

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01066/2019

DATED THIS THE 13TH DAY OF NOVEMBER, 2019

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

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

Smt. Sushma Godbole, IAS,
W/o Sri H.Channabasanagouda,
Aged about 50 years,
Special Deputy Commissioner-1,
Bengaluru Urban district
Bengaluru
Residing at 006, Pushpanjali Apartment,
1st Main, 1st Cross,
Chamarajapet,
Bengaluru – 560 018Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. The Union of India

Represented by its Secretary,
Department of Personnel & Training,
New Delhi 110 001

2. The State of Karnataka

By its Principal Secretary,
Department of Personnel
And Administrative Reforms,
Vidhana Soudha,
Bengaluru – 560 001

3. Sri Jagadish M.K (KAS)

KAS (Senior Scale),
Under Orders of transfer as
Special DC, Bhoomi Monitoring Cell,
Revenue Department,
Bangalore 560 001
And presently posted
As Special Deputy Commissioner-1,
Bengaluru District,
Bengaluru 560 001

....Respondents

(By Shri R.B. Sathyanarayana Singh, Counsel for Respondent No. 2 and
M/s V. Srinivas & Associates, Counsel for Respondent No.3)

ORDER

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

This case is filed by an officer on 30.09.2019 on which date there was no DB available. By that time the matter was filed and it was posted to the next date, that is, on 01.10.2019 and we passed the following order:

“Heard. Issue emergent notice to the respondents by dasti.

Applicant to serve additional notice on learned Advocate General of Karnataka and Government Advocate, Shri R.B. Sathyanarayana Singh.

Post on 03.10.2019.”

2. Then it was posted to 03.10.2019 when we passed the following order:

“Learned counsel for the applicant is present. M/s Srinivas & associates file memo of appearance for R-3 and seek time to file reply.

Post on 10.10.2019 for reply.”

3. Thereafter the matter was posted to 10.10.2019 and we passed the following order:

“Shri Lakshmi Narayana, learned counsel for R-3 is filing a reply, he explains that the cadre rule had been changed which is contested by Shri Vishwanath Bhat, learned counsel for the applicant by which the post of Special Deputy Commissioner has now been taken out of purview of the cadre position.

Shri Sathyanarayana Singh, learned counsel for State Government also prays for some more time to file reply. He seeks hearing on 16.10.2019, before that date he needs to file reply so that applicant will also have an opportunity to file rejoinder if he is opposing any of the grounds raised by State Government in their reply. State Government is required to file their reply within next three days.

Post for disposal on 16.10.2019.”

4. Thereafter it was again posted to 16.10.2019 when we passed the following order:

“All parties to complete the process. Shri Lakshminarayana, learned counsel for R3, files written argument note also which is actually a list of rulings. Shri Sathyanarayana Singh, learned counsel for the State Government, seeks two days’ time to file reply. At this advanced stage there may not be any need for any further rejoinder. Shri Vishwanath Bhat, learned counsel for the applicant also files rejoinder. We will now permit all the parties to file written argument note along with the rulings also on which they wish to rely. The State Government to produce the file also. On consent of all parties, post on 24.10.2019 for disposal.”

5. Thereafter the matter was taken up on 24.10.2019 and orders were reserved. We had heard the learned counsels in great detail and also quizzed them on the issues arising in the matter. It appears to be covered by our earlier order in relation to some facts in OA No. 1526/2018 which was disposed off vide order dated 13.11.2018, which we quote:

“O R D E R (ORAL)

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

We had taken up this matter originally on 20.09.2018 and had directed that status quo to be maintained and notice was issued by dasti. Apparently the Government of Karnataka had issued a proceedings for the creation of posts of Special Deputy Commissioners of IAS cadre in place of the existing posts of Special Deputy Commissioners to try the case of land grabbing under Section 136 (3), 67 (2) and 39 of the Karnataka Land Revenue Act 1964 of Bangalore Urban District. We quote from the same:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

SUBJECT: Creation of the posts of Special Deputy Commissioners of IAS Cadre in place of the existing posts of Special Deputy Commissioners, to try the case of land grabbing u/s 136(3), 67(2) and 39 of the Karnataka Land Revenue Act 1964, of Bangalore Urban District, regarding.

READ: 1. Government Notification No.RD 03ASD1999 dated 30.1.1999.

