

18

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

**ORIGINAL APPLICATION NO.537 OF 2006**

ALLAHABAD, THIS THE 5<sup>th</sup> DAY OF FEBRUARY, 2007

**C O R A M :**

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE MR. M. JAYARAMAN, ADMINISTRATIVE MEMBER**

Sameer Kauser, AAO(Audit),  
S/O Shri D. B. Kauser,  
R/O 12-B/13 Dandia, Tulsi Park, Allahapur,  
Allahabad - 211006.

.....Applicant

By Advocate : Sri D.B. Kauser

Versus

1. Comptroller & Auditor General Of India,  
10 Bahadur Shah Zafar Marg,  
New Delhi-110002.
2. Principal Accountant General,  
(Civil Audit), Uttar Pradesh,  
Allahabad-211001.
3. Union of India,  
(By & through its Secretary, Govt. of India,  
Union Ministry of Personnel, PGP (DOPT),  
New Delhi-110001.

.....Respondents

By Advocate : Shri A. Sthalekar

**ALONGWITH**

**ORIGINAL APPLICATION NO. 516 OF 2006**

*gn*



1. Civil Account Association  
in the office of the Accountant General (AIE) I & II,  
Uttar Pradesh Allahabvad through its General Secretary,  
Sri Uma Shanker Singh.
2. Shri Uma Shanker Singh Son of R.D. Singh,  
presently posted as Senior Accountant,  
in the office of the Accountant General (A&E) I & II,  
Uttar Pradesh, Allahabad.
3. Shri Kamla Kant Pandey, Son of Late Vishwa Nath  
Pandey, presently posted as Accountant in the office  
Of the Accountant General (A&E)I,  
Uttar Pradesh, Allahabad.
4. Atul Mishra Son of Late Jai Nath Mishra,  
presently posted as Clerk in the office of Accountant  
General (A& E) II, Uttar Pradesh, Allahabad.

.....Applicants

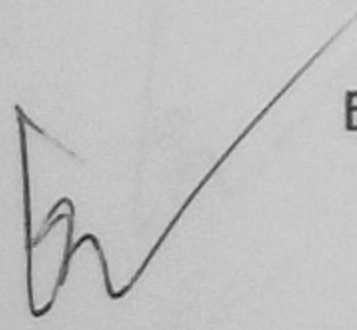
By Advocate : Shri V. Budhwar & Sri A. Tripathi

Versus

1. Union of India, through Secretary,  
Ministry of personnel, Public Grievances and Pension  
(Department of Personnel & Training), New Delhi.
2. Comptroller and Audit General of India,  
10 Bahadur Shah Jafar Marg, New Delhi.
3. Accountant General (A&E) I,  
Uttar Pradesh, Allahabad.
4. Deputy Accountant General (Admn.)  
Office of A.G. (A&E), I Uttar Pradesh,  
Allahabad.
5. Accountant General (Audit & Accounts),  
Uttaranchal at Dehradun.

.....Respondents

By Advocate : Sri A. Sthalekar





**ALONGWITH**

**ORIGINAL APPLICATION NO.536 OF 2006**

1. Section Officers/Asstt. Accounts Officers Association, in office of the Accountant General (A&E) I & II, through General Secretary Shri Ram Kripal.
2. Ram Kripal, Son of Late Nanku Lal, aged about 39 years, presently posted as Assistant Accounts Officer, in office of the Accountant General (A&E) I & II, and also holding the post of General Secretary, Section Officers/Asstt. Accounts Officers Association, in office of the Accountant General (A&E) I & II, Allahabad.
3. R.K. Singh, son of Shri Ram Bachan Singh, aged about 46 years, Presently posted as Assistant Accounts Officer, in office of the Accountant General (A&E) I & II, Allahabad.

.....Applicants.

By Advocate : Shri Vikas Budhwar

Versus

1. Union of India, through Secretary Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi.
2. Comptroller and Auditor General of India, 10, Bahadur Shah Jafar Marg, New Delhi.
3. Accountant General (A&E)I & II, U.P. Allahabad.
4. Deputy Accountant General (Admn.), in the office of Accountant General (A&E) I, U.P. Allahabad.

*bn*



5. Accountant General Uttranchal at Dehradun.
6. Senior Administrative Officer (Appointment)  
in the office of Comptroller and Auditor General of India,  
10 Bahadur Shah Jafar Marg, New Delhi.

..... Respondents

By Advocate : Shri A. Sthalekar

**ALONGWITH**

**ORIGINAL APPLICATION NO.574 OF 2006**

1. Group 'C' and 'D' Employees Audit Association,  
Office of the Accountant General Uttar Pradesh,  
Allahabad, through its General Secretary Manoj Kumar  
Srivastava son of Sri Jwala Prasad Srivastava,  
Senior Auditor, Office of the Accountant General,  
U.P., Allahabad.
2. Manoj Kumar Srivastava, Son of Sri Jwala Prasad  
Srivastava, Senior Auditor, Office of the  
Accountant General UP Allahabad, General Secretary,  
Group 'C' and 'D' Employees Audit Association,  
Office of the Accountant General Uttar Pradesh Allahabad.
3. Raj Kumar pal Son of Sri S. P. Pal, Senior Auditor,  
in office of the Accountant General UP Allahabad.

..... Applicants

By Advocate : Sri Siddharth Singh

**Versus**

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





(22)

5

2. The Comptroller and Audit General of India,  
10-Bahadur Shah Zafar Marg, New Delhi.
3. The Principal Accountant General (Civil Audit), UP Allahabad.
4. The Deputy Accountant General (Administration) Office  
of the Principal Accountant General (Civil Audit), UP Allahabad.
5. The Accountant General (Audit and Accounts)  
(Uttaranchal) Dehradun.
6. The Senior Administrative Officer (Appointment)  
in the Office of Comptroller and Auditor General  
of India, 10-Bahadur Shah Zafar Marg, New Delhi.

..... Respondents

By Advocate : Shri A. Sthalekar

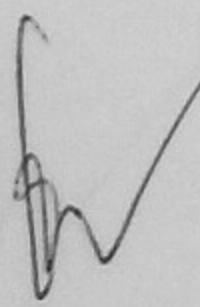
**ALONGWITH**

**ORIGINAL APPLICATION NO.575 OF 2006**

1. Assistant Audit Officers/Section Officers (Audit) Association,  
Office of the Accountant General Uttar Pradesh Allahabad,  
through its General Secretary Vinod Kumar  
son of Sri R.D. Dwivedi, Assistant Audit Officer, i  
n the office of the Principal Accountant General (Civil /Audit)  
U.P., Allahabad.
2. Vinod Kumar son of Sri R.D. Dwivedi, Assistant Audit  
Officer, Office of the Accountant General UP Allahabad,  
General Secretary, Assistant Audit Officers/Section Officers  
(Audit) Association, Office of the Principal Accountant General  
(Civil Audit) Uttar Pradesh Allahabad.
3. Prabodh Kumar Gupta Son of Sri D.L. Gupta, Assistant  
Audit Officer, in office of the Accountant General  
(C and RA) UP Allahabad.

