

NCLT & NCLAT

Summary Notes

classmate

Date

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* Section 415 :-

◆ Acting President & Chairperson of Tribunal or Appellate Tribunal :-

- Vacancy of President / Chairperson by reason of death / Resignation or otherwise → Senior most member shall act until new officer is appointed
- ~~Per~~ President / Chairperson unable to discharge his functions owing to Absence, illness or otherwise → Senior most member shall act until the officer resumes his duties

* Section 416 :-

◆ Resignation of Member :-

- To resign → give notice in writing, Addressed to the CG.
- Resigned person to hold office UNTILL :-
 - a. Expiry of 3 months from date of notice of Resignation
 - b. New appointment is made
 - c. Expiry of term of his office

whichever is earliest.

* Section 417 :-

◆ Removal of Members :-

① Power of Central Government :-

CG Consult → Chief Justice of India

removal in 5 circumstances

- Insolvency
- Conviction of offence involving moral turpitude,
- Physically / mentally incapable
- Acquired financial / other interest
- Abused his position

② Grounds for removal :-

CG make reference to Chief Justice of India Nominate Judge of Sup. Court

Judge of SC To held inquiry against President / Chairperson

③ Suspension by CG in concurrence with CJI :-

CG in concurrence with Chief Justice of India
pass order for suspension of Chairperson / President.

* Section 418 :-

◆ Staff of Tribunal And Appellate Tribunal

→ CG shall provide such officers & other employees to the Tribunal and appellate Tribunal as may be necessary.

→ The officers & other employees shall be under general superintendence of the President, Chairperson / authorized member.

→ Salaries & allowances and other conditions of service shall be as may be prescribed.

* Section 419 :-

◆ Benches of Tribunal

→ Constitution of such number of benches as may be prescribed by CG.

→ Principal bench shall be at New Delhi.

→ Power exercisable by benches:-

- Shall be exercisable by benches consisting of 2 members
a. Judicial Member & b. Technical Member.

- Such power can also be ~~exercised~~ exercised by a bench consisting of a single Judicial Member for such class of cases or such matters pertaining to such class of cases as may be prescribed by President by general / special order.

- If during hearing of such case / matter (as aforesaid), it appears to members that it ought to be heard by bench consisting of 2 members, it shall be transferred by President to such bench as he may deem fit.

→ Constitution of Special benches:-

- President may constitute special bench consisting 3 or more members (Majority being Judicial Members)

- Such bench can be formed for

→ rehabilitation, restructuring, reviving of companies.

→ Decision in the case of difference in opinion:-

Decision in case of difference
in opinion

↓
Majority Prevails

↓
As per majority Rule

↓
Majority do not prevail
(i.e., members Equally divided)

↓
Refer case to the President sitting
Points of case

↓
President shall refer case to other members

↓
Decision as per majority Rule.

* Section 420:-

→ Tribunal may give reasonable opportunity of being heard.

→ amendment in order

a. Within 2 yrs from date of order

b. To rectify mistake apparent from record

c. no amendment in case appeal is preferred.

→ Copy of order shall be sent to all parties concerned.

* Section 421:-◆ Appeal from orders of Tribunal:-

- aggrieved party may prefer an appeal to appellate tribunal.
- No appeal shall lie in case order is made with consent of parties.
- Period of appeal:-
 - within 45 days from the date on which order is made available
 - appeal in prescribed form & manner accompanied by such fees as may be prescribed.
 - appeal to be accepted even after expiry of period as aforesaid but not exceeding a further period of 45 days in case appellant is prevented by sufficient cause.
- Appellate Tribunal to pass order after giving a reasonable opportunity of being heard.
- Copy of order to be sent to all connected parties

* Section 422:-◆ Expedition disposal by Tribunal & Appellate Tribunal:-

- Appellate Tribunal or Tribunal shall dispose of case as expeditiously as possible within 3 months.
- If not concluded within 3 months, reasons shall be recorded & President / chairperson shall extend the period not exceeding 90 days.

