



2025:DHC:1393-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 18 December 2024

Pronounced on: 04 March 2025

+ W.P.(C) 12130/2018, CM APPLs. 47100/2018 & 47105/2018

MADAN MOHAN

.....Petitioner

Through: Mr. Shankar Raju and Mr.
Nilansh Gaur, Advs.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Kushagra Kumar and Mr.
Abhinav Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT

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04.03.2025

C. HARI SHANKAR, J.

1. The petitioner, who belongs to the Indian Civil Accounts Service, was issued a charge-sheet on 5 July 2018 by the Joint Controller General of Accounts (Vigilance), by order and in the name of the President of India, proposing to hold a disciplinary enquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965¹. The allegations in the charge-sheet pertained to the period during which the petitioner

¹ "the CCS (CCA) Rules" hereinafter



was working as Joint Controller General of Accounts (Administration) in the office of the Controller General of Accounts². For the purposes of the present judgment, and in view of the limited ground canvassed by the petitioner, it is not necessary to refer to the charges against him.

2. Admittedly, the charge-sheet dated 5 July 2018 was, before it was issued to the petitioner, approved by the Minister of State (Finance)³, on the basis of the following Office Order dated 3 April 2018, issued by the Joint Secretary to the Government of India in the Department of Expenditure⁴, Ministry of Finance:

“No. A-22012/1/2012-Admn. I (ii)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, 3 April 2018

OFFICE ORDER

Subject: Allocation of work to Minister of State in Ministry of Finance [Shri Radhakrishnan P.]

Reference is invited to this Department's Office Order of even number dated 11th September 2017. In partial modification of the *ibid* order, the Union Finance Minister has allocated the following work (earlier handled directly by the Finance Minister) in addition to the work already allocated to Shri Radhakrishnan P., Minister of State pertaining to Department of Expenditure (DoE), Department of Economic Affairs (DEA) and Department of Investment & Public Asset Management (DIPAM) until further orders:

2. Common to all Departments (Expenditure, Economic Affairs and DIPAM):

² "CGA" hereinafter

³ "the MOS" hereinafter

⁴ "DoE" hereinafter



- a. Answering all Starred Questions (after Union Finance Minister has been briefed on the replies for Starred Questions).
 - b. Disposal of all VIP references.
 - c. All disciplinary cases – both initiation and final orders.
 - d. Cases related to appointment, promotion, resignation and voluntary retirement of officers below Deputy Secretary level in services under the Ministry of Finance.
 - e. Appeals/Petitions in disciplinary cases.
 - f. Cases of training/deputation abroad.
 - g. Cases relating to premature retirement under FR 56 and Rule 48 of Pension Rules.
 - h. Comments on draft Note for the Cabinet or its Committees.
3. All other matters not specifically delegated to the MoS will be submitted directly to Finance Minister.

(Annie George Mathew)
Joint Secretary to the Government of India”

3. Without submitting himself to disciplinary proceedings, the petitioner assailed the chargesheet dated 5 July 2018, as well as the earlier Office Order dated 3 April 2018, issued by the DoE, to the extent it allocated, to the MOS, all powers to initiate disciplinary proceedings and pass final orders thereon. The petitioner contended that, as a Group A ICAS Officer, his disciplinary authority was the Union Minister of Finance⁵, and that the Office Order dated 3 April 2018, to the extent it permitted the MOS to institute disciplinary

⁵ “MOF” hereinafter



proceedings in respect of Group A officers such as the petitioner, was illegal. Consequently, it was submitted that, as the charge-sheet dated 5 July 2018, prior to being issued, had not been approved by the MOF, but only by the MOS, who was incompetent to do so, the disciplinary proceedings stood vitiated *ab initio*, in the light of the judgment of the Supreme Court in *UOI v B.V. Gopinath*⁶, which requires the charge-sheet, prior to its being issued, to be put up before, and approved by, the disciplinary authority.

4. Though nothing really turns on it, we may note, for the record, the prior trajectory of litigation. The petitioner had earlier instituted OA 2759/2018, before the Tribunal, challenging the charge-sheet dated 5 July 2018. The petitioner raised, in the said OA, *inter alia* the plea that the charge-sheet had not been approved by the appointing authority at the relevant stage. The Tribunal, by order dated 25 July 2018, dismissed the OA. Apropos the petitioner's contention that the charge-sheet had not been approved by the authority, the Tribunal merely observed, in para 7 of its order, that the file placed before it by the respondent revealed that the charge-sheet had in fact been approved by the appointing authority. The plea that it had not been so approved, as advanced by the petitioner, was, therefore, rejected. The petitioner challenged the said order dated 25 July 2018, passed by the Tribunal, before this Court by way of WP (C) 8194/2018⁷. Before this Court, the petitioner advanced, for the first time, the contention that the Office Order dated 3 April 2018, to the extent it empowered the MOS not to institute disciplinary proceedings in respect of Group A

