

T.S.R.Subramanian & Ors vs Union Of India & Ors on 31 October, 2013

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Bench: Pinaki Chandra Ghose, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.82 OF 2011

T.S.R. Subramanian & Ors. ... Petitioners

Versus

Union of India & Ors. ... Respondents

WITH

WRIT PETITION (CIVIL) NO.234 OF 2011

J U D G M E N T

K.S. Radhakrishnan, J.

1. Article 32 of the Constitution of India has been invoked by few eminent retired civil servants highlighting the necessity of various reforms for preservation of integrity, fearlessness and independence of civil servants at the Centre and State levels in the country. Prayers made in this writ petition are based on various reports and recommendations made by several Committees appointed for improving the public administration. On the basis of various reports, following reliefs

are sought in the writ petition :-

- (i) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction requiring the Respondents to create an “independent” Civil Service Board or Commission both at the Centre and the State based on recommendations by the Hota Committee, 2004 (para 5.09, para 5.11, Main Recommendations No.38); the 2nd Administrative Reforms Commission 2008 (10th Report, para 9.8); the statement adopted at the Conference of Chief Ministers on Effective and Responsive Administration, 1997;
 - (ii) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction requiring the respondents to fixed tenure for civil servants ensuring stability based on recommendations by Jha Commission 1986 (para 7.2); Central Staffing Scheme, 1996 (para 17.01, para 17.02, para 17.03, para 17.12), the 2nd Administrative Reforms Commission (10th Report, para 8.7, para 9.8, para 17.5), Hota Committee Report, 2004 (Main Recommendations No.39);
 - (iii) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction requiring the respondents to mandate that every civil servant formally record all such instructions/directions/ orders/suggestions which he/she receives, not only from his/her administrative superiors but also from political authorities, legislators, commercial and business interests and other persons/quarters having interest, wielding influence or purporting to represent those in authority based on the principles recognized by Rule 3(3)(ii)(iii) of the All India Service Conduct Rules, 1968 and as implicitly recognized by the Santhanam Committee Report, 1962 (Section 6, sub-para 33[iii]).
2. This Court, considering the importance of the matter, issued notice to various State Governments and the Union Territories so as to ascertain their views on the various issues raised in this case. Most of the States have filed detailed counter affidavits explaining their stand with regard to the reliefs prayed for in this writ petition.
3. Shri K.K. Venugopal, learned senior counsel appearing for the writ petitioners, referred elaborately to the above-mentioned reports and highlighted the necessity of the creation of a Civil Service Board (for short ‘CSB’), both at the Centre and State level, with a degree of independence so that it can make recommendations on all transfers and postings without sacrificing the executive freedom of the Government. Learned senior counsel pointed out that such CSB shall function in a bare advisory capacity and its recommendations will not impose any constraint on the independence of the political authority to effect postings and transfers, including premature transfers. Learned senior counsel also highlighted the necessity for providing a fixed tenure for civil servants ensuring stability which is highly necessary for implementing various programmes which will have social and economic impact on the society. Learned senior counsel also highlighted the reasons for recoding of instructions, directions and orders by the civil servants so that they can function independently and the possibility of arbitrary and illegal decisions could be avoided.

4. Mr. Paras Kuhad, learned ASG appearing for the Union of India, opposed in principle prayer for setting up of independent CSB at the Centre and the State levels, which, according to the learned ASG, would be interfering with the governmental functions. Learned ASG also submitted that any mechanism within the governmental structure could be thought of, but involvement of any person, howsoever high he may be, who is not part of the Centre or the State Government, would not be advisable, especially in the absence of any such provision in the Constitution or the laws made by Centre and the State Governments. Learned ASG also submitted that based on the 2nd Administrative Reforms Committee (ARC), a draft Bill entitled “Civil Services Performance Standards and Accountability Bill, 2010” was provided incorporating certain recommendations in the above-mentioned reports. Further, it was pointed out that the draft Cabinet Note for the introduction of the said Bill in the Parliament is under consideration of the Central Government. Further, it was also submitted that for fixing the minimum tenures of cadre post in the Indian Administrative Service was initiated in November, 2006 by the Department of Personnel & Training. Cadre controlling authorities of the Indian Police Service and Indian Foreign Service were also requested to take necessary follow-up action for fixing the minimum tenures in the cadre post for the Indian Police Service and Indian Foreign Service. During the process of consultation, it was pointed out that comments of the State Governments were sought on the proposal of fixing minimum tenure of posting of IAS Officers. 13 State Governments agreed with the proposal, while some States did not agree. The matter was further discussed in the meeting with the Chief Secretary/Principal Secretaries of the States concerned on 31.5.2007 and again on 4.7.2008 in Delhi. Notification providing for two years minimum tenure for IAS posting having been issued for 13 States/Joint Cadres. Reference was also made to study report of “Centre for Good Governance”, Hyderabad and it was stated that the same is under consideration with the Central Government. With regard to the prayer for recording of instructions/directions, etc., it was pointed out that the requirements are provided under the All India Service Conduct Rules.

