

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00367/2023

Monday, this the 13th day of November, 2023.

CORAM:

**HON'BLE Mr. JUSTICE SUNIL THOMAS, JUDICIAL MEMBER
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

1. Kerala IAS Officers Association
(Registration No. TVM/TC/1430/2013)
represented by it's Secretary,
M.G. Rajamanickam, IAS,

[REDACTED]

Now working as Principal Director,
Local Self Government Department,
Government Secretariat, Government of Kerala,
Thiruvananthapuram – 695 001.

2. Dr. B. Ashok, IAS,
S/o. B. Balasundaram, aged 50 years,

[REDACTED]

Now working as Agricultural Production Commissioner and
Principal Secretary to Government, Government Secretariat,
Government of Kerala, Thiruvananthapuram – 695 001.

3. Priyanka G., IAS,

[REDACTED]

and Now Working as Director, Women and Child Development,
Government Secretariat, Government of Kerala,
Thiruvananthapuram – 695 001.

- Applicants

[By Advocate : Mrs. Girija K. Gopal]

Versus

1. Union of India represented by the Secretary to Government,
Department of Personnel and Training, Public Grievances and

Pensions, Government of India, North Block, New Delhi – 110 001.

2. State of Kerala represented by it's Chief Secretary,
Government Secretariat, Thiruvananthapuram – 695 001.
3. Chief Secretary to Government of Kerala,
Government Secretariat, Thiruvananthapuram – 695 001.
4. Additional Chief Secretary to Government,
Personnel and Administrative Reforms Department,
Government of Kerala, Government Secretariat,
Thiruvananthapuram – 695 001.
5. Member Secretary (Ex-officio),
Civil Services Board, Government of Kerala
(Additional Chief Secretary, P&ARD Department),
Government Secretariat, Thiruvananthapuram - 695 001.
6. Additional Chief Secretary to Government,
Local Self Government Department,
Government of Kerala, Government Secretariat,
Thiruvananthapuram – 695 001
7. Additional Chief Secretary to Government,
General Administration (AIS-C) Department,
Government of Kerala, Government Secretariat,
Thiruvananthapuram – 695 001.
8. Mahipal Yadav IPS,
Additional Director General of Police,
Now working as Excise Commissioner,
Excise Headquarters, Nandavanam,
Thiruvananthapuram – 695 011.
9. Joy Elamon, Director General,
Kerala Institute of Local Administration,
Mulangunnathukavu P.O., Thrissur – 680 581.
10. K Jayakumar, IAS (Retd)
Director, Institute of Management in Government,
Law College Road, Palayam, Vikas Bhavan P.O,
Thiruvananthapuram – 695 033. - Respondents

[By Advocates : Mr. Thomas Mathew Nellimoottil, SPC for R-1
Mr. Baijuraj G, GP for R-2 to 7]

INTERIM ORDER:-**Per: Justice Sunil Thomas, Judicial Member**

The first applicant is a registered Association of Officers of Indian Administrative Service allotted to the Kerala Cadre, represented by its Secretary. The Association has claimed that it has authorized the Secretary to approach the Central Administrative Tribunal, seeking the reliefs evidenced by Annexure A-1 minutes. The 2nd applicant is the President of the Association and the 3rd applicant is an Executive Committee Member of the Association. The grievance of the applicants are in relation to the action of respondent Nos. 2 to 5 in effecting transfers and appointment of IAS Officers in the State of Kerala, allegedly in breach of Indian Administrative Service (Cadre) Rules, 1954 and Indian Administrative Service (Cadre) Amendment Rules, 2014, which are produced as Annexures A-2 and A-2(a). According to the applicants, when Annexure A-2(a) stipulates that it is the Civil Services Board that has to make recommendations for appointment and transfer of cadre officers and further that a cadre officer appointed to a cadre post shall hold office at least for two years, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months and further that the transfer and posting of a Cadre Officer before such minimum specified period shall only be on recommendation of the Civil Services Board, the issuance of frequent orders of transfers and posting in respect of IAS Officers in the State without any recommendation of the Civil Services Board and without adhering to any of the conditions which are

