M. Sankaranarayanan, IAS

Vs

State of Karnataka and others, Respondents.

Civil Appeal No. 4090 of 1991

(CJI M. H. Kania, G. N. Ray JJ)

11.11.1992

JUDGEMENT

G. N. RAY, J.:-

1. This appeal is directed against the decision of the Central Administrative Tribunal, Bangalore, dated February 7, 1991 passed in Original Application No. 11 of 1991. The appellant, Shri M. Sankaranarayanan, made an application before the Central Administrative Tribunal, Bangalore, for quashing the order dated January 4, 1991 transferring and posting him as Secretary, High Power Committee for development of Hyderabad, Karnataka area, Bangalore (hereinafter referred to as High Power Committee) as contained in Annexure A-4 to the application made before the Central Administrative Tribunal, and for a direction to allow the applicant, Shri Sankaranarayanan, to continue as the Chief Secretary, Government of Karnataka. The aforesaid order of transferring and posting the appellant as Secretary, High Power Committee was challenged mainly on two grounds, namely, that such order was not passed bona fide for the exigencies of the administration but the same was passed mala fide by the Chief Minister of Karnataka who became displeased with the appellant on account of his unfavourable attitude and resistance to some of the proposals of the Chief Minister in the matter of posting of senior officers of the State to different key posts. It was also contended that his transfer order is vitiated because of the non-compliance of the procedural formalities for a valid transfer of the appellant to the said post of Secretary, High Power Committee inasmuch as there was no declaration under Rule 9(l) of IAS (Pay) Rules, 1954 that the post of Secretary, High Power Committee, was equivalent to the post of Chief Secretary and in the absence of such declaration the transfer of the appellant from the post of Chief Secretary to the Secretary, High Power Committee, was illegal and void.

2. To appreciate the relevant contentions made by the appellant and the respondents before the Central Administrative Tribunal and also before this Court at the hearing of the appeal, the backdrop of the events resulting in the impugned order of transfer and posting of the appellant and consequential challenge of such order by the appellant, requires to be indicated in short.

3. The appellant, Shri Sankaranarayanan, was appointed to the Indian Administrative Service (Karnataka Cadre) in 1957 and on May 5, 1990 he was holding the post of Additional Chief Secretary to the Government of Karnataka. By Notification dated May 5, 1990, he was appointed' as Chief .Secretary to the Karnataka Government until further orders. In the State of Karnataka, there was. originally one post of Chief Secretary to the Government. By an order dated October 17, 1980, an ex-cadre post of Additional Chief Secretary was created with a declaration under R. 9(1) of IAS (Pay) Rules that the status and responsibilities of the said post were equivalent to the cadre post of Chief Secretary. The post of Additional Chief-Secretary was thereafter en-cadred by Notification

dated January 30, 1987 with the same pay as of the post of Chief Secretary. The post of Secretary, High Power Committee, was created by the State Government of Karnataka in 1989 with the designation Chairman, Hyderabad, Karnataka Development Board by order dated September 27, 1989. The said post was declared equivalent to the status and responsibilities to the cadre post of Additional Chief Secretary under R. 9 of IAS (Pay) Rules. The posts of Chief Secretary, Secretary, High Power Committee and Additional Chief Secretary carry equal pay. On January 3, 1991, the Cabinet Government of Karnataka took a decision to the effect that a change of the Chief Secretary should be effected. Pursuant to such cabinet decision, the Chief Minister, on January 4, 1991, had taken the following three decisions and passed consequential orders namely (i) declaring that the post of Secretary, High Power Committee, was equivalent in status and responsibilities to the post of Chief Secretary of the Government, (ii) transferring the appellant, Shri Sankaranarayanan, to the post. of Secretary, High Power Committee with immediate effect and (iii) appointing the 4th respondent, Shri N. K. Prabhakar Rao, who was holding the post of Chief Secretary to the Government. It may be noted in this connection that Shri Prabhakar Rao is senior to Shri Sankaranarayanan as a member of the Indian Administrative Service. The Notification giving effect to the above orders of transfer was issued on January 4, 1991 but the authenticated Government order declaring the equivalent of two posts under R. 9 of IAS (Pay) Rules, was issued on the next day, namely, January 5, 1991.