5. Learned counsels appearing for the State Governments and the Union Territories have also placed their stand on various reliefs sought for in this writ petition. Learned Standing counsel appearing for the State of Uttar Pradesh submitted that the State has already established Civil Service Boards in terms of the Government orders dated 24.12.2001 and 19.5.2007, which is meant to operate with respect to IAS and Provisional Civil Services, Indian Police Services and Provisional Police Services and for Indian Forest Services and their feeder services. Over and above, the State has also formulated transfer policy dated 15.5.2008. Learned counsel appearing for the State of Maharashtra also made reference to the Maharashtra Government Servants Regulations of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and submitted that the Act provided for transfer of Government servants and prevention of delay in discharge of official duties.

6. Reliefs prayed for in this writ petition are based on the Hotta Committee Report, 2004, 2nd Administrative Reforms Commission (10th Report), 2008. 2nd Administrative Service Commission (15th Report), the Report of the Committee on Prevention of Corruption, Santhanam Committee Report, etc. We have gone through those reports in detail.

A. CIVIL SERVICE BOARD (CSB):

7. The Government of India on 3rd February, 2004, appointed the Hota Committee to examine the whole gamut of Civil Service reforms and the terms of reference of the Committee were as follows :-

- “(i) Making the Civil Service • responsive and citizen-friendly;
- transparent;
- accountable; and • ethical in its (a) actions and (b) interface with the people,
- (ii) Making the civil service e-governance friendly.
- (iii) Putting a premium on intellectual growth of civil servants and on upgrading their domain knowledge,
- (iv) Protecting the civil service against wrongful pressure exerted by
 - (a) administrative superiors;
 - (b) political executive;
 - (c) business interests; and
 - (d) other vested interests.
- (v) Changes, if any necessary, in the various All India Services Rules and Central Civil Rules to provide a statutory cover to the proposed civil service reforms.
- (vi) Changes in rules governing the disciplinary proceedings against civil servants to decentralize the process as far as practicable, and to make the disposal of such proceedings time-bound.
- (vii) Any other matter that the Committee may consider relevant to the subject of civil service reforms.”

8. On establishment of Indian Civil Services Board, the Hota Committee made the following recommendations :-

“5.09 We found that some States complied with the recommendations of the Conference of Chief Ministers and set up Civil Services Boards/Establishment Boards with Chief Secretary of the State as the Chairman and other senior officials of the State as Members. But the Boards set up by executive order in different States have failed to inspire confidence as more often than not, they have merely formalized the wishes of their Chief Ministers in matters of transfer of officials. We are firmly of the view that a Civil Services Act has to be enacted to make the Civil Services Board /

Establishment Board both in the States and in the Government of India statutory in character. In the proposed set up in the Government of India, the Appointments Committee of the Cabinet will be the final authority for transfer of officers under the Central Staffing Scheme. The same principle of fixed tenure should apply to senior officers, who are not under the Central Staffing Scheme, but are working under the Government of India for which the Departmental Minister in charge is the final authority for transfer. The Chief Minister will be the final authority for transfer of all Group 'A' officers of State Service and AIS officers serving in connection with affairs of the State. If a Chief Minister does not agree with the recommendations of the Civil Services Board/ Establishment Board, he will have to record his reasons in writing. An officer transferred before his normal tenure even under orders of the Chief Minister can agitate the matter before a three-member Ombudsman. The Chairperson of the Ombudsman will be a retired official of proven honesty and integrity. The other two members can be on part-time basis from among serving officers. In all such premature transfers the Ombudsman shall send a report to the Governor of the State, who shall cause it to be laid in an Annual Report before the State Legislature. The Ombudsman may also pay damages to the officer so transferred to compensate him for dislocation and mental agony caused due to such transfer. We are conscious that we are recommending a statutory barrier to frequent transfer of senior officials but the matter has come to such a pass that it requires a statutory remedy. We also clarify that the Chief Minister as the highest political executive has the final powers to order transfer of an officer before his tenure is over.

5.10 We are also of the opinion that postings of all Group 'B' officers must be done by the Head of the Department in a State and the same tenure rule shall be given a statutory backing. We were advised by some witnesses that only the Chief Minister's orders for transfer should be taken in case of Group 'A' officers / officers of All India Services and no Minister of a State should have any powers to order a transfer or approve a proposal for transfer of any official either of any State Service or of the All India Service. We agree with the view, as in our opinion owing to reasons of political expediency or even due to unwholesome reasons, Ministers in States often are not able to make proper use of the power vested in them for transfer of their departmental officers. If a Minister has cogent reasons to ask for transfer of an official before he completes his tenure, he will move the Civil Services Board to be set up under the new Civil Services Act and the Civil Services Board, with its views on report of inquiry by a designated officer, shall submit the case to the Chief Minister for final orders. Thus in a State Government, a Minister's proposal for transfer of any officer of Group 'A'/Group 'B' will be formally decided by the Chief Minister of the State.

