

BOOK REVIEW

AN INTRODUCTION TO THE GUIDING PRINCIPLES IN THE DECISIONS ON SERVICE LAW. Compiled By Lakshmi Swaminathan. Delhi : Bahri Brothers, 1999. Pp. 36+230, Rs. 300/-.

The Book under review¹ is a compilation of recent cases decided by the Supreme Court of India on Service Law. Administrative law has over the last three or four decades evolved into a specialised branch of law of particular interest and concern to employees and employers alike. With the establishment of the Central Administrative Tribunals (CAT) following the enactment of the Administrative Tribunals Act, 1985, a very large number of cases in the country are being dealt with in this forum in the first instance. As in other branches of law, appeals from the decisions of the Tribunal lie to the High Courts and the Supreme Court.²

Today, the administration is ubiquitous and infringes freely and deeply on every aspect of an individual life. The theme of administrative process is the legal control of arbitrary government/administrative powers. The legal control mechanism is essentially imprinted in constitutional law in as much as that dependence of administrative law on constitutional law sketches the administrative process. Therefore, the entire development of administrative law is characterized by a consistent series of decisions controlling and structuring the discretion conferred on the state and its offices; the law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the state and it is the glory of administrative law that such discretion has been through judicial decisions structured and regulated.³

The book has grouped over 500 cases into six broad Chapters. viz., (I) General Principles, (II) Recruitment and Appointment, (III) Incidence of Services, (IV) Disciplinary Proceedings and Punishments, (V) Retirement, and (VI) Other Aspects.

Thoroughly updating the 1993 digest MEMBERS DIGEST OF IMPORTANT DECISIONS popularly known as the GREEN BOOK compiled by Justice V.S. Malimath (Retd.) the learned author of the book has taken a fresh look at the typical subject headings under which a large number of the cases could be grouped and classified clearly distinguishing fine points of fact and law in arriving at a decision in a new case.

¹ *An Introduction to the Guiding Principles in the Decisions on Service Law*, compiled by Lakshmi Swaminathan (Delhi, 1999).

² *Id.*, Preface.

³ See I. P. Massey, *ADMINISTRATIVE LAW* 168 (4th ed. 1995).

Service Law being a specialized branch of law and the case law having immensely increased over a passage of time the author has done a commendable job in presenting a brief introduction to each Chapter highlighting the important legal propositions dealt with therein and the effort put in towards not merely adding new decisions but changing the entire setup and pattern of the book under review deserves all praise.

In Chapter I, the general principles of law, applicable to disputes in general, with particular reference to service law, have been grouped. The sub-grouping under chapter I highlights 18 topics besides introduction, focussing issues such as Jurisdiction/Interpretation/Limitation/Laches and Delays/Natural Justice/Bias; Malafides : Fraud/Speaking Order/Interim Order/Non Joinder, Misjoinder of Parties/ Roving Enquiries/ Mistake/ Precedents/ Res-Judicata/ Larger Bench/Promissory Estoppel/Privilege and Non-Kisclosure of Documents/Judicial Review and Review.⁴

At the threshold, the question of jurisdiction of the judicial forum to adjudicate on the lis before it arises and it is in this context that cases under sections 14 and 19 of the Administrative tribunals Act, 1985 and other provisions dealing with this aspect of law have been given.

Chapter II on "Recruitment and Appointment" has 12 sub-headings which include, typically, Recruitment Criteria/Processing & Short/Selection Committee, Interview, Tests/Examinations/Wait List, Empanelment & Operation of Panels/Reservation/Dereservation/Appointments, Vacancies/Cancellation/Compassionate Appointment/Adhoc, Casual Employment/Daily Wage Employment/Contract Labour/Regularisation.