..... Applicants.

By Advocate : Sri Siddharth Singh





23

6

Versus

1. Union of India, through Secretary,  
Ministry of Personnel, Public Grievances and Pension  
(Department of Personnel Training)  
New Delhi.
2. The Comptroller and Audit General of India,  
10-Bahadur Shah Zafar Marg, New Delhi.
3. The Principal Accountant General (Civil Audit),  
UP Allahabad.
4. The Deputy Accountant General (Administration)  
Office of the Principal Accountant General (Civil Audit)  
U.P., Allahabad.
5. The Accountant General (Audit and Accounts)  
(Uttaranchal) Dehradun.

..... Respondents

By Advocate : Sri A. Sthalekar

**ALONGWITH**

**ORIGINAL APPLICATION NO. 600 OF 2006**

Bhola Ram, Son of Late Ram Deen Ba Ram,  
Resident of 108 Ganga Nagar Rajapur Allahabad  
At present posted as Supervisor under the Control  
Of Pradhan Mahalekhakar (Civil Audit ) U.P.  
Allahabad.

..... Applicant

By Advocate : Shri P. K. Kashyap

Versus

1. Union of India through Pradhan Director Staff  
office of Niyantrak and Mahalekha Parikshak at  
10 Bahadur Shah Zafar Marg, New Delhi - 1100021.





- (20)
2. Sachiv Pradhan, Mahalekhaka Civil Audit U.P. Allahabad.
  3. Senior UP Mahalekhakar Administration Office of Pradhan Mahalekhakar Civil Audit U.P. Allahabad.
  4. Sachiv Mahalekhakar (lekha avam lekha Parkisha/ Uttranchal Dehradoon.

..... Respondents.

By Advocate : Shri A. Sthalekar

**ORDER**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

As the issue involved in all the above O.As is common, a common order would suffice and hence, this common order is passed.

2. **The issue:** The Office of the Comptroller and Auditor General of India, vide their order dated 22-02-2006 brought out Policy for allocation of Staff on separation of cadres in the office of reorganized States and decided that the separate cadres on the basis of the Policy would be effective from 01-06-2006. The above policy was formulated in the wake of the bifurcation of the State of Uttar Pradesh as U.P. And Uttaranchal, vide Uttar Pradesh Reorganization Act, 2000 (hereinafter referred to as 'the Act' ). The issue is whether the said Policy could be held legally valid and whether transfers effected on the basis of the policy could also be held valid.

h



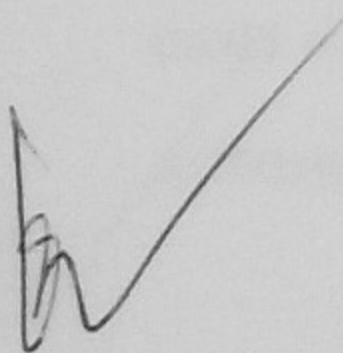
25

3. **The facts:** Parliament had enacted on 25<sup>th</sup> August, 2000 Act 29/2000 i.e, "The Uttar Pradesh Reorganization Act, 2000." By virtue of this Act, a new State called "State of Uttaranchal" comprising of the following Districts of the State of Uttar Pradesh had been formed.

1. Pauri Garhwal
2. Tehri Garhwas
3. Uttar Kashi
4. Chamoli
5. Dehradun
6. Nainital
7. Almora
8. Pithoragarh
9. Udam Singh Nagar
10. Bageshwar
11. Champawat
12. Rudraprayag
13. Hardwar.

3.1 The division of one State into two, warranted certain provisions relating to the State Cadres of I.A.S. and other services. While Sec. 72 dealt with State Cadre in the IAS, IPS and IFS, Section 73 dealt with provisions relating to 'Other Services'. The said provision, which is relevant in this case reads as under:-

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 provisionally 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 in connection with the affairs of the State of Uttaranchal.





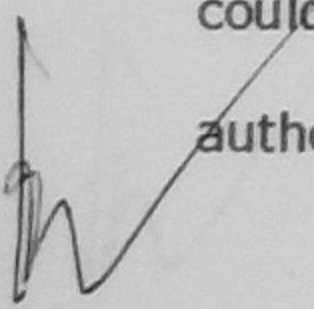
28

Provided that every direction under this sub section issued after expiry of a period of one year from the appointed day shall be issued with the consultation of the Government of the Successor States.

(2) As soon as may be after the appointed day, the Central Government shall by general 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 provisions of sub sec (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 Government concerned or in default of such agreement, as may be determined by the Central Government."

3.2 The applicants in the O.As (and also the members of the Applicant Association in OA No.575/2006) are working in the office of the Accountant General, audit/Accounts Office in U.P. Thus, some of the staff members were already at the respective Districts of the then non-bifurcated UP and after the bifurcation of the State, those who were in the respective Districts which formed the new Uttaranchal State continued in their respective positions. However, as the complements provided to these Districts were found to be insufficient, some others from the Districts of Uttar Pradesh, were sent on **tour** to various offices of the respondents situated at Uttaranchal. While sending persons on tours retaining lien at Uttar Pradesh could not be relented as the service conditions do not get altered, when the authorities had chosen to transfer such persons to the State of Uttaranchal,





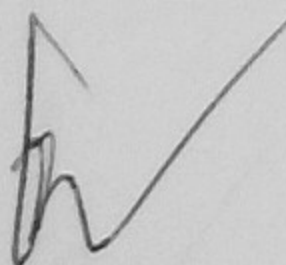
27

10

the applicant association (in OA No. 575/06) along with certain others moved the Tribunal by way of O.A. No. 1313/2003. Likewise, certain other aggrieved persons had also filed such O.As. All such applications were dealt with by the Tribunal which had by order dated 02-01-2004 dismissed the applications and upheld the transfer. Being aggrieved by the dismissal of the O.A. No. 1313/04 and connected O.As, the order of the Tribunal was challenged in civil writ petition before the Hon'ble High Court of Judicature at Allahabad vide Civil Misc. Writ Petition No. 664/2004. Certain other writ petitions were also filed and all these were connected together with Writ Petition No. 654/04 being the leading petition before the Hon'ble High Court of Allahabad. The Hon'ble High Court was pleased to set aside the order of the Tribunal, vide judgment dated 26<sup>th</sup> March, 2004 and certain portions thereof are extracted below:

"7. Under Article 151 (2) of the Constitution of India, Comptroller and Auditor General of India is required to submit audit report in relation to the accounts of the State to the Governor of the State, who in turn shall lay the same before the Legislature of the State.