5.11 In our opinion, Civil Services Boards must be set up in all States on similar lines as at the Centre. The Central Act should have a provision to enable the States to adopt the law and make it applicable in the States, without going through the long process of drafting a new law and getting it passed in the Legislature. The Civil Services Board

in a State - chaired by the Chief Secretary and comprising senior officers - shall perform the functions relating to transfer, empanelment, promotion, and deputation of officers performed by the Establishment Board of Government of India/Special Committee of Secretaries of Government of India, both of which are chaired by the Cabinet Secretary. Under Article 309 of the Constitution, Parliament may also enact a Civil Services Act setting up a Civil Services Board for the Union Government which will perform the functions being performed at present by the Establishment Board presided over by the Cabinet Secretary. The Civil Services Act may also provide for a Special Committee of Secretaries to prepare panel of names for appointment for posts of Additional Secretaries and Secretaries to Government of India. Under the new Civil Services Act, a Cabinet Minister/Minister of State with independent charge in Government of India may be given a time limit to accept/send back proposals for the Establishment Board regarding posting of officers with his observations. In any particular case, if the Establishment Board after giving the views of the Minister in charge its utmost consideration does not change its original recommendation, the Cabinet Secretary may send proposals of the Establishment Board with observations of the Minister in charge through the Home Minister, a Member of the ACC to the Prime Minister, who heads the ACC for a final decision.

5.12 Inter alia, a Civil Services Board of a State shall also perform functions of recommending officers of All India Service/Group 'A1' service of the State for transfer to different posts under the State Government. It would be expedient before an officer is sought to be transferred in the public interest when he has not completed his tenure, that an administrative inquiry of a summary nature is held to ascertain if the transfer is justified as a matter of public policy.

The administrative inquiry will be conducted as expeditiously as possible by a designated officer nominated by the Civil Services Board. In appropriate cases, the Civil Services Board may also direct the officer to proceed on leave on full pay and allowances till the administrative inquiry is over and a decision is taken regarding his transfer. The designated officer to conduct the inquiry will be ordinarily the Reporting Officer of the officer sought to be transferred. The Civil Services Board on receipt of the report of inquiry of the designated officer shall advise the Chief Minister regarding justification for transfer of the officer in the public interest before his normal tenure is over. Ordinarily the Chief Minister is expected to agree with the recommendations of the Civil Services Board as transfer of an official is a routine administrative matter on which a Civil Services Board must have a decisive role. But if the Chief Minister does not agree with the Civil Services Board and orders transfer of an official before his tenure is over, he may have to record in writing reasons for such transfer. If the official is transferred before his tenure without adequate justification, he will have the right to approach a three member Civil Service Ombudsman set up for the purpose.

Recommendation 38: In the proposed Civil Service law, the highest political executive shall continue to be the final authority to order transfer of any officer before his tenure is over; but he will be expected to give due consideration to Report of the Administrative Inquiry/views of the Civil Service Board/Establishment Board and record reasons on the need for premature transfer of an officer. It

is reiterated that the political executive shall have the final authority to transfer an officer at any stage in the public interest. An officer aggrieved by order of premature transfer can agitate the matter before a three-Member Ombudsman, who may, where suitable, award monetary compensation to the aggrieved officer. The constitution of the Ombudsman will be the same as the Ombudsman proposed for the Disputes Redressal Council as at para 6.19 of this Report. The President/Governor shall receive reports from the Ombudsman and shall lay an Annual Report on such transfers on the table of the Legislature. There should be a suitable provision in the law to enable States to adopt it and make it applicable in the States without going through the long process of drafting a law and get it passed in the Legislature. {para 5.03 to 5.10}"

9. The 2nd Administrative Reforms Commission was set up by the President reflecting the Resolution dated 31st August, 2005 passed by the Government of India. The Commission was set up to suggest measures to achieve a preemptive responsible, accountable, sustainable and effective administration for the country at all levels of the government. The tenure of the Committee was extended from time to time and the Committee submitted its report in the year 2008. On the question of the setting up of the independent CSB, the Committee has made the following recommendations :

"9.7.1 The Commission suggests that an independent 'Authority' should deal with matters of assignment of domains, preparing panels for posting of officers at the level of SAG and above, fixing tenures for various posts, deciding on posts which could be advertised for lateral entry etc. As this Authority would be performing the above-mentioned crucial tasks, it would be necessary to ensure its independence by giving it a statutory backing and stipulating that it should be headed by an eminent person with experience of public affairs to be appointed by the Prime Minister in consultation with the Leader of the Opposition in the Lok Sabha. The Authority should have a full time Member-Secretary of the rank of Secretary to Government of India, and persons of eminence in public life and professionals with acknowledged contributions to society as Members of the Authority. This Authority, to be named as the Central Civil Services Authority, should be constituted under the proposed Civil Services Act. As the constitution of the Central Civil Services Authority under a new law may take some time, the said Authority may be constituted, initially, under executive orders."

