

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.1528/2016
MA No.1824/2016**

Reserved on : 18.01.2018
Pronounced on : 22.03.2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Mrs. Padma Jaiswal D/o Ram Prasad
(IAS: 2003 Batch),
R/o M-2799, Netaji Nagar,
New Delhi-110023.

... Applicant

(By Mr. Nidhesh Gupta, Senior Advocate, assisted by Mr. Tarun Gupta, Mr. Puneet Varshney and Ms. Vriti Gujral, Advocates)

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block,
New Delhi-110001.
 2. Union of India through
Secretary, Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi.
 3. Joint Cadre Authority (JCA) of AGMU Cadre,
through Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.
 4. Union Public Service Commission through
Secretary, Dholpur House,
Shahjahan Road,
New Delhi-110069.
- ... Respondents

(By Mr. Sanjay Jain, ASG, assisted by Mr. Gyanendra Singh, Advocate)

ORDER

Justice Permod Kohli, Chairman :

This OA has been filed invoking jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, with the following reliefs:

- “(a) set aside the order passed by the respondents whereby penalty of removal from service has been inflicted upon the Applicant (not yet served);
- (b) quash the Enquiry Report dated 19.9.2010 and other connected and consequential proceedings thereto;
- (c) strike down UPSC’s first advice dated 29.04.2014, and UPSC’s second advice furnished in January, 2016;
- (d) call for records of the proceedings pertaining to the present case from the Respondents;
- (e) any other relief which this Hon’ble Tribunal thinks just and appropriate in the facts and circumstances of the case; and
- (f) cost of the present application may be awarded to the applicant.”

2. Apart from various other grounds seeking to challenge the disciplinary action, one of the main contentions raised is the competence of the Ministry of Home Affairs, respondent No.1, to initiate the disciplinary proceedings against the applicant and to impose the penalty. The plea in this regard is incorporated in ground (F) of the OA, which reads as under:

- “(F) Furthermore, gross illegality has been committed by the MHA (respondent no.1) by fully usurping

the powers of Disciplinary Authority from Joint Cadre Authority (of AGMU cadre comprising State Govt. of Arunachal Pradesh and 2 other States Goa and Mizoram) in complete violation of AIS (D&A) Rules 1969 and AIS (Joint Cadre) Rules 1972. This has rendered the very institution of Disciplinary proceedings null and void. Since the Applicant belongs to UT cadre and her Disciplinary Authority is Joint Cadre Authority, therefore, only the Joint Cadre Authority had the power to initiate disciplinary proceedings against the Applicant and not the MHA."

3. Respondents 1 and 3 contested the claim of the applicant and defended the disciplinary action against the applicant by the Ministry of Home Affairs being the competent authority to initiate disciplinary proceedings and impose penalty. The reply to this ground is contained in reply to ground (F) of the counter reply. Same is also reproduced hereunder:

"(F) That the AGMUT Cadre is a Joint Cadre, for which, Joint Cadre Authority has been constituted. In terms of Rule 2(e) of AIS (D&A) Rules, 1969, the Joint Cadre Authority can nominate one of the constituent States to represent them in a particular matter. The Rule 2(e) of AIS (D&A) Rules, 1969 is reproduced as under:-

"State Government concerned in relation to a joint cadre, means the Government of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Government of all such States to represent them in relation to a particular matter."

In terms of above Rule, the JCA in October, 1989 (Annexure-R-5) authorized MHA to act as a Disciplinary Authority. The resolution is reproduced as under:-

“In the interest of the morale of the service officers as well as to maintain the uniformity in decision-making on matters pertaining to vigilance cases/departmental proceedings it is desirable as well as necessary that such matters are dealt with at Central level though the recommendations of the constituent units are to be given due consideration. It is, therefore, advisable to leave this matter with MHA (UT Division).”

It may be apt to quote the Order dated 11.07.2014 of the Principal Bench of CAT in O.A. No.4293/2012 Shri J. K. Sharma Vs. UOI & Others held that *“once the Joint Cadre Authority has nominated the Central Government to represent them in relation to disciplinary proceedings, the competence of the Central Government/Ministry of Home Affairs to initiate disciplinary proceeding against the applicant cannot be questioned. The plea of the applicant that only State of Arunachal Pradesh and not the Central Government was competent to initiate proceedings against him is rejected”*. In view of the above, the respondent Ministry (MHA) is competent under All India Services (Discipline & Appeal) Rules, 1969 to initiate disciplinary proceedings against IAS officers of AGMUT Cadre. The applicant being a member of IAS of AGMUT Cadre, the MHA is the disciplinary authority against the applicant.

Further, the DoP&T vide letter dated 29.10.2014 (Annexure-R-6) has intimated that there is no legal infirmity in MHA (Respondent Ministry) acting as competent disciplinary authority in respect of IAS/IPS officers of AGMUT cadre officers.”

4. It is deemed necessary to refer to some necessary facts. The applicant is a 2003 Batch IAS officer. She was assigned the AGMU cadre. She was posted in Arunachal Pradesh as Deputy Commissioner, West Kameng District w.e.f. February, 2007. She was transferred from the said position vide order dated 23.02.2008. Some preliminary inquiry was conducted on the basis of a complaint against the applicant. The applicant was placed under suspension vide Ministry of Home Affairs letter dated 15.04.2008 and shifted to Itanagar. The applicant continued under suspension till it was revoked on 08.10.2010. The preliminary inquiry and the suspension was on the basis of a complaint dated 22.02.2008 by some locals of District Kameng regarding misappropriation of Government revenue and misuse of official position. This complaint was communicated to the applicant vide letter dated 04.09.2008 by Secretary (Personnel), Government of Arunachal Pradesh seeking the views/explanation of the applicant. She submitted her reply dated 05.09.2008. The applicant was, however, served with a memorandum dated 08.04.2009 by the Ministry of Home Affairs for initiating disciplinary proceedings under rule 8 of the All India Services (Discipline & Appeal) Rules, 1969. The memorandum was accompanied with the articles of charge, statement of imputations, list of witnesses and documents etc. The applicant submitted her reply to the charge memorandum on 15.06.2009, after asking for some documents etc.

An additional reply dated 27.11.2009 was submitted to the questionnaire dated 20.11.2009 served upon her. The respondents instituted a departmental inquiry on 13.08.2009. While these proceedings were pending, another charge memorandum dated 14.05.2010 was served upon the applicant. It is alleged that the second charge memorandum was based upon the earlier charges, as contained in the first memorandum dated 08.04.2009. The applicant submitted another reply dated 07.06.2010. The inquiring authority on completion of the inquiry, submitted the inquiry report dated 19.09.2010. The disciplinary authority obtained the CVC advice, and copy of the CVC advice dated 16.12.2010 was also served upon the applicant. The applicant submitted representation dated 22.02.2011 against the inquiry report and the CVC advice. The disciplinary authority obtained UPSC's advice, which was rendered on 29.04.2014. UPSC recommended penalty of removal from service. Copy of the UPSC's advice was served upon the applicant. She submitted interim reply dated 25.08.2014 against the UPSC advice to MHA. She also submitted a letter dated 15.09.2014 to the Home Minister. Some further representations were submitted by the applicant. The applicant filed OA No.1228/2016 before this Tribunal seeking a direction to supply copy of the fresh advice of UPSC, which appears to have been obtained by the respondents later, with further direction to consider the representation of the applicant against the

subsequent advice of UPSC. This OA was disposed of with the following order:

“Having heard the learned counsel for the applicant, having gone through the record with his valuable assistance, the main OA is disposed of with a direction to respondent no.2 to supply the copy of advice of UPSC to the applicant as per instructions of G.I., Dept of Per. Trg., OM No.11012/8/2011-Estt.(A), dated 5-3-2014 (Annexure-A/25) before passing the final order in disciplinary proceedings against her.”