4. The appellant, Shri Sankaranaryanan, contended in his application before the Central Administrative Tribunal that the appellant was in the office of Chief Secretary when Shri Veerendra Patil was the Chief Minister of Karnataka. There was an intensive anti corruption drive against the senior bureaucrats including the 4th respondent through the instrumentality of Lok Ayukta. One such officer was Shri J. Alexender, IAS, who was suspended while he was holding the post of the Chairman and Managing Director of the Mangalore Chemicals and Fertilisers Ltd. but when Shri Alexender obtained a stay order from the Central Administrative Tribunal, the appellant, in the best interest of administration suggested that Shri Alexender should not be given the post of Secretary of the Department of Industry and Commerce but he should be given a posting in a less sensitive post but such suggestion of the appellant was not accepted by the third respondent, namely, the present Chief Minister of Government of Karnataka, Shri S. Bangarappa. Similarly, when a proposal to replace Shri Sangameswar, IAS, from the post of Managing Director of the Mysore Sales International Ltd. and post one Shri Madhu in place of Shri Sangameswar came up for consideration, the appellant pointed out to the Chief Minister about the propriety in making such a change particularly when Shri Sangameswar was keen in defending the cases filed against the Government in the Supreme Court and his other actions were Also appreciated by his superiors and 'Shri Madhu had indicated his reluctance to accept the post in his letter to the Government in view of the fact that some of his relatives happened to be excise contractors. But the third respondent did not like his suggestion and directed the posting of Shri Madhu as Managing Director, Mysore Sales International Ltd. The third respondent also did not like to pass orders on the files containing the irregularities committed by the fourth respondent while holding high offices in the State during the period between 1983 and 1989. These files contained 41st report of the Public Undertaking Committee recommending enquiry into the imprudent decisions taken by the 4th respondent as Chairman and Managing Director of the New Government Electric Factory, Bangalore. Accordingly, at the instance of the then Minister of Industries and Commerce an enquiry had been undertaken through Lok, Ayukta. The Report submitted after the enquiry indicated prima facie case against the 4th respondent warranting further departmental actions. The former Chief Minister made enquiries about these matters and the appellant also furnished further necessary information to the then Chief Minister who referred the matter to the Personnel Department of Administrative

Reforms. The Secretary, Department of Personnel and Administrative Reforms suggested for initiation of departmental action against the fourth respondent. The fourth respondent made a suggestion to the Government seeking permission for voluntary retirement. But after the Ministry headed by the then Chief Minister, Shri Veerendra Patil, was dismissed and the President's rule was imposed in the State, the fourth respondent withdrew his letter seeking voluntary retirement. The appellant put up all the files before the third respondent for appropriate orders in view of the fact that the previous Chief Minister did not take any final decision regarding the proposal to initiate disciplinary action against the fourth respondent. But the third respondent kept the files without passing any orders. It was contended by the appellant that since the appellant was not prepared to lies and to compromise with the desires of the Chief Minister, the Chief Minister, namely, the respondent No.3, became displeased with him and opposed some of his suggestions relating to the posting of senior bureaucratic officers. The appellant has contended that he was sought to be transferred with undue haste from the post of Chief Secretary to the post of Secretary, High Power Committee, although such post was inferior to the post of Chief Secretary and no declaration under Rule9(l) of IAS (Pay) Rules for the equivalence of the said post had been made.