10. Para 9.8.e also refers to the composition of the Committee which reads as follows :-

"9.8.e. A Central Civil Services Authority should be constituted under the proposed Civil Services Bill. The Central Civil Services Authority shall be a five-member body consisting of the Chairperson and four members (including the member-secretary). The Authority should have a full time Member-Secretary of the rank of Secretary to Government of India. The Chairperson and members of the Authority should be persons of eminence in public life and professionals with acknowledged contributions to society. The Chairperson and members of the Authority shall be appointed by the President on the recommendations of a Committee consisting of the Prime Minister

and the Leader of the Opposition in the Lok Sabha.

(Explanation:- Where the Leader of the Opposition in the Lok Sabha has not been recognized as such, the Leader of the single largest group in the Opposition in the Lok Sabha shall be deemed to be the Leader of the Opposition).”

11. The Second Administrative Reforms Commission Fifteenth Report (April 2009) has also made various suggestions in order to provide legislative backing to these measures, the Commission has recommended enactment of a Civil Services Law which will cover all personnel holding civil posts under the Union. The Commission recommended for the constitution of a Central Civil Service Authority, among other things, which reads as follows:

“VIII. Constitution of the Central Civil Services Authority:

i. The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Civil Services Authority to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

ii. The Central Civil Services Authority shall be a five-member body consisting of the Chairperson and four members (including the member-secretary). The Authority should have a full time Member- Secretary of the rank of Secretary to Government of India. The Chairperson and members of the Authority should be persons of eminence in public life and professionals with acknowledged contributions to society. The Chairperson and members of the Authority shall be appointed by the President on the recommendations of a Committee consisting of the Prime Minister and the Leader of the Opposition in the Lok Sabha.

(Explanation:- Where the Leader of the Opposition in the Lok Sabha has not been recognized as such, the Leader of the single largest group in the opposition in the Lok Sabha shall be deemed to be the Leader of the Opposition).

2.4.2.5 Subsequently, in its Report on “Refurbishing of Personnel Administration” (the Tenth Report), the Commission suggested a detailed procedure for placement of officers at the middle and top management levels in the Union Government. It calls for the constitution of a Central Civil Service Authority by law, which will be an independent five member body consisting of persons of eminence in public life and professionals with acknowledged contributions to Society. This Authority will be empowered to deal with a large number of issues concerning civil services such as assignment of domain to officers, preparing panels for posting at the levels of Joint Secretary and above, fixing tenures for senior assignments and such other matters that may be referred to it by the Union Government. The Commission is of the view that there should be a similar Civil Services law and a State Civil Services Authority for each State. The mandate and functions of the State Body would largely coincide with those prescribed under the proposed Union Civil Services Law. This Authority

should deal with issues of appointment and tenure of higher officials of all ranks in the State Governments including the Chief Secretary, Principal Secretaries, Engineer-in-Chiefs and the Principal Chief Conservator of Forests. However, till the time the proposed law is enacted and the State Civil Service Authority is constituted, recommendations made at para 2.14.2.5 above may be immediately adopted by all the State Governments.

2.4.2.6 Recommendations:

a) After enactment of the State Civil Services Law on the lines of the proposed Union enactment, the proposed State Civil Service Authority should deal with matters concerning appointment and tenure of senior officers of all ranks in the State Governments (including the Chief Secretary, Principal Secretaries, Engineer-

in-Chiefs, other Agency Heads and Principal Chief Conservator of Forests).

b) Till the time that such an Authority is constituted, the following mechanism may be adopted for appointment of the Chief Secretary and Principal Conservator of Forests in the States:-

- There should be a collegiums to recommend a panel of names to the Chief Minister/Cabinet for these two posts. For the post of Chief Secretary, this collegium may consist of (a) a Minister nominated by the Chief Minister, (b) the Leader of the Opposition in the State Legislative Assembly and (c) the incumbent Chief Secretary. For the selection to the post of Principal Chief Conservator of Forests the collegiums may consist of (a) The Minister In-charge of Forests, (b) the leader of Opposition in the State Legislative Assembly and (c) the Chief Secretary.

- There should be a fixed tenure of atleast two years for both these posts.

- The selection for the post of Chief Secretary and Principal Chief Conservator of Forests should be widened to include all officers above a specified seniority (e.g. 30 years). All officers with a eniority higher than a prescribed limit should be eligible to be a part of the panel.

c) As regards the appointment and tenure of the Director General of Police, the recommendations made by the Commission in its Report on “Public Order” at para 5.2.3.7 should be implemented.”

12. We have elaborately referred to the Report of the Hota Committee, Report of the 2nd Administrative Commission, 2008-2009, which highlighted the necessity of creation of an independent CSB at the Centre as well as the State level.

