

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No.194 of 1999

Decided on: 05.05.1999

Shri M.D. Gaikwad ..... Applicant

(By Shri R. Venkatramani, Sr. counsel with Shri S.Y. Khan,  
Counsel for the applicant).

Versus

Union of India & Another ..... Respondent(s)

(By Shri R.P. Aggarwal and Shri M.K. Gupta, Counsel for the  
respondents).

CORAM:

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? Yes
2. Whether to be circulated to the other Benches of the Tribunal? No

(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 194 of 1999

New Delhi this the 5<sup>th</sup> day of May, 1999

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

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Shri M.D. Gaikwad  
S/o Shri Savia Ram Gaikwad  
R/o 178-C, Mayur Vihar, Phase-II,  
Delhi. ..Applicant

Shri R. Venkatramani, Senior Counsel with Shri S.Y. Khan,  
Counsel for the applicant.

Versus

Union of India through

1. Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhawan,  
Dr. Rajendra Prasad Road,  
New Delhi.

2. Director General  
All India Radio,  
Prasar Bharati  
(Broadcasting Corporation of India),  
Dte. General: All India Radio,  
Akashvani Bhawan,  
New Delhi. ..Respondents

Shri R.P. Aggarwal with Shri Rajinder Nischal, Counsel  
for respondent No.1.

Shri M.K. Gupta, Counsel for respondent No.2.

ORDER

The transfer of the applicant who is a Deputy  
Director General under the respondent No.2 to Calcutta is  
under challenge in this application. By an interim order of  
the Tribunal dated 11.2.99, the respondents were directed to  
consider the representation of the applicant through  
respondent No.1 and a period of 4 weeks was allowed and the  
applicant was allowed to function in his post which he was  
holding prior to the impugned order. Subsequently, on  
16.3.99, the respondents reported that representation of the  
applicant had been disposed of. The learned Senior counsel  
for the applicant submitted that the representation had not

been disposed of meaningfully taking into account the averments made in the OA as well as the orders of the Tribunal with regard to the applicant, as directed by the Tribunal. It was, therefore, decided that the matter could be decided and disposed of after the pleadings are completed. Thereafter, the parties were heard on 8.4.99.

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2. The main thrust of the applicant's case is that the impugned order of transfer is beyond the competence of the second respondent inasmuch as no transfer of the existing employees of the All India Radio and Doordarshan have been effected in terms of Section 11 of Prasar Bharati Act, 1990 which came into force on 15.9.97 i.e. the appointed day as notified by the Central Government. Applicant contends that besides the fact that no action of transfer of employees to the Corporation, i.e., Broadcasting Corporation of India has been issued in terms of Section 11 of the aforesaid Act, the respondent No.2 has not been delegated with any specific power for transferring the applicant who is a member of an organized Central Government Service, namely, the Indian Broadcasting Service. It is stated that the respondent No.2 who is also Chief Executive of the Prasar Bharati had passed the impugned order in his capacity as Chief Executive of the said Prasar Bharati and he had no jurisdiction to pass such an order. The applicant also relies on Ministry of Law's comments as extracted in the order passed in OA 1802/98 dated 30.10.98 as well as in the order of the Chandigarh Bench OA 528/Ch/1998 dated 22.7.98 which also relied on the provisions of Section 11 of the Act granting interim stay of the operation of the order passed by the Director General of Prasar Bharati.

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3. The learned Senior Counsel arguing for the applicant made a fervent plea that the action of the second respondent was totally arbitrary. He, however, submits that the utter lack of jurisdiction and competency of the second respondent is what is material in deciding this application. He, however, submitted that the arbitrariness of the respondents will be clear from the facts that the post of Deputy Director General, Calcutta which had been abolished for number of years was hurriedly revived by respondent No.1 by their order dated 28.1.1999 although the applicant's transfer to the aforesaid post was passed by the impugned order dated 25.1.99 when there was no such post in existence on that day. The learned Senior Counsel also submitted that despite the fact that the applicant had almost reached the 58 years of age, the respondents have transferred him and this was against the general policy of not transferring people within 2 years of their retirement. He also contends that the action of respondent No.2 has been motivated by mala fide consideration. He refers to the decision in **Prem Chand Vs. U.O.I., 1996 (2) ATC 96 para 5.** The learned Senior counsel also referred to the demi official letter written by Additional Secretary under respondent No.2 and which has been referred to as Annexure R-2 to the counter-reply of the respondents. He submitted that this demi official letter does not purport to be a delegation to the Chief Executive Officer of Prasar Bharati under any provisions of Prasar Bharati Act, 1990. This, at best, could be internal communication which does not confer any power on the second respondent nor does it establish his competence to issue such an order. Where an officer as in the case of the applicant