5. The respondents, namely, the State of Karnataka and the Chief Minister of Karnataka and also the said respondent No. 4 denied the allegations relating to the malice of facts and contended that the allegations relating to the malice of facts were mischievous, malicious, scandalous and vexatious and such allegations were deliberately made to malign the respondents. The respondents also contended that the post of Secretary, High Power Committee, was equivalent. to the post of Additional Chief Secretary and such declaration had been made long back and the post of Additional Chief Secretary and the post of Chief Secretary were also equivalent and interchangeable In any event, before giving effect to the order of transfer of the appellant, further declaration was made by the Chief Minister that the post of Secretary, High Power Committee was equivalent to the post of Chief Secretary so that in any event the appellant had no occasion to feel stifled. Accordingly, there was no occasion to contend that the declaration, required as under Rule 9(l) of IAS (Pay) Rules, had not been made and the order of transfer was accordingly vitiated for non-compliance with the statutory rules. The Central Administrative Tribunal, after considering the facts and circumstances of the case and hearing the submissions made on behalf of the respective parties, inter alia, came to the finding that the freedom to choose a person as the Chief Secretary to the liking of the Chief Minister and the Cabinet on whom there is absolute confidence, is undisputed prerogative and such decision becomes unassailable when it is made in bona fide manner following the statutory formalities applicable to such selection and appointment. Referring to the decision of this Court made in the case of E. P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555, and referring to various observations made in the said decision at length, the Central Administrative Tribunal came to the finding that the appellant had no subsisting right to remain as Chief Secretary and it was, the prerogative of the Chief Minister and the Cabinet to take a decision to appoint a person to the post of Chief Secretary in place of the appellant to whom the. Cabinet and the Chief Minister had confidence. It was held by the Central Administrative Tribunal that the appellant had failed to establish that he had been transferred with the ulterior motive of .placing the appellant in a lower post and thereby permanently preventing him from continuing in the position and status of Chief Secretary. The Administrative Tribunal inter alia held that it is an admitted position that there was a difference of opinion between the appellant and the Chief Minister and such difference had been developing ever since the new Chief Minister had assumed office. The Tribunal had also noted that the appellant was also not promoted and posted as Chief Secretary permanently but he was appointed to the post of Chief Secretary until further orders and he continued in that capacity only for eight months without being regularised or. confirmed in that post. The Central Administrative

Tribunal also held that there had been only casual collateral challenge by the appellant against the appointment of fourth respondent as the Chief Secretary raising some allegations which could at best be grouped in the category of vague and indefinite allegations. The Central Administrative Tribunal held inter alia that the applicant had not laid down any firm foundation to hold that the appointment of the 4th respondent as Chief Secretary was bad and unsustainable. It has been held by the Central Administrative Tribunal that the fourth respondent had already assumed the office of the Chief Secretary and except in making some vague allegations, his appointment as Chief Secretary was not challenged on the score of violation of rules governing the matter. As such, the Central Administrative Tribunal held that there was no occasion to go into the legality of the posting of fourth respondent as the Chief Secretary of the State.

6. So far as the other contention made by the appellant, namely, that the transfer order is vitiated in view of the fact that the appellant was sought to be reverted to a lower post in violation of the procedure in Rule 9(l) of IAS (Pay) Rules and Rule 4 of IAS (Cadre) Rules is concerned, it has been contended by the appellant that a Notification issued on January 5, 1991 declaring the post of Secretary, High Power Committee, as equivalent to the post of Chief Secretary, was of no consequence and could not cure the initial defect inasmuch as prior to such Notification issued. on January 5, 1991 declaring equivalence of the said posts, the impugned order of transfer was sought to be effected and the respondent No. 4 was allowed to join the post of Chief Secretary pursuant to the order of transfer of the appellant. the Central Administrative Tribunal referred to four documents being Annexures 7, 8, 9 and 10 to the application made by the appellant and also the affidavits filed by the parties and accepted the contention of the respondents that the post of the Secretary was declared equivalent to the post of Additional Chief Secretary and the post of Additional Chief Secretary was also declared equivalent to the post of Chief Secretary, and such declarations had been made ever since 1980 and the appellant was fully aware of the said position. The Central Administrative Tribunal also accepted the contention of the respondents that in order to avoid any embarrassment and complication, the State Government had also made a declaration on January 4, 1991 prior to the transfer of the appellant, that the post of the Secretary, High Power Committee, was equivalent to the post of Chief Secretary but the formal authenticated order declaring the said equivalence was issued next day i.e. January 5, 1991. There was no delay in issuing the declaration and even assuming that there was a delay of one day in making the formal declaration of equivalence, such delay had not nullified and invalidated the decision of the Government. Referring to the various decisions of this Court including the decision made in the case of Babulal v. M/s. Hazari Lal Kishori Lal, (1982) 2 SCC 525: (AIR 1982 SC 818), the Central Administrative Tribunal indicated that a deviation from the strict procedure prescribed by law would not vitiate an action taken by Government or public authority in the interest of public unless it could be shown that such an act had resulted in gross injustice to the affected party. The Central Administrative Tribunal held that the appellant could not establish that impugned order had caused any serious injury to him. The Central Administrative Tribunal further held that the appellant had submitted that because of the delay in issuing the declaration strictly in accordance with the Rule 9(l) of IAS (Pay) Rules, the appellant was in dark as to the nature and duties of the post of Secretary, High Power Committee, to which he had been transferred under the impugned order. The Central Administrative Tribunal held that the form and procedure in Rule 9(l) of IAS (Pay) Rules do not make it obligatory to approach the issue in a judicial or quasi judicial manner and the violation, if any, of Rule 9(l) was only a mere technicality and. it did not cause any legal injury or injustice to. the appellant. Such violation, even if any, was .not so serious that it required a judicial scrutiny by the Central Administrative Tribunal in the facts and circumstances of the case. The Central Administrative Tribunal also held that after going through the files leading to the declaration under