⁶ (2014) 1 SCC 351

⁷ Madan Mohan v UOI



officers, amounted to illegal sub-delegation of the power which vested, statutorily, in the MOF. As this contention had never been advanced before the Tribunal, this Court permitted the petitioner to withdraw the writ petition with liberty to re-approach the Tribunal taking all pleas, including the challenge to the Office Order dated 3 April 2018. The petitioner, thereafter, filed a Review Application, numbered RA 139/2018 in OA 2759/2018, seeking review of the judgment dated 25 July 2018 passed by the Tribunal in the said OA. By order dated 20 August 2018, the Tribunal dismissed the Review Application is not having been filed in accordance with the liberty granted by this Court in its order dated 6 August 2018 in WP (C) 8194/2018. The petitioner challenged the said order dated 20 August 2018, passed by the Tribunal, before this Court by way of WP (C) 9071/2018⁸. This Court, by its order dated 29 August 2018, dismissed the said writ petition, holding that the liberty granted by this Court, in its order dated 6 August 2018 in WP (C) 8194/2018, was to institute an independent petition before the Tribunal, in which the petitioner assail the Office Order dated 3 April 2018, and not to file a Review Application. The petitioner, thereafter, proceeded to file OA 3909/2018, in which the presently impugned order has come to be passed by the Tribunal.

5. The respondent-Union of India⁹ has, in its counter-affidavit both before the Tribunal as well as before this Court, sought to advance a plea that OA 3909/2018 was not maintainable in view of the dismissal of RA 139/2018 by the Tribunal and WP (C) 9071/2018, challenging

⁸ **Madan Mohan v UOI**

⁹ "UOI" hereinafter



the said dismissal of RA 139/2018, by this Court. The principle of constructive *res judicata* has also been raised. We may note, here itself, that these pleas are without any merit, as this Board has, in its order dated 6 August 2018 in WP (C) 8194/2018, reserved liberty with the petitioner to re-approach the Tribunal, challenging the Office Order dated 3 April 2018, as well as the charge-sheet dated 5 July 2018. No doubt, the petitioner, instead of filing a fresh OA, filed a Review Application, which was rightly dismissed by the Tribunal, whose order was also appropriately upheld by this Court. That does not, however, efface the liberty granted by this Court in its order dated 6 August 2018 in WP (C) 8194/2018, to the petitioner, to file a fresh OA before the Tribunal challenging the charge-sheet dated 5 July 2018 as well as the Office Order dated 3 April 2018. OA 3909/2018 was, therefore, competent.

6. The Tribunal has, by order dated 15 October 2018, dismissed OA 3909/2018. The Tribunal observes, in para 8 of its order, that the OA was liable to be dismissed on the ground of non-maintainability but, nonetheless, proceeds to examine it on merits “in deference to observation made by Hon’ble Delhi High Court”. We may observe that precisely because of the “observation” – which, presumably, refers to the liberty granted by this Court to the petitioner in its order dated 6 August 2018 – the Tribunal was clearly in error in observing that OA 3909/2018 was liable to be dismissed on the ground of non-maintainability. Nonetheless, the Tribunal has deigned to consider the case set up in the OA on merits and, therefore, we, too, may proceed to the merits of the matter.



7. On the merits of the challenge faced by the petitioner, the Tribunal merely holds thus:

“9. From this, it is evident that the allocation of powers between the Minister of Finance on the one hand and Minister of State for Finance, on the other hand, were made. It is a matter of arrangement and allocation within the Ministry and by no stretch of imagination, it can be treated as sub delegation. The power exercised by the Minister of State would be as good as it having been exercised by the Minister of Finance.

10. The applicant placed reliance upon certain paragraphs in the judgement of Hon’ble Supreme Court in *Union of India v B.V. Gopinath*. That was the case in which the powers of Minister of Finance were exercised by the Chairman of Central Board of Direct Taxes. That is not the case here.”

Based on these somewhat laconic observations and findings, the Tribunal proceeds to dismiss the petitioner’s OA.

8. Aggrieved thereby, the petitioner is before us in the present writ petition, instituted under Article 226 of the Constitution of India. The petitioner has separately placed on record, under CM 35844/2022, a copy of the judgment rendered by a Division Bench of this Court in *P.D. Kanunjna v Central Board of Direct Taxes*¹⁰ which, according to the petitioner, covers the dispute in his favour. Alongside, the petitioner has also placed, on record, Office Order dated 4 July 2019, issued by the DoE, which was under consideration in *Kanunjna*, and which reads thus:

“No. A-22012/1/2012-Admn. I
Government of India
Ministry of Finance
Department of Expenditure

¹⁰ 2022 SCC OnLine Del 1337



New Delhi, the 4th July, 2019**OFFICE ORDER**

Subject: Allocation of work to Minister of State in Ministry of Finance – reg.

