RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 2nd DAY OF January, 2004

Original Application No. 1313 of 2003

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI,MEMBER(A)

1. Asstt.Audit Officers/Section Officers(Audit) Association, 'Satya Nishtha Bhawan', 15-A, Dayanand Marg, Allahabad through its General Secretary Shri Vinod Kumar.

2. Sudhish Chand, S/o Late Vijay Shankar, r/o 4/6A Beli Road Allahabad. Presently working as Asstt. Audit Officer in the office of Principal Accountant General Audit(1) U.P., Allahabad.

.. Applicants

(By Adv: Shri S.K.Om)

Versus

1. Union of India through Comptroller Auditor General, 10 Bahadur Shah Zafar Marg, New Delhi.

2. Principal Accountant General(Audit) I U.P., Allahabad.

3. Senior Deputy Accountant General (Admn) U.P., Allahabad

.. Respondents

(By Adv:Shri Amit Sthalekar)

Along with OA No.1314 of 2003

Rajjan Lal, Son of Late Maiku Lal, Resident of 77-C Muir Road Rajapur, Allahabad.

.. Applicant

(By Adv:Smt. Radhna Upadhya)

Versus

1. Union of India through C.A.G 10 Bahadur Shah Zafar Marg, New Delhi

2. Principal Accountant General
(Audit) I Uttar Pradesh
Allahabad.

3. Auditor General
A.G. (Audit) II Allahabad

4. Sr.Dy.Accountant General
(Admn) A.G.(Audit) II
Allahabad.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Along with OA.No.1368 of 2003

Sameer Kumar, son of
Mr.Dinesh Bahadur Kauser
R/o 12-B/13, Dandia, Tulsi Park
Allahpur, Allahabad 211 002

.. Applicant

(By Adv: Shri D.B.Kauser/Ms.R.Kauser)

Versus

1. Union of India
(By & through its Secretary,GOI
Ministry of Finance, New Delhi.

2. Comptroller & Auditor General
Of India, New Delhi.

3. Principal Accountant General(Audit)
I, U.P., Allahabad.

4. Accountant General, Uttaranchal,
Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Alongwith OA No.1369 of 2003

1. Group C & D Employees (Audit)
Association, A.G. at U.P.
Allahabad, Satya Nishtha Bhawan,
15 A Dayanand Marg, Allahabad,
through its General Secretary
Shri P.R.Rajvedi.

2. Shri P.R.Rajvedi, son of Late D.K.
Rajvedi, resident of New Katra
Allahabad, presently posted as
Senior Auditor in the office of
Principal Accountant General (Audit-2),
U.P. Allahabad.

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3. Dwarika Prasad, son of Late Dasshrath Prasad, resident of Type-II/25, Kendranchal colony, Dhoomanganj, Allahabad, posted as Senior Auditor in the office of Principal Accountant General, U.P.Allahabad.

4. Sushil Kumar, son of Shri T.B. Srivastava, resident of 436/193 A, Rasoolabad, Allahabad, posted as Senior Auditor in the office of Principal A.G.U.P., Allahabad.

.. Applicants

(By Adv: Shri V.Budhwar)

Versus

1. Union of India through Secretary, Ministry of Personnel Public Grievances and Pension (Department of Personnel & Training) New Delhi.

3. Principal Accountant General Audit-1, U.P.Allahabad.

4. Senior Deputy Accountant General(Admn), U.P. Allahabad.

5. Accountant General Uttaranchal at Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Along with O.A. No. 1378 of 2003

1. Jyotimay G.Sen Gupta, Son of Shri Mohini Mohan Sen Gupta aged about 53 years, resident of Q.No.109, Kendranchal(Pocket 1) Pritam Nagar, Allahabad.

.. Applicant

(By Adv: Shri R.P.Singh)

Versus

1. Union of India through the Comptroller Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi.

2. Principal Accountant General, Audit-1, Uttar Pradesh, Allahabad.

3. Deputy Accountant General(Admn) (A & E)- 1, Uttar Pradesh, Allahabad.

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4. Accountant General, Uttaranchal
at Dehradun.