Rule 9(l) since placed before the Tribunal, the Tribunal was satisfied that the Government had considered the question in detail and sufficiently in advance and had taken a decision to issue the declaration of equivalence on January 4, 1991 and it was a valid decision satisfying the requirement of Rule 9(l) of IAS (Pay) Rules, 1954. Referring to the allegations of mala fides, the Central Administrative Tribunal came to the finding that the facts were narrated in paragraphs (1) (w) of paragraph 6 of the application of the appellant. The Tribunal categorically came to the finding that there was no firm foundation to find on facts that the impugned order was vitiated by any mala fide. In that view of the matter, the Central Administrative Tribunal dismissed the application made by the appellant. As aforesaid, the said decision is under challenge in this appeal.

7. Mr. Venugopal the learned Counsel for the appellant has strenuously contended that declaration of equivalence under Rule 9(l) of IAS (Pay) Rules, 1954 is an essential statutory requirement and without such declaration of equivalence no member in the cadre of IAS can be transferred to a non-cadre post. He has contended that the declaration of equivalence of the posts of Chief Secretary and Additional Chief Secretary made in 1980 has been highlighted beyond proportion before the Central Administrative Tribunal by the respondents and the Administrative Tribunal was also influenced because of such declaration of equivalence made in 1980. But such declaration of equivalence is of no consequence and the legal requirement of declaration of equivalence was still there and non-compliance with the requirement of declaration of equivalence has rendered the impugned order of transfer illegal and void. Mr. Venugopal has contended that previously there was only one post of Chief Secretary in the administrative hierarchy in the State of Karnataka. It was felt necessary that a post of Additional Chief Secretary should be created and the recommendation to that effect was made when the post, of Additional Chief Secretary was not encadred. A declaration of equivalence was also made by the State Government so that a cadre officer belonging to the Indian Administrative Service may be transferred to the non cadred post of Additional Chief Secretary but later on, the post of Additional Chief Secretary was encadred on the basis of triennial review. After such encadrement of the post of Additional Chief Secretary, the declaration of equivalence which was made earlier lost its force. Mr. Venugopal has submitted that the question of equivalence comes in when one post is outside the cadre post of Indian Administrative Service. Mr. Venugopal has contended that equivalence is referable only to an ex-cadre post and exhypothesi declaration of equivalence cannot come inter se posts within the cadre. Accordingly, all the previous exercises made in declaration of equivalence when the post of Additional Chief Secretary was not a cadre post are of little consequence. Mr. Venugopal has also contended that the post of Additional Chief Secretary and Chief Secretary are not equivalent in reality. The post of Chief Secretary is the highest post in the administrative set up in the State. Mr. Venugopal has referred to the Office Memorandum dated September 2, 1988 at page No. 127 of Volume II-A of the Paper Book of this appeal, for the purpose of showing that the post of Chief Secretary is superior post because Additional Chief Secretary is to report to the Chief Secretary. We also made reference to the Karnataka Government (Transfer of Business) Rules, 1977 and contended that reference to various provisions of the Rules would indicate that the post of Chief Secretary is the highest post and the reports of different Secretaries including Additional Chief Secretary are required to be routed through Chief Secretary but no Report of the Chief Secretary is ever required to be routed through Additional Chief Secretary or any other officer. He has submitted that a mere declaration that the post of Additional Chief Secretary is equivalent to the post of Chief Secretary will not make both the said posts equivalent. Mr. Venugopal has also contended that as a matter of fact, the respondents felt difficulty in transferring the appellant to the post of Secretary, High Power Committee, because the said post was declared equivalent to the post of Additional Chief Secretary and not to the post of Chief Secretary. Precisely for the said reason, after the impugned order of transfer, an attempt was