Reference is invited to this Department's Office Order of even number dated 19 June 2019 on the subject cited above allocating work to Shri Anurag Singh Thakur, Minister of State (MOS) in the Ministry of Finance.

2. The following amendments are made to the 19 June 2019 Office Order:

(i) All Un-starred Parliament Questions will be disposed of at the level of the MOS;

(ii) All matters where the President of India is the Appointing and Disciplinary Authority, shall be submitted to the Finance Minister through the Minister of State;

(iii) The following items of work/subject matters shall be submitted directly to the Union Finance Minister:

a) All matters pertaining to Group of Ministers (GoM)/Alternative Mechanism where Finance Minister is the Chairperson or a member;

b) All Budget -related matters;

c) Matters related to Enforcement Directorate (ED), Directorate of Revenue Intelligence (DRI), Directorate General of GST Intelligence (DGGI), Directorate of Investigation – CBDT, Financial Intelligence Unit (FIU);

d) Matters pertaining to financial sector regulators.

3. The 19 June 2019 Office Order stands modified to the extent as specified out in Para 2 above.

4. This issues with the approval of the Union Finance Minister.

(Annie George Mathew)



Additional Secretary to the Government of India

9. The writ petition also places, on record, Office Order dated 11 September 2017, issued by the DoE, Ministry of Finance, where under work has been allocated to the MOS in the Ministry of Finance. Though lengthy, it is necessary to reproduce this Office Order also in extenso, thus:

“F.No.A-22012/1/2012-Admn.l (i)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, 11th September, 2017

OFFICE ORDER

Subject: Allocation of work to Minister of State in Ministry of Finance

In continuation of this Ministry's order of even number dated 21st July 2016, the Finance Minister has allocated the following work pertaining to the Department of Revenue (DoR) and Department of Financial Services (DFS) to Shri Shiv Pratap Shukia, Minister of State. "

2. All matters except those listed below at Para 3 and Para 4 shall be submitted to the Finance Minister through Minister of State (MoS):
3. The following matters will be disposed of at the level of MoS:
 - i. All Un-starred Questions, Assurances, Special Mentions, verification and authentication of notifications, other documents, reports, etc, which are required to be laid on the Table of Rajya Sabha and Lok Sabha.
 - ii. Disposal of V.I.P. references other than those received from Prime Minister, Cabinet Ministers, Chief Ministers of States.
 - iii. Matters relating to Official Language.



iv. Department of Revenue:

A. CBDT-

1. All matters relating to establishment and vigilance of Group 'A' officers below the rank of Commissioner of Income Tax.
2. Matters relating to appointment of Standing Counsels, Prosecution Counsels and Special Counsels for the Income Tax Department before the High Courts and the Supreme Court.
3. All matters relating to Regional Direct Taxes Advisory Committees.

B. CBEC-

1. Engagement of SPP for prosecution matters.
2. Engagement of Special Fee Counsels.
3. Postings and transfers at the level of Additional/Joint Commissioners and Deputy/Asstt. Commissioners.
4. Disciplinary matters where the MoS is the Disciplinary Authority.
5. Recruitment Rules for all Grades except for Group 'A' officers.

C. Revenue Headquarters –

- 1 Grants-in-aid to the National Institute of Public Finance and Policy.
- 2 Administration of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
- 3 Administration of the Sales Tax-Laws Validation Act, 1956 (7 of 1956).



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4 Levy of tax on the course of inter-state Trade or Commerce problems arising out of the administration of the Central Sales Tax 1956 (74 of 1956).

5 All Bills etc. relating to Sales Tax levy in States coming up for the previous instructions, recommendations or assent of the President.

6. Problems arising out of the invalidation of sugarcane cess levies of State including Validation of such levies,

7 Recruitment Rules and amendments thereto for posts in the Department of Revenue upto Group B employees.

8 Appeals/Petitions in disciplinary cases of officers other than Group 'A',

9 Engagement of non-panel counsels.

10 All exemption proposals upto Rs. 2 crores.

11 Disciplinary cases of Group B employees.

v Any other matter which the Finance Minister may like to delegate.

(Annie George Mathew)
Joint Secretary to the Government of India
Ph. No; 011-23093283”

10. During the pendency of the writ petition, the petitioner superannuated as Principal Chief Controller of Accounts, Ministry of Education, on 30 September 2021.



11. While issuing notice in this writ petition on 13 November 2018, this Court identified the limited issue arising for consideration before it, in the present case, as “whether the Minister of State for Finance acts as a delegate of the Minister for Finance in respect of works are located to such Minister of State”. The UOI was, therefore, directed to file an affidavit on this aspect, supported by the relevant rules, and the petitioner was permitted to file a rejoinder thereto.