B. FIXED TENURE:

13. Various Committees have also recommended and highlighted the necessity of providing fixed tenure for a civil servant so as to ensure stability and efficiency of administration. The Central Staffing Scheme, 1996, highlighted the necessity of a fixed tenure to provide certain degree of stability to the administration. Reference in this regard may be made to paras 17.01, 17.02, 17.03, 17.12 and 17.13 and the same are extracted hereinbelow for easy reference :

“17.01 The fixed tenure of deputation of posting under the Central Government is the heart of the Central Staffing Scheme. Rotation between the Centre and the States, Central Ministries and parent cadres, and headquarters and the field, provide a certain degree of pragmatism to policy formulation and programme implementation from the Central Ministries. Based on the experience gained so far, the periods of tenure at the different levels have been prescribed as under:-

- i Under Secretary 3 years
- ii Deputy Secretary 4 years
- iii. Director 5 years
- iv. Joint Secretary 5 years

17.02 An officer holding the post of Joint Secretary or equivalent, when appointed to a post under the Government of India at the level of Additional Secretary, would have a tenure of 3 years from the date of appointment as Additional Secretary subject to a minimum of 5 years and maximum of 7 years of combined tenure as Joint Secretary.

Additional Secretary. Where an officer remains on leave (either from the Centre or from his Cadre authority or both) on the expiry of his tenure as Joint Secretary till his appointment as Additional Secretary, the leave period shall be counted as tenure deputation. Additional Secretary 4 years, except for cases covered under the previous heading.

Secretary No fixed tenure.

17.03 Every officer shall revert at the end of his tenure as indicated above on the exact date of his completing his tenure. He will, however, have a choice to revert to his cadre on the 31st May previous to the date of the end of his tenure in case personal grounds such as children's education etc., necessitate such reversion. No extension after completion of the full tenure would be allowed.

17.12 (a) Officers of the Indian Foreign Service appointed to posts under the Central Staffing Scheme would have a tenure of three years.

(b) They shall not normally be relieved, except with the approval of the appointments Committee of the Cabinet from a Central Staffing Scheme post before their tenure.

17.13 No lateral shifts of officers from one Ministry/Deptt. to another will normally be considered. However, in the case of Private Secretary to Ministers the policy followed would be :-

(a) The redeployment of a Private Secretary in the same Ministry/Department as Deputy Secretary or Director is discouraged.

(b) The Private Secretary (to Minister) who has been empanelled for holding post of Joint Secretary at the Centre should also not be considered for relocation in the same Ministry/Deptt. and the officer should be posted to some other Ministry/Deptt.”

14. The 2nd Administrative Reforms Commission (10th Report) also speaks of the same in paras 8.5.11, 8.5.12, 8.5.14, 8.7 (e)- (g), 9.8(e)-(g) and 17.5(VIII) and the same are extracted hereinbelow for easy reference :

“8.5.11. There appears to be unanimity on the point that it is necessary to give a fixed tenure to a civil servant in his/her post. In fact, the Draft Public Services Bill, 2007 has stipulated in Clause 16(e) that “The Central Government shall fix a minimum tenure for cadre posts, which may be filled on the basis of merit, suitability and experience.” 8.5.12 In Clause 22, the Bill enjoins the Cadre Controlling Authorities to “notify within a period of six months from the coming into force of this Act, norms and guidelines for transfers and postings to maintain continuity and predictability in career advancement and acquisition of necessary skills and experiences as well as promotion of good governance. Transfers before the specified tenure should be for valid reasons to be recorded in writing.

Provided that the normal tenure of all public servants shall not be less than two years.” 8.5.14 The Commission is of the view that the Central Civil Services Authority (discussed in detail in Chapter 9) should be charged with the responsibility of fixing the tenure for all civil service posts under the Union Government. At present, the functions of the Authority are envisaged as advisory under the provisions of the Draft Public Services Bill, 2007. This needs to be changed, and so far as the fixation of tenure is concerned, it is suggested that the decision of the Authority should be binding on the Government. The Authority should also be given the responsibility to monitor postings and place before Parliament a periodic evaluation of the actual average tenure for each post and for the Central Government as a whole. Establishment of State Civil Service Authorities for the States with similar responsibilities needs to be urgently taken up by the State Governments where tenures are much less stable. The details of the State Civil Services Authorities would be examined by the Commission in its Report on ‘State Administration’.

8.7 (e) – (g) Placement at Middle Management Level [.....] e. The Central Civil Services Authority should be charged with the responsibility of fixing tenure for all civil service positions and this decision of the Authority should be binding on Government.

f. Officers from the organized services should not be given ‘non-

field’ assignments in the first 8-10 years of their career.

g. State Governments should take steps to constitute State Civil Services Authorities on the lines of the Central Civil Services Authority.