8. Similarly under Sections 10 and 11 of the Comptroller and Auditor General (D.P.C.) Act, 1971, the Comptroller and Auditor General of India is required to compile the accounts of the State and submit report to the Governor. In respect of the State of Uttaranchal also the aforesaid constitutional and statutory obligations are required to be filled by the Comptroller and Auditor General of India. In order to carry out the aforesaid constitutional and statutory obligation, the Office of the Accountant General (Audit and Accounts) Uttaranchal at Dehradun was established on 9<sup>th</sup> May, 2002. Since the Office of Accountant General (Audit and Accounts) Uttaranchal at Dehradun was created for the first time in the





28

year 2002, it was necessary that the newly created office was properly staffed and since it was not possible to make fresh appointments on the various posts in the newly created office, a transfer policy was formulated inter alia providing for transfer for a period of 18 months for the employees working in the Office of Accountant General U.P. At Allahabad. The transfer policy so formulated by the respondents was given effect to by issuance of the orders of transfer dated 29<sup>th</sup> October, 2003 and 31<sup>st</sup> October, 2003.

9. Under the aforesaid orders of transfer, employees working in the office of Accountant General U.P. At Allahabad were transferred and posted at Uttaranchal for a period of 18 months. According to Department, audit cycle is a calendar of 12 months and prescription of 18 months takes care of the requirement in connection with the preparation of reports etc. Thus, there was rational in fixing the period of 18 months for transfer and posting of the employees at Uttaranchal.

10. The aforesaid orders of the transfer were challenged basically on the ground that petitioner employees aforesaid are not members of any centralized service. Their service conditions are regulated by the Indian Audit and Accounts Department (Senior Account) Recruitment Rules, 1988; Indian Audit and Accounts Department, Audit Officers (Commercial) Recruitment Rules, 1989, the Indian Audit and Accounts Department (Senior Auditor) Recruitment Rules, 1985. The said rules have been framed in exercise of the power under Article 148 (5) of the Constitution of India. The said service rules do not provide for any condition of transfer. In the appointment letters issued to the petitioners there was no condition about their being transferred outside State of Uttar Pradesh. Thus it is submitted that the petitioners cannot be transferred outside the State of Uttar Pradesh. It is further stated that the Office of Accountant General (Audit and Account) Uttaranchal at Dehradun is neither a branch nor Zonal Office of the Accountant General (A&E) I & II Uttar Pradesh and nor it is a separate Account Office of the State Government of Uttar Pradesh.

20. The only question which remains for the consideration is as to whether in absence of the statutory service conditions providing for transfer, is it permissible under the law that an employee working under one Cadre Controlling Authority can be transferred to the jurisdiction of another Cadre Controlling Authority without his consent.





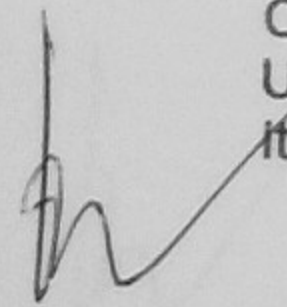
29

22. Broadly stated stands of the respondents is that the Comptroller and Auditor General by virtue of Article 149 of the Constitution of India has necessary competence and power to issue departmental instructions on matters of conditions of service of persons serving in his department and such departmental instructions have force of law and hold the field to the extent that they are not inconsistent with the rules. Manual of Standing Order (Administrative) issued by the Comptroller and Auditor General contains the provisions for appointment by transfer on deputation and, as such, it is to be deemed that the petitioners have been shifted on deputation for a period of 18 months irrespective of the fact as to whether the petitioners had given their consent for the same or not.

23. The contention raised on behalf of the respondents appears to be attractive. However, on analysis of the service rules, circular issued and the general principle of law, it would be clear that the stand taken by the respondents is legally not justifiable. The concept of deputation carries with it the concept of lending and borrowing with the consent of the person, who is to be sent on deputation. Meaning thereby, there must be a department in which a particular employee is working, the department is willing to lend the service of the employee for another department, the other department is willing to accept the employee so lend for its service and most important the employee has given his consent and is ready and willing to work with the borrower. In absence of any of the aforesaid three conditions, there cannot be any deputation.

26. Thus, no person contrary to his will can be asked to serve another master. It is not in dispute between the parties that the Cadre Controlling Authority of the Office of the Accountant General (A&E) I & II, Uttar Pradesh at Allahabad is different than the Cadre Controlling Authority of the employees working in the Office of Accountant General Uttaranchal.

27. For sending an employee on deputation, his consent is a must. Admittedly, in the facts of the present case, the employees who has approached the Tribunal as well as this Court has not opted for being sent on deputation to Uttaranchal. In absence of their consent to opt for Uttaranchal, it cannot be said that they are being sent on deputation. The





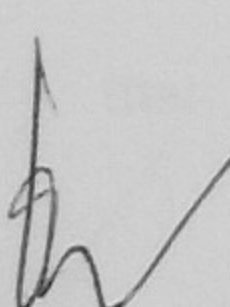
impugned order of transfer, as such, cannot be sustained as one being in the nature of deputation.

28. The rules which have been referred to in the judgement of the Tribunal, quoted hereinabove, only provide for transfer from one office or post to another under the control of the same Cadre Controlling Authority in whose cadre they are borne. The petitioners herein are 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.

29. They are not liable to be transferred by these authorities to the Office of Accountant General (Audit & Accounts) Uttaranchal at Dehradun. The power of the Comptroller and Auditor General cannot be extended to confer a power to transfer an employee contrary to the aforesaid service condition to any place within the Country. The power upon the Comptroller and Auditor General to clause 4.2.1. and 10.4.1. cannot be read in a manner to suggest that the Comptroller and Auditor General of India has unlimited power to transfer an employee borne in jurisdiction of one Cadre Controlling Authority to that of another Cadre Controlling Authority. The provisions of the standing Manual, namely 4.2.1 and 10.4.1, when they contemplate sending of an employee on deputation with the approval of Comptroller and Auditor General necessarily apply that the consent of the employee who is being sent on deputation has been obtained. The rules cannot be read so as to suggest that an employee can be sent on deputation without his consent to other States.