made to publish a declaration on January 5, 1991 to the effect that the post of Chief Secretary is equivalent to the post of Secretary, High Power Committee. Mr. Venugopal has contended that the post of Secretary, High Power Committee, cannot be equivalent to the post of Chief Secretary of the State which is highest post and in any event the post facto declaration of equivalence on January 5, 1991 cannot cure the initial defect of not declaring equivalence of the post in question prior to the order of transfer made on January 1991. Mr. Venugopal has submitted that the appellant may not have an absolute right to remain in the post of Chief Secretary and for good administrative reasons the Cabinet and the Chief Minister may have a prerogative to select a person of their confidence to the post of Chief Secretary but the appellant having been appointed as Chief Secretary can only be removed from the said post for good administrative reasons but not for any oblique purpose. The appellant could have been transferred from the post of Chief Secretary to a suitable post which was equivalent to the post of Chief Secretary only in accordance with law and a declaration of equivalence under Rule 9(l) of IAS (Pay) Rules was an essential sine qua non for transferring an incumbent holding the post of Chief Secretary to any other ex-cadre post. Mr. Venugopal has contended that declaration of equivalence of a cadre post with a non cadre post is a statutory requirement under Rule 9(l) of IAS (Pay) Rules. Such statutory requirement must be strictly complied with. So long the declaration of equivalence made. by the competent authority is not published in accordance with the procedure under Rule 9(1), no equivalence takes place and in the absence of equivalence, no cadre officer can be posted to a non cadre post. Admittedly, the impugned order of transfer of the appellant was made on January 4, 1991 and the respondent No. 4 purported to assume the office of the Chief Secretary on January 4, 1991. But the declaration of equivalence was made on 5-1-1991 i.e. after the impugned order of transfer. Hence, the impugned order of transfer of the appellant is illegal on the face of it and subsequent declaration of equivalence cannot cure the invalidity of the order of transfer. On this score alone the impugned order is liable to be quashed. Mr. Venugopal has further contended that the Central Administrative Tribunal failed to appreciate that in reality the posts of Chief Secretary and Additional Chief Secretary were not interchangeable and declaration of equivalence made earlier had lost its force after the encadrement of the post of Additional Chief Secretary.

8. Mr. Venugopal has also submitted that it is not always possible and practicable to precisely establish mala fide in fact but the Court should draw reasonable inference from the pleadings whether there was any foundation of mala fide action. Mr. Venugopal has contended that the appellant has given instances how he gradually incurred displeasure of the present Chief Minister when his suggestions for posting senior bureaucratic officers of the State in key and sensitive positions, contrary to the desire of the Chief Minister, were not liked by the Chief Minister. Mr. Venugopal has contended that the respondent No. 4 was found prima facie guilty of various administrative lapses of serious nature over the years. During the regime of the previous Chief Minister of the State, Shri Veerendra Patil, enquiries had been conducted at a high level and recommendations were made for initiating departmental proceedings. Unfortunately, before any formal order could be passed by the then Chief Minister, Shri Veerendra Patil, the Ministry was dissolved and the President's rule was imposed. Thereafter, the present Chief Minister came to head the Cabinet of the State. The appellant as a Chief Secretary of the State was duty bound to place all the relevant files for appropriate directions of the Chief Minister so far as the respondent No. 4 is concerned. When the appellant placed all the relevant files, it was only reasonably expected that the present Chief Minister would pass formal orders for initiating departmental proceedings against the respondent No. 4 but for inexplicable reasons, the present Chief Minister held back the files without passing any order. Even in the matter of posting of Shri Alexander, Sri Sangmeswar and Sri Madhu, the appellant indicated cogent reasons relating to the postings desired by the Chief Minister and

