

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO.679 OF 1997

New Delhi this the 08<sup>th</sup> day of December, 2000

Hon'ble Mrs. Lakshmi Swaminathan, M (J)  
Hon'ble Mr. S.A.T.Rizvi, M (A)

Sh. A.K.Gaur & Ors. ....Applicants  
(By Advocate: Sh. V.K.Rao)

VERSUS

Union of India & Ors. ....Respondents  
(By Advocates: Sh. P.H.Ramchandani & Sh. N.S. Mehta)

1. To be referred to the Reporter or not? Yes
2. To be circulated to other Benches of the Tribunal? No

  
(S.A.T. RIZVI)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No. 679/1997

New Delhi, this 08<sup>th</sup> the day of December, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)  
HON'BLE MR. S.A.T. RIZVI, MEMBER(A)

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In the matter of

1. Shri A.K.Guar  
son of Shri H.N.Gaur,  
r/o A 157, East Kidwai Nagar,  
New Delhi
2. Shri R.S.Dahiya,  
son of Shri Maha Singh,  
r/o H.No.42, Sector 9, R.K.Puram,  
New Delhi
3. Shri Israr Ahmed  
S/O SHRI r.AHMED,  
R/O 20/50, Lodhi Colony,  
New Delhi
4. Mrs.Anita Bahuguna  
w/o Anand Bahuguna,  
r/o Sec. 5, Qr. No.110,  
R.K.Puram, New Delhi
5. Shri B.N.Swamy  
s/o Shri R.N.Swamy,  
r/op Sector 8, Qr.No.371, R.K.Puram  
New Delhi
6. Mrs.Beena Singh,  
w/o Ishwar Singh,  
r/o Sector 37, Ar.No.642, Faridabad
7. Bharat Bhushan  
s/o Shri Gopi Chand  
r/o 14/32-B, Tilak Nagar,  
New Delhi
8. Shri C.B.S Negi,  
s/o Shri B.S.Negi  
r/o H. 246, Sarojini Nagar  
New Delhi
9. Shri Dwarika Prasad  
s/o Jangli Ram  
r/o Hari Singh,

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Nangal Deri,  
New Delhi

10. Shri Dev Singh  
s/o Shri Prem Singh,  
r/o 6/643, Lodhi Colony,  
New Delhi
11. Shri Dharam Veer  
s/o late K.R. Chaudhary,  
r/o 534, Jheel Delhi
12. G.C. Mudgal,  
s/o late B.M. Mudgal,  
r/o V & PO Pataudi,  
Distt. Gurgaon
13. Shri H.C. Chhabra  
s/o late Shri M.R. Chhabra,  
r/o 177/2A, Bhola Nath Nagar,  
Delhi
14. Shri H.D. Kashyap  
s/o late Hira Singh  
r/o Pkt. B5/50 A Mayur Vihar  
New Delhi
15. Shri J.K. Das  
s/o late R. Dass  
r/o 512/7A Vijya Bank Maujpur,  
Shahdara, Delhi
16. Shri J.V. Tyagi  
s/o late S.N.S. Tyagi  
r/o C 636, Sarojini Nagar,  
New Delhi
17. Shri Jatan Singh  
s/o Shri Ram Singh,  
r/o Vill & PO Khesra,  
Distt. Sonapat
18. Shri Krishna Avtar  
s/o C.L. Aggarwal,  
r/o 2-1, 1652, new Shivpuri,  
Hapur (UP)
19. Shri M.D. Gupta,  
s/o late Ram Narayan,  
r/o 3323, Paharganj,  
New Delhi

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20. Shri M.P. Bhardwaj,  
s/o late N.K. bhardwaj,  
r/o H 90, Sec. IV, DIZ Area  
New Delhi
  21. Shri Lalit Singh  
son of shri Ram Singh,  
r/o 674, Aliganj, Lodhi Road,  
New Delhi 110 003
  22. Shri M.B. Iyer,  
son of b.R. Iyer,  
r/o G 1719, Laxmi Bai Nagar,  
New Delhi
  23. Shri Mohan Lal,  
son of late Gyani Ram,  
r/o P 2, G-29, Bindyapur Ext.  
Delhi
  24. Mrs. Nirupama Khurana,  
w/o shri P.K. Khurana,  
r/o Flat no.2, Kadambari, Rohini  
New Delhi
  25. Shri O.P. Mann  
son of Shri C.R. Mann  
r/o RZ-1-156/2 Mohavir Ext.  
New Delhi
  26. Shri Om Prakash  
s/o Shri Madan Lal,  
r/o F 243, Lado Sarai  
Mehrauli, New Delhi
  27. Shri Oscar Kujur  
s/o shri T. Kujur,  
r/o 335-AD Munirka,  
New Delhi
  28. Shri Pradeep Bhattacharya,  
s/o late Shri S. Bhattacharya,  
r/o II/41, North West Moti Bagh,  
New Delhi
  29. Smt. P.K. Khanna,  
w/o Shri V.K. Khanna,  
r/o 31/87, Vishwas Nagar,  
Shahdara, Delhi
  30. Shri P.S. Negi,  
s/o Shri M.S. Negi,  
r/o B-2/44, Janakpuri,  
New Delhi

