CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00193/2019

DATED THIS THE 27TH DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri S.B. Shettennavar, IAS,
S/o Bhalachandra Shettennavar,
Aged about 51 years,
Working as Deputy Commissioner,
Vijayapura District,
Vijayapura
Residing at D.C. Bungalow,
Near Dr. B.R. Ambedkar Circle,
Vijayapura .....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. The Union of India,
Represented by its Secretary,
Department of Personnel & Training,
New Delhi

2. The State of Karnataka,
By its Principal Secretary,
Department of Personnel
And Administrative Reforms,
Vidhana Soudha,
Bengaluru 560 001

3. Sri Patil Yalogouda Shivanagouda, IAS,
Aged major, Working as Director, Horticulture & Director,
National Horticulture Mission
& Ex-Officio, Deputy Secretary to Government,
Horticulture Department,
Lalbagh, Bengaluru ....Respondents

(By Shri N. Amaresh, Counsel for Respondent No. 1 and
Shri R.B. Sathyanarayana Singh, Counsel for the State Government)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J)

Apparently when the matter was taken up before us on 14th of March, 2019, we found that serious allegations had been raised against a Hon'ble Minister as explained by the learned counsel. But then we had pointed out to him that if malafides are to be tested it can be tested only on specific allegations raised against a person and having that person in the party array is essential as without giving credence to his defence also and without hearing him no order pertaining to prejudice him in any way can be passed by any adjudicatory authority. But then he was unwilling to bring in the Minister as a party even though he raised serious allegations against him. Therefore, the OA was dismissed for non-joinder of necessary parties.

2. But challenging this he filed Writ Petition No. 15822/2019 which we quote the order:

> *"THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 14.03.2018 PASSED IN O.A.NO.170/00193/2019 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL BENGALURU BENCH, BENGALURU VIDE ANNEXURE-C AND TO QUASH AND SET ASIDE THE ORDER DATED 20.02.2019 (ANNEXURE-A-2) IN O.A.NO.170/00193/2019 PASSED BY THE R-2 AND ETC.,*
>
> *THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY,* ***NARAYANA SWAMY J****, MADE THE FOLLOWING:*
>
> ***ORDER***
>
> *The order transferring the petitioner from the post of Deputy Commissioner, Vijayapura District to the post of Managing Director, Mysore Paper Mills Limited, Bengaluru, was the subject matter of O.A.No.193/2019, before the Central Administrative Tribunal, Bengaluru Bench (CAT). By the Order dated 30.03.2019, CAT has rejected the application and being aggrieved, the present*

writ petition is filed.

2. The CAT dismissed the application in the following manner:

> *"Heard. This O.A. is filed challenging the alleged malafide of a Hon'ble Minister. But then, in spite of having made that allegation, the applicant has not made the concerned party, from whom the malafides emanated, as a party. Therefore, for non-joinder, the O.A. will not lie.*
>
> *2. The O.A. is dismissed. No order as to costs."*

3. We have gone through the memorandum of application filed by the petitioner herein before the Tribunal. We find that there are other grounds raised by the applicant/petitioner, including the protection of minimum tenure provided in Rule 7 of Indian Administrative Service (Cadre) Amendment Rules, 2014. Section 14 of the Administrative Tribunal Act, provides that the Central Administrative Tribunals shall exercise all the jurisdiction, powers and authority exercisable by all Courts except the Supreme Court.

4. No doubt, the Tribunal has the power to reject an application on the ground of non-joinder of necessary party. However, the Tribunal could have looked into the grounds raised by the applicant/petitioner. Irrespective of the allegation of malafide made by the applicant/petitioner, the Tribunal could have proceeded to consider the application on grounds other than malafide.

5. The learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in the case of ***T.S.R.Subramanian and others /vs./ Union of India and others reported in AIR 2014 SC 263****, wherein guidelines have been provided to the competent authority, including the State Government, in the matter of transfers. It is the submission of the learned counsel for the petitioner that the State Government has violated the provisions of the Indian Administrative Service (Cadre) Amendment Rules, 2014 and the guidelines given by the Hon'ble Supreme Court of India, while passing the impugned order of transfer.*

6. We do not wish to go into the merits of the matter since we are of the opinion that the matter requires consideration at the hands of the Tribunal, on merits.

7. For the reasons stated above, we set aside the impugned order passed by the Tribunal and remand the matter back to the Tribunal for consideration on merits.