30. The finding of the Tribunal, as such, treating the impugned order of transfer to be orders shifting the employees of department irrespective of the fact whether the petitioner-applicants have opted for the same or not, cannot be legally sustained.

34. In the circumstances stated above, there being no service condition for transfer of an employee borne under one Cadre Controlling Authority in the appointment letter of the petitioners or in any other statutory service conditions applicable to the petitioners, the impugned order dated 29.10.2003 and 31.10.2003 are patently illegal and are not sustainable in the eyes of law and are accordingly quashed.



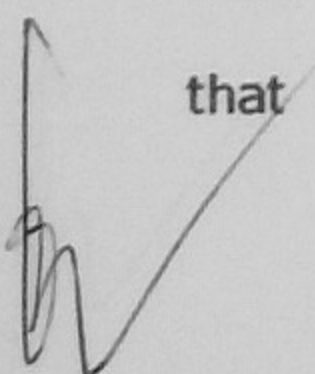


39

35. Undoubtedly transfer policy framed by the employer is not justifiable in the Court of law as it does not have any statutory force. But if the transfer orders are issued contrary to the service conditions applicable, such orders are liable to be struck down. References may be had to the judgements of Hon'ble Supreme Court in **Shilpi Bose vs. State of Bihar**, AIR 1991 SC 532 ; **Bank of India vs. Jagjit Singh Mehta**, AIR 1992 SC 519; **Union of India Ors. vs. S.L. Abbas**, AIR 1993 SC 2444. Moreso, as the petitioners are not questioning the policy of transfer formulated by the respondents, the challenge is on the ground that there being no provision for transfer under the service rules, the petitioners cannot be transferred by the respondents. Thus, the judgement referred to by the respondents have absolutely no application to the facts of the present case and the legal contention raised in that regard is totally misconceived.

36. In view of the aforesaid, the petitions succeed and are allowed. The orders impugned dated 29.10.2003 and 31.10.2003 are hereby quashed. The judgement of the learned Central Administrative Tribunal, Allahabad Bench, Allahabad dated 2<sup>nd</sup> January, 2004 is set aside. However, it is provided that the respondents may, after obtaining consent from the employees concerned, send him on deputation to Uttaranchal and shall ensure payment of deputation allowance to such employees. It is further provided that the employees who have joined on transfer at Uttaranchal under the interim order passed by this Court, will be entitled for deputation allowance for the period they have worked at Uttaranchal and they shall not be asked to continue at Uttaranchal without their consent any further."

3.3 The respondents have taken up the above judgment before the Hon'ble Supreme Court in SLP (C) No. 11957/04 and the Apex Court by order dated 20-07-2004 gave a partial stay of operation of the impugned order in so far as it requires consent of the employees and it was made clear that for the time being the respondents shall be treated as being on





302

15

deputation and directed that such deputationists be afforded all allowances. Thereafter, the petition has been numbered as CA 631/05. On 08-04-2005 an I.A filed came up for consideration when the Apex Court had directed that the case be listed in August, 2005 and on 29-08-2005, when the case came up, no orders were passed. (The latest information has been taken out from the internet) Thus, the stay granted continues and the persons who were transferred were treated as one on deputation with usual allowances. The applicants in the O.As in hand have not given their consent for transfer and they are not willing to get allocated Uttaranchal Cadre. In respect of those transfer, the period of deputation was 18 months. In fact, after completion of 18 months of deputation by the previous batch, another batch was also sent vide order dated 02-08-2005 and the arrangement so made had been stipulated to be subject to final decision by the Apex Court.

3.4 While the above was with reference to earlier transfer under the then evolved transfer policy, based on almost identical transfer policy, the present transfer policy has been formulated with one vital difference, i.e. there has been no specific period, which means that the present transfer is on permanent basis. This would thus mean that there has been a complete cadre change. The relevant portion of the transfer policy is as under:-

h  
"Where sufficient volunteers are not available to go on deputation, the junior most persons in each cadre may be sent on deputation to the newly created/re-organized offices.



32

16

However, in case vacancies arise in old offices they will be reverted back on seniority basis starting from the senior most first."

3.5 The above is the main grievance of the applicants as the policy if implemented would vary the conditions of service of the applicants, by way of hampering their seniority position and consequently their prospects of further promotion etc., Their grievance of the applicants is aggravated by the alleged fact that there has been imbalance in the allocation. The statistics as given in the applications is as under:-

(a) Sanctioned Strength for UP and Uttaranchal:

Assistant Audit Officer:	415
Section Officer (Auditor)	81

(b) Men-in-position for UP and Uttaranchal

Assistant Audit Officer	283
Section Officer	119

(c) Surplus deficiency Position:

Assistant Audit Officer	-132
Section Officer	+ 38

(d) Allocation to State of Uttaranchal:

Assistant Audit Officer	36
Section Officer (audit)	25

3.6 Of the above, a few have given their option and remaining had not given their option to be encadred in the Uttaranchal State Cadre.



321

3.7 According to the applicants, while as per the provisions of Sec. 73 of the Act, for effecting the change in the cadre both provisionally initially and regularly (i.e. from U.P. Cadre to Uttaranchal Cadre) on permanent basis, there shall be a general or special order of the **Central Government** and to the best of the knowledge of the applicants, no such general or special order of the Government has been issued.

3.8 The policy of transfer, also stipulated that if sufficient number of volunteers are not available (i.e. for deputation) the junior most in the cadre would be transferred. This stipulation according to the applicants would mean unilateral decision to shift the officers and the same would be permanent.

3.9 The applicants in all the O.As have assailed the transfer policy on the following grounds:

(a) Respondent No. 1 has no legal locus standi to come up with 'separation of cadres' policy as a substitute to the earlier impugned 'TRANSFER POLICY' of December, 2002;

(b) Some applicants have already endured an eighteenth month spell of deputation as Section officer (Audit) in the O/o. The Accountant General, Uttaranchal, Dehradun and other personnel in all cadres (including Assistant Officers) remain placed on deputation terms that is to last beyond January, 2007, hence the applicant owing to the fortuitous circumstance of promotion as Assistant Audit Officer w.e.f. 1<sup>st</sup> January, 2006 could not be picked up again on the specious plea of junior placement in the seniority list either in June 2006 or thereafter.