2. Government Notification No.RD 711 LGB 2009 (P) dated 4.6.2010

3. Government Notification No.RD 400 ASD2012 dated 10.10.2011

4. Government Order No.RD 709 LGBD2012 dated 12.9.2013

5. Order of the Hon'ble High Court of Karnataka in WP.No.51551-52/2013(KLR-RES-PIL)dated 26.8.2014

6. Letter of the DC Bangalore Urban District No.DM/CR/37/2014-15 dated 20.9.2014

7. Government Order No.RD 807 ASD2014 Bangalore dated 30.9.2014

PREAMBLE:

Government vide their Order dated 30.1.1999 had allocated work between the Deputy Commissioner and the Special Deputy Commissioner of Bangalore District and further delegated to the Special Deputy Commissioners the powers to conduct Court proceedings under Sec.136(3) of the Karnataka Land Revenue Act 1964.

Further Government vide their order dated 4.6.2010 read at (2) above, created three temporary posts of Special Deputy Commissioners of KAS Cadre for expeditious disposal of cases of land encroachment in Bangalore urban district and delegated them the power to inquire into cases under Sec. 136(3) of the Karnataka Land Revenue Act

1964. These posts were continued from time to time and these posts were continued till 12.9.2013 vide GO ate Read (4) above.

Meanwhile, the Hon'ble High Court in WP.No.7021/2011 dated 26.5.2011, Para-6 has recorded thus "**the post of Special Deputy Commissioner has now become synonym for corruption, nepotism and arbitrariness of which fact this Court can take judicial notice and it is high time a governance worth its name having some semblance of commitment to maintenance of rule of law looks into such anarchic exercise of power by these special deputy commissioners and takes corrective measures, instead of driving each and every effected person to seek for relief in writ jurisdiction before the High Court.**" Pursuant to this observation, Government vide their order dated 10.10.2011 read at (3) above, modified their earlier order of work allocation between the Deputy Commissioner and the Special Deputy Commissioner and restored the powers under Sec. 136(3) of the Karnataka Land Revenue Act 1964 to the Deputy Commissioner ,Bangalore urban district by withdrawing the same from the Special Deputy Commissioner.

In spite of withdrawing the powers under Sec. 136(3) of the Karnataka Land Revenue Act 1964 vide G.O dated 10.10.2011, from the Special Deputy Commissioners, the Special Deputy Commissioners continued to exercise the same beyond 10.10.2011. The Hon'ble High Court in WP.No.51551-52/2013 (KLR-RES-PIL) dated 26.8.2014 inquired into the same and Para 3 of its Order is reproduced below

"3. Therefore, the Notification bearing No.RD 400 ASD2012 dated 10.10.2011 reallocates the work between the Deputy Commissioner and the Special Deputy Commissioner, Bangalore urban district and clearly confers power under Section 136(3) of the Karnataka Land Revenue Act 1964 upon the Deputy Commissioner. The above letter issued by the Principal Secretary to the Deputy Commissioner, Bangalore urban district clarifies the Government view that subsequent to the Notification No.RD 400 ASD2011 dated 10.10.2011, the Special Deputy Commissioner appointed pursuant to the Government order

No.RD711, RD 290 and RD 709 were not required to exercise power under Section 136(3) of the Karnataka Land Revenue Act 1964. Accordingly, the Notification No.RD 400 ASD2011 dated 10.10.2011 shall be given complete effect and, the Deputy Commissioner and the Special Deputy Commissioner shall exercise powers accordingly.”

In lieu of the Hon'ble High Court order dated 26.8.2014 above and the legal issues arising out of the work allocation under Sec 136 (3) of KLR Act 1964, the Deputy Commissioner, Bangalore urban district submitted a detailed proposal to the Government that there are a total of 5412 cases relating to appeals under PTCL. Inam, Arbitration, verification and authentication of documents other miscellaneous cases and other pending cases filed by some parties in the Hon'ble High Court, and being remanded by it for time bound enquiry, and that a few Contempt of Court cases are also being filed due to non disposal of cases within the stipulated time due to administrative problems, and work pressure. Further there are many cases arising out of several Writ Petitions and Writ Appeals filed in cases of Land grabbing wherein the Hon'ble High Court has directed to enquire into these cases under Section 67(2) of the Karnataka Land revenue Act 1964. About 800 cases have been disposed of in the Court of Deputy Commissioner in the past 3 years, and this disposal amounting to 16% is at a slow pace and that this is causing hardship to the parties, advocates and the general public, and hence the need to create the post of an IAS cadre Officer for the speedy disposal of the above mentioned cases.

On perusal of the Hon'ble High Court's order dated 26.8.2014 and the proposal of the Deputy Commissioner, Government in partial modification of the their order at Read(7) above, revoked the order No.RD 400 ASD 2011 dated 10.10.2011, and further, cancelled 2 posts of Special Deputy Commissioners created vide RD 711 LGB 2009(P) dated 4.6.2010, upgraded the remaining one post of Special Deputy Commissioner to that of an IAS Cadre and reallocated the work.

