

Cyber Appellate Tribunal

Introduction:

The Information Technology Act, 2000 which came into force on 17th, October 2000 was enacted to provide legal recognition for transactions carried out by means of electronic data inter change and other means of electronic communication, commonly referred to as “electronic commerce” which involve the use of alternatives to paper based methods of communication and storage of information, to facilitate electronic filing of documents with the Government Agencies and to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers Book of Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and also for matters connected therewith or incidental thereto.

The first and the only Cyber Appellate Tribunal in the country has been established by the Central Government in accordance with the provisions contained under Section 48(1) of the Information Technology Act, 2000. The Tribunal initially known as the Cyber Regulations Appellate Tribunal (CRAT). After amendment of the IT Act in the year 2008 (Which came into effect on 27.10.2009) is known as the Cyber Appellate Tribunal (CAT). The Tribunal started functioning from October, 2006 in a portion of the Department of Information Technology building at CGO Complex, Lodhi Road, New Delhi. The Act provided for the Tribunal to be headed by a Presiding Officer who is or who was or who is qualified to be a Judge of a High Court. Hon’ble Mr. Justice R.C. Jain, a retired Judge of Delhi High Court was the first Presiding Officer of the Cyber Appellate Tribunal, who joined as Presiding Officer on 4th October, 2006. The tenure of Mr. Justice R. C. Jain, as Presiding Officer of Cyber Appellate Tribunal expired on 7th December, 2007.

Now we will briefly discuss Roles and powers of Cyber Appellate Tribunal.

Establishment of Cyber Appellate Tribunal [section 48]

(1) The Central Government shall, by notification, establish one or more appellate tribunals to be known as the Cyber Regulations Appellate Tribunal.

(2) The Central Government shall also specify, in the notification referred to in subsection (1), the matters and places in relation to which the Cyber Appellate Tribunal may exercise jurisdiction.

Though the aforesaid sub-section (1) provides for appointment of one or more appellate tribunals by the Central Government but the language of the rule 13 of the cyber regulation tribunal rules, 2000 make it clear that there shall only be one tribunal and it shall ordinarily hold its sitting at New Delhi.

The aforesaid rule has further provided a lot of flexibility to cyber appellate tribunal as far as its sittings are concerned. That is, if at any time, the Chairperson of the Tribunal is satisfied that circumstances exist which rendered it necessary to have sittings of the tribunal at any place other than New Delhi, the Chairperson may direct to hold the sittings at any such appropriate place.

It is for the chairperson to exercise this ‘rule of sittings’ in a most appropriate and judicious manner. The tribunal shall notify to the parties the date and the place of the hearing of the application.

It is for the Central Government to specify by order the matters and places in relation to which the cyber appellate tribunal may exercise jurisdiction.

It was held by the Supreme Court in **Union of India vs. Paras Laminates (p) limited** “there are no doubt that the tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all the powers expressly and impliedly granted.

Composition of Cyber Appellate Tribunal [section 49]

A Cyber Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Cyber Appellate Tribunal) to be appointed, by notification, by the Central Government

Qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal [section 50]

A person shall not be qualified for appointment as the Presiding Officer of a Cyber Appellate Tribunal unless he— (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) is or has been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least three years.

Term of office [section 51]

The Presiding Officer of a Cyber Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Salary, allowances and other terms and conditions of service of Presiding Officer [section 52]

The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Presiding Officer of a Cyber Appellate Tribunal shall be such as may be prescribed: Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer shall be varied to his disadvantage after appointment.

Powers of Superintendence, direction, etc. [Section 52A]

The Chairperson of the cyber appellate tribunal shall have powers of general superintendence and directions in the conduct of the affairs of that Tribunal, exercise and discharge such powers and functions of the Tribunal as may be prescribed.

The chairperson being the head of the cyber appellate tribunal has both executive and administrative powers of general superintendence and directions in the conduct of the affair of the Tribunal, which may include presiding over the meeting of the Tribunal, exercise and discharge such powers and functions of the Tribunal as may be prescribed.

Distribution of Business among Benches [Section-52 B]

Where Benches are constituted, the Chairperson of the Cyber Appellate Tribunal may, by order, distribute the business of that Tribunal amongst the Benches and also the matters to be dealt with by each Bench.

The aforesaid section refers to an administrative function, i.e. distribution of business among benches. It shall be the prerogative of the Chairperson to distribute the business amongst the Benches and also the matters to be dealt with by each Bench.

This provision may become useful in the coming years with the increase in litigation and more and more appeals coming before the Cyber Appellate Tribunal.