8. At this juncture, the learned counsel for the petitioner seeks an order of interim stay of the impugned order of transfer. Since the petitioner and the respondent No.3 have assumed charge at the respective posts in terms of the impugned order of transfer, we decline to pass an interim order. We feel that it is appropriate for the

applicant/petitioner to move the Tribunal for an interim order. It is for the Tribunal to consider such a prayer, in accordance with law.

The writ petition is accordingly allowed."

3. The Hon'ble High Court in paragraph 3 of the order held that there are other grounds raised by the applicant/petitioner, including the protection of minimum tenure provided in Rule 7 of Indian Administrative Service (Cadre) Amendment Rules, 2014 and that Section 14 of the Administrative Tribunal Act, provides that the Central Administrative Tribunals shall exercise all the jurisdiction, powers and authority exercisable by all Courts except the Supreme Court.

4. In paragraph 4, the Hon'ble High Court would say "***No doubt, the Tribunal has the power to reject an application on the ground of non-joinder of necessary party. However, the Tribunal could have looked into the grounds raised by the applicant/petitioner. Irrespective of the allegation of malafide made by the applicant/petitioner, the Tribunal could have proceeded to consider the application on grounds other than malafide.***"

5. Without any doubt, other grounds also could have been examined but then the non-joinder of necessary party is a significant event as what will happen then is that the allegations made against a particular person will remain unanswered by that person, denying him an opportunity of being heard. That is why stipulation is made in the Civil Procedure Code, which is a guiding star for all legal proceedings under law in India, that for non-joinder of a necessary party or even a mis-

joinder of a party, proceedings cannot go on. Because of the fact that these allegations are so entwined and intertwined in the factum of the case that there cannot be any decision taken without him having been given an opportunity of being heard.

6. In this case, the question of suitability of an officer to be in a particular place is under challenge. For right or wrong reasons, a Minister may have had an opinion about the concerned official who is under his charge and the Minister may have made a complaint against him and, in greater public interest, the government may have thought it fit to move the applicant to another place. The applicant may have several reasons for remaining in the same place but then what is to be considered is the general public interest and the effect if the applicant is continuing in the same place. If it is against the general public interest, then it is not open to challenge it unless the very root of the issue is addressed. The executive is the first custodian of general public interest and only in significant cases judicial interference is called for.

7. In paragraph 5, the Hon'ble High Court had considered the effect of Indian Administrative Service (Cadre) Amendment Rules, 2014. But then the Hon'ble Apex Court had in many a case held that the suitability of an officer at a particular post has to be first decided by the government and the government alone. As the sovereignty rests in the people, the function and responsibility to decide the administrative set up, in the first place, without any doubt, remains on the executive. Only on significant aberrations made open for all to see and an opportunity granted to the concerned executive and the concerned official to challenge it can judicial interdiction be made possible. In this case, quite

obviously, as going by the impugned order, the government had thought it not fit to retain the applicant at a particular post. The State Government relies on Annexure-R1 and would say that the applicant was transferred with the approval of the competent authority, i.e., the Chief Minister. No challenge is made against the decision of the Hon'ble Chief Minister but a challenge is made against the concerned Minister who may have complained to the Chief Minister. So, unless all these facts are brought out in extenso, there cannot be a judicial interdiction against a normal, ordinary expression of administrative exigency by the Chief Minister. It appears that the applicant had been posted as Managing Director of the Mysore Paper Mills Limited, Bangalore. The government would say that the conditions of service and other benefits and facilities will not be altered in any such manner. Therefore, the question to be decided is "**What is the right of the applicant to choose the post of Deputy Commissioner at Vijayapura as a matter of right?"**

8. The learned counsel for the applicant would say that he was transferred as Deputy Commissioner, Vijayapura vide order dated 07.03.2018 and he had been transferred vide order dated 20.02.2019, i.e., within 17 days of completion of one year of service. Since even the rules stipulate one year of service, the diminishment of 17 days is not to be taken as a matter to be considered as significant. Therefore this ground also will not lie.

9. But we find it strange that applicant had raised serious allegations against the concerned Minister but yet declining to corroborate it. He being an Indian Administrative Service officer is expected to behave in a manner as befitting his position. He cannot be expected to raise an allegation against a

Hon'ble Minister without atleast making an effort to substantiate it. Whether the allegations made against the Minister will constitute a defamation under criminal law is a matter which we will not look into. But, after having made such allegations in open Court, the applicant had a duty to substantiate it and give the concerned affected victim an opportunity of being heard or to challenge the allegations against him. Therefore, we find that the applicant had committed a serious misconduct under the rules. But since the allegations were made by the learned counsel and not by the party present in Court, we will not go any further in this matter.