5. Present OA was thereafter filed. In para 4.12 it is alleged that the respondents have passed the final order imposing penalty of removal from service upon the applicant in the disciplinary proceedings against her, without complying with the directions passed by the Tribunal in her earlier OA. It is further stated that the copy of the impugned order has not been served upon the applicant.

6. Some controversy arose regarding passing of the penalty order and withdrawal thereof. When the matter was taken up for hearing, Mr. Sanjay Jain, the learned ASG, tendered an assurance to the Tribunal that the penalty order would not be acted upon. Arguments of parties were heard on the preliminary question regarding competence of the MHA to initiate the disciplinary proceedings.

7. It is deemed necessary to examine the relevant provisions whereunder the disciplinary action is required to be initiated against

a member of an All India Service (AGMU cadre). The applicant being a member of All India Service, her service conditions are governed by the All India Services Act, 1951. Section 3 of the aforesaid Act empowers the Central Government to make rules in consultation with the States concerned. Section 3 is reproduced hereunder:

“3. Regulation of recruitment and conditions of service.—(1) The Central Government may, after consultation with the Governments of the States concerned, including the State of Jammu and Kashmir and by notification in the Official Gazette make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All-India Service.

(1A) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

(2) Every rule made by the Central Government under this section and every regulation made under or in pursuance of any such rule, shall be laid, as soon as may be after such rule or regulation is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in such rule or regulation or both Houses agree that such rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of

anything previously done under that rule or regulation.”

In exercise of the powers conferred under the 1951 Act, the All India Services (Discipline & Appeal) Rules, 1969 (for short, 1969 Rules) were framed. Rule 7 prescribes the authority to institute the proceedings and to impose penalties. Relevant extract of this rule is reproduced hereunder:

“7. Authority to institute proceedings and to impose penalty— (1) Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in rule 6—

(a) xxx xxx xxx

(b) if such act or omission was committed after his appointment to the Service—

(i) while he was serving in connection with the affairs of a State, or is deputed for service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of that State;” (*emphasis supplied*).

Rules 2(c) and 2(e) define the “Government” and “State Government concerned” in relation to a joint cadre. Same are also reproduced hereunder:

“2. Definitions.— In these rules, unless the context otherwise requires:—

xxx xxx xxx

(c) 'Government' means –

(i) in the case of a member of the Service serving in connection with the affairs of a State, or who is deputed for service in any company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of a State, the Government of that State;

(ii) in any other case, the Central Government;

xxx xxx xxx

(e) 'State Government concerned' in relation to a joint cadre, means the Government of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Government of all such States to represent them in relation to a particular matter."

Sub-rule (1) (b) (i) of rule 7 prescribes that where a member of the Service has committed any act or omission which renders him liable to any penalty specified in rule 6, if such an act or omission was committed after his appointment to the Service, the Government of that State where the government servant is serving in connection with the affairs of the State, is competent to institute proceedings and to impose penalty. The definition of "Government" under rule 2(c) further defines the "Government of that State" where the member of the Service is serving in connection with the affairs of that State. Rule 2(e) further defines "State Government concerned" in relation to a joint cadre means the Government of all the States for which the joint cadre is constituted, and includes the Government of a State

nominated by the Governments of all such States to represent them in relation to a particular matter. It is undisputed that the applicant belongs to the joint cadre comprising the States of Arunachal Pradesh, Goa, Mizoram and Union Territories. The joint cadre was constituted vide notification dated 28.12.1988. Said notification reads as under:

“In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), read with sub-rule (1) of rule 3 of the Indian Administrative Service (Cadre) Rules, 1954, the Central Government, in consultation with the Governments of Arunachal Pradesh, Goa and Mizoram, hereby constitutes for the States of Arunachal Pradesh-Goa-Mizoram-Union Territories, an Indian Administrative Service cadre and abolishes the Indian Administrative Service cadre of Union Territories from the date of publication of this notification in the Official Gazette.”

By a separate notification dated 03.04.1989, a Joint Cadre Authority was constituted. The said notification reads as under:

“In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), read with sub-rule (1) of rule 4 of the All India Services (Joint Cadre) Rules, 1972, the Central Government in consultation with the Government of States concerned hereby constitutes the Joint Cadre Authority for the Joint I.A.S., I.P.S. and I.F.S. Cadres of Arunachal Pradesh-Goa-Mizoram- Union Territories, as below:-

- “1. Chief Secretary, Arunachal Pradesh
2. Chief Secretary, Goa
3. Chief Secretary, Mizoram
4. Addl. Secretary in the Ministry of Home Affairs incharge of UTS Division.

5. Joint Secretary (UT) in the Ministry of Home Affairs (to act as Convener)”

8. It may be noticed that in exercise of the powers vested in the Central Government, Joint Cadre Rules were framed in 1972, namely, All India Services (Joint Cadre) Rules, 1972 (for short, 1972 Rules). The duties and functions of the Joint Cadre Authority are defined under rule 5 of the 1972 Rules, which reads as under:

“5. Duties and functions of the Joint Cadre Authority.- (1) The Joint Cadre Authority shall determine the names of the members of the All-India Services, who may be required to serve from time to time in connection with the affairs of each of the Constituent States and the period or periods for which their services shall be available to that Government.

(2) Where there is a disagreement on any matter among the members of the Joint Cadre Authority, the matter shall be referred to the Central Government for decision and the Governments of the Constituent States shall give effect to the decision of the Central Government.”

The duties and functions of the Joint Cadre Authority as prescribed in rule 5 do not contain the right to initiate disciplinary proceedings and impose penalties on a member of All India Service (AGMU cadre). After the constitution of the Joint Cadre Authority, an amendment was carried out in the 1969 Rules with the addition of proviso thereto. In sub-rule (3) of rule 7, following proviso was inserted vide DOP&T Notification No.13/1/71-AIS-III dated 11.01.1972:

“Provided that in relation to the members of the Service borne on a Joint Cadre, the punishing Government shall consult the Joint Cadre Authority:”
(*emphasis supplied*).

Based upon the aforesaid rules, particularly the 1969 Rules, it is argued on behalf of the applicant that the Ministry of Home Affairs has no competence to initiate the disciplinary proceedings against the applicant, and it is only the State Government concerned, i.e., Arunachal Pradesh, who is competent to initiate disciplinary proceedings in consultation with all the States comprising the joint cadre.