Further, the High Power Committee meeting held on 7.10.2014 under the Chairmanship of the Hon'ble

Chief Minister to discuss the action taken on the Report submitted by Joint Legislature Committee under the Chairmanship of Sri AT.Ramaswamy and effective regulation of land grabbing of valuable land in Bangalore Urban District discussed the same and the huge pendency of quasi judiciary cases of land grabbing in Bangalore Urban District in detail, and decided to create two additional posts of IAS cadre (appeals) in addition to the existing post of Deputy Commissioner to facilitate expeditious disposal of the afore mentioned cases.

In lieu of the orders of the Hon'ble High Court in WP.No.7021/2011 dated 26.5.2011 WP.No.51551-52/2013 dated 26.8.2014, opinion of the Dept. of Law and Parliamentary Affairs was sought, The Law Department opined that it is not right to upgrade two posts of Deputy Commissioners as Deputy Commissioner (Appeal-1) and (Appeal-2), instead Section 9 of the Karnataka Land revenue Act 1964 provides for posting Special Deputy Commissioners who may be empowered to exercise some of the powers of the Deputy Commissioner, for a part or whole of the District. Further, it added "The Division Bench of the Hon'ble High Court in their order dated 26.8.2014 has nowhere observed that the posting of the 3 Special Deputy Commissioners or the powers vested on them vide GO read above is illegal. Its order is restricted to the GO dated 10.10.2011 by which 3 Special Deputy Commissioners have no powers to exercise powers under Section 136(3) of the Karnataka Land Revenue Act 1964 and hence the orders passed by them subsequent to 10.10.2011 are null and void as the Deputy Commissioner and the Special Deputy Commissioners were to exercise powers vested with them in accordance with the Govt. Order dated 10.10.2011 only. Hence, the Deputy Commissioner and the officers appointed by Government alone can exercise powers under Section 136(3) and review all the cases passed after 10.10.2011"

In view of the orders of the Hon'ble High Court, proposal of the Deputy Commissioner, opinion of the Law Dept. Government have decided to appoint 2 IAS cadre officers as Special Deputy Commissioners in addition to the Deputy Commissioner and delegate

them the powers to remove encroachments and powers under Section 136(3) 67(2), 39,192(A), 192(B). Hence this order.

Government Order No.RD 807 ASD2014 Bangalore dated 30.9.2014

Under the circumstances mentioned in the preamble, Government hereby revokes Government order Nos.RD 400 ASD2011 dated 10.10.2011 and No.RD 807 ASD2014 dated 30.9.2014

The post of the Special Deputy Commissioner in the Office of the Deputy Commissioner , Bangalore Urban District as renamed as Special Deputy Commissioner-1 IAS cadre.

Further, two of the three temporary posts of Special Deputy Commissioners created vide Govt. Order dated 4.6.2010 are hereby cancelled and the remaining one post of Special Deputy Commissioner post is renamed as Special Deputy Commissioner-2 IAS cadre in exercise of the powers vested with Govt. under Sec. 9 of the Karnataka Land Revenue Act 1964, with immediate effect and until further orders.

Following is the delegation of powers and work allocation to the Deputy Commissioner, Special Deputy Commissioner-1 IAS cadre and Special Deputy Commissioner-2 IAS cadre, Bangalore Urban District

<i>Deputy Commissioner Bangalore Urban District</i>	<i>Special Deputy Commissioner-1 (IAS cadre)</i>	<i>Special Deputy Commissioner-2 (IAS cadre)</i>
1	2	3
<i>Bangalore District</i>	<i>Bangalore North Sub-Division</i>	<i>Bangalore South Sub-Division</i>
<i>District Administration, Magisterial powers, Law and Order</i>	<i>Karnataka Land Revenue Act 1964 Section 136(3), 67(2) (Suomoto proceedings) and Section 39, section 192 (A) and (B), section 94(3)</i>	<i>Karnataka Land Revenue Act 1964 Section 136(3), 67(2) (Suomoto proceedings) and Section 39, section 192 (A) and (B), section 94(3)</i>

<i>Revision petitions u/s 136(3) of the Karnataka Land Revenue Act 1964</i>	<i>Arbitration matters</i>	<i>Arbitration matters</i>
<i>All other matters which are not specifically entrusted with the Special Deputy Commissioners 1 &2</i>	<i>All matters relating to Abolition of Inam tenures under Inam Abolition Act and Rules</i>	<i>All matters relating to Abolition of Inam tenures under Inam Abolition Act and Rules</i>
	<i>Rehabilitation of displaced persons under various projects</i>	<i>Rehabilitation of displaced persons under various projects</i>
	<i>First appeal u/s 18 (10 of Right to Information Act, 2005</i>	<i>First appeal u/s 18 (10 of Right to Information Act, 2005</i>

As per the Direction of the Hon'ble High Court in its order dated 26.8.2014, all the matters heard and disposed of under Section 136(3) after 10.10.2011 without being vesting with the powers, to be reallocated among the concerned officers above.

