

# **SERVICE LITIGATION: A CASE STUDY OF ANDHRA PRADESH ADMINISTRATIVE TRIBUNAL (APAT)**

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## **Introduction**

Unlike India, in most other countries of the world one does not notice the Government and its employees fighting large scale litigation. One main reason for this seems to be the lack of an alternative machinery which can impartially mediate between the Government and its employee. The disputes that arise between Government and employees are of two kinds. Firstly they are of a general nature and secondly they are of an individual nature. While it is the right of every person in the service set up to expect just and fair treatment in regard to his employment, frequent litigation between him and the state involving countless other co-employees in the service in the battle is a deviation from the right direction. There has been a phenomenal rise in service disputes in recent times leading a tremendous amount of litigation and the consequent burden on the judiciary, government and the concerned employees. It is time that serious attention is devoted to discover the reason for it and take effective steps to ensure curtailment of such litigation. Frequent litigations between the state and its employees ultimately affects the efficiency of the service and brings about indiscipline, lack of loyalty and an attitude of indifference. This paper attempts to identify the critical areas causing litigation in service cases taking the Andhra Pradesh Administrative Tribunal (APAT) as a case study.

Article 323-A of the Constitution created Administrative Tribunals for adjudication of disputes relating to service matters of employees in public service for the centre and other states. The outcome of this exercise is the Administrative Tribunal Act 1985.

*An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of <sup>1</sup>[any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution] and for the matters connected therewith or incidental thereto.*

In this paper empirical data was analysed based upon the cases filed at the APAT. Information was collected from APAT regarding the number of

OAs pending along with information relating to counters filed or not from 1994 to 1999 and without information about counters from 2000 to 2002. In total over 22,000 cases were taken for analysis. This included all the cases pending at APAT as on December 2002. Along with the statistical data certain key judgements and policy decisions at various levels and a few case studies relating to the main areas of litigation were studied in detail to highlight the reasons causing litigation in those areas. A sample survey was also conducted in a range of government departments. In this exercise, the Secretaries to Government, senior officers of the secretariat and staff, heads of departments and their officers, Chairman of APAT, retired judges of the AP High Court and the Supreme Court were interviewed.

### Current Reality

#### *Number of OAs Filed Every Year: An Analysis of the Category-wise Contribution*

As part of the empirical study all the cases between 1995 and 2002 were taken into account and a statistical analysis was done. In total there were around 22,000 cases in the APAT during this period (as of January 2003). The statistical analysis is split into two levels. The first level shows individual contributions of each category every year. For each year, the category contributing to 5% or more of the inflow was taken into account. The table below shows the categories contributing to 5 % or more of the OAs filed in the APAT.

Category	1995	1996	1997	1998	1999	2000	2001	2002
Appointment	20	22	22	20	20	22	23	27
Promotion	26	23	20	16	15	19	16	16
Seniority	19	19	15	12	8	8	5	4
Absorption/Regularisation	5	5	5	8	5	7	8	6
Major punishment	6	6	8	9	11	6	6	7
Suspension				6	5	5	7	4
Pay Fixation & Recovery					5			5
Pensionary benefits						5	5	
Transfers						8		10
<b>Total</b>	<b>76</b>	<b>75</b>	<b>70</b>	<b>71</b>	<b>69</b>	<b>80</b>	<b>70</b>	<b>79</b>

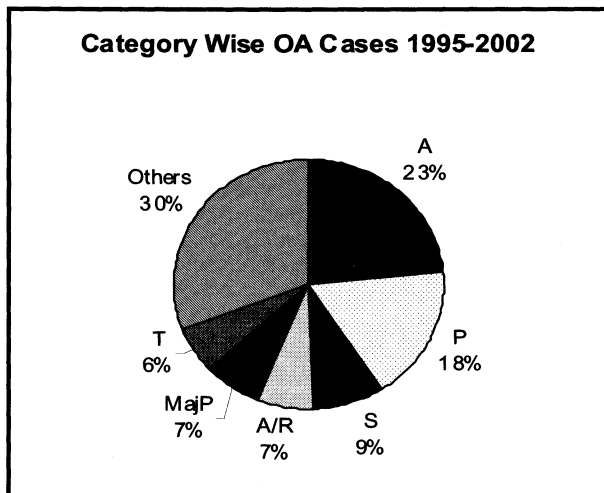
*Note: All figures given in percentage terms*