5. Accountant General, U.P.
Allahabad.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Along with OA No.1379 of 2003

1. Smt. Meena Bose, w/o Shri B.Bose
posted as Audit officer in the
office of Principal Accountant
General Audit-1, U.P.at Allahabad

2. V.K.Agrawal son of Late M.P.
Agrawal, posted as Audit Officer in
the office of Principal Accountant
General Audit-1, U.P. at Allahabad.

3. Chhotey Lal Saroj, son of
Shri Bhagwandin, posted as Senior
Audit Officer in the office of
Accountant General Audit II,
U.P. at Allahabad.

4. Anurag Kumar son of Late S.P.Sinha
posted as Senior Audit officer in
the office of Principal Accountant
General Audit-1, U.P. at Allahabad.

5. Vijay Kumar Bhatia, son of
Shri R.P.Bhatia, posted as Senior
Audit Officer in the office of
Principal Accountant General
Audit II, U.P. at Allahabad.

6. S.Mansoor Mehdi, son of late
S.Manjoor Husain, posted as Senior
Audit officer in the office of
Principal Accountant General
Audit, U.P. at Allahabad.

7. T.N.Gupta son of Late V.P.Gupta
posted as Senior Audit officer
in the office of Principal
Accountant General Audit-1 & II
U.P. at Allahabad.

8. P.K.Bhatia son of Shri R.P.Bhatia
posted as Senior Audit officer in
the office of Principal Accountant
General Audit-1 & II, U.P. at
Allahabad.

9. Sobh Nath son of Late Ram Khelavan
posted as Audit Officer in the
office of Principal Accountant
General, U.P. at Allahabad.

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10. Vijay Kumar son of Late Shambhu Nath, posted as Audit Officer in the office of Principal Accountant General Audit-1, U.P.at Allahabad.

11. R.P.Tripathi, son of Late G.P. Tripathi posted as Senior Audit Officer in the A.G. office, A.G. Audit II U.P., Allahabad

.. Applicants

(By Adv: Shri V.Budhwar)

Versus

1. Union of India, through Secretary Ministry of Personnel Public Grievanc es and Pension (Department of Personnel & Training) New Delhi.

2. Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi.

3. Principal Accountant General Audit-1, U.P. Allahabad.

4. Senior Deputy Accountant General (Admn), U.P. Allahabad.

5. Accountant General, Uttaranchal at Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Along with OA No.1381 of 2003

1. Civil Accounts Association office of the Accountant General (A & E) 1 &II, Uttar Pradesh Allahabad through its General Secretary Sri Kali Prasad.

2. Shri Kali Prasad son of Late Ram Lal resident of 311/8 Chandpur Salori Allahabad, presently posted as Senior Accountant in the office of the Accountant General (A & E) 1 & II, Uttar Pradesh, Allahabad.

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3. Dharma Raj Singh, son of
Shri Vishwanath Singh, resident
of 184/3 Muirabad, Allahabad
posted as Senior Accountant in the
office of the Accountant General (A & E)
1 & II, Uttar Pradesh, Allahabad.

4. Rana Ratnesh Kumar Singh
Son of Late R.N.Singh, preetam
Nagar, Allahabad, presently
posted as Supervisor in the
office of the Accountant General
(A & E) 1 & II, Uttar Pradesh
Aallahabad.

.. Applicants

(By Adv: shri V.Budhwar)

Versus

1. Union of India through
Secretary Ministry of Personnel
Public Grievances and Pension
(Department of Personnel & Training)
New Delhi.

2. Comptroller and Auditor General
of India, 10 Bahadur Shah Jafar Marg
New Delhi.

3. Accountant General (A & E) 1 & II
Uttar Pradesh Allahabad.

4. Deputy Accountant General
(Admn), Office of A.G.
(A & E) 1, Uttar Pradesh,
Allahabad.

5. Accountant General (Audit &
Accounts), Uttaranchal, at
Dehradun.

.. Respondents

(By Adv: shri Amit Sthalekar)

Alongwith OA No.1382 of 2003

1. Section officers/Asstt.Accounts
officers, Association, office of the
Accountant General (A&E) 1 & II,
U.P. Allahabad, through its
General Secretary.