12. Counter-affidavit by the UOI, and rejoinder thereto by the petitioner, stand filed in the writ petition.

13. In the counter affidavit, the UOI places reliance on Rule 4(3)(b)¹¹ of the Government of India (Allocation of Business) Rules¹², 1961, as also Rule 3¹³ of the Government of India (Transaction of Business) Rules, 1961, both enacted under Article 77 (3) of the Constitution of India. The Office Order dated 3 April 2018, which, too, the petitioner has chosen to impugn, it is submitted, merely allocate business of the Government between the MOF and the MOS, which is well within the powers of the MOF, conferred by Gaborone 4

¹¹ **4. Allocation of Departments among Ministers –**

(1) The business of the Government of India allocated to Cabinet Secretariat is and, shall always be deemed to have been, allotted to the Prime Minister.

(2) Subject to the provisions of sub-rule (1), the President may, on the advice of the Prime Minister, allocate the business of the Government of India among Ministers by assigning one or more departments to the charge of a Minister.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), the President may, on the advice of the Prime Minister –

(a) associate in relation to the business allotted to a Minister under either of the said sub-rules, another Minister or Deputy Minister to perform such functions as may be assigned to him; or

(b) entrust the responsibility for specified items of business affecting any one or more than one Department to a Minister who is in charge of any other Department or to a Minister without Portfolio who is not in charge of any Department.

¹² "the Allocation of Business Rules" hereinafter

¹³ 3. Disposal of Business by Ministries.- Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.



of the Allocation of Business Rules. The petitioner, it is submitted, is in error regarding the allocation of business as sub- delegation. Inasmuch as the charge-sheet issue of the petitioner was, *a priori*, approved by the MOS, submitted that the mandate of **B.V. Gopinath** stands complied with.

14. The petitioner, in his rejoinder to the counter-affidavit of the UOI, has submitted that the power to act as disciplinary authority stands delegated to the Minister in charge by Rules 2(g)¹⁴, 8(1)¹⁵ and 12¹⁶ of the CCS (CCA) Rules, and has never been otherwise delegated by the President of India to anyone else. The Allocation of Business Rules, it is submitted, are not applicable to the exercise of jurisdiction under Articles 309 and 311 of the Constitution of India. Rule 2(g) of the CCS (CCA) Rules identifies the disciplinary authority as the authority specified in Rule 11. Rule 8 of the CCS (CCA) Rules stipulates that appointment to Group A services is by the President of India. The proviso to Rule 8 empowers the President to, by special order, delegate his jurisdiction to any other authority. Such a delegatee cannot, however, sub-delegate the power to anyone else. Specifically,

¹⁴ (g) "disciplinary authority" means the authority competent under these rules to impose on a Government servant any of the penalties specified in Rule 11;

¹⁵ **8. Appointments to Group 'A' Services and Posts -**

(1) All appointments to Central Civil Services, Group 'A' and Central Civil Posts, Group 'A', shall be made by the President :

Provided that the President may, by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments.

¹⁶ **12. Disciplinary Authorities -**

(1) The President may impose any of the penalties specified in Rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on -

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.



it is submitted that, in the guise of allocation, the MOF could not have sub-delegated his power as disciplinary authority to the MOS.

15. It is further submitted, in the rejoinder, that, while the Office Order dated 3 April 2018 purports to partially modify the earlier Office Order dated 11 September 2017, the latter Office Order does not stipulate, anywhere, that the MOS would be the disciplinary authority for Group A officers. Nor is any power, to that effect, allocated to the MOS by the Office Order dated 3 April 2018. The Office Order dated 11 September 2017 makes reference only to officers below the level of Deputy Secretary. Para 3 of the said Office Order provides that all matters, not specifically dedicated to the MOS, would be submitted directly to the MOF. There being no specific delegation to the MOS in respect of disciplinary matters of Group A officers even in the Office Order dated 3 April 2018, the disciplinary authority, in respect of such officers, continues to remain the MOF. Reliance is placed, in this context, on para 4(iii)(c) of the Office Order dated 11 September 2017.

16. By mere allocation, it is further submitted, the MOS could not have usurped the jurisdiction of the MOF as the delegatee of the President under the CCS (CCA) Rules.

17. In this connection, reliance was also placed, in the rejoinder, on office order dated 19 June 2019 issued by the DoE, Ministry of Finance, which read thus:

“No. A-22012/1/2012 – Admn.I



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**Government of India
Ministry of Finance
Department of Expenditure**

New Delhi, the 19th June, 2019

OFFICE ORDER

Subject: Allocation of work to Minister of State in Ministry of Finance

The Union Finance Minister has allocated the following work to Shri Anurag Singh Thakur, Minister of State (MOS) in the Ministry of Finance with immediate effect.

2. All matters pertaining to the five Departments of Ministry of Finance except those mentioned in Para 3 below, but including Starred & Unstarred Parliament Questions and Calling Attention Motions, shall be submitted to the Finance Minister through the Minister of State. However, VIP References addressed to the Finance Minister will be submitted directly to her.

