

Energy Conservation Act 2001

Chapter IX - Appellate Tribunal for Energy Conservation

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Energy Conservation to hear appeals against the orders of the adjudicating officer or the Central Government or the State Government or any other authority under this Act.

Section 31 - Appeal to Appellate Tribunal

(1) Any person aggrieved, by an order made by an adjudicating officer or the Central Government or the State Government or any other authority under this Act, may prefer an appeal to the Appellate Tribunal for Energy Conservation:

Provided that any person, appealing against the order of the adjudicating officer levying any penalty, shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Central Government or the State Government or any other authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the 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.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Central Government or the State Government or any other authority.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where an appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Central Government or the State Government or any

other authority under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Section 32 - Composition of Appellate Tribunal

(1) The Appellate Tribunal shall consist of a Chairperson and such number of Members not exceeding four, as the Central Government may deem fit.

(2) Subject to the provisions of this Act,--

(a) The jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) A Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:

Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;

(c) The Benches of the Appellate Tribunal shall ordinarily sit at Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;

(d) The Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of the Appellate Tribunal from one Bench to another Bench.

Explanation.--For the purposes of this Chapter,--

(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under item (i) or item (ii) of clause (b) of sub-section (1) of section 33, and includes the Chairperson of the Appellate Tribunal;

(ii) "Technical Member" means a Member of the Appellate Tribunal appointed as such under item (iii) or item (iv) or item (v) or item (vi) of clause (b) of subsection (1) of section 33.

Section 33 - Qualifications for appointment of Chairperson and Members of Appellate Tribunal

(1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he,--

(a) In the case of Chairperson of the Appellate Tribunal, is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and

(b) In the case of a Member of the Appellate Tribunal,--

(i) is, or has been, or is qualified to be, a Judge of a High Court; or

(ii) Is, or has been, a Member of the Indian Legal Service and has held a post in Grade I in that service for at least three years; or

(iii) Is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with the Power or Coal or Petroleum and Natural Gas or Atomic Energy; or

- (iv) Is, or has been the Chairman of the Central Electricity Authority for at least one year; or
- (v) is, or has been, Director-General of Bureau or Director-General of the Central Power Research Institute or Bureau of Indian Standards for at least three years or has held any equivalent post for at least three years; or
- (vi) Is, or has been, a qualified technical person of ability and standing, having adequate knowledge and experience in dealing with the matters relating to energy, production and supply, energy management, standardization and efficient use of energy and its conservation, and has shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.

Section 34 - Term of office

The Chairperson of the Appellate Tribunal and every Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall hold office as such after he has attained, --

- (a) In the case of the Chairperson of the Appellate Tribunal, the age of seventy years;
- (b) In the case of any Member of the Appellate Tribunal, the age of sixty-five years.

Section 35 - Terms and conditions of service

The salary and allowances payable to and the other terms and conditions of service of the Chairperson of the Appellate Tribunal and Members of the 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 Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

Section 36 - Vacancies

If, for reason, other than temporary absence, any vacancy occurs in the office of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal, 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 Appellate Tribunal from the stage at which the vacancy is filled.

Section 37 - Resignation and removal

(1) The Chairperson or a Member of the Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal 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 Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member of the Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Section 38 - Member to act as Chairperson in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

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

Section 39 - Staff of Appellate Tribunal

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

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal, as the case may be.

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

Section 40 - Procedure and powers of Appellate Tribunal

(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The 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 (5 of 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;

(c) Receiving evidence on affidavits;

(d) Subject to the provisions of sections 123 and 124 of the Indian Evidence Act 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

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

- (f) Reviewing its decisions;
- (g) Dismissing a representation of default or deciding it, *ex parte*;
- (h) Setting aside any order of dismissal or any representation for default or any order passed by it, *ex parte*;
- (i) Any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code 1860 (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure 1974 (2 of 1974).

Section 41 - Distribution of business amongst Benches

Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Section 42 - Power of Chairperson to transfer cases

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench for disposal, to any other Bench.

Section 43 - Decision to be by majority

If the Members of the Appellate Tribunal 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 Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 44 - Right of appellant to take assistance of legal practitioner or accredited auditor and of Government to appoint presenting officers

(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner or an accredited energy, auditor of his choice to present his case before the Appellate Tribunal, as the case may be.

(2) The Central Government or the State Government may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal, as the case may be.

Section 45 - Appeal to Supreme Court

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

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 a further period not exceeding sixty days.
