CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application 362/2011

Date of Order : 09.11.2011

CORAM: **HON'BLE DR. K.B. SURESH, MEMBER (J) &**
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

1- Lekh Raj S/o Shri Ramitta, aged 48 years, MCM.
2- Mani Ram S/o Shri Uda Ram aged 49 years, Fitter Pipe.
3- Ram Avadh S/o Shri Dhan Singh aged 58 years, FGM.
4- Chandgi Ram S/o Shri Shanker Lal aged 57 years, MCM.
5- Harish Chandar S/o Shri Goverdhan Ram, aged 48 years, Fitter Pipe.
6- Subhash Chandra S/o Shri Jai Lal aged 44 years, Fitter Pipe.
7- Vijay Lal S/o Shri Ayodhya Lal aged 52 years, Fitter Pipe.
8- Balbir Singh S/o Shri Puran Singh aged 48 years, Fitter Pipe.
9- Amarjit Singh S/o Shri Jail Singh, aged 48 years, Fitter Pipe.

All applicants working under the Garrison Engiener, Army, MES, Lalgarh Jattan and residents of Sri Ganganagar C/o Lekh Raj S/o Shri Ramditta, R/o C/o G.E., Lalgarh Jattan, District Sri Ganganagar.

.....Applicants.

By Mr. Vijay Mehta, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. Commander Works Engineer, MES, Sri Ganganagar.

3. Garrison Engineer, MES, Army Lalgarh Jattan, District - Sri Ganganagar.

..... Respondents.

By Mr. Ravi Bhansali, Advocates.

O R D E R (ORAL)
[PER DR. K.B.SURESH, JUDICIAL MEMBER]

The Nation having faced the dilemma caused by the neighbour, Pakistan, had decided to countenance it by a show of weapons, and had in fact stepped in with a nuclear device explosion, apparently being undertaken as a deterrent against continued attacks. The Government of the day decided in its political wisdom that it is required to show the strength of India, and its defence preparedness, as a deterrent, by a military exercise by the Army and the Air Force at the Borders of the State of Rajasthan, as twice having been attacked, it was feared that the neighbour would attack once again. Whether

or not the decision of the Government was correct or not, it is not open to challenge in any way, as it was part of the National Defence Policy.

2. It was the bounden duty of the Government of that time to protect the integrity of the Borders of the country, and steps as were found necessary to maintain the integrity of the nation had to be taken quickly. For this purpose, it was empowered by the Constitutional process with powers to take such decisions, and bring it into a regulatory matrix, and such an act was conceived as 'Operation Parakram', basically a military exercise along the borders with Pakistan. It is now said that some foreign nations had complained against it, firstly as to its necessity, and secondly as to its provocative nature. But whatever may be the reason, that was the political decision of the Government of the time, and it is not amenable to challenge or even scrutiny in any Forum. In fact, the neighbour was sufficiently deterred that an open warfare could be prevented by just a show of force.

3. Apparently, a number of concessions were therefore allowed to the concerned civilian staff of the Army. Such stipulations were earlier contemplated as Field Service Concessions as per Annex. 'C' of the Ministry of Defence letter No.A/02854/AG/PS-3(a)/97-SD (Pay/Ser) dated 25th January, 1964, in Field Areas, and as Annex. 'D' to the Ministry of Defence letter No.A/25761/AGPSD-3(b)/146/S/2/D (Pay/Services) dated 2nd March, 1968 in Modified Field Areas, read with Ministry of Defence letter No. 4 (6)/2000/D (Civ.I) dated 21st September, 2000, and it was prescribed that the rate of compensation for the concession shall be as per the minimum rate laid down for the Combatants in the respective area. Therefore, this is not a new process but an accepted one.