35

(c) The impugned policy of separation merits being cold stored till the final decision of the Hon'ble Supreme Court of India in SLP (Civil) No. 11957/2004;

(d) The impugned policy of 'separation of cadres' has not been formulated honestly, bonafide, reasonably and in public interest that could be upheld as per the statutory rules;

(e) The move smacks of gross arbitrariness when 157 men of the second round of deputationist are not going to complete their 18 month term till early January, 2007;

(f) "Cadre-related matters" happen to be part and parcel of conditions of service in regard to which Respondent No. 1 has no independent powers under Article 148(5) of the Constitution.

(g) As per the ratio of judgement of the Apex Court in Doraiswamy's case, Government of India either singly or jointly are not empowered to act unless and until the relevant provisions of the U.P. Reorganisation Act, 2000 (Act No. 29 of 2000) is suitably amended by the august Parliament.

(h) There are already sufficient vacancies in the State of Uttar Pradesh and as far as functioning in the State of Uttaranchal is concerned, as many as 36 incumbents are working there on deputation on the post of Assistant Audit Officer and 25 on the post of Section Officer (Audit).

(i) The new transfer policy is nothing but circumventing the orders of the Hon'ble Supreme Court and also against the spirit of the orders of Hon'ble High Court, passed in Civil Misc. Writ Petition No. 664 of 2004 which has not been stayed entirely by the Hon'ble Supreme Court.

(j) To the best of knowledge of the applicants, no general or special order has been issued by the Central Government, namely the President of India in regard to the allocation of the applicant Association in the office of respondent No. 5, i.e., at Uttaranchal.

(k) In view of the express provisions contained in Article 148 (5) of the Constitution of India, no rules have been framed by the President after consultation with the Comptroller and Auditor General of India in regard to the service condition the



36

applicant No. 1 Association and in view of the said position the applicants cannot be allocated the respondent No. 5 office.

3.10 O.A. No. 577 of 2006 also challenges the policy and these are from the Group C and D employees association and others. The legal pleas taken in this OA are the same as in the other O.As. Likewise, OA No. 516 of 2006 has been filed by the Civil Accountants Association, while OA No. 600/06 is filed by the lone applicant Bhola Ram, supervisor. All have raised identical legal plea.

3.11 In OA No. 536, the order dated 06-03-2006 passed by the Deputy Accountant General/Administration has been impugned and the same reads as under:-

" In Accordance with the directions issued by Headquarters vide letter No. 62-NGE (App)/53-2003 dated -, separated cadres in the reorganised State of Uttaranchal are to be in place on 1.6.2006. For allocation of staff on separation of cadres in the reorganised State, a policy has been framed by the Comptroller and Auditor General of India (Policy enclosed as Annexure 'A'). Accordingly, fresh options in the prescribed format (enclosed as Annexure 'B') are required to be obtained from all the existing staff for permanent transfer to the newly created/reorganised office.

As such, all the existing staff of offices of Accountant General (A&E), Uttar Pradesh, and, Uttaranchal (at Allahabad, Lucknow and Dehradun) including the persons on deputation to other offices/departments, unauthorised absence or under suspension, are required to submit their option in the prescribed format through their respective office/coordination, for permanent allocation to the office of their choice.



37

If such option is not received within one month from the date of issue of this office order from any person, such person will be allocated to the office for which number of optees are less than the required strength."

3.12 For the purpose of references, the impugned orders in various O.As are as under:-

OA No.	Date of impugned Order	Passed by	Remarks
516/06	06/03/06	Dy. Accountant General, Adm'n	Calling for option
536/06	06/03/2006 09/05/2006	-do- Sr. Adm'n Officer	-do-
537/06	22-02-2006	C & A.G.	Policy for allocation of staff + Covering letter
574/06	01/03/2006 13-04-2006	Dy. Acctt General Dy. Acctt General	Allocation to U'chal Rejection of Repn.
575/06	As in OA 574/06	-do-	-do-
600/06	24-05-2006	'Lekha Pariksha Adhikari (Prashasan)	Transferring applicant.

*[Handwritten signature]*



3.13 Respondents have resisted the O.As. According to them -

(a) Para 14.2.1 of the C& AG's Manual of Standing Orders (Administration) Volume provides that the Controller and Auditor General of India has powers to transfer any officers from any post or office within the IA & AD.

(b) The Comptroller and Auditor General holds full powers to frame rules and conditions of service in respect of persons serving in the I.A & A.D.

(c) After the creation of the new State of Uttaranchal, the new sanctioned strength has been worked out on the basis of actual work load. The existing vacancies in the old office are to be shared with the newly created Uttaranchal State.

(d) To fulfill the constitutional and statutory obligations, the services in each cadre of experienced officers/officials are required in the new office and hence the Policy for allocation of staff on separation of cadres has been framed. The said policy prescribes a new sanctioned strength (person in position) and vacancies to be shared equally between U.P. Audit Office and Uttaranchal in a most scientific and justified manner.

(e) The stipulation of deputation for a period of 18 months was made on the justifiable basis that continuity was warranted in performing the obligatory functions of the organization.

(f) The C & AG has power to delegate his authorities to his



39

subordinates and as such, it is not obligatory that each and every order emanating from the organization should be signed by the C & A.G. Further, for allocation of staff from UP to Uttaranchal, it is not at all necessary to involve the State Accountant General within or outside the territorial limits of the State.

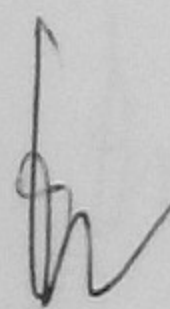
(g) The Apex Court has been seized of the issue and that it has allowed the staff to go on deputation to Uttaranchal, which means that the Apex Court has upheld the temporary transfer order.

(h) Since this Cadre Bifurcation is a new exercise/event, persons can be sent to the Uttaranchal Office even if they have completed their tenure in Uttaranchal Office as part of temporary transfer on previous occasion. The applicants are expressing their desperation to get themselves and similarly placed other staff exempted on the ground that they have already done one stint of deputation for 18 months at Uttaranchal.

(i) The policy for separation of cadre provides that one time option shall be called for from all existing staff for permanent allocation to the office of their choice. This will be accomplished by following all canons of natural justice.

(j) To ensure normal and smooth functioning, the arrangement of temporary transfer has been discontinued and the policy for separation of cadres has been framed which is perfectly legal and valid and hence deserves to be upheld by the Tribunal.

4. The counsel for the respective parties had presented their respective cases at length. Citations referred to also have been in abundance, and all





32 40

have been entertained, as **Lord Denning stated in Jones v. National Coal Board(1957) 2 QB 55, 64:** *"Let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every situation."*

5. The spinal points urged in unison by the counsel for the applicants in all these O.As mainly congeal into the following:-

(a) The orders impugned are without jurisdiction: When under Sec 73 of the Reorganization Act, 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 provisionally 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 in connection with the affairs of the State of Uttaranchal, in the instant cases, there has been no general or special order of the Central Government and as such, the impugned policy is illegal.