mandatorily to be followed therein is legally not sustainable. According to the applicants, the Hon'ble Supreme Court has time and again reiterated the necessity of adherence to minimum tenure of members of All India Services; it was held that no power was vested with any authority to curtail the same without even convening the meeting of the Civil Services Board and following the procedure prescribed in IAS Cadre Rules. Such indiscriminate orders of transfer had led to the directives of the Hon'ble Supreme Court in ***T.S.R Subramanian & Others v. Union of India & Others (2013) 15 SCC 732***. Hence, it is contended that effecting postings and transfer without following the procedure in Annexure A-2(a) introduced pursuant to the direction of the Hon'ble Supreme Court, are arbitrary as being issued without any authority. The same smacks of malafide, both legal and factual and is nothing but an outcome of arbitrary exercise of power for extraneous considerations. According to the applicants, since this has been going on, they have no other remedy other than to seek redressal of their grievances before this Tribunal.

2. It is pointed out by the applicants that Rule 7 of Indian Administrative Service (Cadre) Rules, 1954, as amended, deals with postings and stipulates that all appointments to cadre posts shall be made in the case of State Cadre, by the State Government. Rule 7(c)(i) lays down that the Central Government, in consultation with the State Government or State Governments concerned, may determine the tenure of all or any of the cadre posts specified for the State. Rule 7(c)(ii) provides that a cadre officer, appointed to any post for which the

tenure has been so determined, shall hold the minimum tenure as prescribed, except in the event of promotion, retirement, deputation outside the State or training exceeding two months. Rule 7(c)(iii) stipulates that an Officer may be transferred before the minimum prescribed tenure only on the recommendation of a Committee on Minimum Tenure, as specified in the Schedule. Further to this, by virtue of the notification issued by the Department of Personnel and Training dated 30.01.2014 in compliance with the judgment of the Hon'ble Supreme Court and the resultant amendments effected to IAS (Cadre) Rules, cadre officers of All India Services are now to generally hold their posts for at least two years, unless promoted, retired or sent on deputation outside the State or on training beyond two months.

3. It is submitted that in pursuance to the DOP&T notification, the State of Kerala constituted the Civil Services Board, comprising of the Chief Secretary of the State as Chairman, the senior most Additional Chief Secretary as Member and the Additional Chief Secretary (P&ARD) as Member Secretary to discharge the functions of the statutory Civil Services Board of Kerala. Annexure A-3 is the Government Order issued by the 2nd respondent constituting the Civil Services Board (CSB). According to the applicants, after one or two initial meetings held in 2014 and 2015 and a few orders pursuant thereto, the 2nd Respondent-State Government has willfully disbanded the convening and conduct of the Civil Services Board. The Civil Services Board had thereafter not been convened at all in clear violation of

the Hon'ble Supreme Court's judgment. Postings and transfers of cadre Officers are done at the sweet will of the political executive without following the procedure. The officers are transferred without considering even the minimum tenure rules. It is alleged that, for example, transfers and postings of seven persons have been issued to the post of Director, Scheduled Castes Development Department in the last six months. The average tenure of Cadre Officers has slipped to way below one year against the prescribed minimum period of two years, even in sensitive posts, like District Collectors, Secretary to Government and Heads of Departments of Critical Departments due to non-convening of the CSB. A minimum, reasonable tenure, which is a prerequisite for minimum satisfactory performance, is not adhered to. The applicants have relied on Annexures A-12 to A-16 orders to evidence indiscriminate transfers of IAS Officers, without adhering to the tenure policy and without the junction of Civil Services Board and formalities to be observed by the Board. Aggrieved by the non-compliance of the directions, the applicants have submitted Annexure A-10 representation before the Kerala Chief Minister requesting for necessary action. Further, by Annexure A-11, the 2nd applicant had also brought to the notice of the Chief Secretary, Government of Kerala, the concerns of the Members of the Association.