* Section 423:-

◆ Appeal to Supreme Court:-

- appeal to lie before supreme court from the order of appellate Tribunal involving "question of law".
- appeal to be made within 60 days from date of receipt of order.
- Supreme court to accept / entertain appeal even after 60 days but not exceeding a further period of 60 days.

* Section 424:-

◆ Procedure before Tribunal & Appellate Tribunal:-

(1) Tribunal regulate their own procedure based on natural justice:-

- Procedure as stated in Code of ~~Civil~~ Civil Procedure, 1908 not to apply to Tribunal or appellate Tribunal.
- It shall be governed by principles of natural justice.
- Tribunal & Appellate Tribunal to have power to regulate their own procedure.

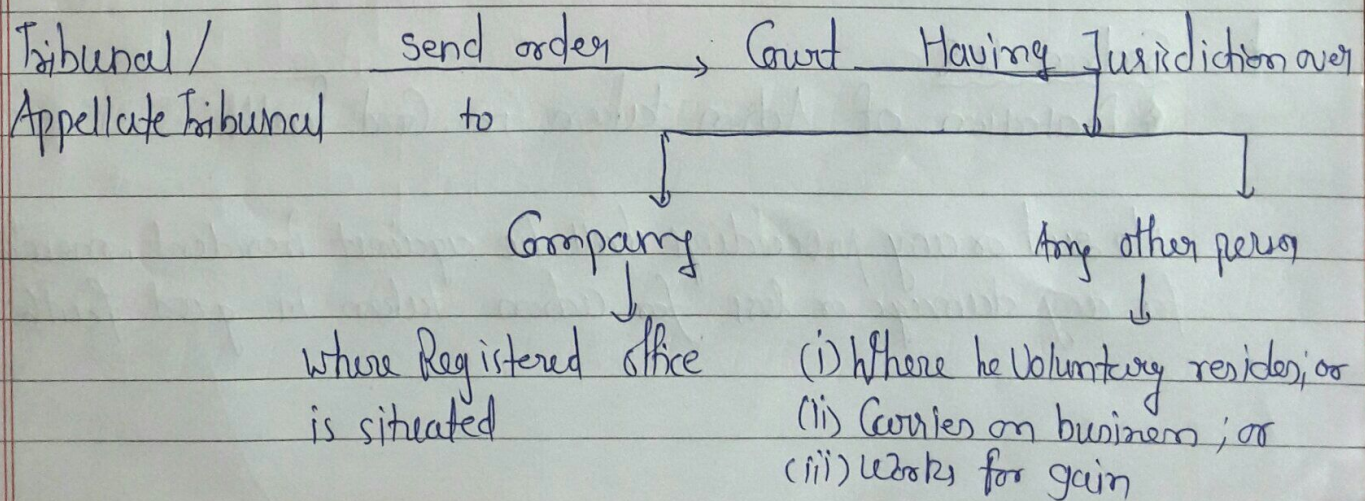
(2) Vested with same powers as that of a civil court:-

- Summoning & enforcing attendance of any person & examining him on oath.
- Requiring discovery & production of documents.
- Receiving evidence on affidavits.

- Requisitioning any public document or record or a copy thereof (subject to section 123 & 124 of Indian Evidence Act, 1872)
- Issuing commissions for examination of witnesses or docs.
- Dismissing a representation for default or deciding it ex-parte
- Setting aside the order of dismissal of representation
- any other manner whatsoever, as may be prescribed.

[3] Nature of decree and its execution :-

- Any order of a Tribunal / Appellate Tribunal to be a decree made by a court.
- It shall be lawful for Tribunal / Appellate Tribunal to send its order to Court within the local limits of whose Jurisdiction
 - in case of a company → the Registered office is situated
 - in case of any other person → where he voluntarily resides / carries business / works for gain.



* Section 425:-

◆ Power to punish for Contempt:-

→ Tribunal / Appellate Tribunal to have all powers & authority as a High Court have.