normally reasonings indicated by the appellant were not expected to be overruled by the Chief Minister in the interest of purity in administration. But, unfortunately, such suggestions had been overruled by the Chief Minister. Mr. Venugopal has contended that in the backdrop of the events disclosed in various sub-paragraphs, namely, paragraphs 6(1) to 6(q) of the petition made before the Tribunal it should have come to the finding that a case of malice in fact had been established prima facie and the respondents were under an obligation to dispel the reasonable inference to be drawn by the Tribunal about the existence of malice in facts. Unfortunately, the Tribunal has not. considered the question in the proper perspective. Mr. Venugopal has submitted that since the posting of respondent No. 4 as Chief Secretary was not directly challenged by the appellant and infraction of any statutory provisions could not be established by the appellant so far as the posting of respondent No. 4 is concerned, the Tribunal has proceeded on the footing that such posting, therefore, is not required to be interfered with and consequently the challenge to the transfer and posting of the appellant cannot also be sustained. Mr. Venugopal has contended that such approach, to say the least, is unsatisfactory and requires a rethinking. Mr. Venugopal has also contended that when the former Chief Secretary went on leave prior to his retirement, the appellant's case was considered and in view of his excellent track record over the past 33 years as a member of the Indian Administrative Service in the Karnataka cadre, the appellant was found to be most suitable candidate to hold the post of Chief Secretary and he was made the Chief Secretary. Simply because the appellant was appointed as the Chief Secretary until further orders, such appointment and posting do not necessarily mean that he was holding the said post only as a stop-gap-measure. Mr. Venugopal has contended that it is nobody's case that the Government of Karnataka did not intend to appoint and post the appellant as Chief Secretary of the State and such posting was made only by way of a stop-gap-measure until suitable person could be selected and later on the respondent No. 4 was posted as Chief Secretary on appropriate consideration of the cases of all the eligible officers of the State. Mr. Venugopal has contended that the order of transfer of the appellant and also the order of posting of respondent No. 4 had taken place simultaneously in undue haste even without making declaration of equivalence. It only indicates that there had not been any bona fide and proper exercise to find out the most suitable person for the post of Chief Secretary in the normal way. He has submitted that although no specific pleading was made by the appellant before the Tribunal that in order to find a berth for the respondent No. 4, the appellant was moved Out against the interest of the administration and the respondent No. 4 was appointed as Chief Secretary of the State, there is sufficient material to indicate that the Chief Minister was bent upon to move out the appellant from the post of Chief Secretary who had always resisted improper suggestions of the Chief Minister in the better interest of the administration and to give effect to such improper decision not on the score of administrative exigencies or for public interest, the impugned order of transfer was made. On the face of the adverse materials on record and the recommendations made by the appropriate Committee to initiate disciplinary proceedings against the respondent No. 4, there could not have been any administrative exigency to place the respondent No.4 in charge of the highest Administrative office in the State. Mr. Venugopal has submitted that mala fide in fact needs to be considered from the totality of the facts and circumstances by drawing reasonable inferences. There cannot be a strait-jacket formula to which every case of malice of fact can fit in.

9. Mr. Attorney General appearing with the Advocate General of the State of Karnataka for the respondents Nos. 1 and 3, namely, the State of Karnataka and the Chief Minister of Karnataka, has submitted that the post of Chairman, Karnataka-Hyderabad Development Board was created on September 1, 1989 and the respondent No. 4 who was holding a very high and responsible office at, the relevant time. The respondent No. 4 is a very senior member of the Indian Administrative Service in the Karnataka cadre and admittedly senior to the appellant as a member of the Indian