4. Lamenting that no action has thereon been taken and indiscriminate transfers in breach of the directions and Rules are effected, the applicants have now approached this Tribunal, *inter alia*, seeking to declare that the

appointments and transfers to the IAS Cadre posts made by the State Government in defiance of the judgment of the Hon'ble Supreme Court, the resultant amendment in the IAS (Cadre) Rules, and the order of constitution of CSB are *void ab initio*. Another ancillary relief sought is to issue directions to R-2 to 5 to convene meetings of Civil Service Board at required intervals and to diligently scrutinize appointments and transfers in respect of IAS Cadre Officers as stipulated in the IAS (Cadre) Rules, Fixation of Cadre Strength Regulations and other relevant Regulations. An interim relief is sought for directing the 2nd respondent State of Kerala, not to issue orders of appointment, transfers and postings in respect of IAS Cadre posts and equivalent posts without convening of, and recommendations of the Civil Services Board.

5. The respondents have filed detailed objection to the application for interim relief.

6. Heard Mrs. Girija K. Gopal, the learned Counsel for the applicant and Mr. T.B. Hood, the Learned Special Government Pleader for Respondents 1 to 7. Examined the records.

7. The reliefs sought by the applicant has been resisted by the respondents on four specific grounds, which are para-wised as follows:-

i) Rule 7 of Central Administrative Tribunal Rules of Practice, 1993 mandates that when an application is filed by an Association, a true copy of

the resolution of the Association empowering such person to do so is mandatory. Annexure A-1 has not authorized the Secretary to seek relief concerning the transfer and posting of IAS Officers.

ii) Section 19 of the Central Administrative Tribunals Act, 1985 authorizes “a person aggrieved” by “any order” to prefer an application before the Tribunal for redressal of his grievance. It authorizes the Central Administrative Tribunal to entertain the grievance of the person aggrieved by or against the order. However, the application does not disclose any specific individual grievance of the 2nd and 3rd applicants and does not challenge any specific order. Hence, the applicants are not persons aggrieved and consequently the O.A is not sustainable.

iii) Transfer and posting of IAS Officers evidenced by Annexures A-12 to A-16 can only be challenged by the individual aggrieved persons. The applicants No. 2 and 3 are not aggrieved by the above orders of transfer of IAS Officers, nor is the Association collectively aggrieved. Hence, the applicants are not persons aggrieved and hence are not entitled for any interim relief.

iv) IAS (Cadre) Rules, 1954 as amended in 2014, does not mandate that all transfers and postings of IAS Officers shall be only on the recommendation of the Civil Services Board.

We will deal with the above objections *in seriatim*.

Objection No. 1

8. The first applicant is admittedly a registered Association represented by the Secretary. In the O.A, it has been stated that the Secretary has been duly authorized to approach the Tribunal seeking reliefs as sought in the O.A. In the Original Application, two reliefs were sought. The first one was against the appointment and transfer of IAS Officers in Kerala in violation of procedure contemplated in Annexures A-2 and A-2(a) and also without the recommendation of the Civil Services Board. The 2nd challenge was against the posting of non-IAS cadre officers or any other officers to posts notified as borne to IAS (Kerala) Cadre. Though two specific reliefs were sought in the Original Application, the interim relief is confined to the first relief.

9. To support the claim of the first applicant Association that it has authorized the Secretary to institute the legal proceedings, the applicants have relied on Annexure A-1, the minutes of the meeting of the Executive Committee held on 11.06.2023. The relevant portion of the above minutes reads as follows:-

“Item No.2- Posting of non-IAS Cadre Officers to encadred posts of the IAS :-

The President and Secretary introduced the issue of posting non-IAS Cadre Officers to encadred posts of the IAS. The appointment to the post of the Excise Commissioner by an IPS Officer and the practice of appointing State Cadre Officers or retired individuals by renaming the encadred posts of IAS were discussed.