9. The Joint Cadre Authority as constituted vide notification dated 03.09.1989 was further re-constituted vide subsequent notification dated 25.04.1995, and the Joint Cadre Authority now comprises seven members as under:

- “1. Secretary, Ministry of Home Affairs (representing Union Territories in respect of the Indian Administrative Service and Indian Police Service)
2. Chief Secretary, Arunachal Pradesh
3. Chief Secretary, Goa
4. Chief Secretary, Mizoram
5. Chief Secretary, Delhi
6. Inspector General of Forests, Ministry of Environment and Forests (representing Union Territories in respect of the Indian Forest Service)
7. Joint Secretary (Union Territories Division) Ministry of Home Affairs (Convener in respect of the Indian Administrative Service and Indian Police Service)/Joint Secretary (in charge of Indian

Forest Service Cadre Management), Ministry of Environment and Forests (Convener in respect of Indian Forest Service).”

Any decision after the 1995 re-constitution has to be taken by the seven members of the Joint Cadre Authority (re-constituted Authority).

10. The respondents have relied upon the decision dated October, 1989. This document is minutes of the meeting of Joint Cadre Authority (AGMU cadre) approved by circulation. Relevant extract of the aforesaid minutes is reproduced hereunder:

“Prior to reorganization of the UT Cadre as a new Joint Cadre of IAS/IPS known as AGMU Cadre, all functions of the Cadre Authority as well as of ‘State’, as defined in various Rules/Regulations governing the terms and conditions of All India Services, were being looked after by the Ministry of Home Affairs (UT Division). However, after attainment of Statehood by some of the Union Territories and consequently after reorganization of the Cadre, the Government has notified the constitution of the Joint Cadre Authority (JCA) for the Joint Cadre, vide Notification No.13013/1/89-AIS(I) dated the 3rd April, 1989, thus bringing the Joint Cadre within the ambit of All India Services (Joint Cadre) Rules, 1972 as amended from time to time, in addition to other service rules.

2. In the interest of proper management and smooth functioning of the Joint Cadre within the four constituent units of the Cadre, namely, Arunachal Pradesh, Goa, Mizoram and Union Territories, it has become imperative that the Joint Cadre Authority delegated some of its routine functions to and authorize the Ministry of Home Affairs (UT Division) and other constituent units to discharge/exercise those functions/powers, though within the policy framework as determined by the Joint Cadre Authority

from time to time. JCA has given a serious thought to the above proposal. JCA, as pointed out above, in the interest of cadre management, strongly feels that service matters of local nature which do not have any adverse impact on the overall structure of the service or the cadre as such, should be dealt with by the constituent units at their own level as it may not be practicable or desirable for the Joint Cadre Authority to go into these matters in detail. JCA also feels that if the constituent units are allowed to exercise these routine powers, it would generate a sense of responsibility among the constituent units towards the cadre management. Consequently, JCA also feels that the involvement of JCA should be restricted to only such matters which warrants a policy decision or matters having impact on other constituent units or matters involving more than one constituent unit, in order to maintain uniformity and continuity in the administrative structure of these services/Joint Cadre. Once policy guidelines have been determined by the JCA, question of delegating the authority to implement the policy as per guidelines to the constituent units can also be considered by the JCA later.

3. xxx xxx xxx

(B) Functions to remain with MHA (UT Division):

- (i) Transfer/posting of cadre officers from one segment to another. However, for this purpose JCA will frame proper guidelines keeping the overall interest of the service officers as well as the constituent units in view. Till the new guidelines are framed by the JCA, transfer/posting from one segment to another will be guided by the guidelines as existing on date.
- (ii) In the interest of the morale of the service officers as well as to maintain the uniformity in decision-making on matters pertaining to vigilance cases/departmental proceedings it is desirable as well as necessary that at Central level though the recommendations of the constituent units are to be given due consideration. It is, therefore, advisable to leave this matter with MHA (UT Division).
- (iii) Maintenance of ACRs of the cadre officers.

- (iv) All cases pertaining to 'seniority' of the officers.
- (v) All cases pertaining to study leave/training abroad."

Under the aforesaid decision, the functions assigned to the MHA under para (B)(ii) *inter alia* include transfer and action for disciplinary proceedings which is retained/handed-over to the MHA. Based upon the aforesaid resolution, it is contended on behalf of the respondents that the MHA was competent to initiate the disciplinary proceedings and to impose penalty upon the applicant.

11. Mr. Sanjay Jain, learned ASG, who argued the matter on behalf of the respondents, also referred to Indian Administrative Service (Cadre) Rules, 1954. Rule 3 of these Rules deals with the constitution of the cadre, and reads as under:

"3. Constitution of Cadres - (1) There shall be constituted for each State or group of States an Indian Administrative Service Cadre.

(2) The Cadre so constituted for a State or a group of States is hereinafter referred to as a 'State Cadre' or, as the case may be, a 'Joint Cadre'.

The above rule provides for constitution of an IAS cadre for each State or group of States. Where such cadre is constituted for a State, it is to be referred as the 'State cadre', and where it is for a group of States, it is to be referred as 'joint cadre'. Mr. Jain has also referred to rule 1 of the Rules of 1972. Sub-rule (ii) of rule 1 mentions, "They

shall apply to a Joint Cadre constituted for any group of States other than the Joint Cadre of Union Territories". He also referred to the Civil List of IAS, which indicates the cadres of various States. In the compilation of rules and documents submitted by the respondents, the Civil List for the year 1972, at serial number 17 is "Union Territories". It is stated that the Union Territories do not constitute a joint cadre for UTs but one single cadre as a State, and all Union Territories are represented by the Ministry of Home Affairs as a "State Cadre", at par with any other State cadre in terms of identity. It is submitted that it is in this context that sub-rule (ii) of rule 1 of the 1972 Rules provides joint cadre constituted for a group States and excludes the joint cadre of Union Territories. It is accordingly submitted that minimum two States are required to join hands to constitute a "joint State cadre". However, in respect to the Union Territories, all the Union Territories constitute one "State cadre". Earlier there were ten Union Territories and some of the Union Territories having been conferred the status of States, now there are seven Union Territories and they constitute one "State cadre" at par with any other State to be represented by the Central Government (MHA). The submission is that all the Union Territories being one common unit as a "State cadre", they could join with any other State to constitute a joint cadre, as if all the Union Territories represent one State, and since the MHA represents the Union Territories, it became

a constituent of the joint cadre and later as member of the Joint Cadre Authority. Referring to the 1989 resolution adopted by the Joint Cadre Authority, it is stated that the Joint Cadre Authority of which the MHA representing the Union Territories was one of the member, was given the authority to initiate disciplinary action against all the members of the joint cadre who constitute the Joint Cadre Authority, and thus by virtue of the aforesaid resolution, the MHA alone was the competent disciplinary authority for all the services as are notified in the notifications dated 03.04.1989 and 25.04.1995. Mr. Jain has also relied upon a judgment of this Tribunal in OA No.4293/2012 decided on 11.07.2014 - *J. K. Sharma v Union of India*. This judgment is based upon the resolution of October, 1989, referred to hereinabove. Mr. Jain has further referred to the Government of India (Allocation of Business) Rules as notified on 14.01.1961. These Rules are framed by the President of India in exercise of powers under Article 77 of the Constitution of India. MHA is one of the Ministries of the Government and it has various departments under it, one of the department being the Department of States, which include Union Territories. It has powers/jurisdiction with regard to general questions relating to public services in the Union Territories and service matters insofar as these fall within the purview of State Governments *inter alia* relating to the officers of Indian Administrative Service and Indian Police service serving in

connection with the affairs of the Union Territories. It is accordingly submitted that by virtue of the Allocation of Business Rules also, all issues relating to public services in the Union Territories with respect to officers of the IAS, IPS etc., and even serving in the State Governments, fall within the purview of the MHA.

