

CASE NO.:
Appeal (civil) 2971-2973 of 1997

PETITIONER:
GOVERNMENT OF NCT DELHI & ORS.

Vs.

RESPONDENT:
ALL INDIA CENTRAL CIVIL ACCOUNTS, JAOS ASSOCIATION & ORS.

DATE OF JUDGMENT: 03/10/2001

BENCH:
S.Rajendra Babu & Doraiswamy Raju

JUDGMENT:

RAJENDRA BABU, J. :

This is a matter which ought to have been resolved by respondent No.8 and the appellants and unnecessary litigation is being resorted to by all the parties.

By the Constitution (7th Amendment) Act, 1956, the States in Part C and Territories in Part D of the First Schedule were replaced by the Union Territories, which, under Part II of the First Schedule, as amended, inter alia, include the Union Territory of Delhi. The administration of the Union Territories is carried on by the Union, through an Administrator. As stated by this Court in *New Delhi Municipal Committee vs. State of Punjab*, 1997(7) SCC 339, the President, who is the executive head of a Union Territory does not function as the head of the Central Government, but as the head of the Union Territory under powers specially vested in him under Article 239 of the Constitution thereby occupying a position analogous to that of a Governor in a State. Though the Union Territories are centrally administered under the provisions of Article 239 they do not become merged with the Central Government as has been stated by this Court in *Satya Dev Bushahri vs. Padam Dev & Ors.*, 1955(1) SCR 549. However, the Administrator is competent to exercise all powers vested in him by the Government of National Capital Territory of Delhi Act, 1991 [1 of 1992] [hereinafter referred to as the Act]. The Administrator functions as a delegate of the President and will have to act under the orders of the President, that is, the Central Government.

A letter was sent by the Government of National Capital Territory of Delhi [for short Government of NCT Delhi] to the Chief Controller of Accounts, Government of India on 7.6.1994 that the Government of NCT Delhi has decided to repatriate all the JAOs/AAOs, who are presently on deputation to that Government from the Ministry of Urban Development and posted in various divisions under PWD/Flood Control Department of that Government. However, to avoid administrative problem they were repatriating 20 such officers in the first phase from 30.6.1994 and the remaining similar officers will be repatriated in phased manner in due course. On 28.6.1994, the Government of NCT Delhi issued an office order indicating that it has been decided that the services of the officers mentioned therein who are working in the Irrigation & Flood Department

or Public Works Department [for short PWD] were to be placed back at the disposal of the the Ministry of Urban Development, Government of India. This order was challenged by an application before the Central Administrative Tribunal, Principal Bench, New Delhi [hereinafter referred to as the Tribunal].

The case put forth before the Tribunal by respondent No.1 and certain individual officials in two sets of applications, is that the PWD of Government of NCT Delhi is a part of the Central Public Works Department [for short CPWD] and all officers and staff including the accounts staff working in the PWD thus belong to the CPWD; that the accounts staff of the CPWD are under the administrative control of the Chief Controller of Accounts, the Ministry of Urban Development; that prior to 1976, the cadre controlling authority was the Accountant General under the Comptroller of Auditor General and after the Departmentalisation of Union Accounts [Transfer of Personnel] Act, 1976 came into force, the Ministry of Urban Development became their controlling authority; that all the civil works and PWDs of the Union of India have been treated to be under the Ministry of Urban Development by virtue of Allocation of Business Rules, 1961. In view of this position, the applicants before the Tribunal contended that the order made by the appellants is without jurisdiction and competence.

The stand taken on behalf of the Chief Controller of Accounts and the Union of India is that there is only one service, namely, the Union Service and there is no separate service for the Union Territories and for most of the purposes of the Constitution, they are treated as a part of the Union and hence the services or posts or the staff working in the Government of NCT Delhi are the services or posts in connection with the affairs of the Union. The Central Civil Services [Classification, Control & Appeal] Rules, 1965 include all services or posts of the NCT Delhi and in view of this position, the service conditions of employees under the control of the Government of NCT Delhi and the employees working under the Union are to be regulated by the Union under proviso to Article 309(2) of the Constitution. Therefore, the Central Government has overriding powers on the Government of NCT Delhi and, therefore, Government of NCT Delhi cannot seek replacement of the applicants in this case and fully supported the case of respondent No.1.