holds the cadre post as he belongs to the Organised Service and the post in question continues to be within the cadre, the appropriate authority for ordering transfer will be only the cadre controlling authority and the Chief Executive Officer of the Prasar Bharati cannot have any authority to transfer cadre officer from one cadre post to another. The learned Senior counsel, therefore, argued that there is a fundamental lack of jurisdiction on the part of respondent No.2 to pass the impugned order and, therefore, it is clearly illegal. He further asserted that in terms of Section 12 of the Act, the Central Government had not seized to perform any functions under the aforesaid section and the functions outlined therein under Section 12 continued to be performed only by the Central Government and only when Central Government ceases to perform such functions, it would be appropriate for the Central Government to transfer its officers to the Corporation. By this, the learned Senior counsel aruged that the applicant continued to be an officer under the Central Government for all purposes.

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4. The respondents have filed separate replies. In the reply, respondent No.1 strongly relies on demi official letter dated 14.1.1999 referred to earlier. It is stated that it has been decided by the Government that the placement decision of such Government employees would be left to the Chief Executive Officer of Prasar Bharati who would have to move such an officer internally when the cadre posts are operated and by the specific demi official letter dated 14.1.99 (Supra), the respondent had specifically authorised the Chief Executive Officer to transfer all of the Prasar

Bharati officers which includes the applicant. Therefore, the learned counsel appearing for respondent No.1 argued that the letter of 14.1.99 was sufficient for the purpose of empowering the Chief Executive Officer of Prasar Bharati to make internal transfers in the exigencies of service. In the reply filed by respondent No.2 it is stated that the transfer of the applicant was necessary because he was an experienced officer and the North Eastern Zone was without a senior officer of the level of Deputy Director General. It is also submitted on behalf of respondent No.2 that the transfer of applicant from his present post under Section 11 of the Act was entirely different from the internal transfer as in the present case. It is further stated that the post of Deputy Director General, Eastern Region was not abolished and the administrative necessity to streamline the administrative work in the station/offices of All India Radio and Doordarshan continues to exist in that zone. The respondent No.2 has denied any allegation of mala fide or arbitrariness in the transfer of the applicant. The respondent No.2, who is the officer who has issued the impugned order, has submitted that the applicant had levelled false charges without annexing any documents to substantiate them and these allegations were totally an afterthought as there was no mention of these in his representation. The respondent No.2 has also submitted that the applicant has cleverly tried to place the answering respondent in an indefensible position. If the allegations are contested, he can claim that the transfer was ordered in a revengeful spirit and if they are ignored he can state that the allegations are true. The respondent No.2 has strongly denied the allegations of punitive action against the

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applicant on account of some differences in official matters.

5. I have heard the learned counsel for the parties and have also carefully perused the record.

6. It is a common knowledge that although the Prasar Bharati (Broadcasting Corporation of India) Act (hereinafter referred to as Act) passed in 1990 it had a chequered career and it finally came into force only by the notification dated 15.9.97 by the Gazetted Notification of that date as provided in the Act. In terms of Section 3(4) of the Act, the superintendence, management and direction of the affairs of the Corporation vest in the Prasar Bharati Board, constituted under Section 3(5). No material is placed on record nor is there any averment to the effect that such a Board has been constituted. The Executive Member of the Board when constituted shall be the Chief Examined of the Corporation. It appears that during the transition period, the respondent No.1 has appointed respondent No.2 as Chief Executive Officer pending the constitution of the Board. Even after the Act had come into force the transfer of the service of the existing employees of the Central Government to the Broadcasting Corporation (Prasar Bharati) had not been given effect to by an order as provided under Section 11 (1) of the Act. The proviso to the aforesaid section also enjoins on the Central Government that no order of transfer of an officer or other employee to the Corporation can be made if the officer employee concerned intimates his intention of not becoming an employee of the Corporation and it is also made clear in the aforesaid section that these

