessing officer on the basis of certified copy of the judgment.

(3) The cost of any reference to the Supreme Court which shall not include the fee for making the reference shall be at the discretion of the Court.”;

(iv) in section 260A, in sub-section (1), after the words “order passed in appeal by the Appellate Tribunal”, the words “before the date of establishment of the National Tax Tribunal” shall be inserted;

(v) in section 261, after the words “any judgment of the High Court delivered”, the words “before the establishment of the National Tax Tribunal” shall be inserted;

(vi) in section 263, in sub-section (3), after the words “the Appellate Tribunal,”, the words “National Tax Tribunal,” shall be inserted;

(vii) in section 264, in sub-section (7), after the words “the Appellate Tribunal,”, the words “National Tax Tribunal,” shall be inserted.

PART II

AMENDMENTS TO THE WEALTH-TAX ACT, 1957

(27 OF 1957)

1. In section 2, after clause (1c), the following clause shall be inserted, namely:—

‘(1d) “National Tax Tribunal” means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2003;’.

2. In section 25, in sub-section (4), after the words, "Appellate Tribunal," the words "National Tax Tribunal" shall be inserted.

3. In section 27A,—

(i) in sub-section (1), after the words and figures, "file on or after the 1st day of October, 1998", the words "but before the date of establishment of the National Tax Tribunal" shall be inserted;

(ii) in sub-section (2), after the words, "An appeal shall lie to the High Court", the words "before the date of establishment of the National Tax Tribunal" shall be inserted.

4. In section 29, in sub-section (1), after the words, "any judgment of the High Court delivered", the words, "before the date of establishment of the National Tax Tribunal" shall be inserted.

5. In section 29A, after the words "preferred to the Supreme Court", the words and figures "under this Act before the commencement of the National Tax Tribunal Act, 2003" shall be inserted.

PART III

AMENDMENTS TO THE EXPENDITURE-TAX ACT, 1987 (35 OF 1987)

1. In section 13, in sub-section (4), for the words "or any order of a High Court", the words "or any order of the National Tax Tribunal or of a High Court" shall be substituted.

2. In section 21, in sub-section (7), after the words "Appellate Tribunal," the words "the National Tax Tribunal," shall be inserted.

PART IV

AMENDMENTS TO THE INTEREST-TAX ACT, 1974 (45 OF 1974)

1. In section 19, in sub-section (3), after the words "the Appellate Tribunal", the words "the National Tax Tribunal" shall be inserted.

2. In section 20, in sub-section (7), for the words "Appellate Tribunal, the High Court or the Supreme Court", the words "Appellate Tribunal, the National Tax Appellate Tribunal, the High Court or the Supreme Court" shall be substituted.

PART V

AMENDMENT TO THE FINANCE (NO. 2) ACT, 1998 (21 OF 1998)

In section 76, in sub-section (1), the words, figures, letter and brackets "sections 23, 23A, 24, 25, 28 and 29 of the Wealth-tax Act as amended and section 27A as inserted by the Finance (No. 2) Act, 1998", the words, figures and letter "sections 23, 23A, 24 and 25 of the Wealth-tax Act" shall be substituted.

PART VI

AMENDMENTS TO THE CUSTOMS ACT, 1962 (52 OF 1962)

1. In section 2, after clause (30), the following clause shall be inserted, namely:—

“(30A) “National Tax Tribunal” means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2003;”.

2. In section 27, in sub-section (3), after the words "Appellate Tribunal", the words "the National Tax Tribunal" shall be inserted.

3. In section 27A, in the *Explanation*, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

4. In section 28AA, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

5. In section 28AB, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

6. In section 28B, in sub-section (1), after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

7. Sections 130, 130A, 130B, 130C and 130D shall be omitted.

8. In section 130E, in clause (b), after the words "any order passed", the words "before the establishment of the National Tax Tribunal" shall be inserted.

9. In section 131, after the words "an appeal has been preferred to the Supreme Court", the words and figure "under this Act before the commencement of the National Tax Tribunal Act, 2003" shall be inserted.

10. In section 131C, clause (b) shall be omitted.

PART VII

AMENDMENTS TO THE CENTRAL EXCISE ACT, 1944

(1 OF 1944)

1. In section 2, after clause (j), the following clause shall be inserted, namely:—

‘(jf) “National Tax Tribunal” means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2003;’.