10. The issue seems to be covered by the ruling of the Hon'ble Apex Court in **Tamil Nadu Administrative Service Officers Association and another Vs Union of India reported in (2000) 5 SCC Page 728** which we quote from paragraph 18:

> *"18. If one looks into the object of creating an all India service, it is clear that this service was created to select exceptionally bright and intelligent men/women through all India examinations and train them to handle the affairs of the States by manning important posts in the administration of the State. These persons are not to be posted to any and every posts in the Government. They are to man only such posts which have been identified to be so important as to require the services of these persons. With this view in mind, the Central Government was entrusted with the responsibility of identifying such posts and to encadre them in the IAS cadre. A perusal of the Cadre Rules and Regulations shows that the Central Government has identified posts like that of the Collectors, Commissioners, Members of the Board of Revenue, Secretaries and Deputy Secretaries in the administrative departments and Heads of important Departments. It is the attitude of the State Governments of creating ex-cadre/temporary posts without consulting the Central Government and contrary to the Cadre Rules which has created the controversy in hand and has given rise to heart-burn and disappointment to the State civil servants. This however does not, in our opinion, confer any right on the petitioners to seek a mandamus for encadring those ex-cadre/temporary posts, for any such mandamus would run counter to the statutory provisions governing the creation of cadre and fixation of cadre strength. The basis of the petitioners right to be selected for All India service is traceable in case of State Civil Service officers to Rule 8 of the*

Recruitment Rules which says that the Central Government may recruit to the IAS persons by promotion from amongst the members of the State civil service. This Rule itself puts a ceiling on the number of posts that could be filled in the IAS from such promotions which is limited to not more than 33 1/3% of the posts enumerated therein. The prayer of the petitioners for encadrement of the ex-cadre/temporary posts in reality amounts to asking the Central Government to create more posts. The question then arises whether there is any such right in the petitioners to seek such creation of additional posts. It is a well- settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons; be it administrative, economical or policy, decide not to fill up such post(s). See The State of Haryana v. Subhash Chander Marwaha & Ors. [(1974) 3 SCC 220].This principle applies with all the more force in regard to the creation of new vacancies like by encadrement of new posts; more so when such encadrement or creation of new posts is statutorily controlled. We have noticed earlier that the Cadre Regulations and the Recruitment Rules require the Central Government to follow a particular procedure and make necessary consultations before fixing or re-fixing the cadre strength. In such a situation, issuance of a mandamus to increase the cadre strength or to encadre a particular post merely on the basis of long existence of these posts would be inappropriate."

11. The matter also seems to be covered by the judgment of the Hon'ble Apex Court in **E.P. Royappa Vs State of Tamil Nadu reported in (1974) 4 SCC Page 3** and the counsel points out to paragraph 16, 17, 18 and then 79, 80, 82 and 83, which we quote:

"16. The petitioner in the note for circulation dated 14/16 November, 1970 prepared by the Joint Secretary, Public Department, noted that the date of retirement of Ramakrishnan would take effect from the date of expiry of the refused leave, namely, 14 March, 1970. That is why the petitioner asked to be confirmed as Chief Secretary with effect from 14 March, 1970. The petitioner was, however, not confirmed in the post. Therefore, the petitioner was not substantively appointed to the post of Chief Secretary. The petitioner's substantive appointment was in the selection grade of Rs. 1800-2000. The petitioner during the period of refused leave of Ramakrishnan acted as Chief Secretary by way of a temporary arrangement. The petitioner did not have any right to hold the post of Chief Secretary.

17. It was contended that neither the post of Deputy Chairman, Planning Commission nor the post of Officer on Special Duty was a cadre post

within the meaning of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954. The Additional Solicitor General as well as the Advocate General of the State did not contend that either of the posts was a cadre post within the meaning of the Indian Administrative Service (Cadre) Rules. The strength and composition of the cadre as contemplated by Rule 4 of the Indian Administrative Service (Cadre) Rules is to be determined by the Central Government in, consultation with the State Government. The relevant provision is sub-rule (2) of Rule 4. It states that the Central Government shall at the interval of every three years re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations as it deems fit. There are two provisos in the sub-rule. The first proviso states that nothing shall be deemed to affect the power of the Central Government to alter the strength and composition of the cadre at any other time. The second proviso states that the State Government may add for a period not exceeding one year and with the approval of Central Government for a further period not exceeding two years, to a State or joint cadre one or more posts carrying duties and responsibilities of a like nature of cadre posts. It, therefore, follows that the strength and composition of the cadre shall be determined by regulations made by the Central Government in consultation with the State Government. The State Government alone cannot alter the strength and composition of the cadre.