4. Now, as we understand it, an amount of Rs.28.75 per day was apparently found as sufficient for subsistence on a daily basis of such people engaged in 'Operation Parakram'. The Annex.A/2 which is a letter No. 4(9)/2003/D (Civ) dated 6th March, 2006 issued by the Government of India, Ministry of Defence to the Chief of the Army Staff, Chief of the Air Staff and the Chief of the Naval Staff in respect of 'Operation Parakram' stipulated that the Liberalized Pensionary Awards and Ex-gratis lump sum compensation as laid down in Government of India, Ministry of Personnel, Public Grievances & Pension

O.M. No.2/6/87-PIC(II) dated 7th August, 1987, No. 45/55.97 – P&PW(C) dated 11th December, 1998 and the OM No. 45/22/97-P&PW(C), dated 3rd February, 2000, would be of significance and, therefore, all the Units/Formations which had been deployed for this operation, as notified by the respective Commands, and all concerned who were mobilized, are entitled to this concession w.e.f. 14.12.2001 till the conclusion of the operation on 18.3.2003, and that this will cover all civilian defence employees deployed and mobilized, or even kept in readiness, irrespective of the geographical areas of the deployment.

5. The significant matrix of this decision of the Government is that whether they were deployed in a particular area or not, they all would be entitled to the Ex-Gratis monetary compensation, and that this concession applies to the personnel even if they were only kept in readiness, and were not actually put in active Operation. Therefore, after all intra-departmental discussions; finally in 2009 it was decided that such payments, which may amount to around Rs.1000/- or so per month per employee, on the basis of Rs.28.75 per day, was allocated, and an amount of Rs.15 Crores or so had been paid to various employees.

6. In **Secretary to the Government of Haryana and others vs. Vidya Sagar** reported in 2010 (1) SCC (L&S) 437, the Hon'ble Supreme Court had held that once the State had held a benefit accruable to an employee, then, after the event, it cannot be backtracked. The question of promissory estoppel will also have a play here.

7. It now appears that in its report for the year 2010 the Comptroller and Auditor General found that in some cases the same benefit was not extended to the service personnel of the same Unit, and, therefore, it was held that it shall not be payable to the concerned civilian employees. This position cannot be right as there is no equivalence between service and civilian employees, especially in respect of daily rations being supplied to the forces. Whether the monetary benefit had been extended to service personnel or not, the Government of the day had decided that all these civilian defence persons are entitled to such a concession following the matrix laid down from 1964 onwards, and which had become final and acted upon.

8. Therefore, whether one set of employees were given a larger benefit, and other sector was not given it, it has to be assumed that there must be some reason behind it, and even otherwise, equivalence can be brought about only positively, and not negatively. On the basis of the reply, the respondent would say that in many of these cases the matter is only of field rations which is in issue, and whenever the Government could not make arrangements for them, these monetary benefits were extended, but then this cannot be extended uniformly to those who may have been mobilized, and not actually deputed, even if they were static units.

9. This view of the Comptroller and Auditor General is not correct, as these units were kept in readiness by a process of exclusivity, and all effects of it became attached to them. The payment is in respect of a promise, which the Government has the legal duty to pay under whatever condition, and the rules allow it also. At the time when this 'Operation Parakram' was started, these benefits were planned and available for the defence forces, and also field rations are normal perquisites of uniformed forces. But then the Government Order and the Presidential order also very clearly stipulate that even if those persons are not mobilized, they are also entitled to the same benefit. This is a reflection of Article 14 of the Constitution of India, wherein a group of people, who were kept unutilized for a particular work which was entrusted to them, and since extraction of work from them or not is part of the policy, no discrimination can be made in between persons actually working, and not actually working; and, it cannot be said that they may not be paid the said benefits, as they were only kept ready, but not actually utilized. It came about during the hearing that elements of this readiness constitutes many of the elements of work also.

10. The objection of the Comptroller and Auditor General would appear to be that since this monetary benefit was not extended to the service units, then it cannot be extended to civilian employees. In fact there is no parallel in both these cases, and therefore this view may not be correct, as all uniformed forces are already covered by field rations. Therefore, the only question which remains is that whether these persons actually participated in the exercise or not. Even when the scheme was planned-out it was decided by the Government itself that whether the personnel are deployed or not, these benefits

would be made available to them also as a policy, so the objection of the audit in para 3.4 raised by the C&AG does not appear to be correct. Even otherwise, the Government has the power to take such policy decisions which cannot be questioned by the Auditors, and it appears to be rational and logical also in the totality of the circumstances.