12. Mr. Nidhesh Gupta, learned Senior Advocate appearing on behalf of the applicant, has raised following issues regarding the minutes/resolution of October, 1989 –

(i) The Joint Cadre Authority itself exercises the delegated powers and it has no jurisdiction or authority to further delegate the powers vested in it to MHA.

(ii) The resolution of October, 1989 relied upon by the respondents has been signed by only two members out of five.

(iii) Under the statutory rules of 1969, the disciplinary proceedings in respect to a member of an All India Service can only be instituted by a State wherein the officer is posted in connection with the affairs of that State, in consultation with all other States of the joint cadre.

(iv) The joint cadre and the Joint Cadre Authority are two distinct and different entities. Even if it is assumed that the Joint Cadre Authority is constituted for the joint cadre, the action has to be

processed by all the members comprising the joint cadre, which is not the case in the present OA.

13. The validity of the aforesaid resolution and the action is sought to be challenged on variety of grounds, one of them being that MHA has no legal authority to initiate disciplinary action against the applicant, she being member of AGMU cadre. He relies upon following judgments:

1) *Sahni Silk Mills (P) Ltd. & another v Employees State Insurance Corporation* [(1994) 5 SCC 346]:

“8. In *Halsbury's Laws of England*, 4th Edn., Vol. I, in respect of sub-delegation of powers it has been said:

“In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender & Son Ltd. v. Minister of Housing and Local Government* [(1970) 3 All ER 871 : (1970) 1 WLR 1231]) unless sub-delegation of the power is authorised by express words or necessary implication (*Customs and Excise Comrs. v. Cure and Deeley Ltd.* [(1962) 1 QB 340 : (1961) 3 All ER 641 : (1961) 3 WLR 798] and *Mungoni v. Attorney General of Northern Rhodesia* [(1960) 1 All ER 446 : (1960) 2 WLR 389 : 1960 AC 336, PC]). There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind. *Allam & Co. v. Europa Poster Services Ltd.* [(1968) 1 All ER 826 : (1968) 1 WLR 638] ...” (*emphasis supplied*).

“10. So far as the present Section 94-A is concerned, it says that the Corporation subject to any regulation made by the Corporation in that behalf, may direct that particular or any of the powers and functions which may be exercised or performed by the Corporation, may, in relation to such matters and subject to such conditions, if any, as may be specified “be also exercisable by any officer or authority subordinate to the Corporation”. Section 94-A does not specifically provide that any officer or authority subordinate to the Corporation to whom the power has been delegated by the Corporation, may in his turn authorise any other officer to exercise or perform that power or function. But by the resolution dated 28-2-1976 the Corporation has not only delegated its power under Section 85-B(1) of the Act to the Director General, but has also empowered the Director General to authorise any other officer to exercise the said power. Unless it is held that Section 94-A of the Act, enables the Corporation to delegate any of its powers and functions to any officer or authority subordinate to the Corporation, and he in his turn can sub-delegate the exercise of the said power to any other officer, the last part of the resolution dated 28-2-1976 cannot be held to be within the framework of Section 94-A. According to us, Parliament while introducing Section 94-A in the Act, only conceived direct delegation by the Corporation to different officers or authorities, subordinate to the Corporation, and there is no scope for such delegate to sub-delegate that power, by authorising any other officer to exercise or perform the power so delegated.” (*emphasis supplied*).

2) ***Pramod K. Pankaj v State of Bihar & others*** [(2004) 3 SCC 723]:

“16. “Delegatus non potest delegare” is a well-known maxim which means in absence of any power a delegatee cannot sub-delegate its power to another person. It is beyond any cavil that the Water Resources Department did not have the requisite competence to issue the said order dated 22-12-1992. If a guideline for determining the inter se seniority was to be laid down, the State could do so in terms of Article 162 of the Constitution of India. The said order dated 22-12-1992

also does not satisfy the requirements of Article 162 of the Constitution of India. This aspect of the matter unfortunately was not adverted to before the High Court.” (*emphasis supplied*).

3) *NGEF Ltd v Chandra Developers (P) Ltd & another* [(2005) 8 SCC 219]:

“69. BIFR admittedly had the power to sell the assets of the Company but the High Court until a winding-up order is issued does not have the same. BIFR in its order dated 24-8-2002 might have made an observation to the effect that the Company may approach the High Court in case it intended to dispose of its property by private negotiation but the same would not mean that BIFR could delegate its power in favour of the High Court. BIFR being a statutory authority, in the absence of any provision empowering it to delegate its power in favour of any other authority had no jurisdiction to do so. “Delegatus non potest delegare” is a well-known maxim which means unless expressly authorised a delegatee cannot sub-delegate its power. Moreover, the said observations of BIFR would only mean that the Company Court could exercise its power in accordance with law and not *de hors* it. If the Company Court had no jurisdiction to pass the impugned order, it could not derive any jurisdiction only because BIFR said so.” (*emphasis supplied*).

His further contention is that where the State takes any action against a member of the joint cadre, the aggrieved person has a right of appeal before the Central Government under rule 16 of the 1969 Rules, and if the action is initiated by the Central Government, the right of appeal of the Government servant is taken away. It is stated that the right of appeal is a valuable right, and any

action whereby the right of appeal is negated, violates substantive/statutory right. Reliance is placed upon the decisions of the Hon'ble Supreme Court reported as *Surjit Ghosh v Chairman & Managing Director, United Commercial Bank and others* [(1995) 2 SCC 474] and *A. N. Sehgal & others v Raje Ram Sheoram & others* [1992 Supp (1) SCC 304].

14. We have heard the learned counsel for parties at length. We have extracted the statutory provisions relevant for purposes of the issue we intend to decide at this stage.