During the period 1995 to 1997, the five categories of appointment, promotion, seniority, absorption and regularisation, and major punishment contributed to the majority of OAs being filed at the APAT. From the year 1998 onwards, suspensions also contributed to more than 5% of the OAs being filed. In the period covering 1999 and 2002, another new category, 'pay fixation and

recovery' contributed to more than 5% of the cases. However, this category is not significant throughout the sample period. Pensionary benefits are high in 2000 and 2001 and transfers are high in 2000 and 2002. Most of the pension cases are likely to be related to administrative issues and are likely to be cleared quickly. Similarly, in the case of transfers, most of the cases are related to general transfers and are likely to be disposed off quickly by the tribunal. Interestingly, transfers contribute to nearly 10% of litigations in 2002, resulting in the distortion of more important areas like seniority and suspension which drop down to 4%. However, most of these transfer cases falling under the general transfer category, which are likely to be disposed off in the first quarter of 2003, making the other two areas namely, seniority and suspensions, more significant. In general, the first five categories contribute to more than 60% of the litigations.

One must exercise caution while considering major punishments as one of the significant categories. The APAT (OA cases) files from 1995 to 1999 did not specify whether the punishment was major or minor in a majority of cases. Hence, it was decided to classify the punishment as major or minor on a purely arbitrary basis. Therefore, it is quite possible that some of the cases classified as major punishments belong to the minor punishment category or vice-versa. However, from 2000 onwards it was specified whether the penalty was major or minor and the above problem ceased to exist. Nonetheless, punishments as a whole are a significant contributing factor to litigations in courts.

The second level of analysis deals with entire sample period from 1995 to 2002. Those categories contributing to more than 5% of the cases filed were taken into account.



Over the entire sample period from 1995 to 2002, the six categories of appointment, promotion, seniority, major punishment, absorption and regularisation and transfers contribute to more than 70% of the total number of OAs filed in the APAT. Out of these six areas, one can discount transfers to a great extent as they are mostly cases relating to general transfers which are likely to be disposed off quickly. The other five areas have been identified as the areas which deserve special attention. An aspect which needs to be studied is whether the current government policy regarding the above five categories is contributing to more litigations. If this is the case, then one needs to take corrective steps to rectify the current government policy and introduce more dynamic policies which are more foolproof and litigation free.

From the above analysis the following key areas were identified for an in-depth analysis as these areas contribute to the maximum amount of litigation:

- Appointments
- Absorption and regularisation
- Promotion
- Seniority
- Disciplinary proceedings
- Suspensions

Case Studies on Major Litigation Areas

### **Case Study I: Appointments/Absorption and Regularisation**

#### **Appointments**

This group of cases consistently occupied more than 20% of cases instituted in APAT. An indepth analysis revealed that selection process constituted a heavy percentage of cases under the classification of appointments. OA 7613, 7678 and batch of 150 cases was heard and decided by APAT in the year 1999 relating to appointment. In this batch, the issue revolved around the selection process of para medical officers in Medical & Health department. During the year 1998, the Director of Medical education invited applications for filling up the posts of radiographers, ophthalmic assistant, staff nurse, pharmacist grade II and laboratory technician. The batch of OAs 7613/98 and batch were filed by Laboratory technicians when their applications were rejected on the ground of non possession of valid qualification certificates. At the admission stage, the Tribunal directed the respondents to accept their applications and permit them to appear for the written examination pending disposal of OAs and not to announce their results. One of the important issues that came up for consideration was whether the certificate of certified laboratory technician course of

