

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 1239/94
T.A. No. 2011/94
CA No. 2011/94
CA No. 1140/95

DATE OF DECISION 23/08/96

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All India CCA JAO's Assn : Applicant (s)

Shri K. Srinivas & Shri V.K. Rao Advocate for the Applicant (s)

Versus

GoI and others Respondent (s)

Shri M. Chandra Sekharia Advocate for the Respondent (s)

CORAM :

Shri M. Ic Gupta
Mrs. Anuradha Ahlawat

The Hon'ble Mr. A. V. HARIDASAN, VC (T)

The Hon'ble Mr. R. K. ATTOSTA, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes

23/08/96

Reckha -
(R. K. ATTOSTA)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. 1339/94,
O.A. 1140/94
and

O.A. 2011/94

MA 842/96, MAS 780 to 784/96 and RA/81/96
in O.A. 1339/94

New Delhi this the 23rd day of August, 96

Hon'ble Shri A.V. Haridasan, Vice Chairman(J).

Hon'ble Shri R.K. Ahooja, Member(A).

O.A. 1339/94.

1. All India Central Civil Accounts, JAO's Association, (Recognised) through its Secretary, Shri V.K. Sharma, 171, Kamla Nehru Nagar, **Ghaziabad (UP).**
2. Shri N.D. Sharma, JAO, S/o Shri M.P. Sharma, R/o 1151, M.S. Second, Timarpur, **Delhi.**
3. Shri B.L. Sharma, AAO, S/o Shri Bhuramal Sharma, R/o I-242, Sarojini Nagar, **New Delhi.**

...Applicants.

Versus

1. Union of India through its Secretary, Ministry of Urban Development, Nirman Bhawan, **New Delhi.**
2. Chief Controller of Accounts, Ministry of Urban Development, Nirman Bhawan, **New Delhi.**
3. The Govt. of National Capital Territory of Delhi, through its Secretary, 5, Sham Nath Marg, **Delhi.**
4. The Finance Secretary, Govt. of National Capital Territory of Delhi, 5, Sham Nath Marg, **Delhi.**

...Respondents.

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5. The Secretary (PWD),
Govt. of National Capital
Territory of Delhi,
5, Sham Nath Marg,
Delhi. .. Respondents.

O.A. 1140/95

M.L. Gupta,
S/o Shri I.L. Gupta,
R/o D-129, Sarojini Nagar,
New Delhi-23. .. Applicant.

Versus

1. Union of India through
its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. Chief Controller of Accounts,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

3. Govt. of National Capital
Territory of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.

4. Secretary,
Public Works Department,
Govt. of National Capital,
Territory of Delhi,
5, Sham Nath Marg,
Delhi.

5. Shri K.P. Sunny, JAO,
through Secretary (PWD),
Govt. of National Capital
Territory of Delhi,
5, Sham Nath Marg,
Delhi.

.. Respondents.

O.A. 2011/94.

1. All India Central Civil
Accounts JAO's Association
(Recognised),
through its Secretary
Shri V.K. Sharma.

2. Shri A.K. Dixit, AAO,
S/o Shri V.N. Dixit,
R/o 109-D, Pocket 'A',
Dilshad Garden,
New Delhi.

.. Applicants.

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1. Union of India through its Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Chief Controller of Accounts, Ministry of Urban Development, Nirman Bhawan, New Delhi.
3. The Govt. of National Capital Territory of Delhi, through its Secretary, 5, Sham Nath Marg, Delhi.
4. The Finance Secretary, Govt. of National Capital Territory of Delhi, 5, Sham Nath Marg, Delhi.
5. The Secretary, (PWD) Govt. of National Capital Territory of Delhi, Delhi.

.. Respondents.

By Advocates - S/Shri A.K. Sikri with V.K. Rao for the applicants (in O.As 1339/94, 1140/94 and 2011/94).

By Advocates - Shri M. Chandrasekharan, ASG with Shri M.K. Gupta for Central Govt.

- Mrs Avnish Ahlawat with Shri B.S. Gupta, Counsel, for the NCT, Delhi.

By Advocates- S/Shri S.K. Rungta, George Paricken for the interveners.

O R D E R

Hon'ble Shri R.K. Ahooja, Member(A).

As similar questions of fact and law arise in the aforementioned O.As, they are therefore, being disposed of by this common order.