→ Modifications:-

(a) Reference to HC to be construed as including reference to Tribunal & appellate Tribunal

(b) Reference to Advocate-general to be construed as Reference to such Law officers as CG may specify

* Section 426:-

◆ Delegation of Powers:-

Tribunal / Appellate Tribunal by general / special order → direct officer / any other Employee / Person
 to Report the result after inquiry to make inquiry

* Section 427:-

◆ President, members, officers etc. to be public servants

* Section 428:-

◆ Protection of Action taken in Good faith

No suit or any proceedings shall lie against President, members etc. for any damage or loss for action taken in good faith.

* Section 429:-

◆ Power to seek Assistance of Chief Metropolitan Magistrate etc.

① Tribunal / Appellate Tribunal to request in writing → Chief Metropolitan Magi.
Chief Judicial Magi.
District Collector

who shall

↓

take possession of property
Books of A/cs or other docs

↓

Cause the same to be entrusted to
Tribunal &/or other person or
Appellate Tribunal

② CMM / CJM / DC to take such steps & apply such forces as are necessary to give effect to above 2 tasks

③ No act of CMM / CJM / DC to be called into question.

* Section 430:-

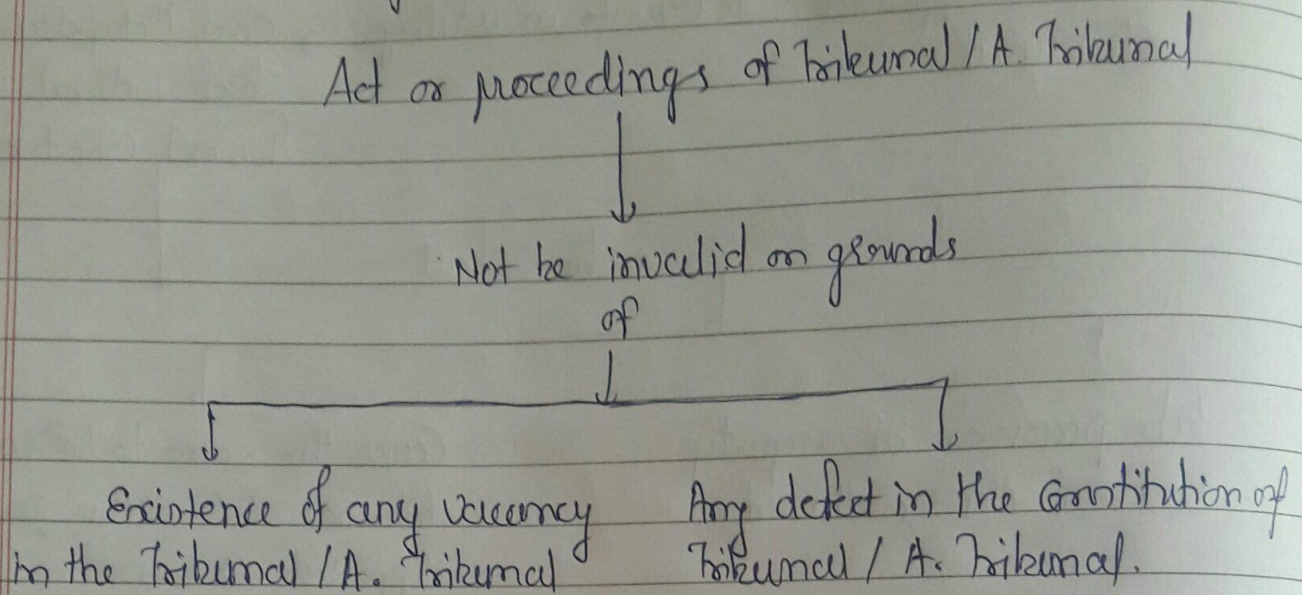
◆ Civil Court not to have Jurisdiction :-

① Civil Court Not to have → Any case which Tribunal / Appellate
Jurisdiction over Tribunal is Empowered to handle