recognised institutions other than those referenced in Annexure III of the relevant service rules can be accepted for appointment. The bench held that the certificates issued by institutions recognised by a Central Act, State Act, Provincial Act as stated in item (i) of category (2) of class-XI subject to their imparting the training course imparted by the institutions shown in Annexure III of the rules are in order. The bench concluded that the certificates issued by any recognised institution imparting the curriculum prescribed by the institutions shown in Annexure III should be sufficient. Such ambiguity in rules is causing litigation in every recruitment process.

Similarly, recruitment to the para medical services was notified by the Department of Medical and Health during the year 2002. The notification did not mention the minimum marks required for selection of a candidate to the service. Similarly it did not specify the recognised institutions whose certificates qualify for the selection. After conducting the written examination and announcement of results, the government ordered an enquiry into the training imparted by some of the private institutions and took a decision to cancel the examination, leading to litigation.

### **Absorption and Regularisation**

OA 5912/94, OA 6199/96 and batch of more than 100 cases relates to the appointment of part time lecturers in education department. The main issue in these batches revolved around the appointment of the applicants as lecturers in the education department in the existing vacancies as they were recruited as part time lecturers by the authorities from time to time. Part time lecturers batch discloses the continuation of part time lecturers for years without filling up the posts either by promotion or direct recruitment, the two methods available under the special services rules. The continuation and the subsequent absorption on humanitarian grounds exposed the scope for favouritism, nepotism and non compliance of statutory reservations guaranteed by the Constitution and the AP State and Subordinate Service Rules, and the resultant litigation.

The scope for litigation in appointments arises due to the following reasons.

- Change of rules of recruitment after issue of recruitment notification
- Cancellation of examination (recruitment process) after setting in motion selection process.
- Compassionate appointment - medical invalidation scheme/death of government servant on duty; appointment of displaced (persons under major projects); reservation (backlog) vacancies/ad hoc appointment (like badli workers) in municipalities. As a part of the

welfare philosophy, the state opened up avenues for appointment of the kith and kin of affected persons under this welfare programme.

While the welfare programme is laudable it landed the government into service litigation in the following areas:

- a) Rival claimants claiming posts. Such as spouse versus children and also step children.
- b) Under-aged claimants seeking appointment after reaching the age prescribed under the rules.
- c) To avail the medical invalidation welfare scheme, government servants started resorting to voluntary retirement with bogus medical certificates of diseases.
- d) In the case of major projects where state has announced a policy of appointment for one member of a family of displaced persons besides paying compensation (a scheme covered by GO 98 of irrigation department). According to the scheme, the project authorities have to maintain a list of eligible candidates and provide employment on first come first served basis. As the development activities of the state are expanding, the state is not able to cope with the demand for employment in the government departments. This leads to endless litigation, besides non observance of rules of reservation provided in the constitution. If the intention is to provide succour to the displaced persons, the state should have offered self-employment schemes or enhanced monetary compensation.
- e) Under Rule 22 of AP State and Sub-ordinate service rules, an offshoot of the constitutional guarantee provided to the backward classes/scheduled castes/scheduled tribes/women the state is legally bound to follow the rotation laid down under the rules. The appointments against reservations and ad hoc appointments have opened up floodgates for litigation.

### **Case Study II: Promotion**

Our study revealed that promotion constitutes 18% of the litigation during the years 1995-2002 in APAT. We took up a detailed case study of OA 1834, 2063 of 1995 and batch relating to promotion of direct recruits to the position of Deputy Executive Engineers in the Irrigation Department vs, promotees in the same department. The tribunal considered the following issues before delivering the judgement.

1. What are the principles to determine inter se seniority between direct recruits and promotees in the category of deputy executive engineers in our state.