Decision:-

After a detailed deliberation, the Executive Committee authorised the President and Secretary to approach the Central Administrative

Tribunal and resultant appeals, etc., if any, with a competent petition. The expenses incurred in pursuing the matter will be covered by the IAS Association Funds.”

10. It was contended by the learned Special Government Pleader that the decision taken at the meeting of the Executive Committee of the first applicant Association held on 11.06.2023 was only concerning the posting of non-IAS Cadre Officers to posts notified by the Government for the IAS Kerala Cadre. The Secretary was not authorized by the Executive or mandated by the Executive Committee of the Association to file an O.A seeking relief in relation to transfer and posting of IAS Officers without recommendation of the Civil Services Board. According to the Special Government Pleader, the relief prayed for in the Original Application with respect to transfer and posting of IAS Officers was beyond the scope of authorization granted by the Executive Committee and consequently the Original Application was liable to be dismissed on that sole ground itself. Hence, the interim relief in the Original Application not to issue orders in relation to appointment, transfers and postings in respect of IAS Cadre posts and equivalent posts without convening of, and recommendations of Civil Services Board should not also be granted.

11. It is true that Annexure A-1 does not disclose specific authorization regarding first relief as sought in the O.A. However, the applicants have produced a resolution of the Executive Committee of Kerala IAS Officers Association held at 6:00 p.m on 08.09.2023 along with MA No. 783/2023, an

application to receive the document in regard to this issue. The above resolution indicated that the Executive Committee of the Association held on 11.06.2023 had discussed various issues including transfers and premature transfers of IAS Officers without convening Civil Services Board, as well as posting of non-IAS Officers to en-cadred IAS posts. The Secretary was then authorized to file an appropriate case before the Central Administrative Tribunal. Accordingly, the O.A was filed. It is further stated that in the minutes of the Executive Committee meeting held on 11.06.2023, inadvertently it had been omitted to include the authorization granted to the Secretary to lay a challenge against transfers of IAS Officers in the State without convening the Civil Services Board. Accordingly, the above resolution, marked as Annexure A-18, signed by the President, Secretary, Treasurer and two other members of the Executive Committee resolved to ratify and affirm every action undertaken by the Secretary to file O.A No. 367/2023 before this Tribunal. Evidently, this decision was purportedly to ratify the decision in Annexure A-1 but was taken after the institution of the O.A and the filing of objections to the prayer for interim relief.

12. The learned Special Government Pleader vehemently challenged Annexure A-18 on the premise that such a ratification was possible, only when a legally permissible Act was omitted to be done and not to ratify an action which specifically is prohibited by law. According to him, Rule 7 of CAT (Procedure) Rules of Procedure prescribed that there must be a specific

authorization and if the authorization produced did not satisfy the statutory requirement, then such an illegality cannot be rectified by a subsequent ratification.

13. To appreciate this contention it is essential to refer to the scope of Rule 7 of CAT (Procedure) Rules. Rule 7 of CAT (Procedure) Rules reads as follows:

“7. Production of authorisation for and on behalf of an Association. - Where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce along with such application, etc., for verification by the Registry, a true copy of the resolution of the Association empowering such person(s) to do so: Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorisation.”