15. It is admitted position that the disciplinary proceedings were initiated and have been concluded by the Ministry of Home Affairs acting as the disciplinary authority. It is also undisputed that the applicant is a member of AGMU (now AGMUT) cadre. The All India Services Act, 1951 deals with the creation and other allied matters of all India services governed by the said Act. Section 3 of the Act empowers the Central Government to make rules for regulation of the recruitment and the conditions of service of persons appointed to the all India services in consultation with the States concerned. Various rules have been framed under the aforesaid Act, the most relevant and significant being the 1969 Rules. Rule 7 of the 1969 Rules relates to the authority to institute proceedings and impose penalty upon a member of the service who is alleged to have

committed any act or omission and is liable for penalty as specified in rule 6. Rule 7(1)(b)(i) empowers the Government of a State to initiate action against a member of the service where such member is serving in connection with the affairs of a State or is deputed to any of the autonomous bodies wholly or substantially owned or controlled by the State Government. As noticed above, the 'Government' as defined in Section 2(c) of the Act of 1951, means the Government of a State where the member of the service is serving in connection with the affairs of that State or deputed in any of its authorities owned or controlled by it, and in any other case, the Central Government. Section 2(e), however, creates an exception and refers to the 'joint cadre' constituted for two or more States, and provides that the Government competent to initiate action would be the Government of all the States for which such 'joint cadre' is constituted, or such of the Government as nominated by all such States to represent them in relation to a particular matter. The applicant was allocated the State of Arunachal Pradesh. In exercise of the powers under Section 3 of the Act of 1951, the Indian Administrative Service (Cadre) Rules, 1954 were also framed. Rule 3 of the said Rules (extracted hereinabove) deals with constitution of cadres. Sub-rule (1) of rule 3 provides for constitution of cadres for each State or Group of States to be called the Indian Administrative Service cadre. Under sub-rule (2) a cadre

created for a State is referred to as a 'State cadre' and the cadre in respect to group of States is called a 'joint cadre'.

16. Insofar as the State of Arunachal Pradesh is concerned, a joint cadre in respect to the States of Arunachal Pradesh, Goa, Mizoram and Union Territories was constituted vide notification dated 28.12.1988. Prior to that, the Central Government also framed rules, namely, All India Services (Joint Cadre) Rules, 1972. The 1972 Rules were also framed in exercise of the powers conferred by sub-section (1) of Section 3 of the 1951 Act. Sub-rule (ii) of rule 1 reads as under:

“(ii) They shall apply to a Joint Cadre constituted for any group of States other than the Joint Cadre of Union Territories.”

From a perusal of the aforesaid sub-rule it appears that the joint cadre constituted for any group of States is other than the joint cadre of Union Territories. Rule 2 of these Rules defines the 'Joint Cadre Authority' and the 'Constituent States'. Same is reproduced hereunder:

“2. Definitions - In these rules, unless the context otherwise requires,-

- (a) "Joint Cadre Authority" means the Committee of Representatives referred to in rule 4.
- (b) "Constituent States" means the States in respect of which a Joint Cadre is formed.”

Rule 4 provides constitution of the Joint Cadre Authority as defined in rule 2(a) in the following manner:

“4. Committee of representatives –

- (1) There shall be a Committee consisting of a representative of each of the Governments of the Constituent States, to be called the Joint Cadre Authority.
- (2) The representatives of the Governments of the Constituent States may either be members of an All-India Service or Ministers in the Council of Ministers of the Constituent States, as may be specified by the Governments of the Constituent States.”

From a conjoint reading of rule 2(a) and rule 4, the concept of the ‘Joint Cadre Authority’ as emerges, means a committee comprising representatives of the constituent States of the joint cadre. Such representatives may be Ministers of the constituent States or members of all India services of the State cadre. The functions and duties of the Joint Cadre Authority have been defined under rule 5, which has already been reproduced hereinabove. From a perusal of the Rules of 1954 and the Rules of 1972, we notice that ‘joint cadre’ as defined under the Rules of 1954 comprises of the States who join to constitute a joint cadre under rule 3(2), whereas ‘Joint Cadre Authority’ is defined under rule 2(a) read with rule 4 of the Rules of 1972 to mean a committee of representatives referred to in rule 4. We may herein notice that there is a separate definition of ‘Joint Cadre

Authority' under the Rules of 1954, i.e., rule 2(d). Said definition reads as under:

“(d) ‘State Government concerned’, in relation to a Joint cadre, means the Joint Cadre Authority.”

Under rule 2(d) of the 1954 Rules, the ‘State Government concerned’ is defined to be the ‘Joint Cadre Authority’, whereas under rule 2(a) read with rule 4 of the 1972 Rules, the ‘Joint Cadre Authority’ is defined to mean a committee consisting of representatives of each of the Governments of the constituent States. Sub-rule (2) of rule 4 of the 1972 Rules empowers the Government of the constituent State to appoint a committee of either members of an all India service or Ministers in the Council of Ministers of the constituent State to be the representatives of the Government in the Joint Cadre Authority. It is in this context that the notification dated 03.04.1989 was issued whereby the Joint Cadre Authority was constituted with the representatives of the constituent States. The States of Arunachal Pradesh, Goa and Mizoram are represented by their respective Chief Secretaries, whereas Additional Secretary in the Ministry of Home Affairs, in-charge of UT Division represents the UT segment, and Joint Secretary (UT) in the Ministry of Home Affairs is to act as Convener. Thus, the Joint Cadre Authority constitutes five representatives, representing the States and Union Territories. Here,

it may be relevant to note that under the 1954 Rules, the expression 'State' has been defined under rule 2(c), which reads as under:

“(c) 'State' means a State specified in the First Schedule to the Constitution and includes a Union Territory.”

Here, 'State' means not only a State as specified in the Fifth Schedule to the Constitution, but also includes a Union Territory. Thus, the Union Territory concerned has also been given the status of a 'State' for purposes of the 1954 Rules and the 1972 Rules. This is the stand of the respondents as well.

17. Having noticed the definitions of 'State, 'cadre', 'joint cadre' and 'Joint Cadre Authority' as envisaged by different set of rules, it comes to the fore that 'joint cadre' and the 'Joint Cadre Authority' are two distinct bodies. A joint cadre comprises all the States constituting the 'joint cadre', whereas the 'Joint Cadre Authority' comprises representatives of the constituent States of the joint cadre. Both the expressions are not synonyms.

18. The duties and functions of the Joint Cadre Authority are clearly defined under rule 5 of the 1972 Rules. From a bare perusal of rule 5, it can be conveniently made out that the function of the Joint Cadre Authority is simply to determine the names of the members of all India services who may be required to serve from time to time in connection with the affairs of each of the constituent States of the

joint cadre, and the period or periods for which their services are to be made available to that Government. Under sub-rule (2) of rule 5 of the 1972 rules, in the event of disagreement on any matter among the members of the Joint Cadre Authority, the matter is to be referred to the Central Government for decision, and the Governments of the constituent States are under an obligation to give effect to the decision of the Central Government. The plain language of rule 5 makes it abundantly clear that the functions and duties of the Joint Cadre Authority are merely to identify the names of members of all India Services constituting the joint cadre who may be required to serve in a particular State and the period or periods for such postings. To initiate disciplinary action and to impose penalty on any delinquent member of a joint cadre is not one of the defined functions of the Joint Cadre Authority, and thus beyond its purview. It is in this context that the decision of the Joint Cadre Authority in its resolution adopted in October, 1989 is to be viewed. The 1989 resolution reproduced hereinabove confers authority and jurisdiction upon the Ministry of Home Affairs to deal with the disciplinary matters of members of all India services comprising the joint cadre and also to deal with their transfers. Apart from the fact that the said resolution was signed by only two out of five members, and cannot be said to be a decision of the Joint Cadre Authority, the fundamental question that continues to haunt the respondents is the validity of the