18. The aforementioned second proviso to Rule 4(2) of the Cadre Rules does not confer any power on the State Government to alter the strength and composition of the cadre. If such power were conferred on the State examination of the strength and composition at the interval of every three years by the Central Government in consultation with the State Government would be nullified. The meaning of the second proviso to rule 4(2) is that the State, Government may add for a period mentioned there to the cadre one or more posts carrying duties and responsibilities of the like nature of a cadre post. The posts so added do not become cadre posts. These temporary posts do not increase the strength of the Cadre. The addition of the post of Deputy Chairman, Planning Commission or Officer on Special Duty to the Indian Administrative Service Cadre of Tamil Nadu State is not permissible because that would result in altering the strength and composition of the Cadre. The State has no such power within the second proviso to rule 4(2) of the Cadre Rules.

79. Now, if we look at the draft order it is clear that it merely uses the words "promoted and posted as Chief Secretary". It is silent as to the nature of the promotion. It does not say whether the promotion is by way of substantive appointment or in an officiating capacity. It could be either, consistently with the words used. It is the authenticated order which says for the first time clearly and definitely by using the words "to act" that the promotion is in an officiating capacity. There is thus no inconsistency between the draft order and the authenticated order from which any error can be spelt out in the authenticated order. The authenticated order in so far as it uses the words "to act", does no more than speak on a matter on

which the draft order was silent. It appears that before issuing the authenticated order the appropriate authority applied its mind to the question as to whether the promotion should be in a substantive capacity or in an officiating capacity and since Ramakrishnan was going on refused leave for four months from 14th November, 1969 and was accordingly, as we shall presently point out, entitled to retain his lien on the post of Chief Secretary till that date, decided that the promotion should be an officiating one as indeed it could not be otherwise, and that is why the authenticated order was issued with the addition of the words "to act" after the expression "promoted and Posted". There is of course no positive evidence to this effect, but it would appear to be a reasonable inference to make in view of the substitution of the words "retiring from service with effect from the afternoon of 13th November, 1969" in the authenticated order. It is, therefore, clear that the authenticated order correctly reflected the final decision of the State Government and under it the promotion of the petitioner was in an acting or officiating capacity.

80. The alternative argument of the respondents must also lead us to the same conclusion. This argument has been dealt with in the judgment of the learned Chief Justice and we do not think we can usefully add anything to what has been stated there by the learned Chief Justice We entirely agree with the reasoning and the conclusion of the learned Chief Justice on this point and hold that since Ramakrishnan proceeded on refused leave for a period of four months from the date of his superannuation he continued to retain his lien on the post of Chief Secretary until 14th March, 1970 during the period of refused leave granted to him, and the promotion of the petitioner under the order dated 13th November, 1969 could not therefore be otherwise than in an officiating capacity. The post of Chief Secretary became vacant on 14th March, 1970 but at no time thereafter the petitioner was confirmed as Chief Secretary and he had, therefore, no right to hold the post of Chief Secretary At the date when he was transferred as Deputy Chairman, State Planning Commission. But that does not mean that he was not entitled to be considered for confirmation, and since he was not confirmed, but Subanayagam, who was junior to him, was, promoted and confirmed, the question must inevitably arise whether what was done was in mala fide exercise of power or in violation of Arts. 14 and 16 of the Constitution.

82. The petitioner is, however, on firmer ground when he bases his, challenge under rule 9, sub-rule (1) of the Indian Administrative Service (Pay) Rules, 1954. Rule 9, in so far as material, provides as follows

"(1) No Member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned, in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

(2)The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would: have- been entitled to, had he been appointed in the post to which the said-post is declared equivalent.

(3) xxxxxxxxx

(4)Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Government in respect of any posts under its control, may for sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the, Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III."