2. In section 11AA, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

3. In section 11AB, in *Explanations* 1 and 2, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

4. In section 11BB, in the *Explanation*, after the words "Appellate Tribunal", the words ", National Tax Tribunal" shall be inserted.

5. In section 35C, in sub-section (4), for the words, figures and letters "Save as provided in section 35G or section 35L", the words and figures "Save as provided in the National Tax Tribunal Act, 2003" shall be substituted.

6. Sections 35G, 35H, 35-I and 35J shall be omitted.

7. In section 35K,—

(a) in sub-section (1), the words "High Court or the" shall be omitted;

(b) in sub-section (2), the words "the High Court or" shall be omitted.

8. In section 35L, in clause (b), after the words "any order passed", the words "before the establishment of the National Tax Tribunal" shall be inserted.

9. In section 35N, after the words "an appeal has been preferred to the Supreme Court", the words and figures "under this Act before the commencement of the National Tax Tribunal Act, 2003" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

Under the direct and indirect tax enactments, an appeal lies to the High Court on a substantial question of law. Due to pendency of a large number of cases in the High Courts, huge revenue is blocked in such litigations. This is adversely affecting the national economy. Hence, urgent measures are required to be taken to speed up taxation matters pending before the High Courts. To achieve the aforesaid objective, an Ordinance, namely, the National Tax Tribunal Ordinance, 2003 was promulgated on 16th October, 2003 to establish a Tax Tribunal to be known as the National Tax Tribunal to hear cases on substantial question of law from the decisions of the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal. This Tribunal is being set up under article 323B of the Constitution and will act through its Benches. A person who has been a Judge of the Supreme Court or the Chief Justice of a High Court shall be the Chairperson of the National Tax Tribunal. The number of Benches to hear the cases under the direct tax laws and indirect tax laws shall be decided by the Central Government from time to time. With the establishment of the National Tax Tribunal all matters and proceedings pending in appeals and references under the direct tax laws and indirect tax laws before the High Courts shall stand transferred to it.

2. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 19th November, 2003.

ARUN JAITLEY.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter, No. A. 11012/1/2003-Admn. III(LA) dated the 30th November, 2003, from Shri Arun Jaitley, Minister of Law and Justice to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Bill, recommends under clause (3) of article 117 of the Constitution of India, the consideration of the National Tax Tribunal Bill, 2003 to the Lok Sabha.

Notes on clauses

Clause 2.— This clause defines certain expressions occurring in the Bill.

Clause 3.—This clause provides for the establishment of a National Tax Tribunal.

Clause 4.—This clause provides for composition of the National Tax Tribunal.

Clause 5.—This clause provides for constitution, jurisdiction and place of sitting of the Benches of the National Tax Tribunal.

Clause 6.—This clause prescribes the qualifications for appointment of Chairperson, Judicial Member, Technical Member (Direct Taxes) and Technical Member (Indirect Taxes).

Clause 7.—This clause provides the manner in which the Chairperson and Members of the National Tax Tribunal shall be appointed by the Central Government.

Clause 8.—This clause fixes the tenure of the Chairperson and other Members of the National Tax Tribunal subject to a maximum age limit.

Clause 9.—This clause provides for the procedure for resignation by the Chairperson or a Member of the National Tax Tribunal.

Clause 10.—This clause provides for the salary, allowances and other terms and conditions of service of Chairperson and Members.

Clause 11.—This clause deals with the procedure for removal and suspension of the Chairperson and Members of the National Tax Tribunal.

Clause 12.—This clause provides that the Central Government shall provide the staff for the functioning of the National Tax Tribunal. They will be appointed by the Central Government on the recommendation of a Selection Committee and their salaries, allowances and other conditions of service shall be prescribed by the rules.

Clause 13.—This clause authorises the persons who may appear before the National Tax Tribunal.

Clause 14.—This clause provides for the appointment of the senior most member to act as Chairperson or discharge the functions of the Chairperson when there is any vacancy in the office of Chairperson by reason of his death, resignation or otherwise, or when the Chairperson is unable to discharge his functions owing to absence, illness or any other cause.

Clause 15.—This clause specifies the procedure for preferring an appeal to the National Tax Tribunal.