9.8 (e) – (g) Placement at Top Management Level [.....] e. A Central Civil Services Authority should be constituted under the proposed Civil Services Bill. The Central Civil Services Authority shall be a five-member body consisting of the Chairperson and four members (including the member-secretary). The Authority should have a full time Member-Secretary of the rank of Secretary to Government of India. The Chairperson and members of the Authority should be persons of eminence in public life and professionals with acknowledged contributions to society. The Chairperson and members of the Authority shall be appointed by the President on the recommendations of a Committee consisting of the Prime Minister and the Leader of the Opposition in the Lok Sabha.

(Explanation:- Where the Leader of the Opposition in the Lok Sabha has not been recognized as such, the Leader of the single largest group in the Opposition in the Lok Sabha shall be deemed to be the Leader of the Opposition).

f. The Central Civil Services Authority should deal with matters of assignment of domains to officers, preparing panels for posting of officers at the level of Joint Secretary and above, fixing tenures for senior posts, deciding on posts which could be advertised for lateral entry and such other matters that may be referred to it by the Government.

g. A similar procedure should be adopted for filling up vacancies at SAG level and higher in the central police agencies. For example, in the Central Para-Military Forces the senior positions should be opened to competition from officers of the CPMFs, IPS and the Armed Forces (including those completing their Short Service Commissions). Similarly for the intelligence agencies officers from the armed forces as well as the CPOs with experience in the field of intelligence should be considered for postings at higher levels in the intelligence agencies.

17.5 Recommendations “A new Civil Services Bill may be drafted. The following salient features may be included in the proposed Bill.

[.....] VIII. Fixation of Tenures : All senior posts should have a specified tenure. The task of fixing tenures for various posts may also be assigned to this independent agency – Central Civil Services Authority.”

15. The 2nd Administrative Reforms Commission (15th Report), 2009 also speaks of the same in paras 2.4.1.2 and 2.4.2.4 and the same is extracted below for ready reference:-

“2.4.1.2 In order to provide legislative backing to these measures, the Commission has recommended enactment of a Civil Services Law which will cover all personnel holding civil posts under the Union. As recommended at paragraph 17.5 of this Report, the proposed law has the following salient features :

[.....] V. Fixation of Tenure. All senior posts should have a specified tenure. The task of fixing tenures for various posts may also be assigned to this independent agency – Central Civil Services Authority”.

[.....] IX. Functions of the Central Civil Services Authority. The Central Authority shall discharge the following functions :

[.....] vi. Fix the tenure for posts at the ‘Senior Management Level’ in Government of India.

2.4.2.4 For appointments to the posts of the Chief Secretary and the Principal Conservator of Forest, the Commission communicated the following interim suggestions to the Government in December 2007:-

i) There should be a collegium to recommend a panel of names to the Chief Minister/ Cabinet for these two posts. For the post of Chief Secretary, this collegiums may consist of

a) a Minister nominated by the Chief Minister,

b) the Leader of the Opposition in the State Legislative Assembly and

(c) the incumbent Chief Secretary. For the selection to the post of Principal Chief Conservator of Forests the collegiums may consist of

a) The Minister In-charge of Forests,

(b) the leader of Opposition in the State Legislative Assembly and

(c) the Chief Secretary.

ii) There should be a fixed tenure of two years for both these posts.

iii) The selection for the post of Chief Secretary and Principal Chief Conservator of Forests should be widened to include all officers above a specified seniority (e.g. 30 years). All officers with seniority higher than a prescribed limit should be eligible to be a part of the panel.”

16. The Hota Committee Report, 2004 also highlights the same as its main Recommendation No.39 which reads as follows :-

“(39). The proposed comprehensive law on the Civil Services shall incorporate, inter alia, a Code of Ethics and a statutory minimum tenure in a post to an officer. Under the proposed law, if an officer is sought to be transferred before his tenure, there would be an expeditious administrative inquiry by a designated senior officer to be earmarked for this purpose. This can be dispensed with if the transfer is on promotion/deputation/foreign training. In all other cases, the Report of Inquiry with the views of the Civil Service Board/Establishment Board would be put up to the Chief Minister if officer of the All India Services Service/other civil services work in the States, or the Appointments Committee of the Cabinet if the officers work under the Central Staffing Scheme. For the officers of the other Central Services working in Ministries/Departments but not under the Central Staffing Scheme, the new law will prescribe tenure with a provision for administrative inquiry before an officer is sought to be transferred except on specified grounds.” C. RECORDING OF INSTRUCTIONS AND DIRECTIONS:

17. Petitioners have highlighted the serious predicament on which the civil servants are placed when they are asked to implement governmental decisions, on oral directions, suggestions, instructions etc. Much of the deterioration of the standards of probity and accountability, according to the Petitioners, can be traced to practice of issuing and acting on verbal instructions or oral orders which are not recorded. This issue was addressed by the Santhanam Committee way back in 1962. Paragraphs 6.20 and 6.21 deal with those aspects, which are given below for easy reference :