11. The Hon'ble Apex Court had in **Punjab National Bank and Another vs. Astamija Dash** reported in 2009 (1) SCC (L&S) 673 held that persons dissimilarly situated cannot be treated equally. Being mobilized for a military exercise is part of duty of uniformed forces. The job stipulations of Civilian defence employees are different. Therefore, on this ground also, there is no equality between them. Besides all uniformed forces have their own arrangements for field rations, as it is a regular work mode for them. Therefore, the objection raised by the C&AG. does not appear as rational or logical. But even otherwise, the Government can devise a policy of grant of largesse, and the only condition to be satisfied would be non-arbitrariness and reasonableness. The grant of such small monetary benefits to the applicants are reasonable, and it does not diminish the equality principle under Article 14.

12. The replies filed in some cases are exhaustive enough to encompass the issues in all connected cases. We, therefore, hold that all these persons, irrespective of the fact that whether they were only mobilized, or whether they actually participated in the 'Operation Parakram' or not, are entitled to the benefit, and the benefit which is given cannot now be withdrawn merely on account of Audit Objection as it is a part of the overall policy, and concretized by a prescribed Presidential order, based on longstanding instructions. Therefore, the impugned orders of recovery, and all the connected orders issued in this regard for recovering the amounts paid towards 'Operation Parakram' are hereby quashed. We declare that on the basis of prescribed and concretized government policy, which is rational, non-discretionary, non discriminatory, logical, and supported by long standing acceptance; all such employees are entitled to this benefit.

13. In the circumstances and issues arising in the case, the C&AG could not have raised this illogical issue, and the

Governmental authorities ought not to have blindly accepted the objection raised in the audit para. Therefore, the present stand of withdrawal from the earlier well thought-out stand of the Government will not stand the test of reasonableness.

14. When a public authority, has adopted a policy, and in the light of that policy, exercises a power to confer a right on a group, it cannot afterwards revoke that position, even on a plea that its policy has since changed. In this case, there is no policy change even, but only a blind submission to the illogical audit objection. This is especially glaring as the policy was declared, and as per that declared matrix, work or readiness to work, was extracted. Therefore, rule against exploitation as prescribed in the directive principles, and promissory estoppel will also bind the hands of the Government.

Per Sudhir Kumar, Administrative Member (concurring).

15. In total agreement with Hon'ble Member (J), I would further like to supplement his oral order by pointing out that the Comptroller and Auditor General of India appointed under Article 148 as a Constitutional Authority, derives his powers and functions and duties from Articles 149, 150 and 151 of the Constitution of India.

16. Under Article 149 of the Constitution of India, the Comptroller and Auditor General of India shall perform such duties and exercise such powers in relation to the accounts of the Union, and of the State, and of any other authority or body, as may be prescribed by or under any law made by the Parliament. Under Article 150 it has been provided for that the accounts of the Union and of the States shall be kept in such form as the President may, on the advise of the Comptroller and Auditor General of India, prescribe. Under Article 151, the reports of the Comptroller and Auditor General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each Houses of the Parliament, and the reports of the Comptroller and Auditor General of India relating to the accounts of the State, shall be submitted to the Governor of the State, who shall cause them to be laid before the legislature of that State.

17. The role, powers and the functions of the Comptroller and Auditor General of India, were examined in detail by the same Bench in its order dated 30.03.2011 in OA No.52/2004 with MA No.60/2009 Suresh Kumar and ors. Vs. Union of India and others and OA No. 96/2007 with MA No. 13/2011 Goverdhan Lal Bairva Vs. Union of India and others, in the combined order passed in those two cases.