2. Shri Pankaj Kumar Srivastava

3. Harish Kumar Mishra, son of
Shri Siddhnath Misra, a/a 42 years
T/III/98 Kendranchal Begum Sarai
Allahabad, presently working as
Sefction officer in the office of respondent
No.1

(By Adv: Shri Shishir Kumar) .. Applicants

Versus

1. Union of India through Secretary Ministry of Personnel, Public Grievances and Pension(Department of Personnel & Training), New Delhi.

2. Comptroller and Auditor General of India, 10, Bahadur Shah Jafar Marg, New Delhi.

3. Accountant General (A&E) 1, U.P. Allahabad.

4. Deputy Accountant General(Admn) Office of the Accountant General (A&E) 1, U.P. Allahabad.

5. Accountant General, Uttaranchal, at Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Along with OA. No. 1383 of 2003

1. Senior Accounts Officer/Accounts Officer (A&E) Association, Office of the Accountant General (A & E-1) Indian Audit and Accounts Department (U.P.Unit), Headquarters Allahabad through its General Secretary Vijai Kumar, R/o 1025, Allahpur, Allahabad

2. Jagdish Narain Pandey, son of B.P.Pandey,a/a 56 years, resident of 389/117.K Daraganj,Aallahabad presently posted as Senior Accounts Officer, office of A.G.(A&E) II Allahabad.

.. Applicants

(By Adv: Shri Shishir Kumar)

Versus

1. Union of India, through Secretary Ministry of Personnel,Public

2. Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi.

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3. Accountant General (A&E-1)
U.P., Allahabad.

4. Deputy Accountant General(Admn)
Office of the Accountant General
(A&E-1),U.P. Allahabad.

5. Accountant General, Uttaranchal
at Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Alongwith OA No. 1384 of 2003

Ram Chet, son of Sri merhai ram
a/a 50 years, R/o village
Chansipur, P.O.Koilsa
District Azamgarh, presently
residing at 58-E/10-N, Circular
Road, Allahabad.

.. Applicant

(By Adv: Shri R.P.Singh)

Versus

1. Union of India through the
Comptroller Auditor General, 10
Bahadur Shah Jafar Marg, New Delhi.

2. Principal Accountant General,
Audit-1, Uttar Pradesh Allahabad.

3. Deputy Accountant General(Admn)
(A&E-1), Uttar Pradesh, Allahabad

4. Accountant General, Uttaranchal at
Dehradun.

5. Accountant General,
U.P., Allahabad.

.. Respondents

(By Adv: Shri(By Amit Sthalekar)

Alongwith OA No. 1385 of 2003

Virendra Pratap Mishra, son of
late S.P.Mishra, resident of
122/11-B,Tagore Town,
Allahabad.

.. Applicant

(By Adv: Shri R.P.Singh)

Versus

1. Union of India through the Comptroller Auditor General, 10, Bahadur Shah Jafar Marg, New Delhi

2. Principal Accountant General Audit -1, Uttar Pradesh, Allahabad.

3. Accountant General, Uttar Pradesh Allahabad.

4. Deputy Accountant General (Admn) (A&E-1), Uttar Pradesh, Allahabad.

5. Accountant General, Uttaranchal at Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

Along with OA No.1386

Ramayan Prasad Tripathi
Son of Late R.N.Tripathi
a/a 54 years, resident of
122/11-B Tagore Town, Allahabad.

n .. Applicant

Versus

1. Union of India through Comptroller Auditor General, 10 Bahadur Shah Jafar Marg, New Delhi.

2. Accountant General (A&E-1) Uttar Pradesh, Allahabad.

3. Deputy Accountant General (Admn) Uttar Pradesh Allahabad.

. Accountant General, Uttaranchal at Dehradun.

.. Respondents

(By Adv: Shri Amit Sthalekar)

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O R D E R (Reserved)

JUSTICE S.R.SINGH,V.C.