decision *per se*. How could an authority, even constituted by a Government notification, take a decision which is beyond its purview? At the cost of repetition, we may say that the duties and functions of the Joint Cadre Authority having been defined under rule 5 of the 1972 Rules, this Authority had/has absolutely no jurisdiction, power or legal authority to adopt such a resolution and to confer powers upon one of the constituents of the joint cadre, as no such powers vest with the Authority under any law. All ancillary questions that the Ministry of Home Affairs represents the Union Territories, and the Union Territories being defined as 'State' for purposes of determination of the cadre under the 1954 Rules, would be irrelevant and insignificant. The legislative intent of the rule-making authority has to be gathered from the rules. We have already noticed the Discipline and Appeal Rules, i.e., the 1969 Rules, which specifically deal with the discipline and appeal for the members of the all India services. Rule 7(b) of the 1969 Rules confers power upon the State Government of a State to institute disciplinary action against a member of the service who is serving in connection with the affairs of the State or any authority wholly or substantially owned or controlled by such Government of a State, or an authority created by an Act of the legislature of that State. The definitions under rule 2 of the 1969 Rules further define the 'Government', and in respect to the joint cadre, the Government of all the States or the Government of a

State nominated by the Governments of all the States specifically empowered in a particular matter, is the competent authority for initiating disciplinary action. Insofar as the Joint Cadre Authority is concerned, it is not empowered under the 1969 Rules to act as the disciplinary authority, and under the 1972 rules said Authority has no such competence in terms of rule 5 thereof which defines the duties and functions of the Joint Cadre Authority. To strengthen the contention of the applicant, Mr. Nidhesh Gupta has further referred to the legislative intent of the rule-making authority. While doing so, he has relied upon the "Business of Government of Arunachal Pradesh (Allocation) Rules, 1998" as notified vide notification dated 26.05.1998. These Rules have been framed in exercise of the powers conferred by clause (3) of Article 166 of the Constitution of India. Rule 3 of these Rules deals with the allocation of subjects to departments etc. Rule 3 is reproduced hereunder:

"3. Allocation of subjects to departments etc.:

The entire business of the Government shall be transacted in the Department (all of which are hereinafter referred to as "Departments") specified in the Schedule and shall be classified and distributed between those Departments as laid down therein.

Provided that the Government may, from time to time, make such additions to, or modification in, the list of business allotted to a Department as it thinks fit."

The Schedule attached to these Rules contains various departments which are allocated under the Rules. Relevant extract of item number 25 which deals with Political, Cabinet Affairs and Vigilance Department, reads as under:

**“25. POLITICAL, CABINET AFFAIRS AND
VIGILANCE DEPARTMENT**

xxx xxx xxx

c. Vigilance

xxx xxx xxx

(iii) All matters relating to disciplinary cases against IAS/IPS/IFS and all categories of officers and staff of Government of Arunachal Pradesh.”

Based upon the above provisions under the Allocation of Business Rules framed under Article 166 of the Constitution of India by the Governor for the smooth functioning of the Government of Arunachal Pradesh, it is sought to be impressed upon the Tribunal that the State of Arunachal Pradesh is the competent authority to deal with the disciplinary cases against the IAS/IPS/IFS and all categories of officers and staff. Mr. Nidhesh Gupta has also referred to the amendment made in rule 7 of the 1969 Rules. In sub-rule (3) of rule 7 the proviso is inserted (reproduced hereinabove). The only restriction imposed upon the State Government to impose penalty upon a delinquent officer (member of the joint cadre) is to consult the Joint Cadre Authority before any punishment is to be imposed. It is accordingly contended that the competence is of the State

Governments, the constituents of the joint cadre, to initiate disciplinary action against such member of the service constituting the joint cadre.

19. Mr. Nidhesh Gupta has further referred to the following rules to substantiate his contention that wherever the legislative intent was to confer the authority on the Joint Cadre Authority, relevant provisions have been made in various rules/regulations framed under the Act of 1951:

“6. The all India Services (Commutation of Pension) Regulations, 1960 – In sub-regulation (1) of regulation 2, for clause (a), substitute:- “(a) ‘Government’, in relation to the members of the Service borne on a Joint Cadre, means the ‘Joint Cadre Authority’.”

7. The All India Services (Confidential Rolls) Rules, 1970 - In rule 2, for clause (h), substitute:- 724 “(h) ‘State Government’ means the Government of the State on whose cadre the member of the Service borne and in relation to a member of an All India Service borne on a Joint Cadre, the Joint Cadre Authority.”

8. The Indian Administrative Service (Cadre) Rules, 1954, - (a) In rule 2, for clause (d) substitute:- “(d) ‘State Government concerned’, in relation to a Joint Cadre, means the ‘Joint Cadre Authority’.” (b) After rule 11 insert:- “11(A). Authority to exercise certain powers in respect of members of the Service serving in connection with the affairs of the State Government under the second proviso to sub-rule (2) of rule 4, under clause (1) of sub-rule (2) of rule 6 and under rules 7, 10 and 11 in relation to the members of Service serving in connection with the affairs of any of the Constituent States shall be exercised by the Government of that State.”

9. The Indian Administrative Service (Recruitment) Rules, 1954. - In rule 2, for clause (h), substitute:- “(h)

'State Government concerned', in relation to a Joint Cadre, means the Joint Cadre Authority".

10. The Indian Administrative Service (Appointment by Promotion) Regulations, 1955. (a) In clause (k) of sub-regulation (1) of regulation 2, for the existing sub-clause (ii), substitute:- "(i) in relation to a group of States in respect of which a Joint Cadre of the Service is constituted, the Joint Cadre Authority." (b) After sub-regulation (2) of regulation 5, insert:- "Explanation. - The powers of the State Government under the second proviso to this sub-regulation shall be exercised in relation to the members of the State Civil Service of a Constituent State, by the Government of that State.

11. The Indian Administrative Service (Appointment by Selection) Regulation, 1956. - In clause (b) of sub-regulation (1) of regulation 2, for sub-clause (ii), substitute:- "(ii) in relation to a group of States in respect of which a Joint Cadre of the Service is constituted, the Joint Cadre Authority."

12. The Indian Administrative Service (Probation) Rules, 1954. - In rule 2, for clause (i), substitute:- 725 "(i) 'State Government' means the Government of the State to which a probationer is allotted or deputed for practical training and in relation to a probationer allotted to a Joint Cadre, the Joint Cadre Authority."

13. The Indian Administrative Service (Pay) Rules, 1954. - In rule 2, for clause (f), substitute:- "(j) 'State Government concerned', in relation to a Joint Cadre, means the Joint Cadre Authority." (c) After rule 10D, insert:- "10E. Authority to exercise powers under rules 6, 7 and 9 in relation to a joint cadre. - The powers under rules 6 and 7, in the case of a member of the service borne on a Joint Cadre, shall be exercised by the Joint Cadre Authority. The powers under rule 9 in relation to the members of the Service, and in relation to posts, borne on a Joint Cadre shall be exercised by the Government of the Constituent State concerned."