(b) The C & A.G. Cannot be a part of "Central Government" .

(c) The service conditions of the applicants get affected by the impugned orders and as per Art. 148(5) of the Constitution of India the service conditions shall be prescribed by rules made by the President after consultation with the Comptroller and Auditor General and in the instant case no such rules have been framed in accordance with the above said provisions of the Constitution. Admittedly, vide

*Handwritten signature*



31

para 32 of the counter in OA 516/06, it has been stated that the policy for permanent allocation of staff, on separation of cadres in A & E offices in State of Uttaranchal and Uttar Pradesh, has been framed by the Comptroller and Auditor General of India in February, 2006. This clearly means that no rules have been framed by the President of India and it is doubtful whether the Policy framed by the C & AG would stand the legal scrutiny even if consultation had been made with the President, since, the statute provides for formulation of any rule only by the President in consultation with the C & AG and not vice versa. ~~and~~ as such, the policy framed by the C & AG is beyond his powers.

(d) The cadre controlling authority changes by virtue of the transfer and no person contrary to his will can be asked to serve another master.

(e) Transfer is no longer a mere incidence of service, but as held by the Apex Court in the case of National Hydro Electrical Power Corporation Limited vs Shri Bhagwan, 2001(8) ACC 574, transfer of a particular employee appointed to a class or category of transferable post from one place to another is not only an incident but **conditions of service**.

(f) Some of the cadres involved are not centralized and hence, no transfer can take place.

(g) Disproportionate allocation of staff members, compared to the magnitude of workload involved.

6. Counsel for the respondents have reiterated the contentions as contained in the O.A. They have also submitted that the Apex Court is



412

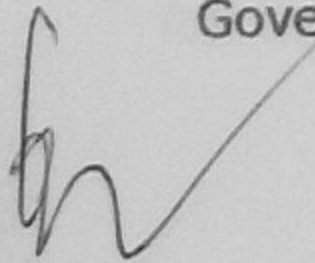
seized of the issue.

7. Arguments were heard and documents perused.

8. The Tribunal initially considered as to whether this OA be either kept pending in view of another case pending in the Apex Court and the decision of that case would bind all the persons serving in the C & AG Organization. However, it has been categorically stated by the respondents vide para 19 of their counter in OA 537/06 that the earlier case was one of temporary transfer and as the same was causing disruption in the functioning, the Comptroller and Auditor General has decided to bifurcate the cadre so that the constitutional and statutory obligation may smoothly be fulfilled. The policy for separation of cadre is an entirely different event and cannot be clubbed with the previous temporary transfer policy. The Policy for separation of cadre laying down ground rules for cadre bifurcation is not in conflict with orders of the Hon'ble Supreme court of India. Hence, this case is decided on the basis of merit.

9. **The discussion:**

9.1 The applicants submit that the C & A.G has no jurisdiction in the matter as under Sec. 73 of the Reorganization Act, it is the Central Government which is the authority for positioning the serving persons in the





43

unbifurcated State to the newly carved out State and the term "Central Government" does not include C & AG. At the cost of repetition, Sec 73 is extracted below:-

**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 provisionally 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 in connection with the affairs of the State of Uttaranchal.

Provided that every direction under this sub section issued after expiry of a period of one year from the appointed day shall be issued with the consultation of the Government of the Successor States.

(2) As soon as may be after the appointed day, the Central Government shall by general 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 provisions 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 Government concerned or in default of such agreement, as may be determined by the Central Government."

9.2 The spirit of the above section is that on reorganization of the States, in so far as the serving employees are concerned, they are allowed to continue in their respective station and position, but on provisional basis and for their shifting from the respective position/station, a general or special





429

order of the Government is required and even if they be posted to the newly created State, their position there would, initially, only be provisional. In the instant case, **there does not appear to be any such general or special order from the Central Government.**

9.3 It appears that the C & AG presumed that his own order itself would suffice, for according to the respondents, provisions contained in Art. 148(5) of the Constitution take care of each and every contingency. In other words, orders of C & A.G. seem to be taken as orders of the Central Government. The task is whether C & AG can be said to be a wing of the Central Government? Section 3(8)( b )( ii ) of the General Clauses Act. It is as follows:

Central Government□ shall in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include in relation to the administration of a Part C State, the Chief Commissioner or Lieutenant-Governor or Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be.□

9.4 The above does not state that C & AG is a part of Government. In fact C & AG cannot, by virtue of its functional responsibilities, a part of Central Government nor could it act on behalf of Central Government. In the case of **T.N. Godavarman Thirumulpad (87) v. Union of India, (2006) 1 SCC 29**, reference has been made to Chapter III of the CAG Act and the Apex





43

Court stated as under:-

**59.** Chapter III of the CAG Act deals with duties and powers of the Comptroller and Auditor General. Section 10 thereof deals with compilation of accounts of the Union and the States by CAG. Under Section 11, the CAG is required to prepare and submit accounts to the President, Governors of States and Administrators of Union Territories having Legislative Assemblies. **Under Section 12, CAG is required to give information and render assistance to the Union Government and the State Governments.** (Emphasis supplied).

9.5 From the above it is abundantly clear that CAG is an independent body and thus distinguishes itself from Union or State Government. If C & AG be a part of the Central government, the CAG Act would not distinguish it from Central Government. **Thus, it is clear that Central Government does not include C & AG.**

9.6 Thus provisions of Section 73 of the Reorganization Act have not been complied with, while shifting the persons from U.P to Uttaranchal.

9.7 Respondents have tried to justify their action by taking shelter under the provisos of Art. 148(5) of the Constitution. The said Clause in the said Article reads as under:-

□Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the





President after consultation with the Comptroller and Auditor General. □

9.8 In other words, as per the respondents, independent of the provisions of Sec 73 of the Act, provisions of Art. 148(5) of the Constitution provides them adequate powers. As such, it is essential to consider the scope and extent of those provisions.

9.9 When there is bifurcation of an existing State into two, for shifting the persons already serving in the erstwhile un-bifurcated State to the newly carved out State, there must be a consultation with the Central Government. The significance of consultation and effect of non consultation have been succinctly brought out in the case of Indian Administrative Service (S.C.S.) Assn. v. Union of India, 1993 Supp (1) SCC 730 , wherein the Apex Court has held as under:-

**26.** The result of the above discussion leads to the following conclusions:

(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. **The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.**

(2) **When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure,**



47

**consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.**

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

**(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory.** The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action ☐after consultation☐.