Powers of the Chairperson to transfer cases [Section 52 C]

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may deem proper to be heard, or suo motu without such notice, the Chairperson of the Cyber Appellate Tribunal may transfer any case pending before one bench, for disposal to any other bench.

The aforesaid section refers to a judicial function, i.e. power of the chairperson to transfer cases after either following the laid down procedure or suo moto may transfer any case pending before one bench, for disposal to any other bench.

Decision by Majority [Section 52 D]

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 of the cyber appellate tribunal who shall hear the point or points himself and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

The aforesaid section advocates the rule-decision by majority. This section also refers to constitution of large Bench, if the members of the Bench consisting of two members differ in opinion on any point, it shall be prerogative of the Chairperson to constitute such large bench. The larger bench shall be headed by the Chairperson and consist of Members, including those who first heard it.

Filling up of vacancies [section 53]

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Cyber Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the

proceedings may be continued before the Cyber Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and Removal [section 54]

(1) The Presiding Officer of a Cyber Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the said Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer of a Cyber Appellate Tribunal shall not be removed from his office except by an order 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 the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings [section 55]

No order of the Central Government appointing any person as the Presiding Officer of a Cyber Appellate Tribunal shall be called in question in any manner and no act or proceeding before a Cyber Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Cyber Appellate Tribunal.

Staff of the Cyber Appellate Tribunal [section 56]

(1) The Central Government shall provide the Cyber Appellate Tribunal with such officers and employees as that Government may think fit

(2) The officers and employees of the Cyber Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries, allowances and other conditions of service of the officers and employees of the Cyber Appellate Tribunal shall be such as may be prescribed by the Central Government.

Appeal to Cyber Appellate Tribunal [section 57]

(1) Save as provided in sub-section (2), any person aggrieved by an order made by Controller or an adjudicating officer under this Act may prefer an appeal to a Cyber Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of tony-five days from the date on which a copy of the order made by the Controller or the adjudicating officer is received by the person aggrieved and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Cyber Appellate Tribunal may entertain an appeal after the expiry of the said period of tony-five days if it is satisfied that there was sufficient cause not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Cyber Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Cyber Appellate Tribunal shall send a copy of every order made by it to" the parties to the appeal and to the concerned Controller or adjudicating officer.

(6) The appeal filed before the Cyber Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and powers of the Cyber Appellate Tribunal [section 58]

(1) The Cyber Appellate 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 and, subject to the other provisions of this Act and of any rules, the Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

(2) The Cyber Appellate 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:—

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents or other electronic records;

(c) Receiving evidence on affidavits;

(d) Issuing commissions for the examination of witnesses or documents;

(e) Reviewing its decisions;

(f) Dismissing an application for default or deciding it ex pane;

(g) Any other matter which may be prescribed.

(3) Every proceeding before the Cyber Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code and the Cyber Appellate 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.

Right to legal Representation [section 59]

The appellant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Cyber Appellate Tribunal. 60.

Limitation of the period [section 60]

The provisions of the Limitation Act, 1963, shall, as far as may be, apply to an appeal made to the Cyber Appellate Tribunal.

Civil Court not to have jurisdiction [section 61]

No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act..

Appeal to High Court [section 62]

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Cyber Appellate Tribunal to him on any question of fact or law arising out of such order Provided that the High 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 a further period not exceeding sixty days.

Compounding of contraventions [section 63]

(1) Any contravention under this Chapter may, either before or after the institution of adjudication proceedings, be compounded by the Controller or such other officer as may be specially authorised by him in this behalf or by the adjudicating officer, as the case may be, subject to such conditions as the Controller or such other officer or the adjudicating officer may specify: Provided that such sum shall not, in any case, exceed the maximum amount of the penalty which may be imposed under this Act for the contravention so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar contravention within a period of three years from the date on which the first contravention, committed by him, was compounded. Explanation.—for the purposes of this sub-section, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Where any contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the person guilty of such contravention in respect of the contravention so compounded.

Recovery of penalty [Section 64]

A penalty imposed under this Act, if it is not paid, shall be recovered as an arrear of land revenue and the licence or the Digital Signature Certificate, as the case may be, shall be suspended till the penalty paid.

Conclusion;

The first Cyber Appellate Tribunal has been established by the central government under the Information Technology Act, 2000. The motive of Cyber Appellate Tribunal is to stop the cyber crimes and frauds over a period of time. These tribunal discharge their power as the same as Supreme Court under the code of civil procedure, 1908. The duties of Cyber Appellate Tribunal are discharged by one person, who is known as Presiding Officer. He acts and discharges his duties as Supreme Court judge.