The Rule states that when an application is filed by an Association, the person or persons who sign the same shall produce along with the application, for verification of the Registry, a true copy of the resolution of the Association “empowering such person(s) to do so”. A closer perusal of the said Rule shows that what the Rule demands is that the Resolution should empower the person who verifies “to do so”. A reading of the quoted words “to do so” in conjunction with earlier words in Rule 7 clearly indicates that the empowerment should be to do an act or to perform an act, which clearly is only to verify the application/pleading, on behalf of the Association. No other requirement is discernible from the plain wording. It does not prescribe what

the contents of the authorization or the subject matter of the authorization should be. In other words, Rule 7 only demands that there must be an authorization to institute a proceeding on behalf of the Association and to verify the application/pleading on its behalf. It does not further demand that the authorization should specify the reliefs which are sought. When the Act and Rules empower an Association to espouse the cause of its members, that right cannot be set at naught by a procedural requirement. Such a rigid or strict interpretation would go against the principles of substantive adjudication and the Procedure Rules should not override substantive provision. Hence it is held that the OA is properly laid and objection is not sustainable. Even if there was any technical defect, it stood rectified by Annexure A-18. Hence, this point is answered against the respondents.

Objection Nos. 2 & 3 –

14. Advancing the objection No.2 formulated by the respondent, it is contended by the learned Special Government Pleader that Section 2(b) of the Administrative Tribunals Act defined an application to mean an application made under Section 19 of the Act. Section 19 provides that a person aggrieved by an order pertaining to any subject matter within the jurisdiction of the Tribunal may make an application to the Tribunal. It is contended that Section 19 read with sub-section 2(b) of Section 20 of the Act shows that only a person who is aggrieved, that too by an order passed by an authority, can approach the Tribunal for redressal of his grievances. It was contended that hence when

there is plurality of persons who are aggrieved, such applications cannot be entertained by the Tribunal. It was contended that only a person aggrieved can approach the Tribunal for redressal of his grievances, thereby contending that the provisions of the Administrative Tribunals Act did not empower the Tribunal to entertain the prayer of the present nature that too, which do not espouse individual grievances of the 2nd and 3rd applicants.

15. Advancing the third limb of argument the learned Special Government Pleader contended that transfer and posting of IAS officers which are allegedly against the rules, can be challenged only by the officer transferred, if he or she is aggrieved. The validity of such order is not justiciable in a procedure at the instance of a 3rd party or at the instance of an association. The concept of public interest litigation is alien to service law, it was contended.

16. It is true that Section 19 of the Act provides that the “person aggrieved” “by any order” may approach the Tribunal for redressal of “his grievance.” The contention advanced by the learned Special Government Pleader is that an applicant can approach this Tribunal seeking redressal of only his individual grievance.

17. Refuting this contention, the learned counsel for the applicant contended that Section 3(42) of the General Clauses Act defies this contention. Section 3(42) provides that the term “person” shall include any company or

association or body of individuals whether incorporated or not. Further, Section 13(2) of the General Clauses Act provides that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa. Hence, the contention of the learned Special Government Pleader that since the terms used in the Act or Rules are “person” and “his” grievance, multiple persons or an association cannot espouse their cause collectively does not stand.

18. The above contention is not sustainable for other reasons also. Rule 4(5)(a) of the CAT (Procedure) Rules provides that notwithstanding anything contained in sub-Rule (1) to (3), the Tribunal may permit more than one person to join together and file a single application, if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter. Clause 5(b) provides that such permission may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of person on whose behalf it has been filed, provided that at least one affected person joins such an application. Further Rule 7 of CAT Rules of Practice enables an association to move the Tribunal subject to the condition that the association shall produce the necessary authorization or resolution of the association enabling such person who signs and verifies the application. The above provisions clearly show that an application by an association is contemplated under the provisions and to that

extent the association, as a collective group can espouse the collective grievance of all of the members. The above provisions further show that the Tribunal may permit the association representing persons who share a common cause of action and have a common interest in the matter to file an application. Thus, a collective grievance of a number of persons can be put forward on their behalf in a single application by an association representing them. In view of the above, any application filed by an association raising the grievances of all its members is legally sustainable.

