

Central Administrative Tribunal
Principal Bench

O.A. 1993/99

New Delhi this the 26th day of June, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Km. Indira Mathur,
D/o late Shri J.S. Mathur,
working as Deputy Director of Programmes,
Directorate General Akashvani Bhawan,
Parliament Street, New Delhi-1100001.
R/o 316, Type-IV, Laxmibai Nagar,
New Delhi-110023.

... Applicant.

(By Advocate Shri S.Y. Khan)

Versus

Union of India through

- (1) Secretary,
Ministry of Information
and Broadcasting,
Government of India,
Shastri Bhawan,
New Delhi-110001.
- (2) Chief Executive Officer
Prasar Bharti,
(Broadcasting Corporation of India)
Akashvani Bhawan,
Parliament Street,
New Delhi-110001.
- (3) Director General,
All India Radio,
Prasar Bharti,
Directorate General,
Akashvani Bhawan,
Parliament Street,
New Delhi-110001.

... Respondents.

(By Advocate Shri K.R. Sachdeva with Shri Rakesh Pal,
Assistant, Departmental Officials)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant has filed this application challenging the order passed by the respondents dated 25.8.1999 transferring her from DGAIR, New Delhi to AIR Sawai-Madhopur, on the grounds that the order is arbitrary, illegal and discriminatory, and against the published policy issued by the respondents (Annexure A-8).

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2. The brief relevant facts of the case are that the applicant, who is working with the respondents as Deputy Director at AIR New Delhi had been transferred by the aforesaid transfer order issued by the respondents. Earlier, the applicant had been posted at AIR, Mathura against which she had made a representation. This order had been cancelled by the respondents who had decided to retain her at New Delhi by their order dated 13.4.1999. Thereafter, the applicant has been transferred by the respondents by the impugned order dated 25.8.1999 to Sawai-Madhopur, Rajasthan, as Station Director.

3. One of the main grounds urged by Shri S.Y. Khan, learned counsel is that while several other officers holding similar posts who have been posted at AIR, New Delhi with longer stay have been retained here, the respondents have chosen to transfer the applicant which is against para ix of the aforesaid transfer policy issued by the respondents themselves. In paragraph 4.6 of the O.A. the applicant has referred to atleast 12 such officers who, according to her, have longer stay at Delhi than her. The applicant has stated that she was posted as Assistant Station Director in New Delhi in 1995 and was promoted as Deputy Director in 1999. She has also stated that between 1995 and 1999 she was posted at AIR, New Delhi. In other words, Shri S.Y. Khan, learned counsel for the applicant has contended that since her reposting in New Delhi in 1995, the applicant had done continuous four years' service prior to the impugned order dated 25.8.1999. His contention is that there are a number of other officers of similar ranks who have been retained in Delhi for more than 10 years and were not transferred which

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is, therefore, against the provisions of paragraph ix of the respondents transfer policy. The applicant had made a representation against the aforesaid transfer order on 6.9.1999 to which learned counsel states that he did not receive any reply. Hence this O.A. By Tribunal's order dated 14.9.1999, the respondents were directed to maintain status quo as on that date which has been continued till date.

4. By Tribunal's order dated 12.5.2000, after hearing both the learned counsel, the respondents were directed to file an additional affidavit giving reasons regarding retention of the officers in New Delhi mentioned in paragraph 4.6 of the O.A. Accordingly, they have filed the additional affidavit on 24.5.2000. In this affidavit, the respondents have stated that 8 officers are attaining superannuation within 3 years "from now" i.e. as of May, 2000. It is seen from the details given by the respondents that only seven officers from serial No. 1-7 are retiring within three years from the date of the impugned transfer order dated 25.8.1999 and the eighth officer Shri P.N. Mishra is to retire on superannuation on 31.1.2003, that is beyond a period of three years of the transfer order which has been impugned in this O.A.