3. The following matters will be disposed of at the level of the Minister of State:

- a) All matters relating to:
 - (i) Assurances (Fulfillment/Extension of time, request for dropping the Assurance)
 - (ii) Special Mentions
 - (iii) Laying the Annual Reports/Rules/Regulations etc. in Rajya Sabha and Lok Sabha
 - (iv) Authentication of papers/notifications required to be laid in Rajya Sabha and Lok Sabha
- b) Matters relating to Official Language
- c) Disposal of all VIP references addressed to the Minister of State
- d) The following works specific to each Department are also delegated to the MOS as follows:

(A) Department of Revenue (DOR):



Revenue Headquarters

- (i) Grants-in-aid to the National Institute of Public Finance and Policy.
- (ii) Administration of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
- (iii) Administration of the Sales-Tax Laws Validation Act, 1956 (7 of 1956).
- (iv) Levy of tax on the course of inter-State Trade or commerce-problems arising out of the administration of the Central Sales Tax Act, 1956 (74 of 1956).
- (v) All Bills etc., relating to sales-tax levy in States coming up for the previous instructions, recommendations or assent of the President.
- (vi) Problems arising out of the invalidation of sugarcane cess levies of States including Validation of such levies.
- (vii) Recruitment Rules and Amendments thereof for posts in the Department of Revenue upto Group B employees.
- (viii) Appeals/Petitions in disciplinary cases of Officers other than Group 'A'.
- (ix) Engagement of non-panel counsels.
- (x) Disciplinary cases of Group B employees.
- (xi) All exemption proposals upto Rs. 2 (Two) crores.

CBDT

- (i) All matters relating to establishment and vigilance of Group A officers below the rank of Commissioner of Income Tax.
- (ii) Matters relating to appointment of Standing Counsels, Prosecution Counsels and Special



Counsels before the High Courts and the Supreme Court.

(iii) All matters relating to Regional Direct Taxes Advisory Committees.

CBIC

(i) Matters relating to engagement of SPPs, Special Fee Counsels.

(ii) Postings/transfers at the level of Additional/Joint Commissioners and Deputy/Assistant Commissioners.

(iii) Disciplinary matters where the MOS is the Disciplinary Authority.

(iv) Matters relating to Recruitment Rules and its amendments other than that of Group A officers.

(B) Department of Economic Affairs (DEA):

(i) National Savings Organizations and small saving related matters except matters meant for Cabinet and its Committees and policy matters.

(ii) Matters pertaining to Currency & Coinage.

(iii) Matters relating to Controller of Aid, Accounts & Audit (CAAA).

(C) Department of Expenditure (DOE):

(i) Recruitment Rules of Group B & C employees and amendments thereof.

(ii) Files relating to Cabinet Committee on Accommodation.

(D) Department of Investment & Public Asset Management (DIPAM):

(i) Recruitment Rules of Group B & C employees and amendments thereof.

4. It may be ensured that all files are submitted/routed to the Ministers strictly in accordance with this allocation of work.



5. This issues with the approval of the Union Finance Minister.

(Annie G Mathew)
Additional Secretary to the Government of India”

18. The petitioner submitted that the afore-extracted office order dated 19 June 2019, did not allocate the jurisdiction in respect of disciplinary matters pertaining to Group A officers on the MOS, in Clauses 3(A)(viii) and (iii)(C). Thus, exercise of powers, in respect of disciplinary action in the case of Group A officers continued to vest with the MOF.

19. We have heard Mr. Shankar Raju, learned Counsel for the petitioner and Mr. Ripudaman Bhardwaj, learned CGSC for the UOI at length.

20. Mr. Raju has also placed written submissions on record.

21. Mr. Raju has broadly reiterated the contentions contained in the pleadings before the Tribunal and before this Court as well as in his written submissions. In the written submissions, the following issues have been delineated as arising for consideration, in para 12, thus:

“12. That further, the Petitioner humbly submits that the present Petition also raises the following Constitutional and legal issues for consideration, which require to be adjudicated for once and all by this Hon’ble Constitutional Court:

- a) Whether the Union Finance Minister can unilaterally change the Disciplinary Authority of the Petitioner, who is a Group “A” officer and is afforded the



constitutional protection under Article 311 read with Article 309 of the Constitution?

b) Whether the Union Finance Minister can circumvent the aforesaid Constitutional protection afforded to the Petitioner through internal work allocations and unilaterally allocate the said quasi-judicial Disciplinary Authority powers to the Minister of State?

c) Whether the Union Finance Minister has power to unilaterally allocate/assume the business to himself or to his subordinate Minister of State of Finance, the business which is not originally allocated to the Ministry of Finance as per the Rules of the Business of the Government of India framed under the Article 77 of the Constitution i.e. the Government of India (Allocation of Business) Rules, 1961?

d) Whether the quasi-judicial Disciplinary Authority powers can be unilaterally allocated to the Minister of State by the Union Finance Minister without consulting the Department of Personnel and Training (DOPT), which has been allocated the subject matter of the “conditions of service” of the Petitioner as per the Government of India (Allocation of Business) Rules 1961.

e) Whether the statutory requirement laid down in the Rule 3 and Rule 4(4) Government of India (Transaction of Business) Rules, 1961, which prescribes mandatory DoPT consultation in case of any change in “conditions of service” of the Petitioner, can be unilaterally dispensed with by the Union Finance Minister?”