O.A.1339/94

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2. The applicants, who belong to the Indian Civil Accounts Department of Ministry of Urban Development, are working as Divisional Accountants in various PWD Divisions of National Capital Territory of Delhi (hereinafter referred to as 'NCT Delhi'). They (No.F.3/7/94-A dt. 08.6.94) are aggrieved by the order of Respondent No. 3/ by which their services are sought to be placed back at the disposal of the Ministry of Urban Development w.e.f. 30th June, 1994. The aforesaid order is impugned on the ground that Respondent No. 3 is not competent to issue such an order as no functionary in the Govt. of NCT Delhi has such an authority not being the controlling authority of the applicants and also because PWD does not come under the executive control of the Govt. of NCT Delhi.

3. We may mention at this stage that after the application was filed, this Tribunal had vide its interim order dated 1.7.1994 directed the respondents to maintain the status quo. This order had been continued from time to time till 21.3.1996 when by order of the same date the O.A. was dismissed for default of appearance on the part of the applicants. Thereafter, the applicants moved an

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M.A. 664/96 for restoration of the OAs which was allowed vide order dated 29.3.1996. Interim order passed on 1.7.1994 which was in force till 21.3.1996 was also revived by the same order. However, the Respondents 3 to 5 at that stage submitted that in the intervening period some of the applicants had already been repatriated to their parent cadre. During the hearing on 18.4.1996 when a number of Miscellaneous Applications were taken up for consideration, representations were made by the counsel for various parties that in view of the confusion about relieving of certain applicants and secondly because of non-payment of salary to them, it would be desirable to dispose of these O.As.. finally at the admission stage itself. The staff of the NCT Delhi who have been issued posting orders in the place of the applicants also sought to be impleaded as interested parties. We also heard them as interveners in the case.

4. The case of the applicants in a nutshell is that the Public Works Department (for short 'PWD') of NCT Delhi is a part of the Central Public Works Department (for short 'CPWD') and all officers and staff including the accounts staff working in the PWD thus belong to the CPWD. The accounts staff of the CPWD are under the administrative control of the Chief Controller of Accounts,

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Ministry of Urban Development. Prior to 1976, the cadre controlling authority was the Accountant General under the Comptroller of Auditor General. By an Act called 'The Departmentalisation of Union Accounts (Transfer of Personnel) Act, 1976', Respondent No.2, namely, the Union of India through Secretary, Ministry of Urban Development, was made their controlling authority. All the civil works and public works department of the Union of India have been treated to be under the Ministry of Urban Development by virtue of Allocation of Business Rules, 1961. The applicants submit that the 69th Constitutional Amendment/Article 239-AA relating to special provisions in respect of Delhi and the enactment of Govt. of National Capital Territory Act, 1991 (for short 'NCT Act, 1991') have made no difference to the situation as far as the powers of the Govt. of NCT Delhi are concerned in respect of the PWD and its staff which continue to be a part of the CPWD and under the control of the Ministry of Urban Development, Govt. of India. The applicants submit that in view of this position, the impugned order passed by respondent No.3 is without jurisdiction and competence.

5. The Respondents 1 and 2, Union of India and the Chief Controller of Accounts, Ministry of Urban Development (hereinafter referred to as 'the Central Government') and Respondents 3 to 5, namely, The Govt. of NCT Delhi, the Finance Secretary, NCT and

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the Secretary PWD of NCT (hereinafter referred to as 'NCT Delhi) have filed their separate replies and have taken divergent stands from each other. The Central Government agree with the applicants that the impugned order dated 8.6.1994 is illegal, ultravires and immature. They contend that the Constitution recognises only two types of services, namely, services under the Union and services under the States (vide Part XIV of the Constitution) and that there are no separate services for the Union Territories (UTs). This is because Union Territories, for most of the purposes of the Constitution, are treated as part of the Union. Hence, the services/posts of the staff working in NCT Delhi are the services/posts in connection with the affairs of the Union. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 include all services/posts of the NCT Delhi. In view of this, the service conditions of employees under the control of NCT Delhi and the employees working under the Union are to be regulated by the Union under proviso ^{to Article 309} / (2) of the Constitution. Thus, the decision of the Central Government must have overriding effect on the decision, if any, of NCT Delhi. Therefore, the NCT Delhi cannot seek replacement of the Accountants, applicants in this case, by its own staff without the approval and consent of the Central Government which in the present case has not been obtained.