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31. Shri P.K.Bhatnagar,  
s/o late Shri M.M.S.Bhatnagar,  
r/o F 163, Nanakpura,  
New Delhi
32. Shri R.C.Jhangiani  
s/o Shri C.H.Jhangiani,  
r/o 2/88, Sunder Vihar,  
New Delhi
33. Shri R.K.Narula,  
s/o shri V.B.Narula,  
r/o 2/36, Subhash Nagar,  
New Delhi.
34. Shri R.M.S.Vohra,  
s/o Shri N.S.Vohra,  
r/o D-77/2 East of Kailash,  
New Delhi
35. Shri Amitabh Srivastava,  
s/o Shri K.D.Srivastava,  
r/o B 5/275, Sector 7, Rohini  
New Delhi
36. Shri Rajinder Singh,  
s/o Lekh Raj,  
r/o Sec. V, H.No.501, M.B.Road,  
New Delhi
37. Ms.Raka Puri  
d/o late S.R.Puri,  
r/o B 7/77/1 Safdarjung Enclave,  
New Delhi
38. Shri Ramesh Kumar,  
s/o H.L.Verma,  
r/o H 138, Nanakpura,  
New Delhi
39. Mrs.Ratna Sharma,  
w/o shri R.N.Sharma,  
r/o A 88, Patpatganj,  
New Delhi
40. Shri Raunki Lal,  
son of Shri Gita Ram,  
r/o 3/50/228, Tri Nagar,  
New Delhi

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41. Shri R.Prabhakar, son of late N.Ramaswamy,  
r/o Sec.V, 483, R.K.Puram,  
New Delhi
  42. Shri R.K.Sharma, son of late Mani Ram,  
r/o Sec.2/65, Type III, Sadiq Nagar,  
New Delhi
  43. Shri S.K.Sharma, son of Shri G.D.Sharma,  
r/o F 270, Tughlakabad  
New Delhi
  44. Smt.Santosh Sharma, w/o Shri S.P.Sharma,  
r/o B 7/Sec.9, Rohini,  
New Delhi
  45. Shri Sardari Lal s/o R.N.Katyal,  
r/o I 162, Sarojini Nagar,  
New Delhi
  46. Shri satya Vir Singh,  
s/o Shri Banwari Lal,  
r/o M 215, Sarojini Nagar,  
New Delhi
  47. Shri S.K.Singh son of shri H.S.Pundhir,  
r/o 174/A, Nirankari Colony,  
New Delhi
  48. Shri S.L.Meena son of Shri Badri Meena,  
r/o G 6/A, Lajpat Nagar,  
Ghaziabad (UP)
  49. Shri Shree Indira s/o Ram Lakhan  
r/o Sec. 7/505, R.K.Puram,  
New Delhi
  50. Shri Subhash Chander, s/o Ram Rekh  
r/o II/6691, Gandhi Nagar,  
New Delhi
  51. Shri S.C.Khuran s/o S.L.Khurana  
r/o 326/9, Gurgaon (Haryana)
  52. Shri Suraj Bhan Bhasti s/o Hari Chand,  
r/o 496 E/5-E Rama Block, Gali No.1,  
Shahdara, Delhi 32
  53. Shri S.R.Manjhi son of Suba Manjhi,  
r/o 1694, Lodhi Road Complex,  
New Delhi
  54. Shri V.B.Sharma son of Shri R.S.Sharma,  
r/o I 162, Sarojini Nagar,  
New Delhi

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55. Shri V.Kothari son of late Parma Nand,  
r/o D I/94, Lodhi Colony,  
New Delhi
  56. Veena Bhardwaj w/o M.M.Bhardwaj,  
C-6/48-2, SDA, New Delhi
  57. Shri Vilash Chand son of shri Puran Chand  
r/o C-5, Vishnu Garden,  
Khayala, New Delhi
  58. Shri Vinod Kumar Sharma  
s/o Shri P.C.Sharma,  
r/o II/9-3 B, Sector 2, DIZ Area,  
New Delhi
  59. Shri V.K.Arora s/o M.R.Arora,  
r/o F 94, Vishnu Garden, New Delhi
  60. Shri Vinay Sehrawat s/o Z.S.Sehrawat,  
r/o 85 M/4 DIZ Area,  
New Delhi
  61. Shri Virendra Kumar s/o Ballakh Ram  
r/o KS II/120, Vikaspuri,  
New Delhi
  62. Umed Singh Rawat s/o Late D.S.Rawat  
r/o A 6/7, Dayal Pur,  
Delhi
  63. Smt. Seethalakshmi w/o R.Seshadri,  
r/o I-Pkt. 33 C, Dilshad Garden  
New Delhi
  64. Shri Shashi Bhasin s/o sunil bhasin  
r/o Block Nil/1 Malviya Nagar,  
New Delhi
  65. Deepak Kumar Jain s/o N.S.P.Jain  
r/o WC 9, IARI, Pusa, New Delhi
  66. Shri Om Prakash s/o Ved Pal  
r/o E 40, South Anarkali, Delhi
  67. Shri Anil Amar Singh  
r/o D 2/149, Jeewan Park, Delhi
  68. Ashok Kumar s/o late Narain Dass  
r/o 52/24-B, Anand Prabhat , New Delhi
  69. Shri Dev Ranjan Mukherjee s/o R.R.Mukherjee  
r/o 175, MIG Flat, Saroj Kund Road, New Delhi