The Government of NCT Delhi contended that the applicants were transferred from the Union Accounts Department on deputation [without deputation allowance] as a result of separation of accounts from audit in 1977 and they were allowed to continue for a long period due to the shortage of the qualified staff with the Government of NCT Delhi. Now the Government of NCT Delhi has its own cadre since 1982 and has tided over the difficulty of shortage of qualified persons by the year 1994 when 108 officials who belonged to the Government of NCT Delhi cadre have qualified in the common SAS examination conducted by the CGA. Prior to enactment of the Act, Delhi had a status of Union Territory without Legislature and the transactions relating to expenditure, receipts, etc. were accounted for under the Consolidated Fund of India. After the Delhi came to be declared as National Capital Territory of Delhi with Legislature and in consequence a separate Consolidated Fund of NCT Delhi has been formed. Separate demands for each department which includes PWD also are prepared and presented by the Finance Minister of the NCT Delhi before the Assembly and the CAG report on the accounts of the NCT Delhi is also placed before the Assembly along with the Finance Accounts and appropriate accounts. The accounts of the PWD divisions are rendered to Pay & Accounts Office NO.XXII which is a subordinate office of Chief Controller of Accounts, Government of NCT Delhi and, therefore, contended that the Assembly of NCT Delhi has full authority to make laws in respect of matters relating to public services which involved PWD also and the NCT Delhi [Allocation of Business] Rules, 1993 have also led to creation of the separate department of PWD with a separate budget provision and demand. They contended that they

have full control over the PWD and there is also a separate accounts service constituted in 1982 with its own rules. The members of respondent No.1, it was contended, were on deputation though without deputation allowance and, therefore, the appellant is entitled to repatriate them to their parent department which is responsible to give them appropriate posting and, therefore, they cannot make a grievance of the same.

The Tribunal stated that in spite of Constitutional developments in regard to Delhi by introduction of Article 239AA and coming into force of the Act, Delhi still continues to be a Union Territory and as a Union Territory all the posts and services under its control continue to be the Central Services and Posts and, therefore, accepted the contention raised on behalf of the Union of India that it is the only services under the Union and the State. After examining the Delhi Administration Accounts Service Rules framed under Article 309 of the Constitution and the Government of India (Allocation of Business) Rules, 1961, the Tribunal took the view that the NCT Delhi will be subject to general control and supervision of the Ministry of Urban Development of the Union of India insofar as the management of the services of its PWD is concerned and in the present case the administration of NCT Delhi had issued the impugned order despite objections of the Ministry of Urban Development and held that the executive powers exercised by the Lt. Governor, Delhi in respect of various services are subject to the overall control and supervision of the President and on that basis the Tribunal allowed the application and quashed the impugned order directing repatriation. Hence aggrieved by this order of the Tribunal, these appeals have been preferred by the Government of NCT Delhi.

Shri P.P.Malhotra, learned senior Advocate appearing for the Union of India, raised a preliminary objection on the basis of Section 52(b) of the Act which provides that all suits and proceedings in connection with the administration of the Capital shall be instituted by or against the Government of India. The objection raised by the learned counsel ignores the fact that the matter arises out of an order passed by the Tribunal before which the Government of NCT Delhi was impleaded as respondent No.3 while the Union of India was impleaded as respondent No.1. When the Union of India was also impleaded as a party and the appellant as another separate party and the order made by the Tribunal affects one of the parties, it is difficult to conceive as to why that party cannot file an appeal invoking the provisions of Article 136 of the Constitution which is a proceeding against the orders made by the courts and the Tribunals. The position in law is clear that though the Union Territories are centrally administered under the provisions of Article 239 of the Constitution, they do not become merged with the Central Government and they form part of no State and yet are the territories of the Union, as has been held by this Court in *Satya Dev Bushahri vs. Padam Dev* [supra] and *NDMC vs. State of Punjab* [supra]. Thus, it must be held that the Union Territory does not entirely lose its existence as an entity though large control is exercised by Union of India. In this view of the matter, we do not think the preliminary objection raised on behalf of the respondents by Shri Malhotra is justified and the same is rejected.

Whatever may have been the position prior to the coming into force of the Delhi Administration Accounts Service Rules, 1982 [hereinafter referred to as the Rules], from the date of the coming into force of these Rules, they govern the Delhi Administration Accounts Service. Rule 3 of the Rules provides that on or from the date of commencement of the Rules, there shall be constituted a Central Civil Service to be known as the Delhi Administration Accounts Service. The Tribunal has been carried away by the fact that what has been constituted is the Central Civil Service and, therefore, it is entirely under the control of the Central Government ignoring for a moment other part of the rule, namely, that out of the Central Civil Service, Delhi Administration Accounts Service is