Clause 16.—This clause provides that the National Tax Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but be guided by the principles of natural justice and shall have the power to regulate its own procedure. It also invests the National Tax Tribunal with powers of civil court in respect of certain matters.

Clause 17.—This clause provides that any order passed by the National Tax Tribunal shall be final.

Clause 18.—This clause provides that the decision of the National Tax Tribunal shall be by majority where the members of a Bench differ in opinion on any point.

Clause 19.—This clause deals with circumstances when a Special Bench may be constituted where a question of law already decided by a Bench subsequently comes up for hearing before another Bench.

Clause 20.—This clause empowers the National Tax Tribunal to make interim order subject to certain conditions.

Clause 21.—This clause vests the National Tax Tribunal with power to punish for contempt of itself as a High Court.

Clause 22.—This clause provides that the National Tax Tribunal may pass such orders as it thinks fit after giving an opportunity of being heard to the parties in any proceedings before it.

Clause 23.—This clause provides for the transfer to the National Tax Tribunal of all matters and proceedings under the direct taxes and indirect taxes pending before any High Court and procedure for their hearing.

Clause 24.—This clause provides for filing of an appeal to the Supreme Court against any decision or order of the National Tax Tribunal.

Clause 25.—This clause makes it clear that Chairperson, Members and staff of the National Tax Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 26.—This clause provides for protection of the National Tax Tribunal, its Chairperson, Member, officer or other employees in respect of anything done in good faith in pursuance of this Bill.

Clause 27.—This clause empowers the Central Government to make suitable provisions by order published in the Official Gazette, and not inconsistent with the provisions of the Bill, for removing any difficulty in giving effect to the provisions of this Bill within a specified period.

Clause 28.—This clause empowers the Central Government to make rules to carry out the provisions of this Bill and such rules may provide for various matters including procedure for the investigation of the charges of misbehaviour or incapacity against the Chairperson or other Members, salaries, allowances and other conditions of service of its staff, etc.

Clause 29.—This clause provides for the procedure for laying of rules framed under this Bill before each House of Parliament.

Clause 30.—This clause provides for consequential amendments in the provisions relating to the jurisdiction of a High Court under Income-tax Act, 1961; the Wealth tax Act, 1957; the Expenditure Tax Act, 1987; the Interest-tax Act, 1974; the Finance (No. 2) Act, 1998; the Customs Act, 1962 and the Central Excise Act, 1944.

Clause 31.—This clause contains the repeal and saving provision.

FINANCIAL MEMORANDUM

The National Tax Tribunal Bill, 2003 provides for the establishment of the National Tax Tribunal for adjudication of disputes with respect to levy, assessment, collection and enforcement of direct taxes and the determination of the rates of duties of customs and Central excise on goods and the valuation of goods for the purposes of assessment of such duties and also levy of tax on service.

Clause 3 of the Bill provides for the establishment of the National Tax Tribunal. According to clause 4 of the Bill, the National Tax Tribunal shall consist of a Chairperson and such number of Judicial and Technical Members as the Central Government deems fit. A Bench shall consist of a Judicial Member and a Technical Member (Direct Taxes) in case of an appeal filed against an order of the Income-tax Appellate Tribunal and a Judicial Member and a Technical Member (Indirect Taxes) in case of an appeal filed against an order of the Customs, Excise and Service Tax Appellate Tribunal. Clause 10 provides that the salary, allowances and other terms and conditions of service of the Chairperson shall be the same as applicable to a sitting judge of the Supreme Court and a member shall draw salary of a High Court judge and other allowances, and the terms and conditions of service of the member shall be the same as applicable to a Secretary to the Government of India. Clause 12 of the Bill provides that the Central Government shall provide the National Tax Tribunal with such officers and employees as it may deem fit. These provisions in the Bill when enacted will have financial implications.

2. Having regard to the number of appeals and references which will stand transferred to the National Tax Tribunal from the High Courts, it is considered necessary to have at least 15 Benches for the Direct Tax matters and 10 Benches for Indirect Tax matters so that cases which may stand transferred to the Tribunal from the High Court may be disposed of quickly. It will also be necessary to provide for an adequate number of supporting officers and employees for proper functioning of the Tribunal.