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provisions apply to all the Members of the Indian Information Service, Central Secretariat Service or any other service. It is not the case of the respondents that action has been taken in respect of the existing employees of the Corporation including the applicant for their transfer to the Corporation in the aforesaid section of the Act. This would imply that the applicant continues to be an employee of the Central Government and also belongs to the cadre of service of Indian Broadcasting (Programmer) Service and holds the post of Deputy Director General. It appears that even the Chief Executive Officer has not been formally transferred to the Corporation under this provision.

7. The respondents place main reliance on the demi official letter of the Additional Secretary dated 14.1.99 (Supra) to contend that the Chief Executive Officer of the Prasar Bharati has been given the necessary power to take suitable placement decision in respect of any Government employee. Para 2 of the aforesaid letter reads as follows:-

" 2. It has been decided that whenever the services of a Government employee are placed at the disposal of the Prasar Bharati, the placement decision would be left to the CEO, Prasar Bharati, and accordingly Prasar Bharati would have the freedom to move such an officer internally whenever and wherever they please. This decision would apply to all cadres and such persons can be posted by Prasar Bharati within the organisation wherever the cadre posts are operated. I hope this clarification would serve the purpose of meeting the administrative requirements of Prasar Bharati in any situation".

8. Although the Act had come into force the respondents have not placed on record any order or

notification placing the services of the Government employees at the disposal of the Prasar Bharati. Therefore, it cannot be said that the employees working in Prasar Bharati had become employees of the Prasar Bharati Corporation. Therefore, the contention of the applicant that he continues to be under the Central Government service has to be accepted and in the absence of any order or notification placing the services of the applicant at the disposal of Prasar Bharati, his placement within the Prasar Bharati would not arise. However, it is fairly clear that despite the fact that the Act had come into force in September, 1997 consequential orders under Section 11 relating to the transfer of existing employees had not been issued, and this may be due to various difficulties. It is provided under Section 35 of the aforesaid Act that if any difficulty arises in giving effect to any provision of this Act, the Central Government may by order published in the official Gazette make such provisions not inconsistent with the provisions of the Act for removal of such difficulties. No such notification in the official Gazette in relation to any difficulties experienced in implementing Section 11 of the Act appears to have been published. Be that as it may, it is also common knowledge that the legislation relating to Prasar Bharati itself has been under consideration for amendment. In the light of these facts, the applicant who continues to be a Government servant and as member of the organised service, is by the impugned order transferred to another cadre post.

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9. Transfer is only an incidence of service and can be made by any authority competent to make such transfer. As far as the impugned order is concerned, this has been made by the Director General of Doordarshan who is also stated to be Chief Executive Officer of the Prasar Bharati. The applicant has not shown any rule or order in which the authorities are specified for transfer of officers at various levels within the cadre. The fact remains that the Director General, Doordarshan continues to be Head of the Department of Doordarshan, as it is stated that the Central Government has not ceased to perform any function under Section 12 notwithstanding the fact that the Prasar Bharati Act had come into force. In the view of this matter, therefore, the Director General as Head of the Department has the power to make suitable posting of officers including the officers of the level of Deputy Director General within the organisation. (21)

10. The next question is about the transfer to a non-existing post as the post in question was deemed to have been abolished some years ago. This, in my view, is rather too technical inasmuch as the Ministry of Information and had issued orders for revival of the post and the posts have become available for officers to join such post.