19. This issue had also been considered and affirmed by the Central Administrative Tribunal, Bangalore Bench in *Indian National NGO's Association of Army Electronics Inspection v. Union of India & Ors.* [(1988) 7 ATC 527]. It was held that the dispute relating to the representation of a service association in the Joint Consultative Machinery (JCM) is a service matter which can be adjudicated by the Tribunal. The service association is an aggrieved person which can file an application before the Tribunal by virtue of Rule 4(5)(b) of the CAT (Procedure) Rules, 1987.

20. The learned Special Government Pleader further contended that the grievances of the association in the case at hand was not entertainable in the light of the law laid down in *Gopabandhu Biswal v. Krishna Chandra Mohanty & Ors.* [(1998) 4 SCC 447] and *Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors.* [(1998) 7 SCC 273]. It was contended that

the association will not fall within the definition of persons aggrieved as contemplated under the Administrative Tribunals Act. In ***Gopabandhu Biswal***'s case (supra) the question that came up was whether persons who are remotely affected are entitled to seek relief under the Administrative Tribunals Act. It was held that only those persons who are directly and immediately affected by the decision are "parties aggrieved" as provided under the Administrative Tribunals Act. Hence, persons remotely affected were not entitled to seek relief under the Act. On facts it was held that persons who were not directly affected by the grant of relief to the applicant and those persons whose chances of future promotion may be affected, were not essential parties to the case. In ***Dr. Duryodhan Sahu***'s case (supra) explaining the term "persons aggrieved", the Supreme Court, held that concept of public interest litigation was alien to service law.

21. However, we find that these decisions do not apply to the facts of the case. Here the association has come up with a definite case that in spite of Annexures A2 and A2(a) coupled with the directions contained in ***T.S.R. Subramanians***'s case (supra), the Civil Services Board, though constituted initially, is neither consulted nor its recommendations solicited, for effecting transfers, pre-mature transfers and appointments. To that extent each individual member of association gets a cause of action if the above binding laws are violated. In case of an apprehended breach of the provisions, each member is entitled to seek redressal of his grievance, by approaching this

Tribunal. Similarly, in matters in which members are collectively interested or are aggrieved or have a grievance, the association is entitled to espouse the collective grievance.

22. In addition, relying on clause 4(5)(b) of CAT (Procedure) Rules the learned Special Government Pleader contended that even assuming that the association is entitled to espouse the cause of members, the application cannot be entertained unless one of its member aggrieved, is party to the Original Application. In the case at hand no such individual aggrieved has been added, it was contended. Learned Counsel relied on a decision of the Division Bench of the High Court of Kerala in *Union of India v. All India Naval Clerks Association & Anr.* WPC No. 21384/2007 to supplement this contention. However, this was correctly answered by the learned counsel for the applicant by inviting our attention to Annexure A7. The said document is a representation submitted by the 2nd applicant, wherein, he has raised his grievances against posting of non-IAS officers to IAS cadre post. He had offered himself to be considered to the post of Excise Commissioner and had stated that his willingness may be considered after the Civil Services Board was considered. In fact his representation was not considered and another officer was appointed. To that extent he is a person individually aggrieved and since he has joined the Original Application submitted by the association, the OA is held to be properly filed.

23. It was further contended that none of the applicants were aggrieved by Annexures A12 to A16. The learned Special Government Pleader pointed out that only persons who were ordered to be transferred by Annexures A12 to A16 could have approached this Tribunal. Hence to that extent their grievance cannot be considered in this Original Application. It is pertinent to note that in the Original Application itself it was specifically pleaded that the applicants were not challenging Annexures A12 to A16. However, they have produced the above documents and relied on said documents on a specific premise that these are instances of premature transfers and postings of officers in breach of the provisions in Annexures A2 and A2(a) and directions contained in *T.S.R. Subramanians*'s case. The applicants have not challenged A-12 to A-16, nor have they claimed any relief on the strength of A-12 to A-16. Their grievance was that Annexures A12 to A16 has evidenced violation of the said Rules. In the light of the above reasons both the objections raised by the learned Special Government Pleader therefore have to be rejected. His contentions does not either stand to reason nor get the support of the statutory provisions.