Impugned in this bunch of Original Applications are the transfers made vide Office order No.PAG(Audit)-1/Admn/Uttaranchal/171 dated 29.10.03 of Certain Senior Audit Officers/Audit Officers/Asstt.Audit Officers/Section Officers/Supervisors/Senior Auditors and Auditors; and transfers made vide No.PAG transfer/232 dated 31.10.03 of certain staff(Senior Accounts officer, Accounts officer,Asstt.Accounts officers,Section officers, Adhoc Section officers, Supervisors, Senior Accountants and Accountants from the offices of A.G.(A&E),U.P.located at Allahabad and Lucknow to the office of the A.G.(Audit & Accounts) Uttaranchal at Dehradun which came into existence as a result of Reorganisation of Accounts and Establishment Offices of Uttar Pradesh. Thus the transferred staff consists of Group 'B' officers and clerical staff.

(2) By Office order dated 29.10.03 which is the subject matter of impugnment in OA Nos 1313/03,1314/03,1368/03,1369/03,1379/03, Senior Audit Officers/Audit Officers mentioned in Annexure 1 to the said order have been transferred from Allahabad to Dehradun office; Asstt.Audit Officers/Section Officers/Supervisors mentioned in Annexure II to the said order working in the Allahabad/Lucknow offices have been transferred to Dehradun office; and Senior Auditors/Auditors mentioned in Annexure III from Allahabad/Lucknow offices to Dehradun. Similarly, the office order dated 31.10.03 impugned in OA Nos 1378/03,1381/03,1382/03,1383/03,1384/03,1385/03 and 1386/03 contains the list of staff that has been shifted from Allahabad and Lucknow offices of the Accountant General(A&E) 1 & II Uttar Pradesh to Dehradun office of Accountant General (A&E) Uttaranchal. These transfers have been made in public interest for a period of 18 months excluding the date of joining in Uttaranchal, Dehradun.

(3) We have heard S/Shri S.C.Budhwar,Senior Advocate, Shishir Kumar, S.K.Om and Km.R.Kausar for the applicants and Shri Amit Sthalekar for the respondents and perused the pleadings.

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(4) Validity of the impugned orders has been challenged on the grounds: firstly, that the staff transferred to uttaranchal office of Accountant General(A&A) at Dehradun vide orders impugned herein belong to a non-centralised cadre whose transfer from Uttar Pradesh to Uttaranchal was impermissible in law except as provided in Section 73 of Uttar Pradesh Reorganisation Act, 2000, secondly, the service conditions of the staff working in the Allahabad and Lucknow offices of the Principal Accountant General(A&E)I,II Uttar Pradesh are governed by Statutory Rules framed in exercise of power under Article 148(5) of the Constitution of India and that being so, transfers of the staff effected vide orders impugned herein on the strength of the transfer policy contained in the office order dated 10.10.03 issued from the office of the Principal Accountant General(Audit)-1 Uttar Pradesh, Allahabad cannot be sustained in that the said transfer policy has not been framed by Central Government so as to clothe the Principal Accountant General(A)-1 Uttar Pradesh, Allahabad with the power to transfer the staff under his Cadre Controlling Authority from Allahabad/Lucknow offices to the office of the Accountant General, uttaranchal at Dehradun; and thirdly the transfer policy contained in the office order dated 10.10.03 sans any source of power to transfer is of no avail and in any case, the norms and guide lines laid down there in have not been followed.

(4) Shri Amit Sthalekar, learned counsel representing the Principal Accountant General (Audit)-1, Uttar Pradesh, Allahabad has submitted in support of the impugned transfer orders that Departmental Instructions issued by C &AG and even the Statutory Rules empower the Cadre Controlling Authority namely, the Principal

Accountant General (A) -1,U.P., Allahabad to transfer the staff from one place to another; that the Principal Accountant General (A)-1 Uttar Pradesh, Allahabad is also the Cadre Controlling Aurhority in respect of the staff of Accountant General, Uttaranchal, Dehradun and that being so, submitted the learned counsel, the transfer policy formulated with the approval of the Headquarters could be taken not only as a document providing guide lines but also as the source of power.