2. Whether quota rule was disregarded in AP and what is the impact of quota rule on seniority?
3. What is the impact of the Presidential Order on the finalisation of the seniority list of deputy executive engineers?
4. Whether the government has power to make retrospective regularisation?

The tribunal examined the concept of seniority as enunciated in the state and subordinate service rules, special rules in the background of presidential order issued under Article 371(D) of the Constitution. According to Rule 2(C)(1) of the AP Engineering Service rules published in GO MS Number 285 (special rule),

*All the substantive vacancies in the category of deputy executive engineer, 37 and half shall be filled by recruitment and the remaining 62 and a half shall be filled by transfer of additional assistant and draughtsmen of the Andhra Pradesh Engineering Sub-ordinate service and by promotion from among assistant executive engineers.*

The bench examined provisions of the general rules and special rules applicable to the civil servants in Andhra Pradesh and also the case law on the subject. It came to the conclusion that,

*if the provisions of the general rules and special rules are read together in the canvas of presidential order, the deputy executive engineer being a zonal post will have to be filled up by direct recruits and promotees/transferees in the ratio fixed in rule 2(C) of special rules and the seniority of the members of that cadre will be with reference to appointment in a vacancy meant for that particular source. In other words, merely because temporary appointment or promotion came to be made, seniority cannot be counted from the date of officiation except when the appointment was made in accordance with rules and as regards to direct recruits their seniority will have to be counted from the date of their joining, as such appointment is in regular vacancy meant for that source.*

Another important issue which needed immediate consideration was whether the government has the power to make retrospective regularisation. The bench heard the Advocate General of the State also. Besides, it referred to the judgement of the Supreme Court in R.Nanjundappa vs. T.Thimmaiah 1972(2) SCR 799 and Aswini Kumar's case 1997 to SCC (1), in the matter and referred to para 13 of the judgement which we considered appropriate to reproduce.

*So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned it is to be noted that the question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on adhoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such non existing vacancy would never survive for consideration and even if such purported regularisation or conformation is given it would be an exercise in futility. It would amount to decorating still born baby.*

After examining the issue threadbare, the bench came to the conclusion that the government has the power to make retrospective regularisation provided such regularisation is as per law. An in-depth study of a few cases like the ones referred above revealed that there are instances of, non observance of the quota fixed in the special rules between the direct recruits and the promotees in almost every service of the state government. A person directly recruited to the first level gazetted post in any of these services is not sure of rising to the level of non cadre highest post in the hierarchy of the department.

In this backdrop of non filling of direct recruitment vacancies in the majority of services for inexplicable reasons and making temporary promotions, ad hoc appointments, in charge arrangements being subsequently made regular, are the main sources of litigation in the seniority promotion area. This only reveals that the cadre controlling authority is not serious about inducting fresh blood, dynamism, etc, which a direct recruit is supposed to bring with him into the service. If the executive finds that the functions of the government can be carried efficiently and effectively without induction of direct recruitment at a few levels in the hierarchy, it can as well amend the service rules and thus limit the scope for direct recruitment. Similarly a liberal policy of relaxation of rules and thereby regularisation of ad hoc promotions must be put to an end to reduce service litigation.

### **Case Study III: Seniority/Promotion**

Our study revealed that the number of cases on seniority in the tribunal from 1995 to 2002 constituted 9% of the total number of cases. We took up the study of OA 7175/95 batch filed in the tribunal for an analysis relating to the handling of seniority disputes in the Revenue Department. Judgement by the



tribunal in OA 7171 of 95 delivered on 1-7-1997 is one of the cases picked up for study. In this judgement, the tribunal heard 36 OA's, Vacate Miscellaneous Applications and Miscellaneous applications. This batch of OA's went up to the Supreme Court, and were decided in the year 1998 (AIR 2001 Supreme Court 1210)