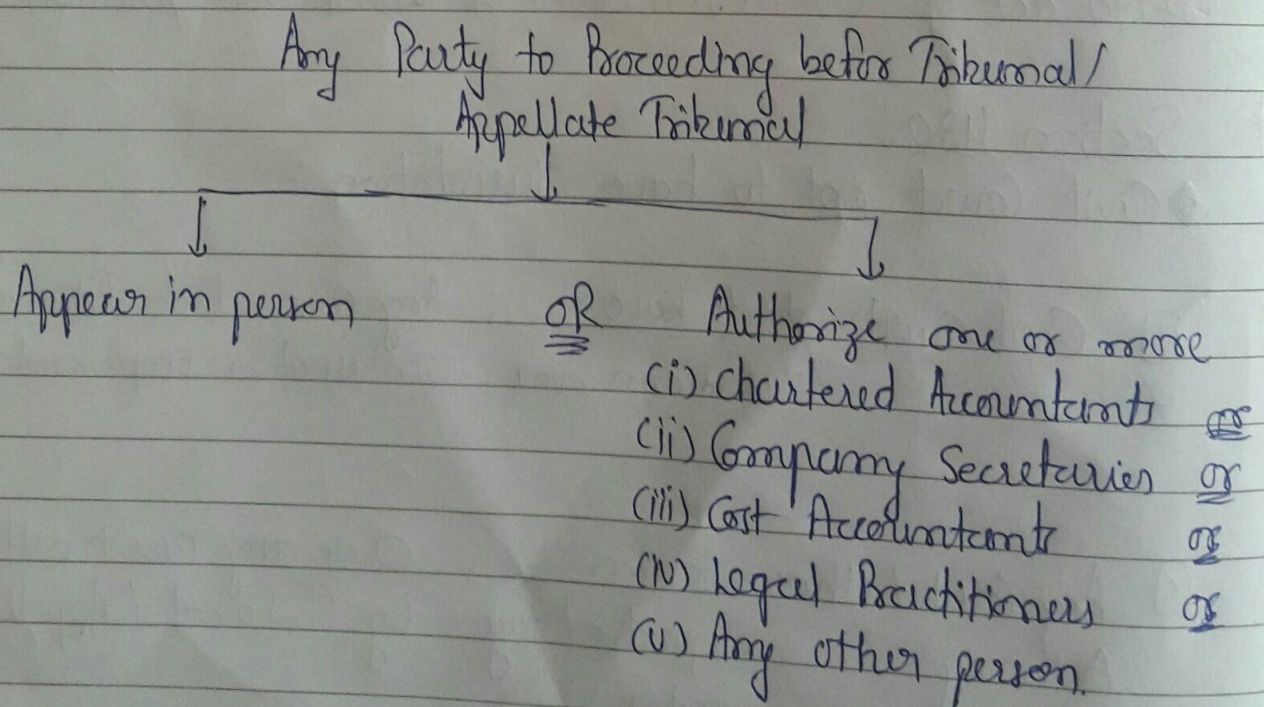
② Any Court / other Authority to provide → Over any case / matter handled
injunction / stay by Tribunal / Appellate Tribunal
order

* Section 431:-

- ◆ Vacancy in Tribunal / Appellate Tribunal Not to Invalidate Acts or Proceedings:-

* Section 432:-

- ◆ Right to Legal Representation:-



* Section 433:-
♦ Limitation :-

Provisions of Limitation Act, 1963 shall Apply to Proceedings before Tribunal / H. Tribunal

* Section 434:-
♦ Transfer of certain proceedings

→ All matters, cases etc. pending before CLB shall be transferred to Tribunal

→ Person aggrieved by decision of CLB may apply to HC within 60 days on any question of law.

• HC to entertain case even after expiry as aforesaid but not exceeding further 60 days if it is satisfied that there was sufficient cause for not filing the case within 60 days.

→ CG to make rules to transfer all matters etc to NCLT & NCLAT