This rule is intended to provide a safeguard for the protection of a member of the Indian Administrative Service. Sub-r. (1) enacts that no member of the Indian Administrative Service shall be appointed to a post other than a post specified in Schedule III, or in other words, to a non-cadre post unless the Government makes a declaration that such non-cadre post is "equivalent in status and responsibility" to a post specified in the said Schedule, i.e., to a cadre post. If the State Government wants to appoint a member of the Indian Administrative Service to a non-cadre post created by it, it cannot do so unless it makes a declaration setting out which is the cadre post to which such non-cadre post is equivalent in status and responsibility. The making of such a declaration is a sine qua non of the exercise of power under sub-r. (1). It is not an idle formality which can be dispensed with at the sweet-will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off so a non-cadre post which is inferior in status and responsibility to that occupied by him. So far as cadre post are concerned, their hierarchy would be known, but a non-cadre post created by the Government would be stranger in the hierarchy, and that is why sub-r. (1) requires that before appointing a member of the Indian Administrative Service to such non-cadre post, the Government must declare which is the cadre post to which such non-cadre post is equivalent in status and responsibility, so that the member of the Indian Administrative Service who is appointed to such non-cadre post, would know what is the status and responsibility of his post in terms of cadre posts and whether he is placed in a superior, or equal post or he is brought down to an inferior post. If it is the latter, he would be entitled to protect his rights by pleading violation of Art. 311 or Arts.14 and 16 of the Constitution, whichever may be applicable. That would provide him effective insulation against unjust or unequal or unlawful treatment at the hands of the Government. The object of this provision clearly is to ensure that the public services are' in the discharge of their duties, not exposed to the demoralising and depraving effects of personal or political nepotism or victimisation or the vagaries of the political machine. The determination of equivalence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-cadre post under sub- r. (1). It is a mandatory requirement

which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-cadre post and determine the equivalence. There the pay attached to the non-cadre post is not material. As pointed out by the Government of India in a decision given by it in' MHA letter No. 32/52/56-AIS(II) dated 10th July. 1956 the basic criterion for the determination of equivalence is "the nature and responsibilities of duties attached to the post and not the pay attached to the post". Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post, sub-r. (2) says that the pay of the member of the Indian Administrative Service appointed to such non-cadre post shall be the same as he would have been entitled to, had he been appointed in the cadre post to which such non-cadre post is declared equivalent. He is thus assured the pay of the equivalent cadre post and his pay is protected. Now this declaration of equivalence, though imperative, is not conclusive, in the sense that it can never be questioned. It would be open to A member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that the non-cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-cadre post is in violation of Art. 311 or Arts.14 and 16. The burden of establishing this would undoubtedly be heavy and the court would be slow to interfere with the declaration of equivalence made by the Government. ***The Government would ordinarily be the best judge to evaluate and compare the nature, and responsibilities to the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Government has declared equivalence after proper application of mind to the relevant factors, the court would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Government.*** *But where it appears to the court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties, attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status or responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. The declaration of equivalence must, however, always be there if a member of the Indian Administrative Service is to be appointed to a non-cadre post. The only exception to this rule is to be found in sub-r. (4) and that applies where the non cadre post is such that it is not possible to equate it with any cadre post. Where the Government finds that the equation is not possible, it can appoint a member of the Indian Administrative Service to a non-cadre post but only for sufficient reasons to be recorded in writing. This again shows that the Government is*

required to apply its mind and make an objective assessment on the basis of relevant factors for determining whether the non-cadre post to which a member of the Indian Administrative Service is sought to be appointed can be equated to a cadre post, and if so what cadre post it can be so equated. This is the plain requirement of rule 9 sub-rule (1) and the question is whether the appointment of the petitioner to the non-cadre posts of Deputy Chairman, State Planning Commission and Officer on Special Duty was in compliance with this requirement."

12. The applicant relies on the judgement of the Hon'ble Apex court in **Varadarao vs. State of Karnataka reported in 1986 (4) SCC 131**, which reads as follows:

"The power of transfer must be exercised honestly, bonafide and reasonable. If the exercise of power is based on extraneous consideration, the order of transfer is liable to be quashed."

There cannot be any doubt of correctness of this proposition. But then if malafides, unreasonableness and dishonesty is to be alleged, it has to be specifically alleged and the persons behind the elements of consideration must be brought out in the party array itself and we should allow a chance to defend for this person as otherwise, the rules of natural justice in so far it relates to them, will not be satisfied. Apparently the applicant had not involved any such person in the party array. No other person who may have had an extraneous consideration in it other than the party respondent. The party respondent being a Government servant is eligible and bound to obey the dictate of his employer. Therefore, no kind of extraneous consideration can be attracted to him. Therefore, an obvious explanation of the Hon'ble Apex Court judgement would be that if there is specific allegation of bias, mala fides, dishonesty or unreasonableness and if such persons who were made this in practice are in the party array and able to defend

themselves then the stand taken by the applicant would be complete. But in the case of such incompleteness, a contrary view is also to be taken.

