

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.435/2002

New Delhi this the 30th day of May, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

John I. Hungu,
S/o late Sh. Innocent Hungu,
Tanzanian National,
R/o C-3 (M.S. Flats),
Minto Road Complex,
New Delhi-110001.

-Applicant

(By Advocate Shri P.R. Toora)

-Versus-

1. Union of India through the
Secretary, Govt. of India,
Ministry of Information & Broadcasting,
Sanchar Bhawan, New Delhi.
2. Chief Executive Officer, Prasar Bharti,
Mandi House, New Delhi-110001.
3. Director General, All India Radio,
Akaswani Bhawan, New Delhi-110001.

-Respondents

(By Advocate Shri Pradeep Dahiya, proxy for Ms. Harvinder Oberoi, Counsel)

O R D E R

Applicant, a foreign national, employed in All India Radio on contract basis impugns respondents' order dated 21.8.2001 as well as 4.9.2001, wherein his request for free leave passage to his wife to visit her own country Tanzania has been rejected, in view of sub paragraph (4) of paragraph 2 of Ministry of Information and Broadcasting letter dated 28.7.82. Applicant seeks aforesaid passage alongwith 18% interest on the amount incurred by the applicant on free home passage undertaken by his wife.

2. Applicant was recruited by the Government in All India Radio as a Staff Artist on contract basis for a period of three years. The period was extended thereafter every five years upto the date applicant has attained the age of 60 years. Thereafter contract was extended on

yearly basis upto 6.1.2001. Thereafter extension was granted upto 30.6.2001 and lastly upto 31.12.2001. Applicant stood retired on 31.12.2001 and was relieved of his duties. Applicant has to go back to his country and has a valid Visa upto 31.5.2002.

3. As per Government of India's instructions contained in letter dated 28.7.82 free leave passage is available to Staff Artists and their family, including wife and dependant children but is admissible to those Artists who have completed at least two years service with All India radio and have at least one year left before the expiry of the contract. Aforesaid free home leave passage is admissible once in three year. Applicant availed the same but the wife of the applicant and the dependant children did not avail it for a long time due to Visa problem.

4. The requirement under sub paragraph (4) of paragraph 2 of the letter dated 28.7.82 was waived and no objection was raised by the Prasar Bharti, according free home passage to the applicant. Applicant requested for the aforesaid leave passage for his wife on account of certain contingencies but the same was rejected. Wife of the applicant visited Dar-es-Salam (Tanzania) from October to December, 2001 and returned back to Delhi, incurring a sum of Rs.44,776/- which was not re-imbursed to the applicant and his request was rejected.

5. Learned counsel for the applicant contended that in the agreement family is defined including wife and son and the Staff Artist and his family are also eligible for free home leave passage. It is further stated that as

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U per AIR Manual and its clause 16.18 foreign nationals employed with All India Radio are entitled to the same allowances and facilities at par with the Indians recruited at the same post. Further placing reliance on an OM issued by the Department of Personnel and Training dated 4.2.2002 it is contended that requirement of two years service before retirement to avail LTC block has been waived of by the Government in respect of Indian employees, as such the applicant is to be treated at par in the matter of pay and allowances with that of Indian staff has been meted out a differential treatment, which cannot be allowed in view of the law of equality enshrined under Articles 14 and 16 of the Constitution of India. Further it is stated that when the applicant's condition of not having one year's service in the contract at the time when he made a request for his free home leave passage respondents waived of the same, in case of his family, which includes his wife, not waiving the same despite the same condition existed as the request was made in August, 2001, whereas contract had come to an end on 31.12.2001 is not justified and is in violation of Articles 14 and 16. The decision is arbitrary.

h 6. It is further stated that he has made a request while in Tanzania to the respondents through a fax message sent to them on 20.12.2000, i.e., when more than one year was left for his retirement and attainment of maximum year of age of 65 years beyond which no extension can be sought, the respondents have not acted upon the same and denied the wife of the applicant free home leave passage. It is further stated that subsequently the request was re-iterated in communication dated 6.8.2001 as well as 22.8.2001. In this view of the matter it is lastly

contended that as his Visa is expiring the matter be disposed of so that he may get his dues and go back to his country to enjoy his retired life.

7. Respondents, on the other hand, took exception to the contentions of the applicant and stated that the rules framed by the Ministry of Information and Broadcasting and sanctioned by the President stipulate at least one year's service left before the expiry of the contract for free home leave passage. As the request of the applicant has been made on 20.6.2001 whereas the contract was extended upto 31/12/2001 the applicant's wife is not entitled for free home passage. It is further stated that the applicant was fully aware that only four months and 25 days have been left for his retirement and hence the claim for reimbursement of Rs.45,000/- is not as per the rules. It is also stated that the Selection Board considered the request of the applicant for extension of contract for one year, i.e., beyond the age of 65 years and as per the recruitment rules contract cannot be extended beyond 65 years. The contract was extended till 31.12.2001 on extending undertaking that the applicant was physically and mentally fit and the claim for reimbursement cannot be acceded to. It is lastly contended that the communication sent by the fax, as alleged by the applicant, has never been served upon the respondents and their action is within the parameters of the rules. As the applicant's wife is not entitled to free home passage, the OA may be dismissed with costs.

8. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view the earlier waiver, as

claimed by the applicant, according him no objection certificate to avail free home leave passage on 14.8.2001 whereas his contract was to expire on 6.1.2001, i.e., less than a year will not entail a vested or indefeasible right to the applicant to claim such a waiver in case of his wife. At that period of time applicant has not attained the maximum age of 65 years beyond which the extension could be accorded on contract basis to the applicant. Though the move was made to extend it further upto June, 2001 and further to 31.12.2001 as the applicant has not yet attained the maximum age of 65 years the aforesaid waiver was justified and in that view of the matter applicant was accorded free home leave passage.

9. As regards the contention that the communication was sent by the applicant in December, 2000 from Tanzania he is not able to persuade us and to file any authentic proof except fax message to indicate that the aforesaid request was communicated to the respondents. Follow up action and the confirmation report is not on record to take a view that the same has been duly served upon the respondents. As such the same has been denied by the respondents and on the basis of the pleadings, I am constrained to hold that the aforesaid information has not been delivered to the respondents. The request of the applicant for free home leave passage for his wife has been made on 6.8.2000 as well as 22.8.2001 when applicant's tenure has already been extended till 31.12.2001, beyond which on attaining the age of 65 years the contract could not have been extended any further. As such as the applicant has less than one year to retire as per the letter of the Government of 1982 ibid as the applicant's wife was not eligible to be accorded free home leave

passage the same was rightly turned down by the respondents, which is inconformity with the rules and cannot be found fault with.

10. As far as discrimination is concerned, there cannot be a parity between the applicant and his wife, as the previous waiver was in different circumstances and as there is not parity the applicant cannot be meted out the same treatment and the plea of discrimination is not well founded and is hereby rejected.

11. In so far as the plea of the applicant that he is to be treated at par with the counter-parts Indian Artists, the same cannot be countenanced as before being treated at par it has to be established that the applicant is eligible as per the Scheme and as the letter of 1982 clearly disentitles applicant's wife for free home leave passage he cannot take benefit of OM dated 4.2.2002 as well.

12. In the result and having regard to the reasons recorded above, I do not find any legal infirmity in the orders passed by the respondents. The OA is devoid of any merit and is rejected. No costs.

S. Raju

(Shanker Raju)
Member (J)

Encl.