14. The Indian Administrative Service (Regulation of Seniority) Rules, 1954. - In rule 2, for clause (j), substitute:- "(j) 'State Government concerned', in relation to a Joint Cadre, means the Joint Cadre Authority."

20. We have carefully perused the provisions contained in the nine set of rules referred to hereinabove framed under the Act of 1951, and it is found that wherever the intention of the rule-making authority was to confer powers upon the Joint Cadre Authority under any of the rules/regulations, necessary provisions have been incorporated therein. There is no corresponding amendment in the 1969 Rules empowering the Joint Cadre Authority to initiate disciplinary action and impose penalty upon the member of a joint cadre. The respondents have failed to answer this question.

21. Further submission of Mr. Nidhesh Gupta is that the Joint Cadre Authority itself being a delegatee of the Government under the 1972 Rules, has no competence to further delegate its powers/authority/functions, assuming it has the power to initiate disciplinary action, being itself a delegatee. Mr. Sanjay Jain, the learned ASG has answered this issue with following submissions:

(i) That the power to delegate is inherent, rather implicit, under rule 2(e) of the 1969 Rules, whereunder the Governments of all the States for which the joint cadre is constituted, have the authority to nominate the Government of any such State to represent them in relation to a particular matter. His submission is that the October, 1989 resolution is deemed to be a nomination by the constituent States constituting the Joint Cadre Authority of the Ministry of Home

Affairs, representing the Union Territories, a constituent of the joint cadre, in respect to the disciplinary proceedings and transfers.

(ii) His second submission is that such an arrangement is not delegation but a functional requirement of the activity of the Joint Cadre Authority, wherein various functions have been assigned to its constituents. Apparently, the argument seems to be very attractive. However, its fallacy is borne out when examined in the presence of rule 5 of the 1972 Rules. The functions and duties of the Joint Cadre Authority are clearly delineated in rule 5, and disciplinary action being not perceived or conceived under rule 5, the Authority cannot exercise the power of the disciplinary authority by assumption of such powers under some notion. As opined earlier, the 'joint cadre' is totally distinct from the 'Joint Cadre Authority'. The functions of both are in different areas and for different purposes. The Joint Cadre Authority is limited to the issues as defined under rule 5 of the 1972 Rules; no less and no more. It is settled law that an authority is to exercise jurisdiction or power in the manner prescribed by law. The Joint Cadre Authority was totally incompetent and had no jurisdiction whatsoever to initiate disciplinary proceedings against the applicant or impose penalty. Once the Joint Cadre Authority itself had no jurisdiction, any of its constituents cannot exercise such authority or jurisdiction by any stretch of imagination.

22. Lastly, Mr. Jain has referred to a notification No. S.O.3773(E) dated 22.11.2017. Said notification reads as under:

“In exercise of the powers conferred by Section 3 of the All India Services Act, 1951 read with sub-rule (1) of rule 4 of the All India Services (Joint Cadre) Rules, 1972 and Section (2b) & (2e) of the All India Services (Discipline And Appeal) Rules, 1969, the Joint Cadre Authority has decided to continue the nomination of Ministry of Home Affairs, a constituent State (representing all UTs) of Joint AGMUT Cadre, so as to continue to function as disciplinary authority in respect of IAS and IPS officers of Joint AGMUT cadre.”

Based upon this notification, it is argued that even if the resolution of October, 1989 is held to be not signed or adopted by all the members of the Joint Cadre Authority and has any deficiencies therein, the same stood rectified by virtue of this notification. We have gone through the aforesaid notification. This has been issued under Section 3 of the 1951 Act read with sub-rule (1) of rule 4 of the 1972 Rules and rules 2(b) and 2(e) of the 1969 Rules. This notification is like a combination of all life saving medicines to be administered to a dying patient. This demonstrates a total non-application of mind. The respondents themselves are not sure under which provision of law this notification has to be issued. That is why it is a combination of so many rules and provisions of the Act. The existing rules have not been modified so as to empower the Joint Cadre Authority to initiate disciplinary action against the applicant. In absence of the basic authority, any resolution adopted or notification issued by the

Government to confer upon the Joint Cadre Authority power to take a decision would also be illegal and unwarranted. Firstly, said notification does not in any manner amend either the 1969 Rules or the 1972 Rules, particularly rule 7 of the 1969 Rules and rule 5 of the 1972 Rules, and thus any authority said to be conferred upon the Joint Cadre Authority by way of a notification dated 22.11.2017 would be of no consequence. Secondly, the notification cannot be applied retrospectively so as to rectify an action which was totally illegal, unwarranted and without jurisdiction, such action has to go.

23. Mr. Jain has also relied upon a judgment of this Tribunal dated 11.07.2014 passed by the Principal Bench in OA No.4293/2012 – *J. K. Sharma v Union of India & others*, wherein following observations were made:

“In the circumstances, once the Joint Cadre Authority has nominated the Central Government to represent them in relation to disciplinary proceedings, the competence of the Central Government/ Ministry of Home Affairs to initiate disciplinary proceeding against the applicant cannot be questioned. The plea of the applicant that only State of Arunachal Pradesh and not the Central Government was competent to initiate proceedings against him is rejected.”

Before making these observations, the Tribunal noticed the issue regarding exercise of delegated powers. Having held that a delegatee cannot further delegate the powers, the Tribunal without examining whether the Joint Cadre Authority acting as a delegatee had any

lawful authority to confer powers upon the Ministry of Home Affairs, concluded that the Ministry of Home Affairs was competent to initiate disciplinary proceedings. We also notice that the Tribunal has not considered rule 5 of the 1972 Rules whereunder the Joint Cadre Authority itself had/has no jurisdiction to deal with the disciplinary proceedings. These observations are thus *per incuriam*. A similar issue fell for consideration before the Bombay Bench of this Tribunal in OA No.450/2013 - *Atmaram Deshpande v Secretary, Ministry of Home Affairs & others*, decided on 11.02.2015. In this case, the order of transfer having been made by the Ministry of Home Affairs of an IPS officer of the joint cadre was challenged. The challenge was on the ground of incompetence of the Ministry of Home Affairs. The respondent No.1, i.e., the Ministry of Home Affairs, relied upon the resolution of October, 1989 to contend that by virtue of the minutes, the Joint Cadre Authority has delegated its functions to the Ministry of Home Affairs and thus Ministry of Home Affairs is empowered to transfer. The plea of the respondents has been noticed by the Bench in the following manner:

“10. Mr. Masurkar submits that the Joint Cadre Authority delegated its power to respondent Ministry vide Para B(i) of its minutes of meeting held in October, 1989. It is not open to the applicant to challenge the minutes of the meeting held in October, 1989. He further submits that the rules do not prohibit any delegation of powers and unless the State Government itself has withdrawn its consent, the

individual officer would have no right to play any plea in this regard. At the time of argument Mr. Masurkar vehemently submits that this is not a case of transfer but a case of posting of a State Policy Officer inducted in IPS. Therefore, approval of JCA is not required. He submits that the spirit of Rule 5(1) read with 5(2) clearly shows that this is an allotment of a particular officer to a constituent State when the officer joins the service just after induction as IPS cadre. This transfer/posting cannot be treated as a routine transfer. The consultation with JCA is required to meet for allotting officer to a particular cadre. The decision of JCA may be appealable before the Central Government. Therefore, transfer/postings cannot be done by JCA. JCA can only lay down a policy for such postings/transfer. It is a matter of fact that Ministry of Home Affairs is fully competent to manage the cadres of IAS/IPS of AGMUT without any JCA. Mr. Masurkar, however, on instructions submits that in the instant case Joint Cadre Authority was not consulted before issuing the order of transfer/posting. He further submits that 27 IPS officers have been transferred vide impugned order dated 27.04.2012."