22. Having heard learned Counsel at length, we find ourselves, in agreement with the judgment of the Tribunal.

23. The submissions of Mr. Raju proceed on a basically erroneous premise that the Office Order dated 3 April 2018 involved a sub delegation of the power vested in the MOF, to initiate and proceed with disciplinary action against Group A officers, to the MOS. This aspect of the matter has been neatly captured in the order dated 13



November 2018 whereby notice was issued in this writ petition, which precisely identifies the “limited issue” arising for consideration as being “whether the Minister of State for Finance *acts as a delegate of the Minister for Finance* in respect of *works allocated to such Minister of State*”.

24. The disciplinary authority, in respect of Group A officers in the Central Government is the President of India. The President has delegated the function to act as disciplinary authority, in respect of officers in the Ministry of Finance, on the MOF. The MOF is, therefore, the delegatee of the President in this regard. The MOF has, by Office Order dated 3 April 2018, allocated certain works, which were being undertaken by him, to the MOS. Among these was work relating to “all disciplinary cases – both initiation and final orders”. Mr Raju contends that this was not allocation, but sub-delegation. This Court, therefore, identified the issue arising for consideration, in its order dated 13 November 2018, as whether the allocation was a mere allocation, or sub-delegation masquerading as allocation.

25. We, having heard learned Counsel and perused the record and the law in that regard, are of the view that there was, in fact, no such sub delegation, as the Tribunal has correctly held. All that the Office Order dated 3 April 2018 did was to allocate, certain some of the business which otherwise fell to the lot of the MOF, to the MOS. The MOS, while discharging the said functions, did not act as a delegatee of the MOF. The exercise of his functions was deemed to be exercise of the said functions by the MOF himself. In exercise of the said



function, the MOS was, therefore, answerable, not to the MOF, but to the Government itself.

26. This position is not *res integra*. It stands lucidly captured in the following passages from *A. Sanjeevi Naidu v State of Madras*¹⁷ rendered in the context of Article 166¹⁸ of the Constitution of India:

“9. We think that the above submissions advanced on behalf of the appellants are without force and are based on a misconception of the principles underlying our Constitution. Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government. *All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister.* Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers.

10. The cabinet is responsible to the Legislature for every action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision

¹⁷ (1970) 1 SCC 443

¹⁸ **166. Conduct of business of the Government of a State. –**

- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
- (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
- (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.



must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Council of Ministers to discharge all or any of the Governmental functions. *Similarly an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard working Minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the "Rules" or the standing orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates."*

27. The above exposition of the law in *A. Sanjeevi Naidu* was rendered in the context of Article 166 of the Constitution of India which is the provision parallel to Article 77¹⁹, in respect of State Government. In other words, just as Article 77(3) empowers the President to make Rules for more convenient transaction of business of the Government of India, and for allocation amongst Ministers of the said business, Article 166(3) empowers the Governor of a State to

¹⁹ 77. **Conduct of business of the Government of India.** –

- (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
- (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules⁷⁸ to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
- (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.



make rules for the more convenient transaction of the business of the State Government and for allocation amongst Ministers of the said business. As the Supreme Court has held in paras 9 and 10 of *A. Sanjeevi Naidu*, the very intent of Article 166(3) – and, therefore, of Article 77(3) in the case of the Union Government – is to obviate the difficulty of the Council of Ministers having to attend to every aspect of government business. Thus, Article 166(3) empowers the Governor of a State to allocate, to one or other of his Ministers, any matter except those in which the Governor is required to act in his discretion.

28. Equally, the President can allocate, to any one or more of the Ministers, the functions which vest in the President – which would include the power to act as disciplinary authority in respect of Group A officers, as vested by Rules 12(1) and 13(1) of the CCS (CCA) Rules.

29. Para 10 of *A. Sanjeevi Naidu* further clarifies that the responsibility of any individual Minister, for every action taken or omitted to be taken in his Ministry, is a political, and not a personal responsibility. No Minister can attend to all the work in his Ministry.