3. The total expenditure per Bench and its staff requirement will be Rs. 31,51,000/- per annum. Accordingly, the total expenditure for 25 Benches would be around Rs. 7.88 crores per annum. The total expenditure on infrastructural requirements on the non-recurring expenditure (for initial setting up) would be Rs. 15,00,000/- and Rs. 10 lakhs per annum is estimated as recurring expenditure, per Bench. Accordingly, total expenditure on the infrastructural requirements including recurring and non-recurring would be approximately Rs. 6.80 crores.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 27 of the Bill empowers the Central Government to remove by order any difficulty, which may arise in giving effect to the provisions of the proposed legislation. This is by way of abundant aution and for covering difficulties, which it is not practicable to visualise. It has, however, been provided that no such order shall be made after the expiry of a period of two years from the date of commencement of the Appellate Tribunal. It has also been provided that a copy of each such order made shall be laid before each House of Parliament.

2. Clause 28 of the Bill empowers the Central Government, by notification, to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which rules may be made under this clause. These matters relate to, *inter alia*, the procedure for investigation of charges of misbehaviour or incapacity against the Chairperson or other Members under the proposed sub-clause (4) of clause 11; the salaries and allowances and other conditions of service of officers and other employees of the National Tax Tribunal under the proposed sub-clause (2) of clause 12; the amount of fee payable for filing an appeal to the National Tax Tribunal under the proposed sub-clause (2) of clause 15 and the subject matter in respect of which the National Tax Tribunal may exercise the powers of a Civil Court under the proposed item (f) of sub-clause (3) of clause 16.

3. As the matters with respect to which order or rules may be made pertain to matters of procedure or detail, the delegation of legislative powers is of a normal character.

MEMORANDUM EXPLAINING THE MODIFICATIONS CONTAINED IN THE BILL TO REPLACE THE NATIONAL TAX TRIBUNAL ORDINANCE, 2003

The National Tax Tribunal Bill, 2003 which seeks to repeal and replace the National Tax Tribunal Ordinance, 2003, proposes to make the following modifications in the provisions contained in the Bill:—

(i) in clause 2 of the Bill, it is proposed to omit the definition of “appointed date” and to make consequential changes;

(ii) certain verbal alterations of a drafting nature have been made in clauses 19, 23 and 30 and the Schedule of the Bill so as to make the intention clear.

BILL NO. 78 OF 2003

A Bill to amend the Delimitation Act, 2002.

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

1. (1) This Act may be called the Delimitation (Amendment) Act, 2003.

Short title
and com-
mencement.

(2) It shall be deemed to have come into force on the 31st day of October, 2003.

33 of 2002.

2. In section 3 of the Delimitation Act, 2002 (hereinafter referred to as the principal Act), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment
of section 3.

“Explanation.—For the purposes of clause (c), the State Election Commissioner of concerned State,—

(i) in respect of the duties of the Commission relating to a State (other than the States of Meghalaya, Mizoram and Nagaland), means the State Election Commissioner appointed by the Governor of that State under clause (1) of article 243K; and

(ii) in respect of the duties of the Commission relating to the State of Meghalaya or the State of Mizoram or the State of Nagaland, as the case may be, means a person nominated by the Governor of that State for such purposes.”.

Amendment
of section 4.

3. In section 4 of the principal Act, in sub-section (2), for the figures “1991”, the figures “2001” shall be substituted.

Amendment
of section 8.

4. In section 8 of the principal Act,—

(i) in clause (a), for the figures “1991”, the figures “2001” shall be substituted;

(ii) in clause (b), for the figures “1991”, the figures “2001” shall be substituted.

Amendment
of section 9.

5. In section 9 of the principal Act, in sub-section (1), for the figures “1991”, the figures “2001” shall be substituted.

Repeal and
saving.

6. (1) The Delimitation (Amendment) Ordinance, 2003 is hereby repealed.