The Tribunal considering the provisions of the Rules of 1972, notifications dated 03.04.1989 and 25.04.1995 whereby the Joint Cadre Authority was constituted, opined as under:

"14. We find force in the argument of the learned counsel for the applicant that Ministry of Home Affairs ('MHA' in short) is one of the representatives of the Constituent namely the Union Territory. MHA does not enjoy any special powers/status/function. Rules do not provide for any delegation/sub-delegation of essential and or regulatory powers/functions by the Joint Cadre Authority to the Ministry of Home Affairs. In fact, the Joint Cadre Authority itself derives powers from the delegated legislation namely the All India Services (Joint Cadre) Rules, 1972. The Ministry of Home Affairs does not enjoy any such absolute power in respect of transfer or posting of any Cadre officer belonging to Joint Cadre. The absolute power lies with

the Joint Cadre Authority solely. However, in the event, there is a disagreement on any matter including transfer/posting among the members of the Joint Cadre Authority, the matter is required to be placed before the Central Government for decision and the decision of the Central Government is binding upon the Constituent States which shall give effect to the decision of the Central Government.”

“18. From the Rule 5(i) of All India Services (Joint Cadre) Rules, 1972, it is amply clear that it is only the Joint Cadre Authority who shall determine the name of the members of the All India Services, who may be required to serve from time-to-time in connection with the affairs of each of the Constituent States and the period or the periods from which their services shall be available to the Government. Rule 5 further contemplates that when there is a disagreement among the members, only then the matter shall be referred to Central Government for a decision. We also find that the said rule do not provide for any delegation or sub-delegation of powers by the Joint Cadre Authority. The respondents have taken a stand that the Joint Cadre Authority has delegated its functions to the Ministry of Home Affairs, therefore, it is the Ministry of Home Affairs who is empowered to pass such a transfer order. The respondents have relied on the Minutes of the meeting of Joint Cadre Authority (AGMU) Cadre in October, 1989. It appears that the relevant parts of the minutes of the said meeting of October, 1989 de hors the above mentioned Cadre Rules. As such, they are having no authority of law. Goa became one of the Constituent States under the Rules alongwith Mizoram and Arunachal Pradesh after attaining Statehood on 20.05.1987. The Ministry of Home Affairs (Union Territory Division) did not have any jurisdiction and/or could not exercise any power which they exercised prior to Goa’s attainment of Statehood. Goa becoming one of the Constituents of the Joint Cadre Authority, the MHA could not have continued with the same powers and functions with respect to the State of Goa which they were exercising when Goa was a Union Territory. Therefore any recording in the meeting of October, 1989 that Joint Cadre Authority was delegating its powers to the

Ministry of Home Affairs will be de hors the relevant provision of All India Services (Joint Cadre) Rules, 1972.

19. In the instant case, the Ministry of Home Affairs is only representing the Union Territories and that is their limited role to that extent in the Joint Cadre Authority. Therefore, the MHA is not competent to issue the impugned order of transfer. The Ministry of Home Affairs enjoys all the same power like other Constituent States forming the Joint Cadre Authority. Under such circumstances, Ministry of Home Affairs representing (Union Territory Division) cannot pass any order in respect of the applicant who belongs to Joint AGMU Cadre and serving in the State of Goa.”

Finally, the Bench held that the order of transfer passed by the Ministry of Home Affairs was by an incompetent authority.

24. It is pertinent to note that the transfer of the applicant herein was made vide order dated 24.07.2015 (Annexure A-49) by the Joint Cadre Authority and not by the Ministry of Home Affairs.

25. It is settled law that where the delegated authority exercises any authority, it must have valid delegation of powers. Reference can be made to the decision of the Apex Court in *Dr. Ramesh Chandra Tyagi v Union of India & others* [(1994) 2 SCC 416]. On the analysis of the rules *in extenso*, we are convinced that the Ministry of Home Affairs had no authority to initiate disciplinary proceedings, what to say of the Ministry of Home Affairs, even the Joint Cadre Authority itself had no jurisdiction or authority under the 1972 Rules. The only authority vests with the joint cadre under rule 7

of the 1969 Rules read with notification dated 28.12.1988 constituting the joint cadre. In view of the law laid down by the Hon'ble Supreme Court regarding powers of the delegatee, the judgment in *J. K. Sharma's* case (supra) relied upon by the respondents cannot be put into service.

26. Apart from the above, the applicant has specifically pleaded that against an order of imposing penalty upon a member of the joint cadre, the right of appeal is available under rule 16 of the 1969 Rules, whereunder appeal lies to the Central Government. In the event the appellate authority exercises the power as punishing/disciplinary authority, the right of appeal, which is a statutory right, is taken away, which is impermissible in law. The right of appeal is held to be a valuable right by the Hon'ble Supreme Court in *Government of Andhra Pradesh & another v N. Ramaniah* [(2009) 7 SCC 165].

27. Mr. Jain has also tried to impress upon the Tribunal that all the Union Territories constitute one unit and are equivalent to a State cadre, for which he has made reference to the Allocation of Business Rules as discussed by us in length. Even though we are of the opinion that in absence of any notification notifying all the Union Territories as one cadre, this contention should not be accepted, but assuming it to be true, the argument would still be of no avail to the

respondents, the Joint Cadre Authority itself having no legal sanction to act as the disciplinary authority or impose penalty. As noticed hereinabove, under rule 7(b) of the 1969 Rules, it is the State Government of the State where the applicant is serving in connection with affairs of that state, and a constituent of the joint cadre, which is the competent authority to institute the disciplinary action and impose penalty, of course, for imposition of penalty, by virtue of the amendment incorporated in rule 7(b), the Joint Cadre Authority is to be consulted.

28. Imposition of penalty is a serious matter and should not be exercised by any person or authority without sanction of law. Penalty has serious repercussions and affects statutory rights of a Government servant with civil consequences. We are of the considered opinion that the Ministry of Home Affairs is not authorized delegatee of the President and has no authority of law to initiate disciplinary proceedings. The disciplinary proceedings have not been initiated by the competent authority and thus, all subsequent proceedings are rendered vitiated. Without going into the merits of the controversy and the facts of the disciplinary action against the applicant, we hold that the entire action against the applicant of initiation of disciplinary proceedings and continuing with it being without sanction of law, is *non est*.

29. This OA is accordingly allowed on this preliminary issue itself. Charge memorandum dated 14.05.2010 and all subsequent actions are hereby quashed. This will not, however, be an impediment for the respondents to initiate fresh proceedings against the applicant in accordance with law.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/