18. In that judgment, the powers of the C&AG of India were examined in detail under the Constitutional matrix, and it was held that those powers could not be diminished by any Law, Rule or Regulations, and cannot also be diminished by the C&AG, or any of his Subordinate Officers also, by an Executive Order. A submission to the effect that the Constitutional Powers, functions and duties could be delegated to the State Government level functionaries of the Accounts departments of the State Governments, subject to obtaining approval of the President of India for such an action, was also turned down, and held to be impermissible under the scheme of balance of powers and functions under the Constitution of India.

19. However, in that judgment, no occasion had arisen for us to comment upon the extent and reach of the Constitutional functions and jurisdiction of the Comptroller and Auditor General of India.

20. The powers of the Comptroller and Auditor General of India to audit had come to be reviewed by the Hon'ble High Court of Delhi at New Delhi in Writ Petition (Civil) No. 4834/1988 and C.M.No.9784/1998 in Writ Petition (Civil) No. 2748/1998 – **National Dairy Development Board Vs. Union of India and the Comptroller and Auditor General of India** in its judgment dated 27.01.2010. In that judgment, the Hon'ble High Court of Delhi had an occasion to examine the provisions of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. Chapter 3 of that Act, consisting of Sections 10 to 20 of the said Act, lays down the duties and the powers of the Comptroller and Auditor General as prescribed by the Parliament under Article 149 of the Constitution of India. In para 20 of its judgment, the Hon'ble High Court of Delhi had defined the role of the Comptroller and Auditor General, quoting the IV report of the Public Accounts Committee in the Lok Sabha, as follows:-

"20. ..... . Role of CAG is much wider and is not merely concerned with normal scrutiny of accounts, fraud, misfeasance etc. but includes enquiries into aspects like "faithfulness, wisdom and economy" in expenditure and receipts. The CAG not only examines whether the corporation has acted in conformity with the prescribed law, rules and procedure but also whether there was improper, extravagant or infructuous expenditure. Audit by CAG is in the nature of appropriation audit in which CAG also examines whether the expenditure was imprudent or wasteful and connected aspects. Examining the role of CAG, the Central Public Accounts Committee's Fourth Report in Lok Sabha had observed :

> **"The Committee are, therefore, definitely of the view that it is the function of the Comptroller and Auditor General to satisfy himself not only that every expenditure has been incurred as per prescribed rules, regulations and laws, but also that it has been incurred with "faithfulness, wisdom and economy". If, in the course of his audit, the Comptroller and Auditor General becomes aware of facts which appear to him to indicate an improper expenditure or waste of public money, it is his duty to call the attention of Parliament to them, through his Audit Reports. At the present time when there is heavy taxation and heavy expenditure, the Committee hope that Comptroller and Auditor General will pay even greater attention than in the past to this aspect of his duties and that Government will given him every facility to perform them."**

21. In para 21 of its judgment, the Hon'ble Delhi High Court had further gone on to examine the internal Regulations on Audit and Accounts of the office of the Comptroller and Auditor General of India, framed in the year 2007 under Section 23 of the CAG (Duties, Powers and Conditions of Service) Act, 1971, by stating as follows:

> ***"21. Different type of audits, which are undertaken by the CAG is apparent when we examine Regulation on Audit and Accounts, 2007 (hereinafter referred to as, the Regulations for short) framed under Section 23 of the CAG Act. The term "audit" has been defined in Regulation 2 (5) to mean examination of accounts, transactions and records in performance of duties and exercise of powers prescribed under the Constitution and the Act and includes performance audit or any other type of audit. Under Regulation 4, objectives of the audit have been defined as :***
>
> **"4. Broad objectives of audit.**
>
> **The broad objectives of audit are to ensure legality, regularity, economy, efficiency and effectiveness of financial**

management and public administration mainly through assessment as to :

(1) whether the financial statements are properly prepared, are complete in all respects and are presented with adequate disclosures (financial audit);

(2) whether the provisions of the Constitution, the applicable laws, rules and regulations made thereunder and various orders and instructions issued by competent authority are being complied with (compliance audit); and

(3) the extent, to which an activity, programme or organization operates economically, efficiently and effectively (performance audit)."