Objection No. 4 –

24. It is contended by the learned Special Government Pleader, without prejudice to the other objections that the IAS Cadre Rules, 1954 as amended in 2014 and 2016 do not mandate that all transfers and postings of IAS officers shall be only on the recommendations of Civil Services Board. According to the learned Special Government Pleader, even as per the Rules, the

recommendations of the Civil Services Board may be required only if the IAS officer is transferred prematurely before completion of the period of service in a post. He submitted that assuming, though without conceding, that an IAS Officer was prematurely transferred in violation of the rules, the legality of such orders can be challenged only in an Original Application filed by person aggrieved by such transfer order, it was contended.

25. It has been specifically pleaded in the Original Application that after the amendment of IAS cadre Rules and issuance of Annexures A2(a) and A3, though the Civil Services Board was constituted and one or two meetings were held in 2014-2015, the Board was not convened thereafter nor consulted. It is specifically alleged that several officers have been transferred and posted without recommendations of Civil Services Board. The specific instances of such indiscriminatory transfers made violating the said Rules and the doctrine of *T.S.R. Subramanians*'s case (supra) have been pleaded. The Annexures A12 to A16 have been pressed into service to substantiate the contention that the officers involved therein were transferred prematurely. It is also contended that the directions in the Rules and the decision of the Supreme Court in *T.S.R. Subramanians*'s case (supra) which ensure minimum service tenure to the officers have been violated.

26. The above specific contentions on facts are not seen disputed in the objection filed by the respondents. The respondents have no case that after

2014-2015, the Civil Services Board was ever convened or recommendations sought. No explanation is also offered as to why Civil Services Board was not convened. Necessarily, it has to be presumed that the allegations of the applicants on facts is, *prima facie*, established as not disputed.

27. Even though it was vehemently contended by the learned Special Government Pleader that the necessity of consulting the Civil Services Board arises only at the time of 'initial' posting, such a contention is neither pleaded in the objection nor is supported by any materials. Further, there is nothing in the rules to indicate that the same applies only in such eventuality.

28. In ***T.S.R. Subramanians***'s case (supra), the concept of ensuring minimum tenure to the IAS officers was specifically considered. The necessity of constituting Civil Services Board was also specifically referred to. The role of the Civil Services in a democratic polity was dealt with by the Hon'ble Supreme Court in paragraph 24 of the ***T.S.R. Subramanians***'s case (supra) as under:

“24. The above are the constitutional provisions which generally deal with the power of the executive. The principles governing the roles and responsibilities of political executive and civil servants, are therefore, constitutionally defined and also based on the basis of various rules framed by the President and Governor for the conduct of business in the Government. Ministers are responsible to the people in a democracy because they are the elected representatives of the Parliament as well as the General State Assembly. Civil servants have to be accountable, of course to their political executive but they have to function under the Constitution, consequently they are also accountable to the people of this country.”

29. Dealing with the necessity of ensuring minimum tenure and insulating the civil service against political influence, Supreme Court observed in following words:

“26. Civil servants, as already indicated, have to function in accordance with the Constitution and the laws made by the Parliament. In the present political scenario, the role of civil servants has become very complex and onerous. Often they have to take decisions which will have far reaching consequences in the economic and technological fields. Their decisions must be transparent and must be in public interest. They should be fully accountable to the community they serve. Many of the recommendations made by the Hota Committee, various reports of the 2nd Administrative Reforms Commission, 2008 and Santhanam Committee Report have high-lighted various lacunae in the present system which calls for serious attention by the political executive as well as the law makers.”

“30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.

31. We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months.”

30. Though the directives contained in ***T.S.R. Subramanians***'s case (supra) was accepted and implemented by the amendment in the Indian Administrative Service Cadre Rules, evidenced by Annexure A2(a) and by constituting of Civil Services Board (Annexure A3) it has not been translated in action by the 2nd Respondent. We feel that this cannot be permitted to continue since the

directions contained in *T.S.R. Subramanians*'s case (supra), which has translated into statutory provisions have to be strictly followed, for effective administration. Thus we cannot accept the objection No.4 in light of these considerations.