The posts of Special Deputy Commissioner-1 (IAS cadre) and Special Deputy Commissioner-2 (IAS cadre) are not subservient to the post of the Deputy Commissioner Bangalore Urban District and shall discharge their duties independently.

By order and in the name of the Governor of Karnataka

Sd/-

(K. S. Sarojamma)

*Deputy Secretary to Government,
Revenue Department*

(Services 3, DM and Registration and Stamps)

To,

1. *Accountant General (A&E), Karnataka, Bangalore*
2. *Chief Secretary, Vidhana Soudha,*
3. *Additional Chief Secretary to Govt., Vidhana Soudha, Bangalore*
4. *Principal Secretary to Govt., DPAR*

5. Principal Secretary/Secretary to Hon'ble Chief Minister
 6. Secretary to Govt. Law Dept./Additional Secretary-2 Law Dept"

2. We find that these posts are IAS cadre posts and found that these are orders passed consequent to the orders passed by the Hon'ble High Court in Writ Petition No. 7021/2011 dated 26.05.2011, therefore, we had granted a further interim order that applicant will continue as Deputy Commissioner-1 at Bangalore for another period of time. Thereafter the 1st and 2nd respondent appeared and filed a reply to the interim prayer on behalf of the respondent state but then since this interim application was also basically inclusive of all tenets of the final order we had asked the learned counsel whether he wishes to file a fresh reply statement and on receiving an answer in negative proceeded to hear the matter. He produces the original file and the file do not disclose any specific malafides on the part of the Government. No specific malafides is also alleged against the Government by the applicant other than saying that the 3rd respondent, who is the party respondent, had managed to assert a post to which he had no right. We find from the order of the Hon'ble High Court and the consequential Government order reproduced above that this is a post reserved for IAS personnel only. Therefore, without any doubt, no KAS personnel can be appointed to this post and particularly in view of the great sensitivity to be attached to it consequent to the orders passed by the Hon'ble High Court. Therefore *prima facie* this transfer will not lie. It is therefore quashed and until further orders to be passed by the Government on requisite and significant reason applicant to be continued at that place for the time being as a cadre post can be held by a non-cadre personnel only on very limited exceptions and not as a general rule.

3. The OA is allowed to this limited extent. No order as to costs.

Sd/-

Sd/-

(DINESH SHARMA)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)"

6. But we regret to note that the counsel had not informed us that the cadre strength of Karnataka being what it is any addition to the cadre would have to have, necessarily, the

juncture of the Union Government and the Union Public Service

Commission. The fact that it was not obtained by the State Government, either intentionally or on negligence, was not brought to our notice when we had passed this order above.

7. We had also come to know after hearing the parties that in fact the impugned order was passed on 20.09.2019 and on the very next day the 3rd respondent had taken over from one Shri Rangarajan, another officer available at the office as apparently applicant was not available. These facts were not brought to the notice of the Court when this matter was initially taken up other than that the 3rd respondent may have taken charge and it was assumed that it was just a charge assumption unilaterally.

8. The case put up by the applicant is that by order dated 13.07.2018 she was earlier posted as Special Deputy Commissioner – I, Bengaluru Urban District and she reported for duty on 19.07.2018. But vide order dated 15.09.2018 the 3rd respondent in this case, and that case also, has been posted in place of the applicant without giving her any posting. Quite naturally the Tribunal also had taken some reservations on this matter as the applicant herein had challenged it in OA No. 1526/2018 and we had quashed the said order of transfer on the grounds mentioned in the judgment itself. But then at that point of time the Tribunal was not in the know that the cadre re-notification was just made by the State Government only and, as they claim, on compulsion, and also without the juncture of neither the Union Government nor

the Union Public Service Commission. This illegality had vitiated the whole process and it was not brought to the knowledge of the Tribunal when it went on to pass the order in OA No. 1526/2018. The case now put up by the applicant is that posting the very same 3rd respondent to the very same post is a gross contempt of the order passed by the Tribunal in OA No. 1526/2018. But then it is pointed out that there is also a significant change of circumstances as the 3rd respondent who had been a Junior Scale KAS officer had since been promoted as Senior Scale KAS officer and then only the posting was effected. Even otherwise also, if it is not a cadre post from the very beginning, it can only be considered as an ex-cadre post.