Administrative Service. The said respondent No.4 was appointed to the post of Chairman, Karnataka-Hyderabad Development Board. The said post was declared as equivalent to the post of Additional Chief Secretary on September 27, 1989 when the said post was created. Later on, on October 11, 1989, the said post of Chairman was re-designated as Secretary, High Power Committee and ex official Additional Chief Secretary to the Government of Karnataka. Mr. Attorney General has contended that simply because adverse comments were made on the functioning of the respondent No. 4 when he was holding the post of Chairman of some other Organisation or the Secretary, High Power Committee, there was no compelling necessity of by-passing a very senior officer. in the Indian Administrative Service Cadre in the State. Since the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary, there had been a necessity to find out a competent senior officer in the Indian Administrative Service Cadre in the State. As no departmental proceedings had been pending against him, the Cabinet and the Chief Minister had taken a decision that Mr. Rao, respondent No. 4, being the seniormost person in the Indian Administrative Service Cadre in the State, having a long experience in different administrative set up and conversant with the problems of the State should be posted as Chief Secretary. Such decision is not ex facie perverse and unjustified. He has contended that even if it is assumed that instead of respondent No. 4, some other officer would have been selected for the post of Chief Secretary, such selection being a prerogative of the Cabinet and the Chief Minister, the appellant cannot question the correctness and propriety of the same. The Central Administrative Tribunal is justified in its finding that there has not been any direct challenge to the appointment of the respondent No. 4 to the post of Chief Secretary and the appellant could not establish that any statutory rule has been violated in giving appointment to the respondent No. 4 to the post of Chief Secretary. Mr. Attorney General has also contended that the law is well settled after the decision of this Court in E. P. Royappa (AIR 1974 SC 555) (supra) that it is the prerogative of the State Cabinet and the Chief Minister to select a person of their confidence to man the key post of Chief Secretary in the State. The only exercise which is required to be made by Court of law or a Tribunal is to find out whether in removing the holder of the post of Chief Secretary, any mala fide action has been taken. The Tribunal, according to the learned Attorney General, is justified in holding that except making some vague allegations, no firm foundation has been laid by the appellant to warrant a finding that the impugned order of transfer of the appellant is actuated by a malice in fact or malice in law. Mr. Attorney General has submitted that the Tribunal has indicated that the Chief Secretary had not been pulling on well with the Chief Minister of the State, and there had been differences of opinion on a number of matters from before. If on such account, the Government and the Chief Minister felt that a man of their confidence should be posted as the Chief Secretary of the State so that there was a good rapport between the Chief Secretary and the Chief Minister and the Cabinet, no exception can be made and such decision being squarely within the prerogative of the Chief Minister and the Cabinet as indicated by this Court in no uncertain terms in Royappa's decision, the Central Administrative Tribunal was justified in declining to interfere against the impugned orders. Mr. Attorney General has contended that allegations of mala fide action on the part of the Chief Minister or the Cabinet must be substantiated by cogent materials and not by vague insinuations. In the pleadings, the appellant has only indicated several instances showing how he assessed the facts in giving suggestions in the matter of posting of different top bureaucratic officers including respondent No. 4 and how his suggestions had not been ultimately accepted by the Chief Minister. Such facts by no stretch of imagination establish a case of mala fide action of the State Government in transferring the appellant from the post of Chief Secretary. Mr. Attorney General has contended that in order to overcome the decision of the Tribunal, on the pleadings made before the Tribunal, the appellant has attempted to introduce a new case in paragraph 20 of the special leave petition by setting up the appointment of respondent No. 4 as both proof and result of the Chief Minister's mala

fides. To make it a triable issue, ground 'k' has been taken in the special leave petition. But introduction of a new case for the first time before this Court by way of embellishment cannot be permitted. He has contended that the said new case is far from truth and is an afterthought deserving outright rejection.

10. Mr. Attorney General has also contended that by virtue of holding a particular administrative position, an incumbent of the post may have the privilege to have the reports of other senior bureaucratic officers routed through him under the prevalent rules of business. Such facts alone do not establish that such post is superior to other post. If there has been a declaration of equivalence under Rule 9(1) of IAS (Pay) Rules, the post must be held to be equivalent irrespective of the fact that because of the rules of business one of the two equivalent posts enjoys some advantage or privilege. Mr. Attorney General has contended that the declaration in 1980 was made under Rule 9(1) of IAS (Pay) Rules to the effect that the post of Additional Chief Secretary which was then an ex-cadre post was equivalent to the post of Chief Secretary. Although, subsequently the post of Additional Chief Secretary was encadred, the declaration of equivalence has not lost its force as sought to be contended by Mr. Venugopal. Mr. Attorney General has contended that even assuming that after the encadrement there was no further scope of declaring equivalence, the fact remains that there had been appreciation and understanding of the State Government about the importance of the two posts and factual assessment of equivalence of the two posts. He has contended that in any event, such question has become academic in the instant case because pursuant to the Cabinet decision, an exercise was made on January 4, 1991 to declare the post of Secretary, High Power Committee, as equivalent to the post of Chief Secretary itself so that there may not be any occasion for the appellant to feel stifled. Such decision had taken place prior to the impugned order of transfer but the publication could not be made on the same day, namely, January 4, 1991 but such publication of equivalence under Rule 9(1) was made on the very next day, namely, on January 5, 1991. Mr. Attorney General has contended that publication on the next day does not invalidate the factum of declaration made on January 4, 1991. Such publication being a requirement of statute has been complied with and the publication has been made in order to give effect to the decision of declaring equivalence already taken.