- (31)
70. Shri Kailash Chand s/o late Panna Lal  
r/o 111, Kapashera, Delhi
  71. Naveen Kumar Sadavarthy, s/o J.N.Sadavarthy  
r/o B-312, East of Loni Road, Delhi
  72. Shri Man Mohan Singh s/o late Gurbux Singh  
r/o A 39-A, Shivaji Nagar, New Delhi
  73. Shri R.S.Khatri s/o late Maha Singh  
r/o F 17/110, Sector 8, Rohini, New Delhi
  74. Shri Subodh Mishra s/o R.R.Mishra,  
r/o B 169, Teachers Colony, New Delhi
  75. Shri Shashi Dhar s/o late Hira Mani  
r/o 49/2 Sector 1, M.B.road, New Delhi
  76. Shri Sunil Kumar Yadav, s/o B.D.Yadav,  
r/o Adarsh Colony, Alwar
  77. Avinash K.Poddar s/o late M.Poddar  
r/o C 201, Gole Market, New Delhi
  78. Shri Sanjeev Sharma s/o O.P.Bharti  
r/o F 54, Naraina Vihar, New Delhi
  79. Shri Avinash Kumar s/o late Bhanoo Ram  
r/o 1351/C 13, Govind Puri, New Delhi
  80. Shri Dinesh Kumar s/o Raj Kumar,  
r/o B 11-A, Shanker Marg, Cali No.6,  
Mandawali Fazilpur, Delhi 92
  81. Shri Jagdish Babu son of Shri Shee Ram,  
r/o H 15-A, Shakurpur Ext. New Delhi
  82. Shri Kamaljeet Singh s/o late M.S.Bal,  
r/o Yoga Mandir, Delhi -9
  83. M.L.Meena s/o G.R.Meena,  
r/o Vill. Badla, Alwar
  84. Shri Mohan Singh s/o r.S.Bist,  
r/o 76, Sector 4, R.K.Puram, New Delhi
  85. Shri M.M.Gera s/o Mohan Lal  
r/o B 60, East Uttam Nagar,  
New Delhi
  86. Shri Ombir s/o Leela Ram  
r/o Vill.Chamanpura PO ghangola, Gurgaon



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87. Shri Ranjeet Singh s/o Sohan Singh,  
r/o B 21/4, Devli ext. New Delhi
88. Shri Ishwar Singh s/o Harnek Singh,  
r/o E 1441 Netaji Nagar,  
New Delhi
89. Shri Raghu Raj Singh s/o Shri Jai Ram Singh  
r/o K 312, Kasturba Nagar, New Delhi
90. Shri Peter Pawan Kumar  
s/o Shri A. Tappo  
r/o N 566, Sector 8, RK Puram,  
New Delhi
91. Ms. Babita Rustogi d/o late J.P. Rustogi,  
r/o 22, Shalimar Park,  
Shahdara, Delhi
92. Budh Parkash s/o late Johri Lal  
r/o 733, Harsh Vihar, Delhi 93
93. Shri D.P. Tiwari s/o Shri S.N. Tiwari  
r/o Ch. Chotu Ram Mahipal Pur  
New Delhi
94. Shri Manoj Kumar Mahto s/o R.B. Mahto,  
r/o 27/10 sector 1, Pusp Vihar, New Delhi
95. Puran Chand s/o Shiv Gopal  
r/o 169, Aliganj, Kotla Mubarakpur, New Delhi
96. Shri Ranvir Singh s/o Bhule Singh,  
Vill. Machi Ghaziabad (UP)
97. Subir Acharya s/o S.K. Acharya  
r/o C 1138, Netaji Nagar, New Delhi
98. Shri Dinesh s/o Bhawani Shanker,  
r/o B 100 Mohan Baba Nagar, Delhi
- 99/ Hukam Chand s/o late Ishwar Dass  
r/o 91, sector III, Pushpa Vihar, New Delhi
100. S.N. Mahto s/o Shri R.B. Mahto  
52/2, Sector I, M.B. Road, New Delhi
- 101 Manoj Kumar s/o Rattan Chand,  
r/o B 605, Netaji Nagar, New Delhi

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102. Suresh Mahto, S/O J.N.Mahto  
r/o Sector II/680 R.K.Puram,  
New Delhi.