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6. The Respondents 3 to 5, Govt. of NCT Delhi, have sought to refute the claim of the applicants that the NCT Delhi is not competent to send them back to their parent cadre. The respondents contend that the applicants were transferred from the Union Accounts department on deputation without deputation allowance as a result of separation of Accounts from Audit in 1977. They were allowed to continue for a long period due to the shortage of the qualifying staff with the NCT Delhi. The NCT has its own cadre since 1982. The NCT Delhi has come out of this shortage only in 1994 when 108 officials of this Government have qualified the common SAS examination conducted by the CGA. Prior to enactment of Govt. of NCT Act, 1991, Delhi had a status of Union Territory without Legislature and the transactions relating to expenditure, receipts etc. were accounted for under the Consolidated Fund of India. After the Delhi came to be declared as National Capital Territory of Delhi, Delhi has been given the status of a Union Territory with Legislature. Consequently, a separate Consolidated Fund of NCT Delhi has been formed. Separate demands for each department which includes PWD also are prepared and presented by the Finance Minister of the NCT Delhi before the Assembly and the CAG report on the accounts of the NCT Delhi is also placed before the Assembly along with the Finance Accounts and appropriate accounts. The accounts of the PWD Divisions are rendered to Pay and Accounts Office No. XXII which is a subordinate office of Controller of Accounts, Govt. of NCT Delhi. The NCT Delhi,

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therefore, contends that after the insertion of Article 239AA, the Legislative Assembly has been given power to make laws with respect to any of the matters enumerated in the State List or in the concurrent list except matters in respect to entries 1 (Public Order), 2 (Police) and 18 (Land, i.e. to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization), ^{and} of entries 64, 65 and 66 in so far as they relate to entries 1, 2 & 18. Thus, the Assembly has full authority to make laws in respect of all matters which involve the ~~development~~ ^{and} Public Works Department (PWD). The NCT Delhi (Allocation of Business) Rules 1993 have also led to the creation of a separate department of PWD with a separate budget provision and demand. The respondents have, thus, full control over its Public Works Department. There is also a separate accounts service constituted in 1982 with its own rules. The applicants it is contended, are on deputation though without deputation allowance. The respondents thus claim that they are fully entitled to repatriate the applicants and parent department which is responsible to give them appropriate postings. They have thus no cause for grievance so far as NCT Delhi is concerned.

7. We have heard the counsels for the applicants as well as the Central Government and NCT Delhi at great length. The Additional Solicitor General has also appeared on behalf of the Central Government. After perusing the pleadings on record and hearing the arguments of the counsel, we consider that the main question requiring adjudication is whether the Government of NCT Delhi can determine the postings and transfer of the staff of the PWD contrary to the wishes of the Central Government.

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8. The counsel for all the parties have taken us extensively through the history of the political and administrative developments from the time Delhi was declared the Capital of Government of India till the 69th amendment of the Constitution and the enactment of the NCT Delhi Act, 1991, as seen and interpreted from their own perspectives. The applicants point out that when the Capital was shifted from Calcutta to Delhi the Governor General-in-Council by his proclamation dated 17.9.1912 took under his immediate authority and management the territory of Delhi. The Delhi Laws Act, 1912 provided for the administration of the territory of Delhi by a Chief Commissioner, as a separate province. The office of Land and Development Officer came into being as a separate organization under the administrative control of the Chief Commissioner of Delhi. Under Section 94 of the GOI Act, 1935 Delhi continued to be a Chief Commissioner's province and as such was administered by the Governor General acting to such extent as he thought fit through a Chief Commissioner to be appointed by him in his discretion. Delhi became a Part 'C' State w.e.f. 26.1.1950 under the Indian Constitution. The States specified in part 'C' of the First Schedule were to be administered by the President under Article 239(1) acting to such extent as he thought fit, through a Chief Commissioner or a Lt. Governor to be appointed by him. Part 'C' states ceased to exist from 1.11.1956 by virtue of the Seventh Amendment and in their place Union Territories were substituted in the First Schedule to the Constitution including the Union Territory of Delhi on