(6) We have given our considerations to the submissions made across the bar. Individual applicants here in are borne under the Cadre Controlling Authority of either the PAG(A)-1, U.P., Allahabad or A.G.(A&E) U.P.Allahabad/Lucknow and concededly they do not have an integrated cadre on all India basis. The first question that arises for consideration is whether they are liable to be transferred any where in India to any office under the Indian Audit & Accounts Department headed by C&AG of India and if they are, who has the necessary competence to exercise the power of transfer. It cannot be gainsaid that transfer of government servants is not only an incidence of service but also a "condition of service" as held in NHP Corporation Ltd Vs.Shri Bhagwan,(2001) 8 SCC 574 and, therefore, it ought to be regulated, as provided in Article 148(5) of the Constitution, by rules made by the President in consultation with the Comptroller and Auditor General of India or, in the absence of rules, by Departmental Instructions. Service Rules e.g. the Indian Audit & Accounts Department, Audit Officers(Commercial)Recruitment Rules 1989; the Indian

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Audit and Accounts Department(Senior Auditor) Recruitment Rules 1985; and rules governing other services under Indian Audit & Accounts Department have been made by the President in exercise of the powers conferred by Clause (5) of Article 148 of the Constitution and after consultation with Comptroller and Auditor General of India (C&AG) to regulate the method of recruitment to the concerned posts. True rules referred to the above do not provide for transfer outside the territorial jurisdiction of the Cadre Controlling Authority, be it the Principal Accountant General or the Accountant General but appointment by transfer on deputation with the approval of C&AG is permissible in law.

(7) A perusal of the recruitment rules aforestated would indicate that appointments to the post of Audit Officers(Commercial) as also to the post of Senior Auditor in the Indian Audit and Accounts Department is permissible by promotion, failing which by transfer on deputation. The Indian Audit and Accounts Department, Section Officer(Commercial) Audit Recruitment Rules, 1988 also provide that the recruitment to the post of Section Officer(Commercial) may be made by promotion failing which by transfer on deputation. Position under Indian Audit and Accounts Department(Senior Accountant) Recruitment Rules, 1988 concerning appointment to the post of Senior Accountant and the one under the IA&AD(Senior Auditor)Recruitment Rules 1985 are no different. That apart by virtue of the provisions contained in Article 149 of the Constitution, the C&AG has the necessary competence and power to issue Departmental Instructions on matters of conditions of

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service of persons serving in his Department as its Head and such Departmental Instructions have the force of law and hold the field to the extent these are not inconsistent with the statutory rules. However, as held in Accountant General V. S.Doraiswamy,(1981) 4 SCC 93; Union of India Vs Amrik Singh (1994) 1 SCC 269; and Mohan Lal V.Comptroller 1979 Lab IC 1355, rules made in exercise of power under Art.148(5) will prevail in the event of any conflict with Departmental Instructions. The Cadre of Senior Auditor and feeder cadre of Auditor as well as other cadres we are concerned here with are no doubt "not centralised" for the entire Department and the rules with respect to them are applicable to each cadre in the various field offices of the Department but the rules as also the Manual of Standing orders(Administrative) issued by C & AG contain enabling provisions for appointment by transfer on deputation. In this connection it would be worth while to quote paragraphs 4.2.1; 4.9.1 and 10.4.1 of the Comptroller and Auditor General's Manual of Standing Orders (Vol-1) as under:

"4.2. Postings and Transfers.

4.2.1 Accounts/Audit Officers are liable for service any where in India in any of the offices or posts under the control of the respective Cadre Controlling Authority in whose cadre they are borne. They are also liable, like all other Central Govt.servants, to be transferred from one office to another subject the provisions of FR 15. CAG may, if necessary, transfer any officer to any post or office within the IA & AD.

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Accounts/Audit officers may also be transferred to any post under the Government or on foreign service to a public sector undertaking/autonomus body/semi government organisation owned or controlled as may be determined in each case and subject to rules and order issued by Govt. of India/CAG in this respect from time to time."

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"4.9. Miscellaneous

4.9.1. The relevant provisions sof postings and transfers, permanent absorption, forwarding of applications, deputation/foreign service mentioned in this Chapter in respect of Accounts/Audit officers will apply mutatis mutandis to Asstt. Accounts/Asstt.Audit Officers."