22. Section 23 of the Comptroller and Auditor General's (Duties, Powers and Conditions of service) Act, 1971, states that the Comptroller and Auditor General of India is authorized to make regulations for carrying into effect the provisions of that Act in so far as they relate to the scope and extent of audit, including laying down, for the guidance of the Government Departments, the general principles of Government accounting and the broad principles in regard to audit of the Government's receipts and expenditure. It is under this enabling provision that the Regulations on Audit and Accounts, 2007, have been framed by the Comptroller and Auditor General of India himself.

23. When one goes through these 2007 Regulations of C&AG himself, it is seen that Regulations on Audit and Accounts are quite exhaustive, and Regulation No.8 states that the audit should be ready to advise the Executive in such matters as accounting standards and policies, and the form of financial statements.

24. Regulation No.13 Chapter 3 the 2007 Regulations on Audit and Accounts explains the scope of the C&AG's audit as follows;:

"<u>Scope of audit</u>

(1) Within the audit mandate, the Comptroller and Auditor General is the sole authority to decide the scope and extent of audit to be conducted by him or on his behalf. Such authority is not limited by any considerations other than ensuring that the objectives of audit are achieved.

(2) In the exercise of the mandate, the Comptroller and Auditor General undertakes audits which are broadly categorized as financial audit,

compliance audit and performance audit, as elucidated in Chapter 5, 6 and 7 respectively.

(3) The scope of audit includes the assessment of internal controls in the auditable entities. Such an assessment may be undertaken either as an integral component of an audit or as a distinct audit assignment.

(4) The Comptroller and Auditor General may, in addition, decide to undertake any other audit of a transaction, programme or organization in order to fulfill the mandate and to achieve the objectives of audit.

25. It is absolutely clear from the Constitutional duties and powers laid down in the above mentioned Articles 149, 150, and 151, that the duties, powers and functions of the Comptroller and Auditor General extend only to the following:- (a) audit of the accounts of the Union and of the States, (b) for advising the President/Governor of a State as to in which form such accounts shall be kept, and (c) for performing such other duties, and exercising such other powers in relation to those accounts, as may be prescribed by or under any law made by the Parliament. Once the Comptroller and Auditor General has audited those accounts maintained in accordance with his advise, the audit reports thereupon shall have to be made public, after first sending them to the President/Governor of the State, as the case may be, for causing them to be laid before the Parliament, or the Legislature of the State, as the case may be, as provided in under Article 151.

26. From the provisions of the Constitution it is clear that no part or portion of the powers of the Comptroller and Auditor General of India extends to the policies, and policy choices available, and the decisions already taken by either the Parliament or Legislature of the State, or by the Executive, i.e., the Union of India, or the State Government. How the Executive shall function has been prescribed in Chapters I and II of Part 5 of the Constitution of India in respect of the Union of India, and Chapters I, II and III of Part -6 of the Constitution of India in respect of States, in Part-8 in respect of the Union Territories, in Part-9 in respect of the Panchayats, and in Part-9A in respect of the Municipalities.

27. It may be pointed out here that from a plain reading of the Constitutional provisions, it is clear that, strictly speaking, the office of the Comptroller and Auditor General of India can only comment favourably or adversely on the accounts maintained, and recommend the format for the maintenance of the accounts of the Union, and of the

States, audit those accounts, after they are finalized, and are made available for audit, and make public its observations arising out of such audit, whether they are favourable or adverse, by forwarding his reports to the President/Governor, for placing those reports before the Parliament or the Legislature. Therefore, the C&AG's reports have to be first caused to be placed before the Parliament in respect of the accounts of the Union, or before the Legislature of the State in respect of the accounts of the State, as the case may be, before any portion of those reports is made available to the Executive, or to the general public at large.

