Control over Bureaucracy in National Capital

What is the issue?

- Control over the administrative services remains a piece of contention between the Centre and Delhi government.
- The matter has been referred to a Constitution Bench.

What is Article 239AA of the Constitution?

- S Balakrishnan Committee was set up to look into demands for statehood for Delhi.
- Based on its recommendation Article 239 AA was inserted in the Constitution by 69th Constitutional Amendment Act, 1991 to give Special Status to Delhi.
- Accordingly NCT of Delhi will have an Administrator and a Legislative Assembly.
- The Legislative Assembly will have power to make laws for the whole or any part of the NCT with respect to the matters in the State List or Concurrent List in so far as any such matter is applicable to Union territories except on the subject of police, public order, and land.

What is the SC ruling over power tussle issue?

- **2018 ruling -** A five-judge Constitution Bench upheld the respective powers of the state Assembly and Parliament.
- It has limited the LG's domain by stating that every decision does not require his concurrence citing that an unelected administrator should not undermine an elected administration.
- The lieutenant governor has to act on the 'aid and advice' of the Council of Ministers.
- In case of a difference of opinion, the L-G can refer the issue to the President of India.
- **2019 ruling -** Anti-Corruption Branch of the Delhi government cannot investigate corruption cases against central government officials.
- Under The Commission of Inquiry Act, 1952, the power to investigate is vested with the Centre and not the Delhi government.

What is the issue in 2019 ruling?

- With respect to who should have control of administrative services the two judges differed in their opinion.
- One Judge was of the view that "transfers and postings of officers in the scale of Joint Secretary and above to the GOI can be done by the Lieutenant Governor directly".
- For other levels, including DANICS (Delhi, Andaman and Nicobar Islands Civil Service) officers, the files can be routed through the Chief Minister to L-G.
- Other judge was of the opinion that power over services lay only with the Centre.
- The two judges could not take a decision as the Constitution Bench in its July 2018 judgment had not interpreted the expression "insofar as any such matter as applicable to Union Territories" appearing in Article 239AA.
- As a result the SC has referred the matter to a five-judge Constitution bench for an authoritative pronouncement.

- Settling this question should give a solution on whether Entry 41 of the State List (State public services; State Public Service Commission.) is within the NCT's executive and legislative domain.

Reference

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