5. Learned counsel for the respondents has clarified that in the case of Dr. Upendra Raina, Deputy Director, he has been posted in AIR, New Delhi since 10.6.1988, Smt. Karuna Srivastava, Deputy Director, has been posted in AIR, New Delhi since 1976, Shri O.R. Naizi, Dy. Director has been posted in AIR, New Delhi since January, 1993 and Km. Veena Vinayak, Assistant Director (Programme) has been posted

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in AIR, New Delhi since February, 1983. The contention of the respondents is that the impugned transfer order has been issued in public interest, as there is no Station Director in position at Sawai-Madhopur. According to them, for smooth and effecient functioning in that Station, they require the services of a Station Director and hence the applicant was transferred there. They have also submitted that earlier, on her promotion to Senior Time Scale, the applicant was posted at AIR, Mathura but at her request she was retained at Delhi on promotion. They have also submitted that the impugned transfer order of the applicant to AIR, Sawai-Madhopur has been approved by the DG/CEO, who is the competent authority. The respondents have submitted that in the facts and circumstances of the case and particularly the reasons given in the additional affidavit dated 24.5.2000 as to why they have retained five other officers in New Delhi it was sufficient to show that they have applied their mind and taken a proper decision while considering the case of the applicant for transfer to Sawai-Madhopur.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. It is settled law that in matters of transfers the Courts/Tribunal should not normally interfere with the decisions of the competent authority, especially when the respondents have stated that the transfer is being done in public interest, except where the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions (See Union of India Vs. S.L. Abbas (1993(2)SLR 585) and Gujarat State Electricity Board Vs. A.R. Sungomal Poshani (AIR 1989 SC 1433). In S.L. Abbas's

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case (supra), the Hon'ble Supreme Court has held that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere in it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration".

8. In this case, the previous representation submitted by the applicant is said to have been rejected by the respondents by their letter dated 14.9.1999. Shri Rakesh, Pal, Departmental representative has produced the relevant file from which it is seen that the reply dated 14.9.1999 merely states that the applicant's request has been considered sympathetically, but it has been recorded that the same cannot be allowed and she was asked to be relieved by 17.9.1999.

9. In the present case, the applicant has submitted that the respondents have not properly followed the transfer policy and, in particular, paragraph ix which reads as under:

"When the question of transfer is considered, as a normal rule, a person with the longest continuous stay at the station, irrespective of the rank(s) held by him earlier, should ordinarily be transferred first. For this purpose, the service rendered at a Station as a Local recruit will not be taken into consideration for determining the length of continuous stay at that station. Also, the actual period of continuous service at the site(s) of installation(s) will be excluded for computation of

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continuous stay provided the period of stay at the installation is more than ninety days in a calendar year".

10. The respondents have tried to justify their decision as to why they have retained four of the officers who admittedly have a longer stay at AIR, New Delhi, because according to them they have certain expertise, for example Dr. Upendra Raina, Dy. Director, who has expertise in Kashmiri language and Smt. Karuna Srivastava, Dy. Director, who is the incharge of music section and so on. However, they have nowhere stated that the applicant is unfit for being retained at AIR, New Delhi. From the facts given above, it is also seen that at the time of passing the impugned transfer order on 25.8.1999, there were as many as 5 officers, including Shri P.N. Mishra, who could have been considered for transfer to any other place as admittedly, they had a longer stay here. It is no doubt correct to state that while considering the question of transfer, the competent authority, as a normal rule has to consider the person with a longest continuous stay at the Station, irrespective of the ranks, who should originally be transferred first which is in accordance with the transfer policy issued by the respondents themselves. As no good reasons have been given as to why the applicant was singled out for transfer out of AIR, New Delhi in preference to others who admittedly had longer stay at this place, it cannot, therefore, be stated in the facts and circumstances, that the respondents had adhered to their own ^{published} policy. As held by the Supreme Court in S.L. Abbas's case (Supra), the competent authority must keep in mind the guidelines issued by them which the respondents have not done in the present case. While it will also be correct to mention that it is

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not for a Court or the Tribunal to interfere in transfer matters, but at the same time it needs to be emphasised that the respondents ought to have adhered to their transfer policy. No satisfactory reasons or sufficient ground have been disclosed by them in their replies as to why the applicant had been chosen for transfer to Sawai-Madhopur over the other five officers having longer stay in AIR New Delhi.

11. In the result, for the reasons given above, the impugned transfer order dated 25.8.1999 transferring the applicant from DGAIR, New Delhi to AIR, Sawai-Madhopur is quashed and set aside, leaving it open to the respondents to proceed in the matter in accordance with law. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'