

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 814/1987
T.A. No.

199

DATE OF DECISION 11-1-1991

<u>Shri N.N. Choudhary</u>	<u>Petitioner</u>
<u>In Person</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>Union of India & Ors.</u>	<u>Respondent</u>
<u>Shri P.H. Ramchandani, Senior</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (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*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

AB
(AMITAV BANERJI)
CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

No. 814/87

DATE OF DECISION: 11 January, 1991

SHRI N.N. CHOUDHARY

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT APPLICANT IN PERSON

FOR THE RESPONDENTS SHRI P.H. RAMCHANDANI, SENIOR
COUNSEL

(Judgement of the Bench delivered by

Hon'ble Mr. I.K. Rasgotra, Member (A)

Shri N.N. Choudhary, retired Chief Controller of Accounts (CCA), Department of Supply has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of Ministry of Finance contained in Controller General of Accounts (CGA)'s d.o. letters No. 28012/1/87/MF/CGA/Gr.A/52 and 187 dated 29.1.1987 and 6.2.1987. With his d.o. letter dated 29.1.1987 the CGA sent a blank Annual Confidential Report (ACR) form restructured in consultation with Ministry of Personnel, Public Grievances and Pensions; the CGA also advised the applicant to whom the d.o. letter was addressed that the said form is designed to obtain a goal-oriented assessment of the officers and that the applicant should go through the instructions at the end of the form and keep them in view while completing the same. He was further advised to forward the CR forms after filling in Part II thereof

to his reporting officer under intimation to the CGA. In the second letter dated 6.2.1987 the CGA advised the applicant in response to his letter dated 2nd February 1987 that the "normal channel of reporting in respect of Chief Controllers/Controller of Accounts of the Indian Civil Accounts Service is that the Financial Adviser of the Ministry is the Reporting Officer, who, in the scheme of Departmentalisation of Accounts, is at the apex of the accounting organisation and answerable to the Chief Accounting Authority. The 'next superior officer' is the CGA and the accepting officer is the Secretary of the Administrative Ministry....."

By way of relief the applicant has prayed that:

- (1) Writ of Certiorari may be issued on the Union of India to quash the provisions of 1.3.1 and 4.4.3(a) of the Civil Accounts Manual issued by the Ministry of Finance and the instructions of the MOF that the Annual Confidential Reports of CCAs will be written by the JS & FAs/CGA as Reporting Authorities;
- (2) Writ of Mandamus may be issued on the Union Government to implement the Cabinet decision of 1955 and adopt U.K. pattern of Internal Financial Control in India; to insert paragraphs 6(i) and 155(v) of the P.A.O. Manual 1963 issued by the Comptroller & Auditor General of India (CAG) in the Civil Accounts Manual 1981, issued by the Ministry of Finance; to abolish the posts of JS & FAs and allow CCA to perform accounts and finance functions as decided by the Cabinet in 1955; to declare

WFA

that Secretary of the Ministry/Department who is the designated Chief Accounting Authority will be the 'Reporting Authority' of the CCA and that the Minister-in-charge of the Ministry/Department will be the Reviewing Authority;

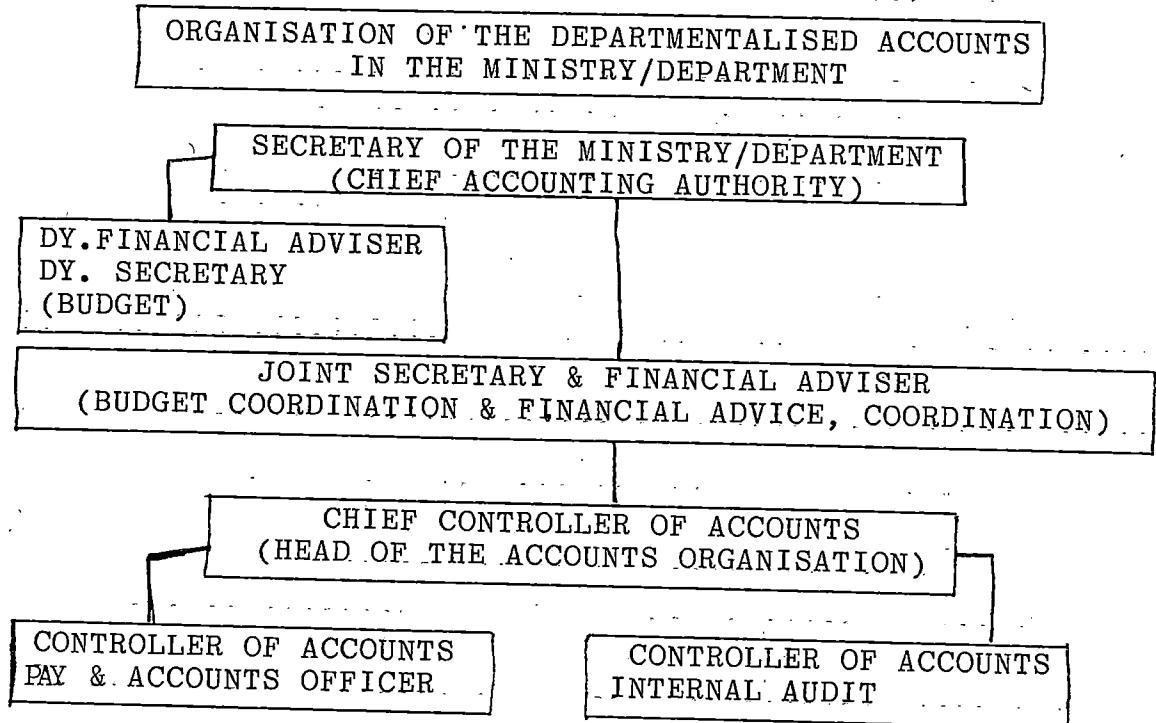
(3) Writ of Quo Warranto may be issued against Financial Advisors taken from the panel of Joint Secretaries on the ground that the MOF has wrongfully allowed these posts to continue consequent to departmentalisation of Accounts in contravention of the decision taken by the Cabinet in 1955.