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1.11.1956. Article 239(1) was amended by the Constitution (7th amendment) Act, 1956 w.e.f. 1.11.1956 providing that every Union Territory shall be administered by the President acting to such extent as he thinks fit through an Administrator. In 1959, the decision was taken by the GOI to transfer the administrative control of the office of L&DO Delhi from Delhi Administration to the Ministry of Works Housing and Supply. The applicants contend that in terms of this constitutional provision all the services in the Central Government were under the control of the Central Government and the staff working in the PWD came under the Allocation of Business Rules, under the administrative control of Ministry of Urban Development. Copies of large number of posting orders involving the staff of PWD including the accounts staff issued by the Central Government have been annexed with the application. In support of this contention our attention has been drawn to the fact that the powers of the President and the Administrator are overriding even in respect of legislative powers granted to the Assembly. Our attention is also drawn to Section 44
1991 of the NCT Act /which provides that for the conduct of business, the President shall make the rules. The applicants contend that only such powers can be exercised by the ~~NCT~~ Government in respect of the employees of the Union Territory which are delegated by the President and in the present case no such power has been delegated as the Central Government, in its reply, has vehemently made it clear. The reading of the constitutional and administrative developments in respect of Delhi are

essentially the same in so far as Respondents 1 and 2 i.e. the Central Government are concerned. The latter have made the additional point that in the correspondence between the Ministry of Urban Development and the NCT Government, it has been made abundantly clear to the latter that the Ministry is the only authority to make the postings and the transfer to and from PWD and that the powers of the Govt. of NCT Delhi extend only to transfers within the Delhi offices of PWD. The respondents also point out to the difficulties in effecting adjustments of staff and also to the understanding given to such staff working in Delhi that they will be absorbed in the new accounts service constituted by Delhi Administration in 1982.

9. Mrs. Avnish Ahlawat, learned counsel for the NCT, Delhi, argued that the administrative and constitutional developments in regard to the Delhi have shown a persistent enhancement in the powers of the Govt. of NCT Delhi, culminating in the introduction of Article-239-AA and the NCT of Delhi Act, 1991. Thus, for instance, the Govt. of India had delegated the powers for creation of posts in respect of not only B, C and D but also 'A' posts even prior to the ^{enactment} ~~Constitution~~ of the NCT Act, 1991. She also contended that vide notification No. F.30/ 1/81-C dated the 15th Feb., 1982, Rules for the setting up of the Delhi Administration Accounts Service were promulgated. This notification was issued with the prior approval of the Central Government. Rule 7 thereof provided that the vacancies in Grade-II shall be filled by promotion from amongst Grade-II officers of subordinate service who pass the SAS examination, while appointments to

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Grade-I shall be made by promotion from Grade-II officers of the service. The rules also provide that the requisite number of officers may be appointed by transfer on deputation of officers holding equivalent posts in departmentalised accounts organization of Ministries of Govt. of India. The Schedule to the rules also includes at Serial No. 27, "the Public Works Department". Thus, according to the learned counsel, the position even prior to the coming into force of the NCT, Delhi, Act, 1991 was that the Administrator had acquired the powers to create the accounts posts and a separate Delhi Administration Accounts Service had been constituted in 1982, which included scheduled posts in the Public Works Department. She also drew our attention to certain orders issued by Pay and Accounts Office whereby Divisional Accountants were transferred from one office of the PWD to other office in the CPWD. She further contended that the provision for the promulgation of NCT Delhi Act, 1991 with its separate Legislative Assembly with a Council of Ministers had given NCT Government an altogether different status and position. The Committee which was set up to go into the question of system to be adopted suitable to the new Constitutional set up of the NCT Delhi had recommended the formation of a separate PWD to be ^{constituted} manned by officers of its own cadre. These recommendations were accepted by Govt. of NCT Delhi and in exercise of powers conferred by Section 44 of the NCT Delhi, 1991, the President had notified the National Capital Territory of Delhi (Allocation of Business) Rules, 1993, as a result of which a separate

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Department of PWD under the NCT Govt. came into being w.e.f 1.12.1993. This department catered to all public works including construction of school, buildings, roads, hospitals, etc. which were the sanctioned works of various Government departments. The demands for such works were voted upon by the Legislative Assembly of the NCT Delhi. Thus, the CPWD had nothing to do with the PWD except in so far as the latter was constrained to borrow officers from the CPWD due to its manpower constraint at the formative stage. The applicants, she argued, were not members of the Delhi Administration Accounts Service and had admittedly been working in the PWD offices on 'deputation' even though without payment of deputation allowance. Now that the NCT Delhi had a number of its own eligible officers in the subordinate services, it had to give them promotion and adjust them suitably in the PWD. The NCT Delhi, however, appreciating the difficulties of the Central Government, decided to repatriate the Divisional Accountants, ~~the interveners~~ in batches over a period of time and the impugned orders concerned only the first batch of 20.