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. **It is for the Court to determine in each case in the light of its facts and circumstances whether the action is** ☐after consultation☐; ☐was in fact consulted☐ or was it a ☐sufficient consultation☐.

(7) Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft

h



48

bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation. (Emphasis supplied)

9.10 The above dictum of the Apex Court induces us to deal with the question whether in the instant case, consultation is mandatory or directory. The impact of the Policy of Transfer is that certain persons (who have not exercised their option to shift to the newly carved state) may suffer deep rooted change of their conditions of services. As such, whether the C & AG has the powers to change the conditions of services of such persons? The powers of the C & AG are not unfettered. On comparison with the powers of the Chief Justice of a High Court as provided for in Art. 229 of the Constitution, the Apex Court has in the case of M. Gurumoorthy v. Accountant General, Assam (Nagaland), (1971) 2 SCC 137, held as under :

"...reference may be made to Article 148 relating to the Comptroller and Auditor General of India. Clause (5) provides:

**□Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General.□**

*fr*



49

12. It is significant that the Comptroller and Auditor-General unlike the Chief Justice of a High Court has not been given the power to prescribe the conditions of service of persons serving in the Indian Audit and Accounts Department in the same terms as are embodied in Article 229(2) (Emphasis supplied)

9.11 The extent of powers of the C & AG has been examined by the Apex Court in the case of **Accountant-General v. S. Doraiswamy, (1981) 4 SCC 93**. In that case, the respondents entered service in the Office of the Accountant General, Tamil Nadu as Upper Division Clerks. They appeared in the Subordinate Accounts Service Examination in November, 1969 and passed the same. They claimed seniority on the basis that their length of service in the Inferior post should be taken into account, and rested their claim on para 143 of the Manual of Standing Orders issued by the Comptroller and Auditor General as it stood before its amendment by a correction slip of July 27, 1956. The correction slip removed the factor of weightage on the basis of length of service in the determination of seniority. The claim was rejected by the Comptroller and Auditor-General. A writ petition filed by them in the High Court of Madras was allowed by a learned Single Judge, and his judgment was affirmed by an Appellate Bench of the High Court. Against the judgment of the Appellate Bench, the Accountant General, Tamil Nadu and the Comptroller and Auditor-General have appealed to this Court, and those appeals <sup>were</sup> ~~are~~ pending as Civil Appeals 1584 to 1588 of 1973. During the pendency of those appeals the President enacted the Indian

62



50

Audit and Accounts Department (Subordinate Accounts Service & Subordinate Railway Audit Service) Service Rules, 1974 (referred to hereinafter as (the Rules of 1974). The Rules of 1974 purport to give statutory recognition to the amendment of para 143 by the Comptroller and Auditor-General. The validity of the Rules of 1974 and the amendment made in para 143 are assailed by the respondents before the Apex Court. The Apex Court held as under:-

The respondents have raised two contentions. The first is that the Rules are invalid as clause (5) of Article 148 to which alone, it is said, they must be ascribed, does not permit the retrospective enactment of rules made thereunder. The other contention is that the specific rules affecting the seniority of the respondents are invalid because in entrusting power to the Comptroller and Auditor-General to issue orders and instructions in his discretion the doctrine against excessive delegation of legislative power has been violated.

5. Taking the first contention first, it may be noted that the Rules of 1974 purport, according to the recital in the notification dated November 4, 1974 publishing them, to have been made by the President ☐ in exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor-General of India ☐. The respondents say that the only provision of the Constitution under which those Rules could be made is clause (5) of Article 148, and we should ignore reference to the proviso to Article 309. If that is done, they urge, there will be no justification for holding that the Rules of 1974 can be given retrospective operation. Unlike the proviso to Article 309, it is pointed out, clause (5) of Article 148 does not permit the enactment of retrospectively operating rules. We think that the respondents are right.

h



9.12 In fact the above has been further amplified in para 7 of the judgment which reads as under:-

7. The next question is whether clause (5) of Article 148 permits the enactment of rules having retrospective operation. It is settled law that unless a statute conferring the power to make rules provides for the making of rules with retrospective operation, the rules made pursuant to that power can have prospective operation only. An exception, however, is the proviso to Article 309. **In *B.S. Vadera v. Union of India* 1 this Court held that the rules framed under the proviso to Article 309 of the Constitution could have retrospective operation.** The conclusion followed from the circumstance that the power conferred under the proviso to Article 309 was intended to fill a hiatus, that is to say, until Parliament or a State Legislature enacted a law on the subject-matter of Article 309. The rules framed under the proviso to Article 309 were transient in character and were to do duty only until legislation was enacted. As interim substitutes for such legislation it was clearly intended that the rules should have the same range of operation as an Act of Parliament or of the State Legislature. The intent was reinforced by the declaration in the proviso to Article 309 that "any rules so made shall have effect subject to the provisions of any such Act". Those features are absent in clause (5) of Article 148. There is nothing in the language of that clause to indicate that the rules framed therein were intended to serve until parliamentary legislation was enacted. All that the clause says is that the rules framed would be subject to the provisions of the Constitution and of any law made by Parliament. **We are satisfied that clause (5) of Article 148 confers power on the President to frame rules operating prospectively only.** Clearly then, the Rules of 1974 cannot have retrospective operation, and therefore sub-rule (2) of Rule 1, which declares that they will be deemed to have come into force on July 27, 1956 must be held ultra vires. (Emphasis supplied).

9.13 As regards the second contention, the Apex Court has held, "We are unable to hold that the power conferred on him under the Rules violates the



principle against excessive delegation."