“6.20. We have already mentioned the existence of ‘contactmen’ and ‘touts’. Obviously these do not include genuine representatives of commercial and industrial firms. In this regard our recommendations are :-

i) No official should have any dealings with a person claiming to act on behalf of a business or industrial house or an individual, unless he is properly accredited, and is approved by the Department, etc. concerned. Such a procedure will keep out persons with unsavoury antecedents or reputation. There should, of course, be no restriction on the proprietor or manager etc. of the firm or the applicant himself approaching the authorities.

ii) Even the accredited representatives should not be allowed to see officers below a specified level – the level being specified in each organization after taking into consideration the functions of the organizations, the volume and nature of the work to be attended to, and the structure of the organization. However, care should be taken to limit permissible contacts to levels at which the chances of corruption are considered to be small. This would often mean that no contact would be permitted at the level of subordinate officers.

iii) There should be some system of keeping some sort of record of all interviews granted to accredited representatives.

iv) There should be a fairly senior officer designated in each Department to which an applicant etc., may go if his case is being unreasonably delayed.

It is necessary that a proper procedure should be devised in consultation with the Central Vigilance Commission for accrediting and approval by the department. Before granting approval the antecedents of the person proposed to be accredited should, if possible, be verified. In any case no person who is not definitely employed by an established undertaking who will be responsible for his contact and actions should be approved.

6.21. It is also desirable that officers belonging to prescribed categories who have to deal with these representatives should maintain a regular diary of all interviews and discussions with the registered representatives whether it takes place in the office or at home. The general practice should be that such interviews should be in the office and if it takes place at home, reasons should be recorded. Any business or discussion which is not so recorded should be deemed to be irregular conduct, of which serious notice should be taken by the superiors.

18. Further, we also notice the All India Services (Conduct) Rules, 1968, which also states that the directions of the officials superior shall ordinarily be in writing. Rule 3(3) of the above-mentioned Rules reads as follows :-

3(3) (i) No member of the Service shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his own best judgment to be true and correct except when he is acting under the direction of his official superior.

(ii) The direction of the official superior shall ordinarily be in writing. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter.

(iii) A member of the Service who has received oral direction from his official superior shall seek confirmation of the same in writing, as early as possible and in such case, it shall be the duty of the official superior to confirm the direction in writing.

Explanation I— A member of the Service who habitually fails to perform a task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of the sub-rule (1);

Explanation II – Nothing in clause (i) of sub-rule (3) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from or approval of, a superior officer or authority when such instructions are not necessary under the scheme of

distribution of powers and responsibilities.”

19. We, in this respect, point out that the response of certain States and Union Territories in the matter of creation of an independent CSB, fixed tenure of civil servants and recording of directions, are neither consistent nor positive. But generally, they have welcomed the suggestion for fixation of tenure subject to the rider that in certain exceptional circumstances, the State Governments should have the power to transfer a person prematurely before completion of the tenure. Few States have welcomed the suggestion that every Civil Servant should record all the instructions and directions received.

20. Union and the State Governments apprehend that creation of an independent CSB or institutional arrangement for regulating transfers and postings of officers would be an intrusion into the executive function of the Centre and State Governments headed by the political executives, who are directly responsible to the people. Further, they have also taken up a stand that the said arrangement would lead to a dual line of control, creating complexities in managing administrative functions and affecting efficiency of civil servants. With regard to frequent transfers of officers, they have taken up the stand that there is already a clear cut policy that except in cases of promotion, in the interest of work and administrative reasons, transfer and posting will be done only after completion of three years of tenure. Few States have issued directions, to get written directions in case of oral directions of Superior Officers in line with Rule 3(3)(ii)-(iii) of All India Services (Conduct) Rules, 1968.

21. Chapter XIV of the Constitution of India deals with services under the Union and the States. Article 309 deals with the recruitment and conditions of service of persons serving the Union or the State, which expressly made subject to the other provision of the Constitution of India, In terms of Article 309 appropriate Legislature, Parliament or the State Legislature is empowered to legislate, to regulate the recruitment and conditions of service of persons appointed to public services and post them in connection with the affairs of the Union or of any State. In terms of the proviso to Article 309, number of rules have been made from time to time by the Union and the State Governments and they govern and regulate the public services in India. Article 310 of the Constitution provides for all members of the civil services of the Union and All India Services to be held in civil post at the pleasure of the President and all members of the civil services of the State at the pleasure of the Governor of the State. Article 311 provides certain safeguards regarding dismissal, removal or reduction in rank of persons employed in civil capacity. Article 312 provides constitution of All India Services. Articles 318 to 333 deal with the Union Public Service Commission (UPSC) and State Public Service Commissions (PSC). Article 320 stipulates that it shall be the duty of the Union and the State PSCs to conduct the examinations for appointment to the services of the Union and services of the State, respectively.