10. The counsel for the staff of NCT Delhi, who have been given posting orders in the place of applicants, point out that in compliance of these orders, some of them have already taken over their new posts and it will be harsh on them if they were now asked to revert back to the lower posts. It was also argued on their behalf that they had prepared for the SAS examination on the expectation that they will be considered for promotion for appointment to Delhi Administration Accounts Service. The position of the applicants with the Delhi Administration was that of deputationist and, therefore, no rights vested in them to continue for such a long period in the posts under the NCT Delhi.

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11. We have given our careful consideration to the pleadings on both sides and arguments which were advanced by the learned counsel for all the parties at great length.

12. It is not necessary for us to comment upon the constitutional position of NCT Delhi. The question for consideration is whether the Govt. of NCT, Delhi had the competence to issue the impugned orders of transfer for repatriation of the applicants. The position, so far as the Respondents 3 to 5, is concerned, is that the applicants came on deputation; that since 1982 there is a separate Delhi Administration Accounts Service; that NCT Delhi has a separate Public Works Department; that the powers for creation of posts have been delegated to the Administrator and that finally, with the coming into being of NCT Delhi Act, 1991 with its own legislative assembly, it has acquired the powers of a State Government except in respect of the reserved subjects. We, however, find a major weakness in this stand. In spite of the constitutional developments in regard to Delhi by the introduction of Article-239AA and the coming into being of NCT Delhi Act, 1991 there is no doubt whatsoever that Delhi still continues to be a Union Territory (UT). As a Union Territory, all the posts and services under its control continue to be Central Services and Posts. As the learned Addl. Solicitor General has pointed out the Constitution of India recognises as per Part-XIV 'Only services under the Union and the State'. Similarly civil posts are either under a State Government or the Central Government. Rule 3 of the Delhi Administration Accounts Service also provides as under:-

"3. Constitution of Service and its classification:

(1) On and from the date of commencement of these rules shall be constituted a Central Civil Service to be known as the Delhi Administration Accounts Service:

(2) The service shall have two grades, namely,

Grade-I,
Grade-II

(3) The posts in Grade-I shall be Central Civil Posts in Group 'B' and those in Grade-II shall be Central Civil Posts in Gr. C.

(4) Members of the Service shall, in the normal course, be eligible only for appointment to the various grades of the service to which they belong and not to any other service."

(Emphasis supplied)

(The schedule attached to the rules also mentions only one post for the PWD)

13. Article 239(1) of the Constitution provides that:

"Save as otherwise provided by Parliament by law, Every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify".

Thus, all powers of the UTs administration flow from the President. The powers of the Lt. Governor (Administrator) to frame rules under Article 309 also flow from the President. The question, therefore, to be determined is whether the President has delegated powers to the NCT Delhi, which is a Union Territory, to make laws in respect of the Public Works Department and the services manning the Public Works Department. In case, the legislative powers have been delegated by the Parliament to the Legislative Assembly of the NCT Delhi to provide for the constitution of a separate unit of PWD and to frame laws in respect of its officers/employees, then it may be argued that the executive function follows the legislative function and where the legislative powers have been delegated, the executive powers would also be deemed to have been delegated. We have, however, not been shown any provision or rule by which such powers have been delegated to the NCT Delhi. Power has admittedly been delegated to the Lt. Governor by the President to create posts of certain categories. It is also correct that the demands for such posts will be voted upon and granted by the Legislative Assembly of Delhi and further that salaries will be paid from consolidated fund of the NCT Delhi. The President may thus be assumed to have delegated the authority to administer the Public Works Department, to NCT Delhi. However, such delegation which