30. Thus, it is open to a Minister to issue directions to officers in his Ministry regarding disposal of government business. Such officers are entitled to take decisions. In doing so, they do not act as delegates of the Minister, but as limbs of the government. In other words, merely by allocating work which otherwise falls to his lot to officials in his Ministry, the Minister does not delegate such work. He merely



allocates the work so as to enable him to attend to work which would necessarily require his, and his own, intervention, such as laying down policies and programmes of the government. The official in the Ministry, to whom the work is allocated by the Minister does not, therefore, while performing the said work, act as the Minister's delegate. He is another limb of the government.

31. A. Sanjeevi Naidu was followed by the Supreme Court in *Samsher Singh v State of Punjab*²⁰. Paras 31 to 35 read thus:

“31. Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. *Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister* (see *Halsbury's Laws of England* 4th Ed., Vol. I, paragraph 748 at p. 170 and *Carltona Ltd. v Works Commissioners*²¹).

32. It is a fundamental principle of English Constitutional law that *Ministers must accept responsibility for every executive act*. In England the Sovereign never acts on his own responsibility. The power of the Sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action. Those advisers must have the confidence of the House of Commons. This rule of English Constitutional law is incorporated in our Constitution. *The Indian Constitution envisages a Parliamentary and responsible form of Government at the Centre*

²⁰ (1974) 2 SCC 831

²¹ (1943) 2 All ER 560



and in the States and not a Presidential form of Government. The powers of the Governor as the constitutional head are not different.

33. This Court has consistently taken the view that the powers of the President and the powers of the Governor are similar to the powers of the Crown under the British Parliamentary system. (See *Ram Jawaya Kapur v State of Punjab*²², *A. Sanjeevi Naidu, U.N.R. Rao v. Indira Gandhi*²³). In *Ram Jawaya Kapur* case Mukherjea, C.J. speaking for the Court stated the legal position as follows. The Executive has the primary responsibility for the formulation of governmental policy and its transmission into law. The condition precedent to the exercise of this responsibility is that the Executive retains the confidence of the legislative branch of the State. The initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, the carrying on of the general administration of the State are all executive functions. The Executive is to act subject to the control of the Legislature. The executive power of the Union is vested in the President. The President is the formal or constitutional head of the Executive. *The real executive powers are vested in the Ministers of the Cabinet.* There is a Council of Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions.

34. The functions of the Governor under the rules of business of Madras Government in regard to a scheme for nationalisation of certain bus routes were considered by this Court in *Sanjeevi Naidu*. The validity of the scheme was challenged on the ground that it was not formed by the State Government but by the Secretary to the Government pursuant to powers conferred on him under Rule 23-A of the Madras Government Business Rules.

35. The scheme was upheld for these reasons. The Governor makes rules under Article 166(3) for the more convenient transaction of business of the Government of the State. The Governor cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But that could be done on the advice of the Council of Ministers. The essence of Cabinet System of Government responsible to the Legislature is that *an individual Minister is responsible for every action taken or omitted to be taken in his Ministry*. In every administration, decisions are taken by the civil servants. The Minister lays down the policies. The Council of Ministers settle the major policies. *When a civil servant takes a decision, he does not do it as a delegate of his Minister. He*

²² AIR 1955 SC 549

²³ (1971) 2 SCC 63



does it on behalf of the Government. The officers are the limbs of the Government and not its delegates. Where functions are entrusted to a Minister and these are performed by an official employed in the Minister's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister.”

(Emphasis supplied)

32. Rule 3 of the Transaction Business Rules envisages that all business allotted to a Department under the Allocation of Business Rules shall be disposed of by or under the general or special directions of, the Minister-in-Charge. The Allocation of Business Rules have been enacted in exercise of the power conferred by Article 77(3) of the Constitution of India. Rule 2 of the Allocation of Business Rules stipulates that the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Officers specified in the First Schedule to the Allocation of Business Rules.

33. The judgment of the Division Bench of this Court in ***P D Kanunjna***, on which Mr Shanker Raju placed reliance, identifies the MOF as the Authority Competent to exercise the power of the President, vested by Rules 12 and 13 of the CCS (CCA) Rules to institute disciplinary proceedings against Group A Officers of the Ministry of Finance and to pass orders of penalty. The petitioner also does not dispute the fact that the MOF was empowered to do so.

34. The petitioner's contention is that it was the MOF and the MOF alone who could exercise this function and could not have delegated it to the MOS by the office order dated 3rd April 2018.



35. The submission is fundamentally flawed. Rule 3 of the Transaction of Business Rules specifically ordains that all business allotted to a Department under the Allocation of Business Rules would be disposed of by, or under the general or special directions of, the Minister-in-Charge. Thus, the Minister-in-Charge, i.e. the MOF in the case of the petitioner, is empowered to either discharge the business falling within his purview under the Allocation of Business Rules on his own or have the business discharged under the general or special directions.