The main issue in this OA's centred round the preparation of the seniority list in the category of the Deputy Tahsildars in the Revenue Department of Andhra Pradesh. According to the special rules issued in GO 1279 GAD dated 12.10.61 for the AP Revenue subordinate service appointment of the category of the Deputy Tahsildar shall be made by direct recruitment and by transfer by promotion from the feeder categories in the ratio 1:1. Several in-service candidates were promoted as Deputy Tahsildars for the year 1980-85 in the available vacancies. In the year 1985 direct recruitment was made directly to the Deputy Tahsildars. Thereafter upto January 1990, appointment of in service candidates by transfer or by promotion was made. Again in January 1990 direct appointment for the post of Deputy Tahsildars was made. Up to the year 1980 the rules framed in 1961 were in force and seniority was to be settled only in terms of rule 33 A of AP State subordinate services. Without finalizing the seniority list in accordance with the then existing rules the government brought an amendment to the special rules governing the service conditions of Deputy Tahsildars with retrospect effect from 12<sup>th</sup> October 1961. Litigation started in the category of the Deputy Tahsildars by filing RP no. 1988 and batch in the erstwhile APAT. That batch was disposed off in the year 1984. The Supreme Court confirmed the decision of the full of bench of APAT in the year 1988 (SLR 1988 (1) 775). The Supreme Court came down very heavily on the government for not following the rule.

*Para 9. Though Rule 3(b) fixes the ratio as 1:1 in respect of substantive vacancies, the recruitment has not been regular and systematic. We have come across several instances where the State Governments do not take steps to give effect to their own rules and, therefore, though there is one mode of prescription, in action a different situation is brought about. Rules have binding effect and they bind the state and the citizens alike once they are in force. In order that law may regulate conduct, the state has to feel bound by its own laws and by willingly abiding by the law exhibit an ideal situation for the citizens to emulate. We disapprove of the callous conduct of the state and direct that the rule shall henceforth*

*be followed scrupulously by effecting recruitment at regular intervals according to the scheme of the rule. The State shall within four months from today compute the substantive vacancies in the cadre and determine the quota of direct recruits to the rank of Deputy Tahsildars and after working out the vacancies available to be filled by the direct recruitment on the basis of 50 per cent of the total number, fill up the same by making direct recruitment within a period of four months thereafter. Once, that is done and regular recruitment is effect, the impasse which has now been created would not continue. The state is directed to draw up the seniority list on the basis of rule 4(e) on or before 31<sup>st</sup> December, 1988. We have given a long time to eliminate the scope for making for an application for extension.*

The Government of Andhra Pradesh did not prepare the seniority list as directed by the Supreme Court within the time prescribed and promulgated new rules in the year 1992. From the litigation in the seniority matter of deputy Tahsildars in the Revenue Department discussed above, it is seen that the executive authority did not take steps for preparation of seniority list every year, as required under the rules and allowed the litigation to continue and as a result the whole service is a divided house.

#### **Case Study IV: Suspensions**

The case law on suspensions and the instructions of the government on the disposal of cases is clear and categorical. Following the judgement of the administrative tribunal in OA 7909/92 dated 10-4-93. Government issued elaborate instructions on suspensions of government servants.

*Judgement: The order of suspension needs to be reviewed by the authorities periodically. The criminal trial or disciplinary proceedings may take a long time and the government is to review the need for continuing suspension on relevant grounds periodically. The observation in Para 5 of the impugned order the applicant shall continue under suspension until the terminations of all proceedings relating to the criminal charge does not imply that till the trial, if any, is concluded, the order of suspension need not be reviewed or revoked. It will be for the government to review the need for continued suspension at reasonable periodical intervals say six months.*

The GAD fixed a time frame of six months for completion of an enquiry and awarding a punishment for delinquent officer. The pending of cases in courts and disposal of cases by the authorities came in for sharp criticism in the hands of courts. The following table illustrates a few cases of tardy progress of disciplinary enquiry in government departments.