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enables NCT Delhi to act in the manner of a State Government do not confer upon the Administrator the authority of a Governor of a State nor the Legislative Assembly the powers of a State Government so long as the NCT Delhi remains a Union Territory. In other words, the delegation is not absolute and does not result in the subtraction of the powers of the President as regards the administration of a Union Territory. Section 49 of the NCT Delhi Act, 1991 provides that notwithstanding anything in this Act, the Lt. Governor and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President. The executive powers exercised by the Lt. Governor in respect of various services of the NCT Delhi are as already discussed subject to the overall control and supervision of the President. Under the Government of India (Allocation of Business) Rules, 1961 it is the Ministry of Urban Development which is concerned with Public Works and, therefore, the NCT Delhi will be subject to the general control and supervision of the Ministry of Urban Development in so far as the management of the services of its Public Works Department is concerned.

14. It will be seen that in the present instance, the NCT Delhi had issued the impugned order despite the objections of Ministry of Urban Development. The NCT Delhi has shown that it has been issuing orders

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of transfer of employees from one Division of the PWD to another, without prior concurrence and approval of the CPWD/Ministry of Urban Development. However, this is the first instance when the NCT Delhi has issued orders of transfer of officers outside of PWD without the concurrence of the Govt. of India. In our view, such a power does not vest with the Govt. of MCT Delhi. Whatever powers may have been exercised by the NCT Delhi in respect of its employees, such employees continue to be part of the services of the Union. Hence, the powers of NCT Delhi are to be exercised under the general directions and control of the Central Government. Where the Central Government chooses to exercise its overriding authority, the NCT Delhi has no alternative but to comply with any directions that may be given to it.

15. We are fortified in our view by the fact that the Lt. Governor of Delhi exercises its powers to make immediate rules and regulations of the employees under his control only in exercise of powers delegated to him by the President.

16. In coming to the conclusion that the NCT Delhi did not have the authority and competence to issue the orders of repatriation of the applicants in face of objections by the Central Government, we do not mean to comment upon the desirability or otherwise, of the action taken by the NCT Delhi. It would appear that the Central Government has allowed the establishment of the Delhi Administration Accounts Service as far back as in 1982. It has also allowed the setting up of the PWD of the NCT Delhi. Delhi

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Administration Accounts Service Rules provide for promotions from the subordinate services, Ministerial as well as Executive, of those who have passed the requisite SAS examination. The applicants are admittedly not a part of the Delhi Administration Accounts Service. It was argued on behalf of the applicants that there was an understanding given to the applicants that they will be considered for absorption in the Delhi Administration Accounts Service. Be that as it may, it appears to us necessary, in the interest of justice, that the Delhi Administration Accounts Service which has been constituted with the approval of the President, should be able to function and meet the requirement for which it was set up. It is, of course for the Central Government and the NCT Delhi to decide as to whether the applicants should be absorbed or not in the Delhi Administration Accounts Service, but a decision should be taken within a definite time frame so that the cadre problems are resolved once for all.

17. In the light of the discussion above and the facts and circumstances of the case, in particular the status of the NCT Delhi as a Union Territory, we come to the conclusion that respondents no. 3 to 5 did not have the competence to issue the impugned orders for repatriation of the applicants. Accordingly, the orders (F.3/7/94-A) dated 08.6.1994 are quashed. The applicants will be treated to be continued in their positions in the PWD until such time they are either absorbed or transferred out of NCT Delhi with the concurrence of the Central Government. The applicants will also be entitled to back

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wages for the period they have not been allowed to work in their posts under the respondents 3 to 5.

16. There will be no order as to costs.

MA 842/96 in O.A. 1339/94

This M.A. is on behalf of Respondents seeking to recall/modify of the order dated 29.3.1996 whereby O.As 1339/94, 2011/94 and 1140/94 were restored and the interim order dated 1.7.1994 was revived.

2. It was pleaded that when the aforementioned O.As stood dismissed and the order of status quo dated 1.7.1994 came to an end, NCT Delhi started filling the posts of AAOs/JAOs from their own cadre who had passed SAS examination and were already holding the posts of AAOs/JAOs in various departments of the NCT Delhi. It was further submitted that they issued the orders in order to fill up the twenty posts occupied by the applicants/deputationists. It was prayed that since the situation as on 1.7.1994 could not be retrieved, the restoration order dated 29.3.1996 may be suitably modified. This M.A. was also taken up for disposal at the time of final hearing.