9.14 The Apex Court has further held as under:-

.....**The Comptroller and Auditor-General of India, who is the head of that Department, is a constitutional functionary holding a special position under the Constitution.** Under Article 149, he performs duties and exercises powers in relation to the accounts of the Union and also of the States. Clause (1) of Article 151 requires him to submit a report relating to the accounts of the Union to the President, who causes them to be laid before each House of Parliament. Likewise, clause (2) of Article 151 requires him to submit a report relating to the accounts of a State to the Governor of the State, who causes them to be laid before the Legislature of the State. **It cannot be said, in the circumstances, that the persons serving in the Indian Audit and Accounts Department are holding office in connection with the affairs of the Union exclusively.**

It is evident that the authority vested in the **Comptroller and Auditor-General** ranges over functions associated with the affairs of the Union as well as over functions associated with the affairs of the States. It is a single office, and the Indian Audit and Accounts Department, which it heads, is a single department. They cannot be said to be concerned with the affairs of the Union exclusively. Consequently, the regulation of the recruitment and conditions of service of persons serving in the Indian Audit and Accounts Department cannot be regarded as a matter falling within the domain of the President within the terms of the proviso to Article 309. A special provision was necessary to entrust the President with that power, and that provision is clause (5) of Article 148. The power contained in clause (5) of Article 148 is not related to the power under the proviso to Article 309. The two powers are separate and distinct from each other and are not complementary to one another. In our opinion, the reference to the proviso under Article 309 in the recital of the notification publishing the Rules of 1974 is meaningless and must be ignored. (Emphasis supplied)



53

9.15 In Comptroller & Auditor General of India v. Mohan Lal Mehrotra, (1992) 1 SCC 20, the Apex Court has held as under:-

The High Court has also touched upon the validity of the impugned circular and stated that they were not issued by the President after consultation with the Comptroller & Auditor General. In the present case, the President has not issued the circular, but Comptroller & Auditor General has issued it. There was however, proper consultation between the government and the Comptroller & Auditor General for issuing the circular. The infirmity pointed out that it was not issued in the name of the President, therefore, relates only about the form and not with regard to the substance. The circular of course, ought to have been issued in the name of the President as required under Article 148(5) of the Constitution, as it affects the service conditions of persons in the Audit and Accounts Department. **But since the government has approved the circular and the circular was in accordance with the declared policy of reservation, we do not want to restrain the Comptroller & Auditor General from enforcing it.** (Emphasis supplied)

9.16 The above decisions of the Apex Court would go to show that the rule is that the Central Government issues the order in consultation with the C & AG, while Central Government may be consulted and the C & AG may issue the rules. Where certain provisions have already been made by the Central Government, these could well be borrowed by the C & AG. Thus, once in consultation with the Central Government, if any provisions have been made by way of a rule under Art. 148(5) of the Constitution, then, in case the said Rule is silent about a particular aspect (In other words, when there are certain gaps), the same could well be filled up by executive orders



by the C & AG, but such executive instructions must run subservient to the statutory provisions. Notification can merely "supplement" or fill up a gap in the statutory rules. In this regard, it is appropriate to refer to the judgment of the Apex Court in the case of Distt. Registrar v. M.B. Koyakutty, (1979) 2 SCC 150 wherein it has been held:-

**"22.** There can be no quarrel with the proposition that if the statutory rules framed by the Governor or any law enacted by the State Legislature under Article 309 is silent on any particular point, the Government can fill up that gap and supplement the rule by issuing administrative instructions not inconsistent with the statutory provisions already framed or enacted. The Executive instructions in order to be valid must run subservient to the statutory provisions. "

9.17 Thus, If any order of the C & AG has been issued, invoking the provisions of Art. 148 of the Constitution, without consultation with the Central Government, then the same becomes invalid and equally it would be invalid, if it tends to superadd or superimpose by an Executive fiat on the statutory rules something inconsistent with the same. In the instant case, the policy of transfer has not been preceded by any statutory Rule framed in consultation with the Central Government. It was issued only in the wake of the enactment of the Uttar Pradesh Reorganization Act, 2000. Here again, Sec 73 provides for consultation with the Central Government. Thus, even under the provisions of Sec. 73, the respondents were under an obligation to consult the Central Government. This has also been violated.



53

9.18 Counsel for the Applicant in OA 537/06 painstakingly prepared his case and supported his arguments with a number of judgments, touching the field of Powers of the C & AG on transfer, delegation of powers, cadre bifurcation, option, competence of C & AG in making policy decisions, Conditions of service, Delegation of powers etc., All the 31 citations referred to by the counsel have been gone through by us and the citations referred to in this order have all from out of such decisions relied upon by the counsel.

9.19 Thus, to conclude it is clear that in the wake of the enactment of Uttar Pradesh Reorganization Act, 2000, under Sec. 73, there should be an order for shifting of the persons serving in the State of UP before bifurcation from the present state of UP to the newly carved out state of Uttaranchal. There has been no such order, general or special, passed by the Central Government. Again, the policy of transfer issued by the C & AG vide the impugned order cannot be said to be one framed under the provisions of Art. 148(5) of the Constitution, as Art. 148 provides for making rules in respect of persons serving under C & AG not by the C & AG but by the President and of course, in consultation with the C & AG and further such rules, if made, are clamped by a condition precedent that such rules should be "subject to the provisions of the Constitution and **of any law made by Parliament**, and here, the law made by the Parliament, vide Uttar Pradesh Reorganization Act, 2000 prescribes under Sec. 73, a general or special order by the Central

h



56

Government for shifting of persons already serving in the pre-bifurcated UP State to the State of Uttaranchal, and such an order is conspicuously missing.

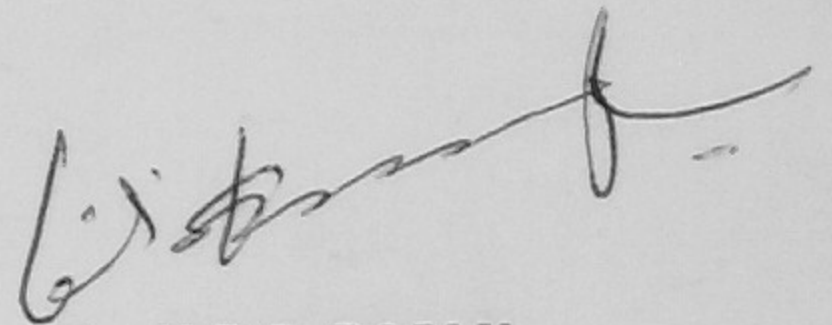
10. Thus, the applicants have made out a cast iron case in their favour. The policy of transfer vide the impugned order in OA 537/2006 has to be held as legally unsustainable, having been passed without authority by the C & AG and consequently, other orders passed by the C & AG or authorities subordinates to them which have been assailed in these O.As are also equally unsustainable. These are, therefore, quashed and set aside. It is however, open to the respondents, to undertake the exercise of having necessary orders passed by the Central Government in accordance with the provisions of Sec. 73 of the Uttar Pradesh State Reorganization Act, 2000 and implement the same. Till such a legally tenable action is taken by the respondents, the applicants cannot be disturbed from their respective position in the State they are functioning.

11. No costs.



**M. JAYARAMAN**

**ADMINISTRATIVE MEMBER**



**Dr. K B S RAJAN**

**JUDICIAL MEMBER**