

Ensuring Fixed Tenure for Bureaucrats

For a system of government to function well, it is imperative that the bureaucracy is ensured operational autonomy to work impartially and effectively to realise the various objectives as are required in the public interest. Such autonomy could only be ensured if they are cushioned against any undue influences. However, this is not what usually happens in this country as reflected in myriad instances. And the most regular weapon used to bring an upright bureaucrat around is the so-called ‘undesirable’ postings and transfers.

An honest and non-pliable officer being hounded out through his career by way of frequent transfers is not something new. We have all been witness to such news which has become quite mundane by now. Civil servants like Ashok Khemka and Sanjeev Chaturvedi immediately come to our mind. The Damocles’ Sword of transfer has often been used as a potent and effective weapon by the political class against our famed steel frame which slowly but surely is alleged to be succumbing to relentless chipping at its foundations.

The Supreme Court, in its landmark judgment on the 31st of October, 2013, issued directives to the Central and State governments to ensure that all civil servants be given a ‘minimum assured tenure’ at a particular posting before they are transferred, so they can work effectively. It also ruled that a Civil Services Board (CSB), comprising senior bureaucrats, be formed at the Centre, in each state and Union Territory to advise the government on matters such as postings, transfers and disciplinary action. The SC also directed the Centre and state governments to pass an order within three months on giving fixed tenure to civil servants, i.e., by the 31st of January, 2014.

The verdict, which is on the line of Apex Court’s earlier order on police reforms for giving fixed tenure to senior police officers in the Prakash Singh case, is likely to go a long way in ensuring functional freedom to the Indian bureaucracy. The judgement came in response to a public interest litigation (PIL) filed by 83 retired bureaucrats led by the former Union Cabinet Secretary TSR Subramaniam drawing the attention of Apex Court towards multiple malaises afflicting Indian civil service including irregular and improper transfers of the bureaucrats. The PIL, inter alia, criticised the extant system of transfers, postings, promotions, disciplinary

action and other personnel matters pertaining to the members of various civil services in India finding them ad hoc and opaque. The said PIL and many other recommendations of the earlier Administrative Reforms Commissions (ARCs) have always espoused and championed the need for some definitive measures bring about some system reforms for ensuring functional autonomy for India's premier civil service.

"Transfers are often used as instruments of reward and punishment, with officials being frequently transferred on the whims and caprices as well as the personal needs of local politicians and other vested interests. Officers, especially those in the All India Services, serving in state governments, have no stability or security of tenure," the PIL said. The PIL had also advocated that the civil servants at all levels be given a minimum three-year fixed tenure in each post to encourage operational freedom within the precincts of rules and laws. It proposed that any premature transfer should be specifically authorised by a 'Civil Service Board/Commission' in special situations to be specified in writing.

It was felt that guaranteeing a 'minimum assured tenure' in postings would effectively deter the political class from using transfers as a threatening weapon against the *babus* (read bureaucrats). Attributing the deterioration in bureaucratic functioning to political interference, the Apex Court hoped that "fixing tenure of bureaucrats will promote professionalism, efficiency and good governance."

It is against this background that a Notification was issued by the Department of Personnel and Training (DOPT) on the 30th of January, 2014 in compliance of the October 2013 judgement of the Supreme Court. As per this Notification, cadre officers of All India Services (AIS) will now generally hold their posts for, at least, two years unless promoted, retired or sent on deputation outside the state or on training beyond two months. The said Notification shall hopefully come as a relief for the civil servants in, at least, those states where transfers are quite frequent.

The relevant rules framed in this regard say that "the Centre or the state government may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board". However, the Competent Authority may reject the CSB recommendation but will, in that case, have to record its reasons therefor. In the matter of transfers, the state CSB is to consider the reports of the administrative department along with any other inputs and is also supposed to obtain the views of the officer proposed to be transferred.

The notified rules require the state CSB to submit a quarterly report in such form as it deems fit to the Central government, clearly stating the details of officers recommended for transfer before the minimum specified tenure while also recording the reasons for the same. The CSB in each state is to be headed by the Chief Secretary and would, inter alia, include senior most Additional Chief Secretary or Chairman, Board of Revenue or Finance Commissioner or an officer of equivalent rank and Principal/Secretary of the Personnel Department while considering the transfers of the IAS officers. For transfers of the IPS officers, the CSB shall comprise members of IAS Board plus Home Secretary and DGP; and for recommending the transfers of the IFS (Indian Forest Service) officers, the CSB is to include members of IAS Board plus Forest Secretary and Principal Chief Conservator of Forest (PCCF).

In pursuance to the DOPT Notification, many state governments have already constituted their CSBs, while many are still to follow suit. All said and done, critics argue that many civil servants would baulk at complaining against a premature transfer because of the potential victimisation in future. Again, it is not very clear as to what would happen if the terms of the said DOPT Notification is not complied with or violated. The concept of the 'competent authority' with power to reject the CSB recommendation itself is not clearly delineated.

Besides, it is felt that the Central interference in such internal state matters might be few and far between. The castigation of a state government for violating the guidelines laid down in the said Notification may very well hinge upon the mutual understanding between the two governments. The Centre, in most likelihood, will gloss over the state deviation for apprehension of upsetting the mutual political understanding between the two tiers of governments.

Notwithstanding negativity of doubting Thomases, a positive beginning has definitely been made. One only hopes that with a conscientised civil society and a vibrant Fourth Estate, the governance in India shall become more organised, orderly, transparent and effective as and when such initiatives get slowly imbibed by our system.

Salient Points

- Operational autonomy to bureaucrats could be ensured if they are cushioned against any undue influences.
- 'Undesirable' postings and transfers are used as regular weapon to bring an upright bureaucrat down.
- The Supreme Court issued directives to government to ensure that all civil servants be given a 'minimum assured tenure'.
- Fixing tenure of bureaucrats promote professionalism, efficiency and good governance.
- Central Government interference in internal matters of state government might be few and far between
- A positive beginning has definitely been made.

Glossary

Non-pliable: inflexible

Damocles' sword: any situation threatening imminent harm or disaster

Baulk: to place an obstacle in the way of

Castigation: to criticise or reprimand severely

Hinge: a natural anatomical joint at which motion occurs around a transverse axis

Gloss: a false or deceptively good appearance