9. The next ground alleged by the applicant is that applicant is not granted a posting anywhere else which, if correct, is surely an infraction. But the learned counsel for the State Government submits that applicant had been given a posting but he is unable to give details of it and the learned counsel for applicant submits that it is not suitable. Therefore, we will deal with this subject a little later.

10. The State Government had filed a detailed reply taking certain positions.

11. They would say that there is no substance in the averments made by the applicant. The 3rd respondent produces the cadre notification and with the help of the learned counsel we had examined it. It came out that the Special Deputy Commissioner post is not a cadre post as per the Indian Administrative Service (Fixation of Cadre Strength) Regulations of 1955. Out of 314 posts if the

Special Deputy Commissioner as a special group of cadre has to be brought in it can only be done with the juncture of the Union Government and the Union Public Service Commission. Since the fixation of cadre is absolutely within the ambit of the Union Government and somehow or other it was not done till date, it cannot be said that the applicant was earlier holding an IAS cadre post. It can only be described as an ex-cadre post, at best. The State Government also would say that at the time when the order was passed in OA No. 1526/2018 the 3rd respondent under Rule 32 was a Junior Scale KAS officer. But vide proceedings taken up by the government he had been promoted as a Senior Scale officer and then only posted as Special Deputy Commissioner which apparently he had assumed charge on 21.09.2019, i.e., before filing of this case. The State Government would say that the post of Special Deputy Commissioner is a non cadre post and therefore in fact the applicant cannot be posted to a non cadre post unless it is so specifically declared as an ex-cadre post and a posting made for specific reason and, as there is no element of such consideration in this matter, there is no merit says the State Government.

12. The State Government says that there is no question of any political influence or anything and particularly so as she has not made any specific allegations against any specific person and made him a party so that he can also defend himself. We find that this is a valid ground raised by the State Government. The State Government relies on Annexure-R1 and says that the post of Special Deputy Commissioner is not a cadre post in terms of IAS (Cadre) Rules, 1954.

13. The 3rd respondent had filed a detailed reply and he quotes from several pertinent judgments relating to the IAS (Cadre) Rules, 1954 which he says that will clinch the issue. He quotes from the rules and stipulates that the IAS (Cadre) Rules of 1954 squarely provides that the State Government would identify the vacancies and after equating the post under Rule 4 the same must be approved by the Union Government after obtaining the opinion of the Union Public Service Commission to which all the counsels agree that such a juncture of Union Government or the Union Public Service Commission has not been brought into the cadre structure of the Karnataka Government as yet. Therefore it appears that the contentions raised by the applicant lacks material. If the cadre strength had not been amended and Special Deputy Commissioner brought in into the cadre, it cannot be said that it forms part of IAS (Cadre) rules and regulations particularly in view of the fact that a cadre officer cannot be posted to a non cadre post as per Rule 8 of IAS (Cadre) Rules as it now stands amended. Therefore it appears that applicant being a cadre officer cannot be appointed to the post of Special Deputy Commissioner whether it is one or two.

14. The learned counsel for 3rd respondent relies on 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** and he quotes from paragraph 18 which we quote:

“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 encadreing 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."

15. Therefore he would say that no order can be issued to post a cadre personnel into a non cadre post.

16. He also relies on the decision of the Hon'ble Apex Court in **R.R.S.**

Chouhan and others Vs Union of India reported in 1995 Supp 3 SCC Page 103 and, to be more specific, paragraph 13, 14 and 15, which we quote:

"13. Moreover, even if it be assumed that the appellants were continuously officiating in a senior post in the Service during the period 1977-85 they cannot avail the benefit of the said officiation for the purpose of seniority because after the select list of 1978 which included their names the next select list for the year 1979 did not contain their names and so also their names were not included in the select lists for the years 1981 and 1984. The names of some of the appellants were included in the select lists for the years 1980, 1982 and 1983 and names of all the appellants were included in the select list for the year 1985. The submission of Shri Madhava Reddy is that the non-inclusion of the names of the appellants in the select lists for the years subsequent to the year 1978 is of no consequence because the names of the appellants were included in the select list for the year 1978 and since they were officiating on a senior post on the date of such inclusion in 1978 and they continued to officiate till 1985 they are entitled to count the entire period of officiation for the purpose of assignment of year of allotment under Rule 3(2)(c) of the Seniority Rules. We do not find any merit in this submission. As indicated earlier Explanation 1 to sub-rule (2Xc) of Rule 3 envisages that an officer who is appointed to the Service by promotion can take the benefit of the period of continuous officiation in a senior post for the purpose of seniority if, on the date of his appointment to the Service, (a) he had been continuously officiating in a senior post, and (b) his name was in the select list. Both these requirements must co-exist not only at the stage of commencement of the period but also not only at the stage of commencement of the period but also during the entire period for which benefit is claimed. If either of these conditions ceases to exist at any stage before the appointment to the Service, there will be a break in the continuity of officiation and the benefit of officiation would not be available for the purpose of seniority. This may occur either due to posting on a post which is not a senior post in the cadre or due to non-inclusion of the name in the select list for the subsequent year. The consequence in either even is the same and the period of officiation cannot be taken into account for the purpose of seniority, Therefore, the effect of the non-inclusion of the names of the appellants in the select lists for the years 1979, 1981 and 1984 is that one of the requirements of Rule 3(2)(c) of the Seniority Rules which could enable appellants to avail the benefit of continuous officiation had