segregated. If under the Rules, there is a separate cadre constituted, the Rules will hold the field whether it is the Government of NCT Delhi which is applying the Rules or the Central Government in exercise of its power in the matter of administration of the NCT Delhi. When the Rules hold the field, the rules will have to be applied. Therefore, if the rules are applied, it becomes clear that under Rule 5, the initial constitution of service is indicated and as to who become absorbed in the services of the Delhi Administration Accounts Service and who are absorbed thereto is also indicated and subject to what conditions. Rule 7 of the Rules provides for method of recruitment to Grade I and II of the Service and proportion is fixed by transfer on deputation of officers holding equivalent posts in the departmentalised accounts organisation or Ministries and Departments of Government of India and from the Indian Audit and Accounts Departments or by promotion from officers of the Grade I of the Delhi Subordinate Service who have passed the SAS examination and recruitment to Grade II will have to be made by promotion from Grade II officers of Subordinate Service who have passed SAS examination which, however, will not preclude the Administration from filling any vacancy by deputation of the qualified officers of the Audit Department or from the office of the Controller General of Accounts in accordance with the orders of the Central Government issued from time to time. The question for consideration is whether it is open to the Government of NCT Delhi to ask for repatriation of those who have been sent on deputation and when all appointments in the Service will have to be made on the basis of the lists prepared in accordance with Rules 5 and 7 of the Rules and not against any specified posts included in the Service and thereafter the appointing authority will allocate the persons borne on the lists to various offices of the Administration. It is also made clear that where the exigencies of the situation so demand the appointing authority may, for reasons to be recorded in writing, appoint a person holding analogous or similar posts under the Central Government or a State Government on deputation for a period of not exceeding three years. Again for duty posts which is of purely temporary in character or a permanent post which is declared to be such post, a local arrangement could be made but for a period not exceeding six months from officers who are eligible for inclusion in the list under rule 11 or rule 15. Therefore, what is required to be seen is when rules have been framed under Article 309 of the Constitution after obtaining approval of the Union of India and in accordance with those rules appointments have to be made to various posts, it is difficult for us to comprehend as to how the Central Government could act contrary to those rules which have been specifically made in respect of Delhi Administration Accounts Service .

In the wake of this difficulty, Shri Malhotra and Shri V.K.Rao submitted that the posts in the PWD in relation to these officers are posts under the CPWD which directly come under the control of the Ministry of Urban Development but this argument is belied by the fact that the orders posting them in the Delhi Administration Accounts Service clearly indicated that they would be on deputation to Delhi Administration without any deputation allowance but the fact remains that these officers have been posted only on deputation. If really as contended for the respondents that the Accounts Department of the PWD in the Government of NCT Delhi was part of the Accounts Department of the CPWS, then there was no need for sending them on deputation and they could have been directly posted. Although such a case was advanced before the Tribunal, no finding has been recorded on this aspect of the matter but we are clear in our mind that they could not have been sent on deputation to the Government of NCT Delhi to work in the Delhi Administration Accounts Service and, therefore, this contention cannot be accepted at all.

The Tribunal also in fact noticed that the stand of the Union of India is not appropriate having allowed the establishment of the Delhi Administration Accounts Service as far back as in 1982 and also allowed

setting up of the PWD of the NCT Delhi and applicants who are not admittedly part of the Delhi Administration Accounts Service should have decided whether these applicants should be absorbed in the Delhi Administration Accounts Service or not and appropriate decision on that aspect should have been taken which would have resolved the problem once for all. Though the Tribunal came to the conclusion that the appellant did not have the competence to issue the impugned order for repatriation they did comment upon the merit of the matter, which, we think in the circumstances of the case, is justified.

When all other arguments failed, almost in desperation, the learned counsel for the respondents, submitted that under the Rules only one post is covered and not the other posts in the PWD so far as the Delhi Administration Accounts Service is concerned. As stated earlier, as to how many posts are available now is not clear although at the time of framing of the Rules, one post might have been available which was shown in the cadre and several other posts might also have been created or come into existence because unless the posts were available, the members of respondent No.1 before the Tribunal could not have been deputed to such posts. If as a fact they have been deputed to such posts, the posts must have been available as in the absence of such posts, they could not have been deputed to the same. In that view of the matter, we find no substance in this argument.

In the result, we set aside the order made by the Tribunal and direct respondent No.8 to take appropriate steps to give effect to the proposal made by the appellants or to take steps for absorption in Delhi Administration Accounts Service as indicated by the Tribunal to which we have adverted to above. Let such action be taken within three months from today.

The appeals stand allowed accordingly. No costs.

...J.
[S. RAJENDRA BABU]

...J.
[DORAISWAMY RAJU]

OCTOBER 03, 2001.