31. Drawing from the above we find that the applicants have established that they have a *prima facie* case and are entitled for an interim order. We are thus inclined to allow the request for interim relief and direct as follows:

“There will be a direction to the 2nd respondent State of Kerala, not to issue orders of appointment, transfer and posting in respect of IAS cadre posts without the convening of and recommendations of the Civil Services Board, wherever the Annexure 2 and 2(a) applies.”

32. Post the OA for filing of reply statement of respondents on 10.01.2024.

(Dated this the 13th November, 2023)

K.V. EAPEN
ADMINISTRATIVE MEMBER

JUSTICE SUNIL THOMAS
JUDICIAL MEMBER

SA

List of Annexures

- Annexure A-1- True copy of relevant pages of minutes of the Association
- Annexure A-2- True copy of the Indian Administrative Service (Cadre) Rules, 1954 prior to 2014 amendment.
- Annexure A-2(a)- True copy of the Indian Administrative Service (Cadre) Amendment Rules, 2014, issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India.
- Annexure A-3- A true copy of G.O (MS) No. 107/2014/GAD dated 05.05.2014 issued by the 2nd respondent constituting Civil Services Board in Kerala.
- Annexure A-4- A true copy of Notification No. 11031/04/2012-AIS-II dated 18.02.2013.
- Annexure A-5- True copy of G.O (Rt.) No 4638/2022/GAD dated 01.11.2022 issued by the office of the Secretary, General Administration Department (AIS-C).
- Annexure A-6- True copy of G.O. (Rt.) No. 2515/2023/GAD dated 06.06.2023 issued by the office of the 7th respondent.
- Annexure A-7- True copy of G.O. (Rt.) No. 1445/2017/LSGD dated 05.05.2017 along with English Translation.
- Annexure A-8- True copy of G.O(Rt.) No. 1045/2023/LSGD dated 15.05.2023 issued by the office of the 6th respondent along with English translation.
- Annexure A-9- True copy of G.O. (MS) No. 13/2018/P&ARD dated 16.06.2023 along with English translation.
- Annexure A-10- True copy of representation dated 16.08.2022 by the 1st addressed to the Chief Minister, Kerala by the 1st applicant Association along with English translation.
- Annexure A-11- True copy of the representation dated 19.06.2023 sent by the 2nd applicant to the 3rd respondent.
- Annexure A-12- A true copy of G.O. (Rt) No. 2506/2021/GAD dated 07.07.2021 whereby transfers and postings of 20 IAS officers along with creation of two ex-cadre posts were done without convening of Civil Services

Board.

Annexure A-13- A true copy of G.O. (Rt.) No. 2702/2022/GAD dated 29.06.2022 whereby transfers and postings of 2 IAS officers were done without convening of Civil Services Board.

Annexure A-14- A true copy of G.O (Rt) No. 3890/2022/GAD dated 09.09.2022 whereby transfers and postings of 6 IAS officers were done without convening of Civil Services Board.

Annexure A-15- A true copy of G.O(Rt.) No. 848/2023/GAD dated 21.02.2023 whereby transfers and postings of 2 IAS officers was done without convening of Civil Services Board.

Annexure A-16- A true copy of G.O(Rt.) No. 2270/2023/GAD dated 22.05.2023 whereby transfers and postings and charge arrangements in respect of 6 IAS officers was done without convening of Civil Services Board.

Annexure A-17- A true copy of the list of the 30 State Administrative Training Institutes as recognised nationally by Department of Personnel and Training, Government of India and published in their website.

Annexure A-18- True copy of the resolution dated 08.09.2023 adopted by the Executive Committee of the Kerala IAS Officers' Association.