103. Shri S.C.Bhamrara,  
S/O late Mani Ram,  
r/o Sector II/65, Type III,  
Sadiq Nagar, New Delhi.

...Applicants.

(By Advocate: Sh. V.K.Rao)

VERSUS

1. Union of India,  
through the Secretary,  
Ministry of External Affairs,  
South Block, New Delhi.

2. Deptt. of Expenditure,  
through Secretary,  
Ministry of Finance,  
North Block,  
New Delhi.

3. Chief Controller of Accounts,  
Ministry of External Affairs,  
Akbar Bhawan,  
Chanakyan Puri,  
New Delhi.

...Respondents.

(By Advocates: Sh. P.H.Ramchandani & Sh. N.S. Mehta)

O R D E R

By Hon'ble Shri S.A.T. Rizvi, Member (A):-

103 applicants all working on the civil accounts side of the Ministry of External Affairs (MEA) have filed this OA seeking the following reliefs:-

(i) Declare that the applicants are the employees of the MEA.

(ii) Further declare that the rules as formulated by the Ministry of Finance (MOF) with regard to the service conditions of the applicants are not applicable.

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(iii) Direct the respondents to control the administration and establishment matters relating to the applicants posted under their control.

(iv) Direct the respondents to formulate rules governing the service conditions of the applicants including promotion, seniority etc. as applicable to this classified Ministerial service.

4 2. This is the third round of litigation in the same matter. It would seem that the All India Civil Accounts Employees Association (Chief Controller of Accounts, MEA Branch) and one Sh. S.S.Arya employed as Senior Accountant in the office of the CCA, MEA had first approached this Tribunal through OA-336/95 which was disposed of by the Tribunal on 17.9.96 by a short order requiring maintenance of status quo as on the date in regard to the second applicant until a decision on the applicants' representation then pending had been conveyed. On the aforesaid occasion, the Tribunal had refused to express any opinion on the merits of the applicants' case or on the maintainability of their claim. The Tribunal had also refused to express any opinion on the question of limitation or on the question of jurisdiction of this Tribunal to adjudicate on such matters. The Tribunal had also clarified that the aforesaid order will not confer a cause of action on applicants, if otherwise there was none.

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3. We may note here that the representation filed by the applicants and which has been referred to in this Tribunal's aforesaid order of 17.9.96 was disposed of by the MEA vide their letter dated 23.10.96. They are aggrieved by the contents of the aforesaid letter ~~contained in the letter dated 23.10.96~~ dated 23.10.96 in which the MEA have conveyed that having regard to the relevant rules, it has been found that the contentions and the claims made in the applicants' representation were not tenable. Clarifying each issue raised by the applicants, the MEA have rejected the aforesaid representation briefly in the following terms:-

- (i) The recruitment to various grades/cadres of the Indian Foreign Service, Branch 'B' (IFS 'B') is governed by the IFS 'B' (Recruitment, Cadre, Seniority & Promotion) Rules, 1964. The manner of entry into IFS 'B' as suggested by the applicants' representation has not been prescribed in the said rules and would accordingly be violative of the said rules.
- (ii) The rules framed by the MOF under their notification dated 10.7.78 cannot be applied for recruitment to/absorption into IFS 'B' which is a service with its own independent rules.
- (iii) The applicants have been availing benefits under the Central Civil Accounts Service Group 'C' Recruitment Rules/Departmentalised Accounts Services Group 'D' Recruitment Rules, 1980 (for

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short "Group 'C' & Group 'D' RRs") issued by the MOF and no justification exists for submitting a representation as late as in 1994. The departmentalization of Union Accounts in Civil Ministries including MEA was a policy decision of the Government. The Government accordingly framed a set of RRs having common application to all the Civil Ministries/Departments whose accounts were departmentalised in 1976. The MOF is applying the Scheme as the nodal Ministry and is also regulating the service conditions of accounts employees uniformly for all the Ministries. There is no valid ground for treating the MEA as an exception.

(iv) The applicants' contention that the departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976 should have led to the merger of the staff transferred with the mainstream of the Ministry/Department is a convenient assumption and there is no provision in the aforesaid Act for transferring personnel to any pre-existing service in any Ministry/Department.

(v) For the reasons given, it was not possible to accede to the applicants' request for their encadrement into IFS 'B'.