ceased to exist. The fact that the appellants were officiating in the senior post during the period when their names were not in the select list, by itself, would not enable them to obtain the benefit of such officiation for the purpose of seniority. The appellants are, therefore, not entitled to count the period of continuous officiation in the post of O.S.D. during the period 1977-85 for the purpose of determination of their seniority and assignment of the year of allotment and the Tribunal has rightly denied the benefit of such officiation to the appellants.

14. Shri Madhava Reddy has placed reliance on the decisions of this Court in *Harjeet Singh etc. v. Union of India &Ors.*, (1980) 3 SCR 459; *Amrik Singh &Ors. v. Union of India &Ors.*, (1980) 3 SCR 485, and *Union of India etc. v. G.N. Tiwari & Ors.*, (1985) Suppl. 3 SCR 744. In *Harjeet Singh (supra)* this Court was dealing with the rules governing the Indian Police Service and in the context of temporary appointment of non-cadre officers to cadre post in the Indian Police Service this Court has referred to the requirements of Rule 9 of the Indian Police Service (Cadre) Rules, 1954 and has observed that such appointment is subject to the directions of the Central Government who may terminate such appointment and that the Central Government too is bound to obtain the advice of the Union Public Service Commission if appointment is to extend beyond six months. In *Amrik Singh (supra)*, which also relates to the India Police Service, this Court was again dealing with Rule 9 of the Indian Police Service (Cadre) Rules, 1954 and has observed:-

"In the present case, no such report by the State Government to the Central Government was sent, no consultation by the Central Government with the Commission was done. We are agreed that by-passing the Public Service Commission bespeaks prima facie impropriety, but we are not inclined to consider this grievance as destructive of the officiation of Ahluwalia in the special conspectus of facts present here. For one thing, Ahluwalia has nothing to do with the error; for example, no senior of Ahluwalia suffered, thirdly, the Central Government, in exercise of its power to relax the Rules, in good faith and, indeed in equity, did relieve the officer against this violation." [p.498]

15. In the said decision though this Court has disapproved the violation of the provisions of Rule 9 but in the facts of that case it was held that the officiation could be taken into consideration. In the recent decision in *Syed Khalid Razvi & Ors. v. Union of India &Ors.*, 1993 Supp (3) SCC 575, this Court in the context of rules governing the Indian Police Service, has observed :-

"In other words, where the vacancy/vacancies continue for more than three months, the prior concurrence of the Central Government is mandatory. If it continues for more than six months prior approval of the Union Public Service Commission is also mandatory. Any appointment in violation thereof is not an appointment in accordance with the law," [p.598]

17. It also indicates after examining several Hon'ble Supreme Court judgments that a cadre officer cannot be posted against a non cadre post and therefore there cannot be any grievance for the applicant as the government and the government alone is the authority to post any person to the non cadre post.

18. *He relies on Annexure-R3 to point out that the Special Deputy Commissioner's post, as said above, is not part of the cadre strength. On questioned about this, the applicant was unable to point out any other statutory formation which will point out and be of benefit to her. The learned counsel for Respondent No. 3 also points out to Annexure-R4 which is the Civil List issued by the Karnataka government and in which also the post of Special Deputy Commissioner do not figure at all. Therefore the version provided to the Tribunal at the time the Tribunal heard OA No. 1526/2018 was undoubtedly wrong.*

19. 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 riot 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.”