28. The Comptroller and Auditor General of India however does not have any further powers and functions to issue any policy directions, or to enforce its views about alternative policy choices upon either the Union of India, in respect of conduct of the Government business by the Union of India, under the executive powers of the Union, as laid down under Article 73 of the Constitution of India, or as flowing from the powers of the Council of Ministers to aid and advise the President in the exercise of his function under Article 74 of the Constitution of India, or for the conduct of the business of the Government of India itself under Article 77 of the Constitution of India, or, mutatis mutandis, upon the concerned State Government acting under its powers as prescribed by the relevant parallel Article of the Constitution of India, or any Law, Rule, or Regulation.

29. After having carefully gone through the very exhaustive C&AG's Regulations of 2007 on Audit and Accounts, it is seen that even these Regulations, framed by the office of the Comptroller and Auditor General of India himself, do not anywhere state that the office of the Comptroller and Auditor General of India can dictate, or even suggest anything to the Executive on the points of policy/alternative policy choices, or the considered policy decisions already arrived at by the Executive.

30. As had been clarified in para 15 of the judgment of this Bench dated 30.03.2011, in OA No. 52/2004 etc. **Suresh Kumar and others Vs. Union of India and others**,(supra), after the accounts have been finalized and presented for audit, and the audit is conducted by the office of the Comptroller and Auditor General, the Executive does not come in the picture anywhere, and the auditing and reporting process on the conclusions arrived at/report of the audit, as prescribed by the Constitution, totally by-

passes the Executive machinery of the Union and the States by deliberate Constitutional choice. The audit report of the Comptroller and Auditor General of India has to go straight to the President, or the Governor of the State, as the case may be, who shall cause the report to be laid before the Parliament, or the State Legislature, as the case may be, before it is shown to the public, in order to fulfill the right of the citizen to know about the financial status of this nation, as natural right inherent in him as a citizen of India, and as a person who is participant in the democratic process.

31. The Comptroller and Auditor General of India, and the Officer under him, also cannot, therefore, negate that Constitutional matrix, and issue draft audit paragraphs of their proposed audit report to the Officers of the Executive, indicating policy choices different than the policy choices already adopted by the Executive, and then expecting or coercing indirectly the Executive to bring about a change in the status of the accounts of the expenditures already incurred, or to adopt the policy choice indicated in the draft Audit para, by the auditors working under the Comptroller and Auditor General, to be adopted by the Executive, out of fear of an adverse audit objection being raised in the final report of the C&AG. The Constitution does not provide for any direct communication of the conclusion of the audit, or even a draft of the conclusion of the audit, between the office of the Comptroller and Auditor General of India (and the auditors working under the Comptroller and Auditor General of India) and the Executive at all. The C&AG's auditing process thus has to necessarily bypass the Union/State Executive machinery by a deliberate Constitutional choice.

32. As was clarified by this Bench in the earlier order dated 30.03.2011 itself, it is only the holder of the power to act, i.e., the Executive, who has to act, and must act properly, for the purposes for which the power has been conferred, as was stated by the Hon'ble Supreme Court in **Kum. Neelima Misra Vs. Dr. Harinder Kaul Paintal & others:** AIR 1990 SC 1402. Since only the Executive, as the holder of the power to act, alone is cast with the legal duty to act, and act properly, for the purpose for which the power has been conferred upon it by a statute, Law, Rule or Regulation, the Executive must act and take decisions only in accordance with the statutory provisions. Therefore, the Executive

cannot and must not be guided by any outside or irrelevant considerations, and must not also act illegally, irrationally or arbitrarily.

33. As a corollary, it follows that the Executive cannot also be forced or coerced by the auditors working under the Comptroller and Auditor General of India to change its considered decisions already taken earlier, and to alter the status of its accounts under audit, and to either act illegally or arbitrarily, or to act on the directions or dictates or hints regarding policy choices/course of action provided to them through the instruments of draft Audit paragraphs given to them by the Audit Officers working under the Comptroller and Auditor General of India, for fear of inclusion of an adverse Audit paragraph in the final audit report of the Comptroller and Auditor General of India to the President/Governor, for being laid before the Parliament/Legislature. Such a change in the course of action already adopted earlier would necessarily result in a change in the status of the finalized accounts which were made available for audit, or the policy decision already arrived by the statutory authority concerned, who alone is cast with the legal duty to act, and to act properly, and would amount to an illegal, arbitrary, or irrational course of action, and is liable to be quashed under Article 14 of the Constitution of India.