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"10.4.1 Non gazetted Govt. servants can be sent on deputation/foreign service only with the approval of Comptroller & Auditor General of India except in case of deputation to State Govt or State Govt. body under the respective State where the Accountant General/Principal Director of Audit can depute such staff borne on the cadre under his control."

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(8) A conspectus of the afore extracted provisions would indicate that Accounts officers/Audit officers, are not only liable for service any where in India in any of the offices or posts under the control of respective Cadre Controlling Authority in whose cadre they are borne but they are also liable to be transferred if necessary, by the C&AG,"to any post or office within the IA&AD." The applicants here in being borne under the cadre controlling authority of either

the Principal Accountant General (Audit)-1, U.P.Allahabad or the Accountant General(A&E)-1, U.P. Allahabad ~~or the Accountant General (A&E)-1, U.P.Allahabad/Lucknow~~ are albeit not liable to be transferred by these authorities to the office of A.G(A&A) Uttaranchal, Dehradun, but C&AG being the head of Department has the necessary competence to transfer any officer to any post or office within the IA&AD. The office of A.G.Uttaranchal at Dehradun being in the Indian Audit and Accounts Department, no exception can be taken to the impugned orders of transfer effected with the approval of the Head quarter i.e. C&AG. It may be observed that the Principal Accountant General (Audit)-1, U.P.Allahabad was initially the cadre controlling authority with respect to the staff in the office of the Accountant General (A&A) Uttaranchal at Dehradun as well but subsequently by office order No.(Admn) 15/59 dated 6.8.02 the office of Principal Accountant General(A&E)-1 U.P. and Uttaranchal came to be redesignated as Principal Accountant General (A&E)-1 U.P. Allahabad consequent upon the creation and functioning of the office of Accountant General(A&A) Uttaranchal at Dehradun. The redesignation has in fact been earlier endorsed by the Headquarter's office vide No.0269-G-1/133-2000-II dated 22.7.02 and it became operative with immediate effect as per Annexure 6 to OA No.1313/03.

(9) Transfer of staff from Allahabad/Lucknow on deputation is thus permissible in law and since the applicants have been transferred for limited period of 18 months they may be deemed to have been shifted on deputation irrespective of whether the applicant had opted for the same or not for the exercise of power by

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the C & AG is not dependant on option.

(10) Next question to be considered is whether the impugned orders are hit by Section 73 of the Uttar Pradesh Reorganisation Act, 2000. Section 72(1) of Uttar Pradesh Reorganisation Act, provides that in so far as the Indian Administrative Servic es, the Indian Police Services, and the Indian Forest Services are concerned,there shall, on and from the appointed day, be two separate cadres one for the State of Uttar Pradesh and the other for the State of Uttaranchal in respect of each of these services and the members of each of the said services borne on the Uttar Pradesh Cadre thereof immediately before the appointed day shall be allocated to the State cadres of the same services constituted under Sub Section(2) in such manner and with effect from such date as Central Govt. may by order specify. Section 73 which contains provisions relating to "other services" is quoted below:-

"73.Provisions relating to other services:-

(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisoonally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required by general or special order of the Central Government to serve provisionally with the affairs of the State of Uttaranchal:

(2) As soon as may be after the appointed day, the Central Government shall, by general

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or special order, determine the successor State to which every person referred to in Sub-Section(1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisionss of sub-section(2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

(11) A reading of sub-section(1) of Section 73 in isolation tends to support the contention of the learned counsel appearing for the applicants. We are, however, of the view that what is visualised in sub-section(1) of Section 73 of U.P.Reorganisation Act, 2000 is a "provisional" arrangement of services other than those mentioned in Section 72, in respect of every person serving in connection with the affairs of the existing State of U.P.immediately before the appointed day pending 'final allotment' as stipulated in sub section(2) of Section 73. A conjoint reading of sub-section(1) and (2) would make it clear, the expression — "unless he is required by general or special order of the Central Govt to serve provisionally in connection with the affairs of the State of Uttaranchal" occurring in sub-section(1) of Section 73 would be attracted only where a 'provisional' allotment is to be made pending 'final' allotment under sub-section(2) of Section 73 and it does not inhibit appointment by transfer on deputation of persons serving in connection with the affairs of the state of U.P. immediately before the appointed day to the office of A.G.(A&A) Uttaranchal at