20. It relate to the substantive appointment and that any temporary arrangements cannot lend credence or grant any further benefit to such post. He would say that following our order in OA No. 1526/2018 applicant had been posted to that post but then it has now been revealed that it was not brought before the Tribunal that the said posts were not actually cadre posts. We wonder why even the State Government had not raised that issue. When following the Hon'ble High Court judgment the earlier notification was issued as Annexure-A1, we had also presumed that all the necessary formalities would have been complied with that. Therefore the learned counsel's argument that that by itself may not confer any right on the applicant seems to us to be *prima facie* correct.

21. It seems to be covered by the judgment of the Hon'ble Apex Court in R.K. Sabharwal's case on the same point. It is submitted that to become a cadre post, there must be a cadre strength and the post is within the strength of

the cadre as held by the constitutional bench of the Hon'ble Apex Court in R.K. Sabharwal's case. It is not the vacancy, it is only a post and is based on cadre strength. The Special Deputy Commissioner is not therefore a cadre post. Therefore, that the applicant being a cadre officer cannot be posted against a non-cadre post seems to carry weight.

22. In **O.P. Singla Vs Union of India reported in (1984) 4 SCC Page 450** in paragraph 20 and 21 it is stated thus:

"20. Though this is the true scope and meaning of Rule 2 (b), it is unnecessary to be dogmatic about it. As will appear presently, even if it is assumed for the purposes of argument that temporary posts not included in the Service are also Cadre Posts, that will not make any difference to the principle on the basis of which the Seniority List of the Service will have to be drawn.

21. But, before advertiring to that principle, it would be useful to draw attention to Rule 2 (d) which provides that a Member of the Service' means a person appointed in substantive capacity to the Service under the provisions of the Rules. This Rule shows that two conditions must co-exist in order that a person can become a 'Member of Service'. Firstly, his appointment has to be in a substantive capacity and secondly, the appointment has to be to the Service, that is, to a post in the Service. Persons who hold posts bearing designations similar to the designations of posts comprised in the Service cannot, for that reason alone, become members of the Service. It is only when they are appointed in a substantive capacity to a post in the Service, that they became members of the Service."

23. Therefore the learned counsel contends that there is a total justification on the part of the State Government in removing a cadre officer and posting a non cadre officer and it is justified. He claims that it is justified by the order of the Hon'ble Apex Court in **K. Prasad Vs. Union of India reported in (1988) SC Page 535**. Paragraph 23 is quoted herewith:

“23. We do not think that such a narrow interpretation of the proviso is warranted. As we see it, the proviso only outlines the general principle that, whoever has the power to do a particular thing has also the power to exercise it from time to time, if need be: (vide, s. 14 of the General Clauses Act, 1897). It had to be specifically put in because of the language of the main part of sub-rule (2) providing for a triennial review lest it should be construed as a restriction on the general power otherwise available. We, therefore, agree with the contention of the initial recruits that the Central Government has the power to alter the strength and composition of the cadres at any time. We are, however, still of the view that the contention urged on behalf of the initial recruits cannot be accepted for a different reason. If the terms of the relevant rules are scrutinised, it will be seen that the strength and composition of the cadre has to be determined by regulations and that these regulations have to be made by the Central Government in consultation with the State Government. It is a well settled principle that, if a statutory power has to be exercised in a particular manner, any exercise of that power has to comply with that procedure. It follows, therefore, that if the initial composition can be only drawn up in consultation with the State Government and by regulations, it will not be permissible for the Central Government to modify or alter the same save in the same manner. In fact also, it has been brought to our notice, there have been subsequent increases in the authorised strength of almost all State Cadres and this has been effected by an appropriate amendment to the Regulations. It is not the case of the Government that before the second and third selections were made, either the State Government was consulted or the regulations were amended for increasing the strength. Nor is it even their case that there was any specific order by the Central Government changing the strength and composition of any cadre. We are, therefore, of opinion that it is not possible to accept the contention of the initial recruits that the mere appointment of an excess number of officers should be treated as an automatic expansion of the cadre strength and composition in exercise of the power available under rule 4(1).”

24. The learned counsel for Respondent No. 3 therefore contends that the post claimed by the cadre officer, who is the applicant herein, is not included in the IAS (Fixation of Cadre Strength) Regulations 1955 by following the procedure in accordance with IAS (Cadre) Rules of 1954 and the posting of a cadre officer to a non cadre post is a part of public policy and thus there is an

injunction granted by the statute not to post a cadre officer to a non cadre post. The learned counsel also relies on the decision of the Hon'ble Apex Court in **AIR 1962 SC Page 1210** which we quote from paragraph 5:

“5. A great deal of controversy was raised before us as to whether the Statutes framed by the University under s. 20 of University of Bihar Act have or have not the force of law and whether a writ under Art. 226 of the Constitution can issue against the Governing Body of the College i.e., whether the appellant has a legal right to the performance of a legal duty by the respondents. In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance. It is, however, wholly unnecessary to go into or decide this question or to decide whether the Statutes impose on the Governing Body of the College a duty which can be enforced by a writ of mandamus because assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus. According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any Article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to Court and ask for a writ to issue. It is therefore not necessary to go into any other question.”