34. Such a modification of a considered policy decision, and /or accounts already finalized and submitted for Audit, which is dictated only on the basis of the alternative policy parameters suggested during the course of the audit, by the Auditors, and not by the relevant Statute, Law, Rule or Regulation, which was already available before the concerned officer, and which had dictated or determined the earlier course of action, based upon the original decision, and a change in the status of the expenditure already incurred earlier based upon that decision, would violate the principles of natural justice, and would be without jurisdiction. Such a reversal of the earlier policy decision would be against the mandatory process of Audit of the accounts already finalized, as has been prescribed by the Constitution of India, since such reversal of policy would now be based only on the basis of an advise or a hint given in the draft Audit para, by the Comptroller and Auditor General of India and his officers, who do not have any jurisdiction to do so under the Constitution of India.

35. It may be reiterated here that while the whole purpose of the Articles 148,149,150 and 151 of the Constitution of India is to provide absolute independence of the Constitutional Office of the C&AG of India and his officers, with extreme transparency being enforced by them in matters of financial discipline and accounting processes and procedures to be adopted by the Union of India, and by the States, as per the aid and advise given by the office of the Comptroller and Auditor General of India, enforcing such transparency does not include any power for the Comptroller and Auditor General of India to try to dictate the policy choices to the Executive, either directly, or even indirectly, through the mechanism of draft Audit paragraphs.

36. While the Executive, which had adopted a particular course of action, after having taken the earlier original policy decision, is accountable for its decision to both the Cabinet of Ministers, and the Parliament, or the Legislature of the State concerned, and these actions can then be later adversely commented upon by the Comptroller and Auditor General of India also, on the other hand, the advise of the C&AG of India, as may be contained in the draft Audit Paragraphs, and the actions taken by the Executive to alter, or correct their course of action already adopted, on the advise of, or at the behest of, the Comptroller and Auditor General of India, as a reaction to the draft audit paragraphs, cannot be adversely commented upon by any body. Since those draft Audit paragraphs which are complied with by the Executive would not form a part of the final Audit Report of the C&AG, they would also escape from the process of examination of the report of the Comptroller and Auditor General of India by the Public Accounts Committee of the Parliament/Legislature. There would thus be no scrutiny of the draft audit paragraphs which are dropped as already complied with. The Constitution therefore clearly does not provide for the Comptroller and Auditor General of India to abrogate to himself the power of deciding the policy choices available to the Executive, and to actually get involved in the alteration of the status of the accounts under audit, through whatsoever instrument or manner, including any (presently prevalent) manner of communication of draft Audit paragraphs. As has already been commented earlier also, the Constitution actually expressly prohibits any sort of direct communication regarding the status of the accounts under audit between the Comptroller and Auditor General of India and its auditors with the

Executive. For the Comptroller and Auditor General of India to try to do such a thing would amount to transgressing the Constitutional limits on the powers, functions and duties conferred upon the Comptroller and Auditor General of India as an organ or instrumentality of the State, as has happened in this particular case also.

37. In this case, the Executive had taken 7 years to arrive at a particular policy decision, and had decided upon the course of action that even those civilian defence employees, who had been mobilized, but not actually put in active deployment/service during 'Operation Parakram', would be entitled to the meagre monetary allowance as decided through the policy choice consciously adopted by the Executive, after a through deliberation, over an inordinately long period of seven years of internal communications. After that, the Constitution does not permit the Comptroller and Auditor General of India try to get the Executive to change its policy choice, by sending to it a draft Audit para, suggesting a different policy choice, and forcing it to reverse its course of action already adopted. The Executive has in this case merely submitted or succumbed to the policy choice as indicated in the draft audit para objection, illegally communicated to it by the Auditors working under the Comptroller and Auditor General of India, and the Executive has as a result meekly chosen to withdraw a considered decision, which only the Executive was legally empowered to take, and was taken by it after deliberations and consultations over a period of 7 years.