4. A week later, on 31.10.96, the applicants approached the Tribunal again with a Misc. Application

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which was disposed of by the Tribunal by holding that since the final order had been passed on the applicants' representation, the remedy open to the applicants was to challenge the same. No further order was passed by the Tribunal on 31.10.96. The present application has consequently been filed on 4.3.97. 36

5. We have heard the learned counsel on either side and have perused the material placed on record.

6. At the outset, we have noted that while the applicants in their representation to the MEA had sought their encadrement into the IFS 'B', that claim has been given up in favour of a different claim referred to in Para 1 above. That is to say, they now want the respondent No.1 (MEA) to formulate separate rules governing their service conditions including promotion, seniority etc. We have also noted that while in September, 96, the application was filed before this Tribunal by All India Civil Accounts Employees Association (CCA, MEA Branch) impleading the All India Association which had been recognised by the Govt. of India as one of the respondents along with an individual (Sh. I.S.Biltoria) who was working as Senior Accountant in the Pay & Accounts Office (Civil Aviation), the present application has not been filed by any Association but by as many as 103 individual applicants. It has been contended by the respondents that all the members of the Civil Accounts Staff (Gr. 'C' & Gr. 'D') working in the MEA have not joined in filing this application. The applicants have not rebutted this allegation.

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7. In their submissions, the applicants have admitted that the respondents have been following the aforesaid Groups 'C' & 'D' RRs which had been issued by the MOF. The applicants' contention is that they are for all practical purposes the employees of the MEA and, therefore, the aforesaid rules framed by the MOF cannot be applied to them, and further that they should be governed by a separate set of rules to be framed by the MEA themselves. That since the MOF do not exercise any supervision or control over the work of the Groups 'C' & 'D' Accounts staff working in the MEA, the rules framed by them (MOF) could not be imposed on the applicants. They have further contended that following the departmentalisation of Union Accounts, each Ministry/Department became responsible for the compilation of its own accounts and the accounts personnel working in various Ministries at the relevant time were to be treated as borne on the respective cadre strength of the various Ministries/Departments. The applicants have further contended that the MEA (respondent No.1) has always been an exception as compared to the other Ministries inasmuch as the MEA have formulated separate service rules for their Stenographers and for the other Secretarial Staff (IFS 'B'), and on this basis contend that Ministry (MEA) should formulate and enforce separate service rules for the accounts staff (Groups 'C' & 'D') as well. In support of their contention, the applicants have relied on the provisions of the Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976 (for short DOUA (TOP) Act, 1976 and the allocation of business rules framed by the Govt. of

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India. According to them, a perusal of the aforesaid Act (sub-Section (i) read with sub-Section 3 of Section 2 of the Act) clearly provides for the transfer of officers and employees of the Indian Audit and Account Department (IA&AD) to Ministries/Departments or other offices of the Central Govt. on a permanent basis by severing all relations with the IA&AD, and thus the officers and the employees so transferred became part of the staff of the respective Ministries/Departments. According to the applicants, the MEA is in the circumstances duty bound in accordance with the Govt. of India's orders to frame separate rules governing the service conditions of Groups 'C' & 'D' accounts staff. 38

8. We can at once see that the relief sought in this case are unique in many ways. The applicants want us to make two declarations, one to the effect that they are the employees of the MEA and the other to the effect that the aforesaid RRs, namely, Groups 'C' & 'D' RRs framed and enforced by the MOF cannot apply to the applicants. They also want us to issue a direction to the MEA to formulate rules governing their service conditions apart from another direction to the effect that the MEA should control the administration and the establishment matters relating to the applicants posted under its (MEA) control. The last relief which is in the nature of a direction makes a strange reading. The applicants do admit that they are working under the control of the MEA and yet they want a direction from us to the same Ministry to control the administration relating to them

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and also to control the establishment matters pertaining to their services. Noting that the relief sought by way of such a direction and by way of declaration as per relief No. (i) would besides being meaningless would lead to confusion and further noting that rendering of declaration in the manner sought by the applicants vide relief No. (ii) would be beyond the jurisdiction of this Tribunal, we would limit ourselves to the relief at No. iv which requires us to direct the MEA to formulate separate service rules governing the applicants only to discover in due course that even this would be beyond the jurisdiction of this Tribunal.

9. Looking at the nature of reliefs claimed by the applicants, we can without difficulty see that this OA suffers from the defect of multiplicity of reliefs. The various reliefs sought do not necessarily flow from one to the other and are, therefore, distinct and different. The OA should, therefore, fail, to begin with, on this ground alone.

10. We have also noted that the applicants have been enjoying the benefits flowing from the aforesaid Group 'C' & Group 'D' RRs respectively without demur, and that they woke up to the need for separate service rules to be framed by the MEA for the first time as late as in 1994 when they filed their representation before the MEA. They have approached this Tribunal first in 1995, i.e., late by 15 & 17 years respectively from the year the respective service rules came into force. No reason has been advanced in support of this abnormal delay beyond

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merely stating that inaction on the part of the MEA constitutes a continuous cause of action. We are not convinced and accordingly the OA must fail on the ground of limitation also.