36. Paras 2(ii) of Office Order dated 4 July 2019 – which is not under challenge in the present case – specifically states that all matters where the President of India is the Appointing and Disciplinary Authority would be submitted to the Finance Minister through the Minister of State. Thus, the involvement of the Minister of State in disciplinary matters concerning Group A officers, cannot be wished away. In exercising his powers in that regard, the MOS does not act as a delegatee to the MOF. The acts of the MOS could be treated as the acts of the MOF, who is responsible for discharging of business in the Ministry of Finance which falls to his lot. The allocation of business of various officials in the Ministry of Finance including the MOS, is merely a matter of convenience as observed by the Supreme Court in *A. Sanjeevi Naidu* and is well within the provinces of the jurisdiction of the MOF. Smooth, efficient and expedient functioning of the Government has, in the ultimate eventuate, to be the predominant consideration. Inasmuch as the MOS while exercising the said power, does not act as a delegate of the MOF, he is not answerable in such



exercise to the MOF either but acts as an officer of the Government of India. Such allocation of business is within the province of the MOF, as upheld by the Supreme Court in *A Sanjeevi Naidu* and *Shamsher Singh*.

37. If the submission of Mr Raju were accepted, the MOF – and, for that matter, every Minister – who acts as the delegate of the President of India in respect of a wide variety of functions which, statutorily are to be discharged by the President, would have to discharge each and every function herself or himself. This would place, as is noted in *A. Sanjeevi Naidu*, an impossible burden on the Union Minister in each case, and would paralyze Governmental functioning. The power and discretion to allocate some of the business which the Minister, as the delegate of the President, is required to discharge, to officers in his Ministry is, therefore, indispensable and essential. It would be extremely hazardous, therefore, to hold that the Minister has no power or authority to do so. We, certainly, are unwilling to accept such a proposition.

38. For all these reasons, we are of the opinion that the petitioner's submission that the Office Order dated 3rd April 2018 is illegal to the extent it allocates the work of disciplinary matters in the Ministry of Finance to the MOS, is misconceived. There is no sub-delegation of work involved in this exercise. The MOF has only allocated the work relating to all disciplinary matters – which would include disciplinary matters relating to Group A officers – to the MOS. Neither is this sub-delegation, nor does the MOS act as a delegate of the MOF. He



exercises the power which the MOF would have otherwise exercised and, in doing so, is directly answerable to the Union Government and the President, and not to the MOF.

39. In that view of the matter, there is complete compliance in the present case with the mandate of *B.V. Gopinath* as the charge-sheet was specifically put up before and approved by, the MOS.

40. Mr. Raju cited the orders passed by a Coordinate Bench of this Court in *Ramesh Chander v Central Board of Direct Taxes*²⁴ and *P.D. Kanunjna*. They are essentially the same order, passed on the same date, in two writ petitions, but were released as separate orders. We have noted that *P.D. Kanunjna* identifies the MOF as the authority competent to exercise the power of the President, vested by Rules 12 and 13 of the CCS (CCA) Rules to institute disciplinary proceedings against Group-A Officers of the Ministry of Finance. Beyond this, however, the decision is of no particular relevance, as it does not deal with the aspect of allocation of work by the MOF to the MOS, with which, principally, we are concerned in the present case. Besides, we have decided this matter on the basis of authoritative pronouncements of the Supreme Court, with which the decision in *P.D. Kanunjna* does not deal.

41. Before parting we may note that Mr. Raju also sought to contend – though no such ground was taken before the Tribunal in the OA – that the Office Order 3 April 2018 could not have been issued

²⁴ Judgment dated 22 April 2022 passed in WP(C) 11260/2019



without prior consultation of the DOPT. For this purpose, he relies on Rule 4(4)(a) of the Transaction of Business Rules.

42. It is obvious that the invocation of Rule 4(4)(a) by Mr. Raju is completely misdirected. Rule 4(4)(a) only requires prior consultation with the DOPT before determining methods of recruitment and conditions of service generally applicable to Government servants in civil employment. The Office Order dated 3 April 2018 did not involve determination either of methods of recruitment or conditions of service of general application to Government servants in civil employment. It did not even involve any abdication by the MOF, of his power to act as Disciplinary Authority in respect of Group A officers in the Ministry of Finance. It merely allocated to the MOS in the Ministry of Finance, certain aspects of the work which was, prior thereto, being undertaken by the MOF himself. Rule 4(4) of the Transaction of Business Rules has no application in such a case.

Conclusion

43. For all the above reasons, we are of the opinion that the Tribunal correctly held that the Office Order dated 3 April 2018 merely involved an exercise of internal allocation of work by the MOF in his Ministry and was, therefore, perfectly legal. Unfortunately, the Tribunal does so without any analysis or examination of the law. We hope that we have cured that lacuna.



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44. For all these reasons, the writ petition is dismissed with no orders as to costs.

C. HARI SHANKAR, J.

MARCH 04, 2025

aky/yg/ar

ANOOP KUMAR MENDIRATTA, J.

Click here to check corrigendum, if any