Ord. 6
of 2003.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Pursuant to enactment of the Constitution (Eighty-fourth Amendment) Act, 2001, the Delimitation Act, 2002 was enacted to constitute the Delimitation Commission for giving effect to the aforesaid constitutional amendment. The Delimitation Commission was accordingly constituted on 12.7.2002 with Shri Justice Kuldip Singh, a retired Judge of the Supreme Court as its Chairperson and Shri B.B. Tandon, Election Commissioner in the Election Commission of India, and the State Election Commissioner as its *ex officio* members. The main task of the Commission was to readjust the territorial constituencies of the seats in the House of the People allocated to each State and the readjustment of the territorial constituencies of the total number of seats in the Legislative Assembly of each State and also to refix the number of seats reserved for the Scheduled Castes and the Scheduled Tribes on the basis of 1991 census. In the budget session, 2003 of Parliament, the Constitution (Eighty-seventh Amendment) Act, 2003 was enacted to provide for readjustment of electoral constituencies, including those reserved for the Scheduled Castes and the Scheduled Tribes, based on the population census for the year 2001, without affecting the number of seats allocated to States in the Legislative bodies.

2. Since the Delimitation Act, 2002 as originally enacted provided for delimitation of electoral constituencies on the basis of 1991 census, to give effect to the Constitution (Eighty-seventh Amendment) Act, 2003, consequential amendments in the Delimitation Act, 2002 are required to be made. In this context, it may also be stated that Members of Parliament during the consideration of the aforesaid constitutional amendment have expressed the view that the delimitation on the basis of 2001 census should be completed as soon as possible. The Delimitation Commission has also pointed out that the Constitution does not envisage the office of State Election Commissioner in the case of States of Meghalaya, Mizoram and Nagaland. It has, therefore, suggested that in case of these three States, provision for appointment of nominee of the Governor instead of the State Election Commissioner, may also be provided by amending the Delimitation Act, 2002.

3. In view of the above considerations and to facilitate continuation of delimitation exercise on the basis of 2001 census as soon as final figures of the 2001 census are published the Delimitation (Amendment) Ordinance, 2003 (Ord. 6 of 2003) was promulgated on 31.10.2003. The said Ordinance amends the Delimitation Act, 2002 to provide for—

- (i) delimitation of assembly and parliamentary constituencies on the basis of 2001 census; and
- (ii) inclusion of nominees of the Governor of the States of Meghalaya, Mizoram and Nagaland (where no State Election Commissioner exists) in the composition of the Delimitation Commission.

4. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 23rd November, 2003.

ARUN JAITLEY.

BILL NO. 79 OF 2003

A Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951.

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

CHAPTER I**PRELIMINARY**

Short title and
commence-
ment.

1. (1) This Act may be called the Representation of the People (Second Amendment) Act, 2003.

(2) It shall be deemed to have come into force on the 29th day of October, 2003.

CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

2. In section 13AA of the Representation of the People Act, 1950, in sub-section (1), the words "other than a Union territory," shall be omitted.

Amendment of section 13AA of Act 43 of 1950.

CHAPTER III

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

3. In the Representation of the People Act, 1951,—

(a) in section 26, sub-section (5) shall be omitted;

(b) in section 78, sub-section (2) shall be omitted.

Amendment of sections 26 and 78 of Act 43 of 1951.

Ord. 5 of 2003.

4. (1) The Representation of the People (Amendment) Ordinance, 2003, is hereby repealed.

Repeal and saving.

43 of 1950.
43 of 1951.

- (2) Notwithstanding such repeal, anything done or any action taken under the Representation of the People Act, 1950 and the Representation of the People Act, 1951 as amended by the said Ordinance, shall be deemed to have been done or taken under the said Acts, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Section 13AA was inserted in the Representation of the People Act, 1950 in the year 1966. The said section provides for designation or nomination of an officer as the district election officer for each district in a State, other than a Union territory, as the chief electoral officer was unable to cope up with the burden of the election work. At that time, there was no concept of districts in the Union territories and therefore, the provision of district election officer was not made applicable to the Union territories. The district election officer coordinates and supervises the work relating to preparation and revision of electoral rolls and conduct of elections for all parliamentary, assembly and council constituencies within the district concerned.

2. The Election Commission has stated that the Union territories are now divided into districts for administrative efficiency and has, therefore, recommended amendment of section 13AA to provide for designation or nomination of district election officers in the Union territories including the National Capital Territory of Delhi, which will facilitate better management of elections in the Union territories. The Election Commission has also requested that in view of the ensuing general election of the Legislative Assembly of the National Capital Territory of Delhi, urgent action may be taken to carry out the proposed amendments and accordingly, the Representation of the People (Amendment) Ordinance, 2003 (Ord. 5 of 2003) was promulgated on 29.10.2003.