11. Another question is whether the transfer can be considered to be in public interest and whether there has been any arbitrariness or mala fide in such transfer. It is stated by the respondents that although the work relating to the East Zone had been looked after by a senior time scale officer for long, it was felt in the administrative interest

that the work should be supervised by a senior level officer of the rank of Deputy Director-General. It cannot, therefore, be said that the decision to operate the posting or to post an officer in that post can be said to be arbitrary. There is no material on record to suggest that there is no administrative interest or exigency. Just because the work was supervised by a Senior Time Scale Officer hitherto, would not by itself negate the administrative exigency/public interest if perceived by the respondents and courts/tribunals cannot hold that there is no public interest in such a situation. As regards the posting of the present applicant to the said post, although reference is made to some differences between applicant and respondent No.2, no mala fide of the respondent No.2 has been taken as a ground in this application. Besides, respondent No.2 has not been personally impleaded also. There is no material on record to indicate that there has been any colourable exercise of power against the applicant in ordering his transfer. Even if the applicant has been appointed by the President under the rules applicable to him as he was a officer of Group 'A' category, the power of transfer can be exercised by the Head of the Department as in the present case. There is no law or rule which prohibits such a power from being exercised. The fact that the Ministry had considered this question and left it to CEO Prasar Bharati/DG, Doordarshan to make postings within the Prasar Bharati would go to show that there was no arbitrariness in the impugned order. There is no material on record to show that the CEO/Prasar Bharati has been entrusted with separate powers under the Act, and that the power of transfer of

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senior level officers is one among them.

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12. The learned Senior counsel referred to proviso to Section 11 of the Act and submitted that the proviso should be considered in relation to the principal matter to which it stood as a proviso and he referred to page 155 of the Book on Principles of Statutory Interpretation by G.P. Singh Third Edition which refers to the observation of their Lordships of the Apex Court in Dwarka Prasad Vs. Dwarka Das Saraf, AIR 1975 SC 1758 and Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765 at page 769 etc. There is no dispute in regard to this point of the learned Senior counsel. As stated earlier, no order under Section 11 has been passed in regard to the transfer of the officers to the Corporation and, therefore, as stated in the earlier part of this order, the applicant is to be held to be under the Government service still and not under the service of the Corporation. The learned Senior counsel, however, referred to the letter of 14.1.99 to stress the point that this letter cannot be construed to have legal validity in respect of the powers alleged to have been delegated to the Chief Executive Officer of the Prasar Bharati. He refers to the decision in Naraindas Indurkhy Vs. The State of Madhya Pradesh and Others, AIR 1974 SC 1232. I have seen the decision in this case. The facts and circumstances in this case are not parimateria with the present case. In that case the power of the Board in prescribing the Text Books on languages was held to be outside the jurisdiction and was held to be ultra vires and the said notification was held to be ineffective and it was held that the Board was not

delegated with the power in terms of the statute creating the Board. In the present case since the applicant continues to be under the Government service and has not been formally transferred to the Prasar Bharati Corporation in terms of Section 11, the decision of the Government in authorising the Chief Executive Officer of the Corporation, who himself had not been transferred to the Corporation and continued to be the Head of the Department and acting as a Chief Executive Officer also cannot be said to be illegal or violative of any provisions of the statute.

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13. The respondents had rightly referred to the oft relied decisions in Union of India and Others Vs. S.L. Abbas, 1993 (4) SCC 357, Union of India Vs. S. Vardana Rao, 1986(4) SCC page 131 and State of M.P. Vs. S.S. Kourav, 1995(3) SCC page 270. It is not necessary to dilate on these decisions since it is held in the present case that there has been no discrimination or arbitrariness or the transfer was motivated by extraneous consideration or there was no colourable exercise of power. Besides, it has also been held that the transfer has not been made as a punitive measure and it cannot be said that in the circumstances of the case that no public interest has been served by ordering the transfer of the applicant.

14. It is also necessary at this stage to refer to the other contention of the applicant that he was transferred within 2 years of his retirement. On behalf of the respondents it is stated that the applicant is the senior-most Deputy Director-General and it is felt by the

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respondents that the Eastern Region will be served better if this is supervised by the senior-most Deputy Director-General. The relative importance for officers assigned to serve in this region is a matter of administrative discretion and the Courts and Tribunals cannot interfere with and it has to be accepted that the respondent No. 2 would have taken into consideration all the relevant factors before taking decision in this matter including the fact that the applicant is within 2 years of his retirement. Although the applicant has not produced any rule or guideline in this behalf, it cannot be held that even if such a guideline is inforce, it confers any vested right to the applicant to content that the transfer is illegal.

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15. In the conspectus of the above discussion, I do not find any merit in this application. The application, therefore, fails and is accordingly dismissed. There shall be no order as to costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

Rakesh