11. During the course of arguments, we were told that out of the 103 applicants, only 13 are the ones who were in service when the aforesaid Group 'C' and Group 'D' RRs came into force. All the others, i.e., 90 applicants were recruited and became members of the aforesaid two services only thereafter. The relief, in the event of the same being granted, will apply prospectively and, therefore, in the circumstances of this case, will affect the new entrants (90 in number) and not the ones who were in service in 1978 and 1980. The applicants were found prepared to accept this preposition in the event of the relief being granted in terms of the prayer made in the application. Quite frankly, we find this situation fairly amusing in that those primarily responsible for launching the struggle before us in the shape of this OA, namely, those initially transferred from the IA & AD, would be prepared themselves to be left high and dry at the end of the day.

12. The point was raised about some group 'C' members of staff having not been included in the list of applicants. It was argued that such of them, whether belonging to Group 'C' or Group 'D' as have not joined in this application, should have been impleaded in this case as private respondents. That having not been done, the application should fail also on account of non-joinder of necessary parties. We take note of this position also.

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13. More than any other contention, the learned counsel appearing for the applicants has placed reliance on his argument centring around the relevant provisions made in the Govt. of India (Allocation of Business) Rules, 1961 (for short "AOB Rules, 1961"). Rule 3 of the said Rules deals with the distribution of subjects. Sub-rule-2 of this Rule provides as follows:-

(2) The compiling of the accounts of each Department shall be allocated to that Department with effect from the date from which the President relieves, by order made under the first proviso to sub-section (1) of Section 10 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971; the Comptroller and Auditor General from the responsibility for compiling the accounts of that Department."

His contention is that the compilation of the accounts of the MEA thus stood allocated to the MEA and to no other Ministry/Department. Further, referring to the second schedule to the AOB Rules, 1961, he has pointed out that insofar as the Group 'C' & Group 'D' employees of Central Civil Accounts Staff are concerned, the MOF (Deptt. of Expenditure) are responsible only for organising training and examinations for the Central Civil Accounts Staff, and not for the cadre management of these groups of employees. According to him, the net effect of the aforesaid provisions read with the DOUA (TOP) Act, 1976 is that the MEA is to be treated as an independent Department/Ministry for the management of accounts of the Ministry and also for the cadre management of the Group 'C' and Group 'D' employees of the civil accounts staff working in the Ministry. His contention is that the

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powers available to the MEA in consequence of the aforesaid provisions includes the authority and the power to frame service rules for the Group 'C' & Group 'D' employees of their own civil accounts staff. We have taken a look at the subjects allocated to the MEA in order to find for ourselves whether any such power has been vested in that Ministry. We do not find any such provision in the second schedule to the AOB Rules, 1961 relating to the MEA. The said schedule provides, inter alia, for IFS Branch 'B' implying that the MEA are fully empowered to frame service rules for IFS 'B' and to deal with all other matters connected with that service. The civil accounts service has not been mentioned anywhere in the second schedule relating to the MEA.

14. A further perusal of the AOB Rules, 1961 reveals that the President may, on the advice of the Prime Minister, entrust responsibility for specified items of business affecting any one or more than one Department to a Minister who is in charge of any other Department. The rule in question is Rule 4 (3) (b). Clearly, therefore, the task of framing service rules for Group 'C' and Group 'D' employees of Civil Accounts Staff could be entrusted by the President to the Minister of Finance as the maintenance of departmentalised accounts is a matter which affects all the Ministries/Departments of the Govt. of India and quite obviously the Minister of Finance would be the most appropriate Minister to take care of this work. Whether or not the President has exercised his power to do so is a different matter and this matter need not detain us.

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15. We have also taken a look at the Govt. of India (Transaction of Business) Rules, 1961 (for short TOB Rules, 1961) framed under Article 77 (3) of the Constitution. These rules provide that all business allocated to a Department under the AOB Rules, 1961 shall be disposed of by or under the general or special directions of the Minister-in-charge. However, there is a provision for permitting departures from the rules. Accordingly, Rule 12 of the TOB Rules, 1961 provides that the Prime Minister may, in any case or class of cases, permit or condone a departure from these rules to the extent he deems necessary. We, therefore, find that while as a rule every Ministry/Department is supposed to adhere to the business allocated to it under the AOB Rules, 1961, the Prime Minister may in any case condone the act of a Minister who disposes of the work otherwise allocated to some other Minister. Under the same Rule, the Prime Minister can permit a Minister to dispose of the business otherwise allocated to another Minister. Thus, in accordance with these provisions also, the Minister of Finance could frame the service rules concerning Group 'C' & Group 'D' employees. Here again, we are not aware whether the Prime Minister has exercised the discretionary power vested in him one way or the other, but that again is a different matter *and need not detain us*.

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16. We do agree with the learned counsel for the applicants that the work relating to the framing of service rules aforesaid is not specifically allocated to the Minister of Finance and, therefore, that Ministry is not duly authorised to frame the aforesaid service rules.