38. Therefore, the alacrity or undue haste shown by the individual Executive officers in obeying the newly suggested policy directions, and veiled suggestions about a different policy choice, which were inappropriately, illegally and un-Constitutionally given to them by the officers working under the Comptroller and Auditor General of India in the form of draft audit para of their proposed audit report, which Audit Report had yet to be finalized, and yet to be submitted to the President, has to be decried, denounced and struck down as un-Constitutional.

39. Firstly, as has been discussed above, the office of the Comptroller and Auditor General of India, and the officers functioning under him, cannot make any suggestion to the Executive, as to policy choices or policy decisions to be adopted by the Union, or the State concerned, in performance of its Constitutional functions and legal duties. Secondly,

whatever may be the weight of the Constitutional authority which the comments or observations of the C&AG may carry, they can flow only out of the final reports of the Audit conducted by the officers working under Comptroller and Auditor General of India relating to the accounts of the Union, or the State concerned, after the final report of the Comptroller and Auditor General of India has been sent to the President, and he has caused it to be laid before each House of the Parliament, in respect of the accounts of the Union of India, and in respect of the accounts of the State, after the report of the Comptroller and Auditor General, after completion of the audit of the accounts of the State, has been sent to the Governor of the State concerned, and he has caused it to be laid before the Legislature of the State. Draft Audit paragraphs of the proposed audit report can have no entity or existence in law, and can carry no meaning or weightage of legal authority whatsoever, and any such draft Audit paragraphs certainly cannot and do not carry the weight of Article 151 of the Constitution of India behind them. This practice is abhorrent to the scheme of the Constitution and cannot be allowed to be sustained in any manner whatsoever. Therefore, as an obiter dicta, the present procedure adopted by the C&AG, of issuing draft Audit paragraphs of the proposed Audit Report to the Executive in advance, and letting (or coercing) the Executive to alter the status of the Accounts already finalized, and under audit, is declared as un-Constitutional and ultra-vires.

40. As was mentioned in the earlier judgment of this Bench dated 30.03.2011 (supra) also, it is a cardinal principle of our Constitution that no one authority, howsoever highly placed, and no authority however lofty in its objectives, can claim to be the sole judge of its powers under the Constitution, and to decide as to whether its action is within such powers laid down by the Constitution. In the instant case, the Comptroller and Auditor General of India has definitely transgressed the limits of the powers, functions and duties entrusted to it, by the Constitution of India, and by the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, and, therefore, the actions of the Comptroller and Auditor General of India in the instant case, and that the of the Executive, taken in meek submission and obedience to the draft Audit para, cannot be sustained at all. As has been mentioned above also, these actions of the C&AG of India are not

supported even by their own Regulations on Audit and Accounts framed and circulated by the Comptroller and Auditor General of India in the Year 2007.

41. Therefore, in this case, since the respondents have first taken a conscious policy decision after deliberating upon it for seven years, and have then actually disbursed the amounts more than seven years after the 'Operation Parakram' was over, they cannot now be allowed to go back on that conscious policy decision, merely because, in the interim, they were handed over a draft audit para of the proposed Audit report of the office of the Comptroller and Auditor General of India, which draft Audit paragraph had never acquired the force or weight of the Constitutional duties, functions and responsibilities, and the Constitutional report of the Comptroller and Auditor General of India, under Articles 149, 150, and 151 of the Constitution of India.

42. In the result I reiterate the conclusion arrived in the opening paragraphs by Hon'ble Member (J) that the impugned order in this case, withdrawing, at the behest of the C&AG, a monetary concession already given to the applicants, and disbursed, is not only illegal, but totally unconstitutional as well. The O.A. is allowed. No order as to costs.

Dated this 9th day of November, 2011

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER

jrm