13. In **State of Madhya Pradesh and Another vs. S.S. Kaurav and Others**, **1995 (1) S.C. Services Law Judgements 350**, Hon'ble Supreme Court held:

> *"The court or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administration system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without factual background. foundation."*

Therefore, without factual elucidation of extraneous consideration and malafides and without engaging those people in the party array and giving them a chance to defend themselves, no such matter can be entertained by any Court or Tribunal.

14. Hon'ble Apex Court in the case of **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwanand Shiv Prakash**, **2001 (2) S.C Services Law Judgements 396**, held :

> *"No Government servant or employee of Public Undertaking has any right to be posted forever at any one particular place. Transfer of an employee appointed against a transferrable post is not only an incident of an order of transfer unless such an order is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer. In fact High Court was not right in quashing the transfer order on the ground that it is against the seniority rules."*

Therefore, without even attempting to explain and elucidate on the malafide and extraneous powers that ruled the roost, the applicant cannot be allowed to contend that there seems to be an infraction on the part of the Government. Anybody who makes an allegation must be willing to explain it and at least prima facie prove it. No one can be allowed to make vague assertions and get away with this.

15. In the case of **Rajendra Singh and Others vs. State of Uttar Pradesh and Others**, **(2010) 1 SCC (L&S) 503**, Hon'ble Apex Court relying on the earlier judgement in **Shilpi Bose vs. State of Bihar**, 1991 Supp (2) SCC 659, held:

> *" In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to- day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."*

In this case, other than making a vague assertion, no specificity is attributed by the applicant to any persons or any set of events.

16. In Shri **N.K. Singh vs. Union of India**, (1994) 6 SCC 98, the Hon'ble Apex Court stated that :

> *"6. …. The scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of malafides and violation of any specific provision…"*

There is no statutory provision which was being overridden by the Government in ordering the transfer of the applicant. There cannot be any question of malafides also to be considered, in the circumstances of the case, as no specific allegation has been made against anybody and no such person is made party to it. Without such an element being available for consideration, no judicial interference can be justified. Thus all elements alleged by the applicant seems to be non existent.

17. In **Government of Andhra Pradesh vs. G. Venkata Ratnam**, (2008) 2 SCC (L&S) 900, Hon'ble Apex Court held:

> *"The Hon'ble High Court was guided by its own notion of what would be in the Department's overall interest, and where respondent would be more suited. This was not accepted by the Hon'ble Supreme Court. It held that respondents could not be allowed to choose his own place of posting. The Hon'ble Supreme Court allowing the appeal held that "the High Court judgment is wholly untenable and rather unusual and strange. The judgment was apparently delivered in anger which might have been caused by the Government Pleader or the Director (the second respondent before the High Court). The Court not only lost judicial poise and restraint but also arrived at completely unfounded conclusions. The High court seems to have been completely taken in by ipse dixit of the respondent and his tall claims about his own ability, and virtually allowed him to choose his own place of posting. It is surprising that High Court castigated the respondent's transfer as lacking bona fides on flimsy and fanciful pleas. The High Court's finding is unfounded and untenable. The legal position regarding interference by court in the matter of transfer is too well established. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide".*

18. Therefore we hold that this is a frivolous and vexatious litigation imposed on the State Government by the applicant. We hold that the OA is without merit and only an attempt to force the state administration into a

position which it may or may not want to take. He had, by his refusal to implead the party against whom he had made specific allegations in the open Court and thereby denying an opportunity of challenge to the victim, sullied the fountain of justice. Therefore, the OA is dismissed. However, after hearing the learned counsel on the effect of it, we decide that we will not impose any cost.

19. The OA is dismissed. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00193/2019

Annexure A1 Copy of the transfer order dated 07.03.2018
Annexure A2 Copy of the transfer order dated 20.02.2019
Annexure A3 Copy of the notification dated 28.01.2014
Annexure A4 Copy of the letter dated 16.01.2019

Annexures referred in short reply

Annexure R1 Copy of the notification dated 20.02.2019

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