3. In view of the order passed in the aforementioned O.As, this M.A. has become infructuous and is disposed of as dismissed.

M.As 780 to 784/96 in O.A. 1339/94.

These M.As have been filed by Sanjiv Sharma and Ors. They are SAS qualified officers of the NCT Delhi who have been appointed as JAOs vide order

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dated 22.3.1996. These M.As were opposed by the applicants in O.A No. 1339/94 and connected O.As. as well as Respondents 1 and 2, i.e. Central Govt., on the ground that the present O.As were filed against the competency of the Respondents 3 to 5. They ^{however} did not contest the power of the NCT Delhi to promote the applicants in the M.As.

2. Even though these M.As 780 to 784/96 were not allowed, in the facts and circumstances of the case they were heard during the final hearing as interveners through their counsel.

3. In view of the order passed in the aforementioned O.As, no further orders are required to be passed in these M.As. These M.As are accordingly disposed of.

RA 81/96 in O.A 1339/94

This R.A. has been filed by one Shri Shailesh Gupta, who belongs to the SAS cadre of NCT Delhi, seeking review of the order dated 29.3.1996 restoring the O.As 1339/94, 1140/94 and 2011/94, which were dismissed in default on 21.3.1996. It has been stated that the applicant and other successful candidates in SAS examination of NCT Delhi were awaiting promotion/appointment to the post of JAO/Divisional Accountant. But due to the said order passed on 1.7.1994 in the aforementioned O.As, he could not secure appointment against the post which was subject matter of the O.As. On the O.As being dismissed in default on 21.3.1996, the orders for repatriation of 20 JAOs/Divisional Accountants were

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issued on 22.3.1996 and on the same date the applicant and others were appointed/promoted to the post of JAOs. The applicant was also relieved from joining his new place of posting on 26.3.1996. However, due to the restoration order dated 29.3.1996, his interest has been adversely affected as he might be reverted to his previous post. The review of the order of restoration has been sought on the ground that the applicants in the O.As suppressed the material facts of issue of fresh order of repatriation on 22.3.1996 and his appointment orders on the same date.

2. This R.A. was also taken up for disposal at the time of final hearing along with the aforementioned O.As.

3. In view of the order passed in O.As 1339/94, 1140/94 and 2011/94, this R.A. has become infructuous and the same is accordingly disposed of.

O.A. 1140/94

This application has been filed against the office order dated 1.5.1995 (Annexure A3) whereby the Respondent No.1, Shri K.P. Sunny has been posted by the NCT Delhi against the post of JAO/AAO which had been vacated by Shri Chiranjee Lal on superannuation on 30.4.1995. The applicant's case is that the Principal Accounts Officer vide his office order No. 10(95) had posted him in the vacancy caused by the retirement of Shri Chiranjee Lal. The order dated 1.5.1995 is impugned mainly on the ground that the NCT Delhi is not competent to issue such an order

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when the applicant has already been posted in that position by the Central Govt. In view of our conclusion in O.A. No. 1339/94, the impugned order is set aside. The NCT will comply with the office orders No. 10(95) issued by Principal Accounts Officer regarding the posting of the applicant. This will, however, be without prejudice to any action which the Govt. of NCT Delhi may take for the promotion of Respondent No. 5 Shri K.P. Sunny and his posting elsewhere.

O.A. 2011/94

This application has been filed against the office order dated 5.9.1994 passed by Respondent No. 5, Secretary, PWD, NCT Delhi. We find that this is an order transferring the applicant from Division No. 27, PWD, DA to Delhi College of Engineering which is also a PWD (DA) posting. The subject matter of the application, however, shows that the application is directed against the order of the Secretary, PWD placing back the services of the applicant at the disposal of the Ministry of Urban Development. That order No. F.3/7/94-AC dated 08.6.1994 (Annexure A3) has already been set aside in O.A. No. 1339/94. The present O.A. No. 2011/94 is allowed only to the that extent. The applicant will continue to be with PWD(DA) till he is posted out with the concurrence of the competent authority in Govt. of India.

R.K. Ahooja
(R.K. Ahooja)
Member(A)

/SAD/

A.V. Haridasan
(A.V. Haridasan)
Vice Chairman(J)