22. UPSC or the State PSCs are to be consulted in all matters relating to the method of recruitment to civil services and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another. Of late, the UPSCs and PSCs are being denuded of their powers of consultation while making promotions and transfer from one service to another. Article 323 lays down that it shall be the duty of the UPSC to present

annually to the President a report of the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with the memorandum, explaining as regard the cases, if any, where advice of the Commission was not accepted, the reasons for such non-acceptance, to be laid before the House of Parliament. Similar provision also exists for the State PSCs. Article 323A authorizes Parliament to set up administrative tribunals regarding disputes with regard to recruitment and conditions of service, appointed to public services. Parliament in exercise of its powers under Article 309 enacted the All India Service Act, 1951, which authorizes Union Government in consultation with the State Governments, to make rules for the regulations of conditions of service of persons appointed to All India Services.

23. Part V of the Constitution deals with the Union. Article 53 states that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 154 of Chapter VI of the Constitution states that the executive power of the State shall be vested with the Governor and shall be exercisable by him either directly or through officers subordinate to him in accordance with the Constitution. Article 73 of the Constitution states that subject to the provisions of the Constitution executive power of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction, as exercisable by the Government of India by virtue of any treaty or any agreement. Article 163 of the Constitution states that there shall be a Council of Ministers, the Chief Minister as the head to aid and advice the Governor in exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them with his discretion.

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.

25. Paragraph 15.1.3 of the report of the 2nd Administrative Reforms Committee (2008) reads as follows:

“A healthy working relationship between Ministers and civil servants is critical for good governance. While the principles governing the roles and responsibilities of Ministers and civil servants are well defined in political theory, in the actual working of this relationship this division of responsibility becomes blurred with both sides often encroaching upon the other’s sphere of responsibility. In any democracy, Ministers are responsible to the people through Parliament and therefore the civil servants have to be accountable to the Minister. However, an impartial civil service is responsible not only to the government of the day but to the Constitution of the land to which they have taken an oath of loyalty. At the same time, implementing the

policies of the duly elected government is a core function of civil servants. That is why the division of responsibility between the civil servants and ministers needs to be more clearly defined. A framework in which responsibility and accountability is well defined would be useful.”

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.

27. We find it, however, difficult to give a positive direction to constitute an independent CSB at the Centre and State Level, without executive control, which Hota Committee has recommended to be statutory in nature, that too, comprising of persons from outside the Government. Petitioners placed considerable reliance on the judgment of this Court in *Prakash Singh and Others v. Union of India* (2006) 8 SCC 1 and urged that similar directions be given to insulate, to at least some extent, the civil servants from political/executive interference. Retired persons, howsoever eminent they may be, shall not guide the transfers and postings, disciplinary action, suspension, reinstatement, etc. of civil servants, unless supported by law enacted by the Parliament or the State Legislature.

28. CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative (till the Parliament enacts a law), to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advice the political executive transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning.

29. We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.

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.

32. We have extensively referred to the recommendations of the Hota Committee, 2004 and Santhanam Committee Report and those reports have highlighted the necessity of recording instructions and directions by public servants. We notice that much of the deterioration of the standards of probity and accountability with the civil servants is due to the political influence or persons purporting to represent those who are in authority. Santhanam Committee on Prevention of Corruption, 1962 has recommended that there should be a system of keeping some sort of records in such situations. Rule 3(3)(iii) of the All India Service Rules specifically requires that all orders from superior officers shall ordinarily be in writing. Where in exceptional circumstances, action has to be taken on the basis of oral directions, it is mandatory for the officer superior to confirm the same in writing. The civil servant, in turn, who has received such information, is required to seek confirmation of the directions in writing as early as possible and it is the duty of the officer superior to confirm the direction in writing.

33. We are of the view that the civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted, if the decision is not his, but if he is acting on the oral directions, instructions, he should record such directions in the file. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk, because he cannot later take up the stand, the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity.

RTI Act and Civil Servants

34. Democracy requires an informed citizenry and transparency of information. Right to Information Act, 2005 (RTI Act) recognizes the right of the citizen to secure access to information under the control of public authority, in order to promote transparency and accountability in the working of every public authority. Section 3 of the Act confers right to information to all citizens and a corresponding obligation under Section 4 on every public authority to maintain the records so that the information sought for can be provided. Oral and verbal instructions, if not recorded, could not be provided. By acting on oral directions, not recording the same, the rights guaranteed to the

citizens under the Right to Information Act, could be defeated. The practice of giving oral directions/instructions by the administrative superiors, political executive etc. would defeat the object and purpose of RTI Act and would give room for favoritism and corruption.

35. We, therefore, direct all the State Governments and Union Territories to issue directions like Rule 3(3) of the All India Services (Conduct) Rules, 1968, in their respective States and Union Territories which will be carried out within three months from today.

36. The Writ Petitions are, accordingly, disposed of with the above directions.

.....J. (K.S. Radhakrishnan)J. (Pinaki Chandra Ghose)
New Delhi, October 31, 2013.