Dehradun in connection with the affairs of the latter State in accordance with the service rules and the departmental instructions issued by the C&AG of India. Impugned appointments by transfer have been made on the same posts though in a cadre outside the Cadre Controlling Authority but being appointments by transfer to the same posts for a limited duration may be taken to be akin to transafers on deputation within the meaning of para 3.1. of Appendix 5 of F.R.S.R. That apart the condition stipulated in appointment orders to the effect that transfer could be made to any branch/zonal offices of the Accountant General, Uttar Pradvesh, I,Ii and III either in extence already or likely to be formed in future as well as to the separated Accounts Organisation under State Government/Government of India on such terms and conditions decided by the Department also supports the contention of learned counsel for respondents. The office of A.G.(A&A) Uttaranc hal at Dehradun is no doubt a new Audit wing set up consequent upon re-organisation of the State Uttar Pradesh but it can be said to be a separated Audit & Accounts Organisation. The said condition of appointment would, therefore, justify the impugned orders of transfer. True, the staff transferred by orders impugned herein was serving in connection with the affairs of existing state of Uttar Pradesh and accordingly, on and from the appointed day, and such staff was entitled to provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh"unless required by general or special order of the Central Government to service provisionally in connection with the State of Uttaranchal" but impugned transfers having been made for a limited

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duration of 18 months may be treated to be transfers on deputation as distinguished from "provisional" transfer within the meaning of the inhibition clause contained in Sub-section(1) of Section 73.

(12) We also find substance in the submission of the learned counsel for the respondents that the Tribunal's power of judicial review in matters of transfer of government servants being limited to cases where transfers are made in contravention of Statutory rules or where they are actuated by malice or have been made against public interest and since the impugned transfers have been made in accordance with the service conditions for a specified duration in 'public interest', interference by the Tribunal would not be justified. (1) Chief General Manager(Telecom), N.E.Telecom Circle & Another Vs. Rajendra Ch Bhattacharjee & ors,(1995) 2 Supreme Court Cases 532; N.K.Singh Vs. Union of India and Ors, (1994) 6 Supreme Court Cased, 98; State of M.P. and Another Vs. S.S.Kourav and Ors (1995) 3 Supreme Court Cases 270; National Hydro Electric Power Corporation Ltd Vs 1.Shri Bhagwan,2.Shiv Prakash,(2001) 8 Supreme Court Cases 574; and Public Services Tribunal Bar Association Vs. State of U.P.& Another, (2003) 4 Supreme Court Cases 104 may be cited to buttressthe view we are taking for these decisions lay down the scope of judicial review in matters of transfer of government servants holding transferrable posts and clearly hold that in absence of a legal or statutory right of the transferree, judicial interference would be unjustified for transfer being an incident of service ought not to be interferred with except in cases of malafides or infraction of any professed norm or a statutory rule.

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(13) A faint attempt was then sought to be made on behalf of the applicants that while passing the impugned orders of transfer due regards had not been made to the factors and guide lines laid down in the policy decision dated 10.10.03 while effecting transfer to the newly set up office of Accountant General,(A&A) Uttaranchal at Dehradun. We, however, refrain from expressing any opinion for the reason that decision on the issue requires factual inquiry in individual cases and therefore, we are of the considered view that it would meet the ends of justice if the applicants are given liberty in this regard to approach the Competent Authority by means of individual representations for redressal of their grievances regarding non observance, if any, of the guide lines laid down in the office order dated 10.10.03. We would, however, like to make it clear that in case any representation is filed, the Competent Authority shall make it a point to dispose of the same by means of a reasoned order after proper self direction to the individual grievances, if any, raised in the representation.

Accordingly, the Original Applications fail and are dismissed subject, of course, to the above directions. We, however, make no order as to costs. The interim orders stand vacated.

MEMBER(A) VICE CHAIRMAN

Dated:---Jan:-2004

Uv/