The reservations in appointments to be provided for candidates belonging to Scheduled Castes, Scheduled Tribes, and other Backward Classes have been provided in a number of Office Memoranda and Circulars issued by the Govt. of India, Department of Personnel and Training, consistent with Constitutional provisions of protective discrimination. The famous case of *Indira Sawhney*⁵ has exhaustively being dealt with in this chapter.⁶

Chapter III deals with cases laying down principles of law on various aspects of the incidence of service of Government servants and others during their employment. The Supreme Court has dealt with umpteen cases of seniority as this is one of the most important aspects of an employee's condition of service which determines his future advancement in his career. The relevant propositions of law are found in the ratio of the Supreme Court decision in *Direct Recruit Class II Engineering Association v. State of Maharashtra*⁷ for determining the question of seniority where quota and rota

⁴ *Supra* note 1 at 3-66.

⁵ *Indra Sawhney v. U.O.I.*, 1992 Sup (3) SCC 217, *supra* note 1 at 83.

⁶ *Id.*, at 69-101.

⁷ 1990 (2) SCC 715, *id.* at 130.

are provided in the recruitment rules, which have been explained in several other cases are discussed in this Chapter. This chapter highlights 20 subject matters such as Probation, Confirmation and Termination/Date of Birth/Allotment, Cancellation of Accommodation/Adverse Remarks in ACR/Transfer/ Deputation/ Termination/ Ad-hoc Service Regularisation/ Reversion/ Seniority/ DPC/ Sealed Cover Procedure/Promotion/Stepping up of Pay Back Wages/Equal Pay for Equal Work/ Termination of Temporary Servants /Pay in Officiating Higher post.⁸

The punishment awarded to an employee by the disciplinary authority after holding departmental proceedings forms the major part of the cases in which the employee challenges these actions in the courts/ Tribunals. "Disciplinary proceedings and punishments" is the core of chapter IV which includes 15 sub-heads appertaining to Misconduct-Absence from Duty/Criminal Misconduct-Disproportionate Assets/Suspension/ Charge sheet /Enquiry/Non Enquiry Report:—Disagreement/Enquiry-delay/ Enquiry not Practicable/Supply of Report/Burden of Proof/Disciplinary Proceedings/ Paralled Proceedings/ Conviction and Departmental Proceedings/Compulsory Retirement/Punishment/Appeals.⁹

Chapter V is titled "Retirement" and has only 4 sub heads relating to Age of Retirement/Pension, Gratuity etc./Voluntary Retirement/Resignation-Withdrawal. It is true that the right to receive pension is 'property' and grant of pension is not a {bounty} but is a vested and valuable right of an employee. However, this can be denied to him in accordance with law. The best treatment of this subject is highlighted in this chapter.¹⁰

Chapter VI on "Other Aspects" spells out five topics related to: Policy Matters/Equality, Equity and Discrimination/Damages, Costs and Interest/Contempt of Court/Sanction for Prosecution.¹¹

Incorporation of "Table of Cases"¹² and 'Subject Index.'¹³ in alphabetical order prefixing and suffixing respectively in the book under review is of immense help in promptly locating the required reference or cross-referencing and citation of service rules or regulations versus the case law. The reviewer has test checked the citation of various cases and text of the statutory provisions. By and large they are found correct. The reviewer suggests that the author should have given a detailed table of statutes, which is necessary to locate a particular statute dealt in the book and the author should have also given a list of full meaning of abbreviations used in the case law citations.

⁸ *Supra* note 1.

⁹ *Id.* at 159-200. See also "Administrative Law", XXX *ASIL*, 1994 at 25.

¹⁰ *Id.* at 203-12.

¹¹ *Id.* at 215-26.

¹² *Id.* at xvii-xxvi.

¹³ *Id.* at 227-30.

Keeping in view the amount of information contained in it and its size, the thoroughly updated and compiled digest is reasonably priced and will be an excellent source of reference for lawyers, judges, academics, students and researchers in Service Jurisprudence. The publishers have also maintained the quality of paper, the print and the get up with minimum printing errors.

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