3. By the said Ordinance section 13AA of the Representation of the People Act, 1950 was amended to provide for nomination or designation of district election officers in all the Union territories and consequential amendments were also carried out in sections 26 and 78 of the Representation of the People Act, 1951.

4. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 23rd November, 2003.

ARUN JAITLEY.

BILL NO. 82 OF 2003

A Bill further to amend the Administrative Tribunals Act, 1985.

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

- | | | |
|-------------|--|--|
| | 1. This Act may be called the Administrative Tribunals (Amendment) Act, 2003. | Short title. |
| 13 of 1985. | 2. In the Administrative Tribunals Act, 1985 (hereinafter referred to as the principal Act), in section 3, after clause (g), the following clause shall be inserted, namely:—
‘(ga) “High Court” means the High Court within whose territorial jurisdiction the Tribunal concerned falls;’. | Amendment of section 3. |
| | 3. In section 27 of the principal Act, the brackets and words “(including a High Court)” shall be omitted. | Amendment of section 27. |
| | 4. After Chapter IV of the principal Act, the following Chapters shall be inserted, namely:— | Insertion of new Chapters IVA and IVB. |

"CHAPTER IVA

ABOLITION OF TRIBUNALS

Power of
Central
Government
to abolish
Tribunal.

27A. If the Central Government is satisfied that the continued existence of the Tribunal or any of its Benches is not necessary, it may, by notification, abolish the Tribunal or any of its Benches and make such provision in the notification as it may deem fit for the transfer and disposal of cases pending before the Tribunal or any of its Benches immediately before such abolition:

Provided that an Administrative Tribunal established for a State under sub-section (2) of section 4 shall be abolished after receipt of a request in this behalf:

Provided further that the Central Government shall abolish a Joint Administrative Tribunal established under sub-section (3) of section 4 after the concerned States have entered into an agreement for abolition of the Joint Administrative Tribunal and forwarded such agreement to the Central Government:

Provided also that a State or States shall forward a proposal for the abolition of an Administrative Tribunal for the State or a Joint Administrative Tribunal for the concerned States to the Central Government, together with a proposal for transfer and disposal of cases pending before such Tribunal drawn up in consultation with the concerned High Court or High Courts of the States.

Vacation of
office by
Chairman,
Vice-
Chairman
and other
Members on
abolition of
Tribunal.

27B. On the abolition of the Tribunal, the person appointed as Chairman of the Tribunal and every other person appointed as Vice-Chairman and Member and holding office as such immediately before such abolition shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service:

Provided that the Chairman of the Tribunal and every other person appointed as Vice-Chairman and Member, who were in service of the appropriate Government and took voluntary retirement from such service to join the Tribunal as such, shall be entitled to draw his pay from the appropriate Government from the date of abolition of the Tribunal till the date he would have superannuated from the service of that Government or till the date of completion of his tenure in the Tribunal, whichever is earlier.

Vacation of
office by staff
of Tribunal.

27C. On the abolition of the Tribunal, the persons appointed as officers and other employees of the Tribunal holding office as such immediately before such abolition shall vacate their respective offices and no such officer and employee shall be entitled to claim any compensation for the premature termination of their term of office or of any contract of service:

Provided that the officers and other employees of the Tribunal who were appointed on deputation basis to the Tribunal shall, on such abolition, stand reverted to their parent cadre, Ministry or Department, as the case may be:

Provided further that the officers and other employees of the Tribunal, who were employed on regular basis by the Tribunal and are still in its service, shall become, on and from such abolition, the officers and employees, respectively of the appropriate Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to them if the Tribunal had not been abolished and shall continue to do so unless and until their employment in the appropriate Government is duly terminated or until their remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee, employed in the Tribunal, to the

appropriate Government, shall not entitle such officer or employee to claim any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Tribunal has established a provident fund, superannuation, welfare or other fund for the benefit of the officers and other employees employed in the Tribunal, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the appropriate Government shall, out of the monies standing, on the abolition of the Tribunal to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the appropriate Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed.

CHAPTER IVB

APPEAL TO HIGH COURT

27D. (1) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court.