11. Mr. Attorney General has contended that it has been specifically stated by the Chief Minister in his affidavit in opposition that declaration of equivalence was made on January 4, 1991 prior to the impugned order. Mr. Attorney General has also submitted that even if it is assumed that the publication of declaration of equivalence was made on January 5, 1991 but the impugned order of transfer was made on January 4, 1991, and by that process there has been violation of Rule 9(1) of IAS (Pay) Rules, such violation is a mere technical violation for which no interference by this Court is called for. He has submitted that Central Administrative Tribunal was justified in coming to the finding that no real injury was caused to the appellant for such technical violation, even if any, and as such no interference was called for by the Tribunal against the impugned order of transfer. Mr. Attorney General has contended that interference under Article 136 of the Constitution is not a matter of course. Such interference is required to be made if it conforms both to equity and law. In the facts and circumstances of the case, the appellant has not been able to make out any case for such interference within the discretionary remedy of this Court and the appeal should, therefore, be dismissed. Mr. Attorney General has also submitted that the appellant is guilty of suppression of material facts. After the impugned order of transfer, in view of some statements made by the appellant to the Press against Chief Minister, a decision was taken to initiate disciplinary proceeding against the appellant and he was placed under suspension. Such suspension was challenged by the appellant before the Central Administrative Tribunal, Bangalore, in Application No. 78 of 1991 and an interim order of stay of the order of suspension was passed in the said proceeding, but subsequent

to the filing of the instant special leave petition before this Court, the interim order of stay was vacated by the Administrative Tribunal. In the aforesaid facts, the factum of suspension was required to be disclosed by the appellant. Mr. Attorney General has contended that for suppression of material facts, this Court should refuse to interfere in this appeal and should dismiss the same. He has also contended that in view of order of suspension, the appellant, in any event, cannot be permitted to hold or continue to hold the post of Chief Secretary.

12. After considering the respective contentions of the learned counsel appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/ or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister of the State. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instant case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior officer of their confidence to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority. The position in this regard has been well explained in Royappa's case (AIR 1974 SC 555) by this Court.

13. So far as the other contention of the appellant, namely, invalidity of the impugned order of transfer for want of declaration of equivalence under Rule 9(1) of IAS (Pay) Rules is concerned, it may be indicated that there had already been a declaration when the re-designated post of Secretary, High Power Committee, was established that the said post was equivalent to the post of Additional Chief Secretary. It is the positive stand of the State Government that the posts of Chief Secretary and the Additional Chief Secretary are equivalent. But in the instant case, it is also not necessary to decide the question in detail as to whether in reality both the said posts are not equivalent as sought to be contended by Mr. Venugopal. It appears to us that prior to the impugned orders, a decision to declare the post of Secretary, High Power Committee, equivalent to the post of Chief Secretary of the State had been taken. Since the impugned order of transfer was implemented with immediate effect, the formal publication could not be made on the very same day but was made on January 5, 1991, namely, on the very next day. It appears from the records that the decision to declare equivalence was taken prior to the impugned order of transfer and the formal publication by way of statutory requirement was made in order to give effect to the decision to declare equivalence already taken. In such circumstances, we do not think that the formal declaration made on January 5, 1991 invalidates the impugned order of transfer. The Tribunal is justified in, holding that infraction, even if any, in making publication formally on January 5, 1991, is only a technical violation for which no interference is called for. In the result, we do not find any reason to interfere with the impugned decision of the Central Administrative Tribunal and the appeal, therefore, fails and is dismissed but

without any order as to costs.

Appeal dismissed.

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