25. He quotes from other paragraphs of Royappa's judgment but then, being too lengthy, it need not be adverted to as it is in the same stream.

26. Applicant filed a detailed rejoinder and we had taken all the counsels through the issues arisen in it. The first ground taken is that posting an officer belonging to IAS is dealt by DPAR 1 and posting of an officer belonging to KAS

is dealt by DPAR 2. We had therefore asked him to explain the significance of it. Other than a methodology of managing intra office procedure, there does not appear to be any significance in it. The second ground canvassed in the rejoinder seems to be that there seems to be violation of the orders of the Court in OA No. 1526/2018. We regret that we have already found that the applicant should have informed us as on that day itself that the Special Deputy Commissioner's post is not actually a cadre post. Believing on the submissions of the party we had passed the said order. Therefore there is no doubt that the said order may not have any binding effect as it is, as it is based on a mistaken set of facts.

27. Therefore with great anxiety we had asked him to reply to the contentions raised by the 3rd respondent. Other than making some vague assertions that the 3rd respondent actively participated in the proceedings of OA No. 1526/2018 therefore if he is aggrieved by that he should have approached other legal forums or filed a review. But then as pointed out by the State Government there is a circumstantial change. At that point of time the 3rd respondent was a Junior Scale KAS officer but now he is a Senior Scale KAS officer. Besides the order in OA No. 1526/2018 was fundamentally and pivotally based on our belief in the submission of the counsels that the Special Deputy Commissioner's post is a cadre post which is now admitted by everybody that it is not a cadre post.

28. Regarding the annexures R3 to R7 the applicant would contend that it may not have any relevance to her. Therefore we had quizzed the learned

counsel and found out that the lack of relevance is only because the post to which she is claiming is not to be found anywhere there. If such post is not found to be anywhere there, the implication is that she being a cadre officer cannot opt to secure a non cadre post without significant participation of the State Government, Union Government and the Union Public Service Commission which is significantly absent in this case. The 3rd respondent points out that if two different political dispensations also thought that applicant may not be a suitable person for that post there must be significant reason. But we are not prepared to accept this as applicant is not on trial for her competence. She has not raised any malafides against any particular person or has not challenged the competence of the 3rd respondent. Therefore this contention of the 3rd respondent will not be taken up.

29. 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 her employer. Therefore, no kind of extraneous consideration can be attracted to her. 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.

30. 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.

31. 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.

32. 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 transferrable 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.

33. 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.

34. 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".

35. Therefore we have to hold as shown below:

- 1) The order we have passed in OA No. 1526/2018 have no legal validity for the reasons aforesaid on the facts as have come out in the matter now.
- 2) The applicant being a cadre personnel cannot opt to be posted to a non cadre post without the juncture of three intermediaries in the matter as stated above.

36. Therefore we uphold the transfer of the applicant but will also direct that the State Government will within the next 48 hours give her an appropriate posting commensurate with her rank and service. But the OA is held to be without merit.

37. 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. 170/01066/2019

Annexure A1 Copy of the order dated 13.07.2018

Annexure A2 Copy of the CTC dated 19.07.2018

Annexure A3 Copy of the order dated 15.09.2018

Annexure A4 Copy of the order dated 10.10.2014

Annexure A5 Copy of the notification dated 20.01.2014

Annexure A6 Copy of the order of this Tribunal dated 13.11.2018

Annexure A7 Copy of the order dated 20.09.2018 passed in OA No. 1526/2018

Annexure A8 Copy of the order dated 20.09.2019

Annexures with reply statement filed by Respondent No.3

Annexure R1 Copy of the promotion order dated 21.09.2019

Annexure R2 Copy of the IAS (Fixation of Cadre Strength) Regulations, 1955

Annexure R3 Copy of the IAS (Fixation of Cadre Strength) Regulations, 1955
(downloaded from the website)

Annexure R4 Copy of the civil list published by DPAR on 03.01.2019

Annexure R5 Copy of the transfer notification of Shri Yalakkigowda

Annexure R6 Copy of the transfer notification of Shri N.M. Nagaraj

Annexure R7 Copy of the transfer notification of Smt. Padma Basavanhappa

Annexures with reply statement filed by Respondent No.2

Annexure R1 Copy of the IAS (Fixation of Cadre Strength) Regulations, 1955

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