Without the accompanying frills, the relief claimed by the applicant is that the JS & FA's function should be entrusted to the CCA enabling him to discharge the functions of both JS & FA and CCA, making the post of JS & FA redundant. The combining of the functions of CCS and JS&FA will also automatically make the Secretary of the Ministry/Department the reporting authority of the CCA.

The background of the case is that with the departmentalisation of the Accounts in 1976, the Comptroller and Auditor General of India was relieved of the responsibility (in phases) of compiling and keeping the accounts of the transactions of the Ministries/Departments of the Government of India. The payment functions discharged by the treasuries were also transferred to the Ministries/Departments. The Secretary of the Ministry is designated as Chief Accounting Authority for all transactions of the Ministry and its departments and to discharge/responsibility, the Secretary is assisted by Integrated Financial Adviser of the Ministry 'who

2

will function for and on behalf of the Chief Accounting Authority. The primary responsibility for compilations and maintaining the accounts under the scheme of separation of audit from accounts devolves on the Controller General of Accounts. To assist him in achieving the said objective the Indian Civil Accounts Service was constituted as a Group 'A' Central Service. It is the members of the ICAS who are positioned in the Ministries/Departments as CCA and entrusted the responsibility of accounting and internal audit. The JS & FA, however, under the scheme performs the functions of Financial Adviser and Chief Accounts Officer which inter alia include disbursement of payment through Pay & Accounts Officers (PAO); consolidation of Accounts prepared by P&AOs in consultation with the for the Ministry, preparation of Budget/heads of departments concerned, Appropriation accounts etc. The organisational set up obtaining at present is given in the following Table.



While the personnel for JS & FA, Director/ Deputy Secretary (Budget) are covered under the Central Staffing pattern, the posts of CCAs were initially manned by officers of the Indian Audit and Accounts Service who opted for transfer to the ICAS and later by the officers recruited to the newly constituted service. Thus while the posts of CCAs are the cadre posts of the ICAS and the personnel for the posts of JS & FAs are selected from All India and other Central Services under Central Staffing Pattern by following a process of rigorous selectivity. 12

The applicant's grievance seems to have arisen from 1.1.1986 with the implementation of the Fourth Central pay Commission's recommendations, merging the pay scale of Rs. 2250-2500 (Level II) and the pay scale of Rs. 2500-2750 (Level-I) into one single scale of Rs. 5900-6700. Both the JS & FA and CCA are placed in the same scale of pay excluding a few Ministries where the Integrated Financial Adviser are in the grade of Additional Secretary (Rs. 7300-7600) or Secretary (Rs. 8000 fixed). Apparently there was no problem prior to 1.1.1986 as the JS & FA was ordinarily in higher scale of pay than the CCA.

The applicant has submitted considerable amount of material dealing with the departmentalisation of Accounts and to fortify his case for combining the functions of JS & FA & CCA and entrusting the same to the cadre officers of ICAs viz. CCAs.