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The learned counsel appearing for the respondents have not placed before us anything to show that the MOF has exercised the aforesaid power to frame the service rules in question in accordance with a specific authorization by the President or in the wake of condonation or permission granted by Prime Minister under the AOB Rules, 1961, or, as the case may be, the TOB Rules, 1961. On this subject, however, the learned counsel for the respondents have referred to the provisions of Article 77 (3) of the Constitution which is reproduced below for the sake of convenience:-

77 (3). The President shall make rules for the more convenient transaction of the business of the Govt. of India, and for the allocation among Ministers of the said business."

Their argument is that the rules made by the President under this provision are made only for the more convenient transaction of the business of the Govt. (emphasis supplied). Such rules are, therefore, intended to subserve the need for convenience in the transactions of Govt. business and are purely internal to the Govt. According to them, no one outside the Govt., such as the applicants in this case, can invoke the aforesaid Article of the Constitution or the aforesaid two Rules (AOB & TOB) made under the authority of the President to enforce his private right. We are in total agreement with this line of reasoning and insofar as the President's authorisation or Prime Minister's permission referred to in paras 14 and 15 above are concerned, we can without hesitation accept that such an authorisation or permission should be deemed to be in existence even if

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has not been made or granted in specific terms and in writing. We thus reach the conclusion that the authority of the MOF to frame the service rules for Group 'C' & Group 'D' staff cannot be questioned and in any case not after such an abnormal delay of over 15 years.

17. The learned counsel for the applicants has notwithstanding the aforesaid argument based on the relevant provisions made in the AOB & TOB Rules, 1961, held out, inter alia, the following other arguments to buttress support for the applicants.

18. Foreign Secretary is the Chief Accounting Authority in accordance with the relevant provisions made in the Civil Accounts Manual issued by the MOF. The applicants have been appointed against the posts sanctioned by the MEA. The applicants are under the budgetary control of the MEA and the expenditure incurred on account of the salary and allowances of Group 'C' and Group 'D' staff is included in the MEA's budget and not that of the MOF. The appointing authority, the disciplinary authority and the appellate authority in relation to the Group 'C' and Group 'D' staff are the officers of the MEA and the seniority/gradation list in respect of the applicants is also maintained by the MEA. Further, the applicants are not transferable to other Departments unless the reasons for doing so are recorded.

19. The aforesaid arguments advanced by the applicants will also, in our view, not assist them in any way. It is clear to us that under the Scheme for

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departmentalisation of accounts, each Department is required to compile its own accounts and is fully responsible for the same. There is nothing wrong if each Ministry under the aforesaid Scheme creates posts on the civil accounts side and makes appointments against those posts. By the same token, there is nothing wrong if the officers/officials on the civil accounts side so appointed are dealt with by each Ministry for disciplinary control purposes in the manner stated by the applicants. We also find nothing wrong if the MEA which does not participate in the CSS nor in the Central Secretariat Stenographers Service participates only in respect of the Group 'C' and Group 'D' service on the civil accounts side. There is nothing wrong similarly if each Ministry makes provisions in its own budget for the salary and allowances of the staff on the civil accounts side. As a matter of fact, it has to be so in any case in accordance with the principles of budget making in the Govt. However, nothing hereinbefore stated in this paragraph can pose a challenge to the coordinating role played by the MOF in the management of accounts of the Union Govt. as a whole. The role played by the MOF which has been impugned by the applicants is a limited role and yet an important role if one has regard to the work allocated to the MOF (DOE) under the AOB Rules, 1961.

20. According to the learned counsel for the respondents, the Ministry (MOF) played a coordinating role, inter alia, by framing the service rules for the aforesaid services applicable to the civil accounts staff

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Ministries/Departments. Thus, it will be seen from the description of duties and responsibilities of the CGA, only a few of which have been recited above that insofar as the compilation of accounts is concerned, it is the CGA who has effectively and in principle replaced the C&AG insofar as the Union Govt. is concerned. Earlier, it was the C&AG who used to discharge the same functions and the officers belonging to the Indian Audit Accounts Deptt. used to compile the accounts of the various Ministries. Viewed in this perspective also, it is not difficult to visualise that the MOF were indeed required to play the role of a coordinating Ministry insofar as the setting up of the Group 'C' & Group 'D' service in question is concerned.

22. What has been a source of surprise to us during the presentation of their case by the applicants is that they have never cared to impugn the service rules in question neither the rules as they have existed from 1978 and 1980 onward nor the amended rule which have been promulgated some time in 2000 AD, a copy of which was shown to us during the course of hearing by the learned counsel for the respondents. We also note that neither the MEA, nor, for that matter any other Ministry has protested against the formulation of the service rules in question by the MOF and yet the applicants have taken it upon themselves to argue the case out as if for the MEA.