Appeal to
High Court.

(2) Every appeal under this section shall be preferred within sixty days from the date of communication of the decision or order of the Tribunal to the person aggrieved by the said decision or order:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the aggrieved person had sufficient cause for not preferring the appeal within the period of sixty days.

(3) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.”.

5. In section 35 of the principal Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:—

Amendment
of section 35.

“(ea) the manner in which the amount of provident fund, superannuation, welfare or other fund credited, shall be dealt with by the Central Government;”.

6. In section 36 of the principal Act, after clause (b), the following clause shall be inserted, namely:—

Amendment
of section 36.

“(ba) the manner in which the amount of provident fund, superannuation, welfare or other fund credited, shall be dealt with by the appropriate Government;”.

STATEMENT OF OBJECTS AND REASONS

Under the Administrative Tribunals Act, 1985 enacted by the Parliament in pursuance of article 323A of the Constitution, the Central Administrative Tribunal has been functioning with its Principal Bench at New Delhi and 16 other Benches located in various parts of the country to adjudicate service related disputes of the Central Government employees and other employees specifically covered by it. Similarly, Administrative Tribunals in eight States have been set up by the Central Government on the requests of State Governments to adjudicate service related disputes of State Government employees.

2. Three of the eight State Governments, viz., Governments of Himachal Pradesh, Madhya Pradesh and Tamil Nadu, where State Administrative Tribunals have been set up, have requested the Central Government to wind up respective State Administrative Tribunals. There being no provision in the Administrative Tribunals Act, 1985 for abolition of an Administrative Tribunal once it is set up, there is a need for amending the Act to provide for an enabling provision for abolition of the Administrative Tribunals and to provide for transfer of pending cases to some other authority after its abolition.

3. With the proposed amendment of the Act providing for abolition of the Administrative Tribunals, certain other provisions for taking care of the service conditions of its functionaries, viz., Chairman, Vice-Chairman and Members and officers and other staff of the Tribunal and transfer of pending cases to other authority after abolition of a Tribunal have been considered necessary. In addition, the Act is also proposed to be amended to provide a provision for entertaining appeals against the orders of the Administrative Tribunals to respective High Courts. This amendment will bring the Act in line with judgment of the Supreme Court in the case of L. Chandra Kumar delivered in March, 1997.

4. The proposed Bill will enable the Central Government to consider the requests of State Governments for abolition of an Administrative Tribunal for a State or its Benches whenever such requests are received by the Central Government. It will also enable the Central Government to examine and consider requests of the State Governments for abolition of respective State Administrative Tribunals. The Bill also empowers the Central Government to wind up Central Administrative Tribunal or any of its Benches as and when the need for the same is felt.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 29th October, 2003.

HARIN PATHAK.

FINANCIAL MEMORANDUM

All the expenses towards the Central Administrative Tribunal are borne by the Central Government and in respect of the State Administrative Tribunal, the same are borne by the respective State Government. Therefore, the Central Government in the present context is concerned with the Central Administrative Tribunal only. At present there is no proposal under consideration of the Central Government for abolition of the Central Administrative Tribunal or any of its Benches. Therefore, even if the Bill is enacted, no expenditure from the Consolidated Fund of India is likely to be incurred immediately on such enactment. However, the Bill authorises or imposes financial consequences in future when the subject matter of the Bill is invoked or implemented by the Government. In the case of the State Administrative Tribunals, proposals from four State Governments are to be considered for abolition of the respective State Administrative Tribunals after the Bill is enacted and comes into force. In that case the expenditure by way of pay and allowances in respect of Chairman, Vice-Chairman and Members, etc., of the State Administrative Tribunals to be abolished will have to be borne by the respective State Governments and no expenditure from Consolidated Fund of India is likely to be incurred on this account.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the Central Government to abolish, by notification, the Tribunal or any of its Benches if and when the same are not considered necessary and also to transfer cases for disposal pending before the Tribunal or its Branches immediately before such abolition. The said clause further provides for the manner in which the amount of provident fund, superannuation, welfare or other fund credited, shall be dealt with by the rules to be made by appropriate Government. The proposed amendments in clauses 5 and 6 are consequential in nature.

2. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G. C. MALHOTRA,
Secretary-General.