The applicant has also supported his contentions relying on the system of financial management followed in U.K. This, however, may or may not have any relevance in India of today. The situation in India has undergone a sea change since the early years of independence on account

13

of the developmental activity and needs of financial management to keep pace with the requirement dictated by intensive and extensive developmental efforts in agriculture industry and other economic and social areas. We are therefore not impressed by the repeated assertion of the applicant in this regard. Be that as it may, the scheme of departmentalisation of accounts, its objectives and achievements and its shortcomings and remedies are matters of policy that come within the domain of the executive and are not matters for judicial review. It is not open to us to question the scheme of separation of audit from accounts, departmentalisation of accounts and whether the functions of the post of JS & FA and CCA should be combined into one post or whether there should be two functionaries in the same scale of pay for the purpose. In the course of hearing it was revealed that the primary grievance of the applicant is that an officer in the same scale of pay belonging to another service than the applicant cannot be the Reporting Officer on his performance. His contention, therefore, is JS & FA (Rs. 5900-6700) who is designated as the Reporting Officer for the CCA (Rs. 5900-6700) offends the constitutional provisions enshrined in Article 14 & 16, as it violates the applicant's right to equality of status and opportunity in public employment. It was in this background that 2 ACRs on him for the year 1986 and one for 1987 were not written as he did not submit restructured ACR forms for the relevant years after filling in part II to his next superior officer, viz. JS & FA. The applicant drew our attention to the decision of Hon'ble Supreme Court in the case of State of Haryana Vs. P.C. Wadhwa & Ors. 1987(2) SLJ 162. The case however is of no help to the applicant, as the judgement of the Hon'ble Supreme Court in State of Haryana Vs. P.C. Wadhwa & Ors. (Supra)

2

14

was delivered keeping in view the specific rules applicable to I.P.S. officers in Haryana and rules framed under Section 3 of All India Services Act, 1951. The judgement does not lay down any general law or ratio that can be applied in the case of the applicant. It was in the context of the relevant Punjab Police Rules that the Reporting Authority was interpreted by the Hon'ble Supreme Court to be superior officer belonging to the same service. In the Central Secretariat, on the other hand, posts in the lower cadre are manned by the Central Secretariat Services while the senior posts are staffed by the officers drawn from All India Services and other Group A Services after following a rigorous process of selection under the Central Staffing Pattern.

Shri P.H. Ramchandani, learned senior counsel for the respondents submitted that since the applicant kept the ACR forms with him and came to the Tribunal without exhausting the departmental remedies the case does not merit consideration at this stage. Further the reliefs prayed for are outside the purview of the rules as framed by the respondents. Unless the applicant writes part-II of the ACR giving his personal assessment, obviously the ACRs on him cannot be completed. The learned counsel also submitted that all the other issues raised by the applicant regarding redepartmentalisation of accounts relate to policy matters and the Tribunal is not the forum for seeking the review of the policy matters.

We have heard both the parties. The scheme of departmentalisation as circulated vide Ministry of Finance, Department of Expenditure OM No.F.10(29)E (Coord)/73 dated 6th October, 1975 places the Joint Secretary and Financial Adviser of the Ministry at apex of the finance and accounts wing of the Ministry as is

2

apparent from the following:

".....FA will also be responsible for the preparation of Ministry's performance, budget, monitoring of progress of schemes against the budget, the maintenance of efficient accounting system is necessary for this purpose....." (emphasis supplied).

Later in paragraph 5 of the OM, it is stated that:

"Pending further consideration of the need for formulation of centralised or decentralised, single or multiple level cadres of finance and accounts, and the scheme for absorption of the present associate finance staff in such cadres, in the initial stage, the FA, the officers and staff working in the associate Finance Divisions in the Department of Expenditure will be transferred to the administrative Ministries....."

It is obvious that it is the Financial Adviser and Joint Secretary who has been designated as the principal financial and accounting authority responsible to assist the Secretary to the Ministry who is the Chief Accounting Authority. The JS & FA has continued, therefore, to occupy a superior position to that of CCA since the scheme of departmentalisation of accounts was introduced in 1976.

Further the respondents had visualised the need for reviewing the staffing pattern even at the time of introduction of the scheme of departmentalised accounts as the need for single or multiple level of cadres of the accounts was to be looked at afresh at an appropriate

interval of time. We have no reason to assume that such a review would be carried by the respondents; as and when required. As observed earlier the other issues agitated by the applicant in the OA raise basic policy issues in regard to the organisation and staffing and control of the finance and accounts wing in the Ministries/Departments under the scheme of departmentalisation of Accounts. Their Lordships of the Supreme Court in Mallikarjuna Rao & Ors. etc. etc. v. State of Andhra Pradesh & Ors. etc. etc. JT 1990 (3) SC 34 have observed:

"The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

The Hon'ble Supreme Court further observed;

"It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory summons to the Executive in respect of the sphere which is exclusively within the domain of the Executive under the Constitution."

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.

The applicant has already retired from service and regarding the ACRs for the period 1986 and 1987, and consequently, no relief can be provided to him in that matter too.

In the facts and circumstances of the case the application is dismissed with no order as to costs.

Subhash
(I.K. RASGOTRA)
MEMBER(A) 11/1/91

Ab
(AMITAV BANERJI)
CHAIRMAN