23. Of the 103 employees on the civil accounts side in the MEA, only 13 are those who actually belong to the

IA & AD and were transferred to the MEA in accordance with the Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976. All the other members of the staff are creatures of the aforesaid service rules and have become members of Group 'C' or Group 'D' service as the case may be, under and in accordance with the said service rules. These other officials, 90 in number, cannot, according to the respondents, protest against the service rules in any case. It is a different matter that for reasons already mentioned the remaining 13 cannot also do so and in any event not after securing benefits under the said rules for 15 years or so.

24. In relation to the origin of the 1978 and 80 rules, the learned counsel for the respondents have brought to our notice that whereas the said rules came into force respectively from 10.7.78 and 16.7.80, the notification making provisions for the "Organisation of the Controller General of Accounts" was issued on 27.9.80. Thus, the RRs in question are of earlier origin. In a way, therefore, the CGA inherited the said rules, and are accordingly performing the functions assigned to them in accordance with those rules. The aforesaid notification of 27.9.80 cannot have an overriding effect over the statutory RRs issued by the President under Article 309 of the Constitution. The learned counsel for the respondents have, in this context, drawn our attention to the Supreme Court's judgement in State of Haryana Vs. P.C. Wadhwa reported as (1987) 2 SCC 602 in which the Apex Court has held that the rules of business cannot override the statutory provisions.

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25. Insofar as the main relief sought by the applicants is concerned, the learned counsel for the respondents have recounted before us the decision of the Apex Court in Mallikarjuna Rao Vs. State of A.P. reported as (1990) 2 SCC 707 wherein it has been held that judicial interference is not called for in matters relating to framing of recruitment rules. The Apex Court has in that case observed as follows:-

"....The power under Article 309 of the Constitution to frame rules is the legislative power..... The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309..... The courts cannot ..... even indirectly require the executive to exercise its rule making power in any manner...."

We clearly see the limitation imposed on us by the aforesaid observation of the Apex Court.

26. The learned counsel for the respondents have also asserted that the departmentalisation of accounts is a policy decision of the Govt. which does not warrant any judicial review. Our attention has been drawn in this connection to the judgement of this Tribunal in N.N.Chaudhary Vs. Union of India reported as (1992) 20 ATC 495. The applicant in that case had attempted to seek judicial review of certain aspects of departmentalisation of accounts but the Tribunal refused to oblige. The Tribunal had in that case observed as follows:-

"...the other issues agitated by the applicant in the OA raise basic policy issues in regard to the organisation and staffing control of finance and accounts

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wing in the Ministries/Departments under the scheme of departmentalisation of accounts..."

The Tribunal thereafter made a reference to the decision of the Apex Court in the Mallikarjuna Rao's case (supra) and further observed as follows:-

"In the circumstances of the case, we do not see any merit for our interference in the policy matters on which the reliefs prayed for are based as they are not open to judicial review."

27. The learned counsel have further contended that it is the policy of the Govt. that the departmentalised accounts offices in Ministries/Departments should be integral part of those Ministries/Departments but simultaneously they should also function as self-contained units to the extent it is administratively possible. The same is necessary for maintaining some degree of independence in conducting pre-check of bills, internal inspection of accounts and maintenance of accounts. They have further submitted that it is the policy of the Govt. to have a specialised accounts service for maintenance of accounts of civil Ministries/Departments instead of merging the accounts personnel in other services of the Ministries/Departments. It is for this purpose that separate accounts services known as Indian Civil Account Service and the Central Civil Account Service were created at the time of departmentalisation of account. According to them, a care has been taken that persons responsible for authorising payments are in a position to maintain some degree of independence from those who are

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responsible to draw money and that fraudulent payments do not take place. A sufficient degree of independence has to be ensured by devising an appropriate staffing pattern. The related matters deal with delicate issue relating to procedure for regulating the flow of money and the Govt. is the best judge to take such decision within the frame-work of law. The applicants' attempt, according to them, to seek judicial direction in this regard is misconceived.

28. The present application is, according to the respondents, also barred by latches, estoppel and acquiescence. After over two decades of departmentalisation of accounts, the accounting and the administrative set ups have taken well-defined shapes and are working smoothly in all Ministries including the MEA. Things cannot be allowed to be un-settled at this stage merely because some of the employees in the MEA feel that there should be a separate set of RRs for them. According to the respondents, there is no law under which the applicants can claim framing of another set of RRs when the RRs already exist.

29. For all the reasons brought out in the preceding paragraphs, the OA is found not only to be time barred but also totally devoid of merit. The same also suffers from multiplicity of reliefs and non-joinder of necessary parties. The application also suffers from the jurisdictional problem. For it is patently outside the jurisdiction of this Tribunal to direct the MEA to frame

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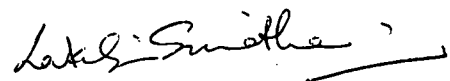
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a fresh set of recruitment rules for the applicants particularly when time tested rules already exist.

30. In the result, the OA is dismissed without any order as to costs.

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(S.A.T. Rizvi)  
Member (A)



(Smt. Lakshmi Swaminathan)  
Member (J)

/sunil/