Department	File No	Date of Appointment of Enquiry Officer	Date of Receipt of Enquiry Report	Time taken by Enquiry Officer	Bench Mark Fixed by CVC & GAD	Excess or Less Time by Enquiry Officer	Remarks
Commercial Taxes	D3/602 /88	30-03-88	28-05-92 / 27-04-94	49 Months & 28 Days	3 Months	45 Months & 28 Days	
Medical & Health	83627/ E1/77	05-06-86	07-07-94	97 Months	3 Months	94 Months	
Transport	3262/97	20-10-98	Case Pending	4 Years / 2 Years, 7 Months 15 days	3 Months	+ 4 Years / 2 Years & 7 Months	Case is pending for non-receipt of articles of charges from ACB
Transport	29868/92	15-03-90 / 04-09-2000	Not yet Received	12 Years / 8 Months 15 days	3 Months	+ 12 Years 5 Months / 1 Year 9 Months	Accused Officer Retired

Following the discussions of the secretaries to Government in the year 1992, on the issue of inordinate delays in finalising enquiries both departmental and ACB resulting in hardship to employees, government revised its earlier instructions in Government order 86 of GAD dated 8-3-94.

- The order of suspension of the government servant shall be reviewed at the end of every six months.
- The appropriate reviewing authority should take a decision regarding continuance or otherwise of the government servant under suspension with reference to the nature of charges as also delays in finalising enquiry proceedings.
- An outer limit of two year, be provided from the date of suspension for keeping the Government servant under suspension and he shall be reinstated without prejudice to the proceedings. However, in exceptional cases permitted the suspension to be continued.

Another GO 74 of GAD dated 24-2-1994 permitted for considering the promotion of offices against whom disciplinary cases are pending resulting in a lot of litigation at courts.

Courts are not normally interfering in the orders of suspension passed by the executive authorities and in majority of cases directions are being issued to the departments to reconsider orders keeping in view the instructions of the government and the case law on the subject. From the statistics available from 1995 to 2002, there are 1050 cases of suspension still pending as writ petitions with APAT. On an average the gross emoluments came to Rs. 12,000 per month. Calculating at 100% of dearness allowance and 75% of basic pay scale, the average pay for an employee placed under suspension comes to Rs. 10,500 per month (this figure was worked out on the assumption that the range of the salary of a government employee under suspension varies from last grade servant with emoluments of Rs. 4000 per month and to a non cadre head of department with gross emoluments of Rs. 20,000 per month). Therefore, the total cost per month (1050 cases X Rs. 10,500) comes to Rs. 1,10,25,000 and the total cost per year comes to Rs. 13,23,00,000 (estimate based on lower values and the true cost due to non disposal of suspension cases likely to be much higher). In this back drop the heavy pendency of cases relating to suspensions deserves to be studied in- depth by the concerned departments and steps taken for early disposal.

## **Conclusion**

Main cause for the high degree of litigation in service matters is executive policy. Lack of grievance redressal mechanisms, ad hoc policies regarding service matters and not adhering to its own rules has made the government itself a victim of heavy litigation in service matters, which is destroying the very fabric of the government services. This paper has shown the way in identifying the main areas contributing to the maximum amount of litigation in service matters. The government must use the means available to focus on these areas and reduce the amount of litigation. Similarly the administrative tribunal can reduce the backlog of cases by bunching of cases based on the above major litigation areas. If the Government does not have a coherent policy directed towards tackling litigation then the problem is likely to worsen in the future. It is estimated that there are over 60,000 grievance cases pending in the various departments. If immediate action is not taken towards redressal of these grievances there is every possibility of these entering the court area and consequently litigation will increase manifold times. Although this paper has

attempted to empirically prove the main areas of litigation in service matters and also detail the reasons for this, it has not attempted to provide the solutions available to tackle this litigation effectively. This will form the basis for a future paper.

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