

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2604/99

New Delhi this the 22nd day of February, 2000
Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)

Pravin Kumar Arora,
S/o Shri Om Prakash Arora,
1/3135, Ram Nagar, Mandoli Road,
Shahdara, Delhi-110032.

...Applicant

(By Advocate Shri B.S. Oberoi)

-Versus-

1. Union of India,
through its Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi.
2. Chief Executive Officer,
Prasar Bharti, Mandi House,
New Delhi.
3. Chief Engineer, Prasar Bharti,
Broadcasting Corporation of India House,
Shahjahan Road, New Delhi.

...Respondents

(By Advocate: Shri S.M. Arif)

ORDER

By Reddy, J.-

The order of transfer of the applicant
is under challenge in this OA.

2. The applicant joined as Technician
in All India Radio and Doordarshan in 1985 in the
office of Chief Engineer North Zone. He was
promoted as Sr. Technician w.e.f. 10.8.89. In
1993 he was transferred to Doordarshan Kendra,
Delhi. In 1996, though he was transferred from
Doordarshan Kendra, Delhi to HPT, Pritam Pura but
he was brought back soon thereafter. By the
impugned order dated 26.11.99 he was transferred
from DDK Delhi to Doordarshan News CPC, Delhi.

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Challenging the order of transfer, the applicant filed the present OA.

3. Learned counsel for applicant submits that he has been harrassed by frequent transfers keeping his seniors without any transfer for several years. It is, therefore, contended that the order of transfer is not only malafide but also discriminatory and also contrary to the transfer policy.

4. It is next contended that the applicant being an employee of the Ministry of Information and Broadcasting, Prasar Bharati is not empowered to transfer him.

5. Learned counsel for the respondents, however, submits that the transfer has been made in the exigencies of service and in public interest and the applicant was not the only employee who has been shifted from DDK Delhi to CPC New Delhi but there are atleast 200 persons who have been shifted alongwith posts to CPC, New Delhi as a new station has been opened with 24 hours news service. It is further pointed out that this being only a local adjustment is not a transfer in the eye of law. The applicant has not been transferred out of Delhi since 1989 and he can, therefore, have no grievance by the impugned order. Learned counsel further argued that as the



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applicant was working under Prasar Bharati he is liable to be transferred by the competent officer therein.

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6. I have given careful consideration to the arguments advanced by the learned counsel.

7. It is trite law that the transfer is an incident of service and it cannot be challenged on any ground except on grounds of malafide exercise of power, competence of the officer to transfer, and in violation of the service conditions. It is not in dispute that the applicant has been working in All India Radio and Doordarshan since 1985 at Delhi. In 1993 he was only transferred from Chief Engineer's Office to Doordarshan Kendra in Delhi only. Again in 1996, i.e., after a period of three years he was shifted from one Kendra to another in Delhi. Thus, though he was being shifted from one place to another in Delhi, he was never posted out of Delhi from 1985. Even under the impugned order he was only transferred from Delhi Doordarshan Kendra to Doordarshan News CPC where it is stated that a new station was opened for broadcasting news for 24 hours, along with several persons with their posts. As stated in the counter-affidavit 200 employees have been transferred to man the new station and in that the applicant was one of them. Hence, I am of the view that there are no malafide or misuse of power in the action taken by the respondents.

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8. I also do not find any force in the contention that the transfer is contrary to the transfer policy. The expression 'transfer' used should ordinarily be taken as transfer out of the cadre. Hence, the transfer from one Kendra to another Kendra is not transfer within the meaning of the expression 'transfer' used in the guidelines/ transfer policy. In the present case I find that the authority had to pick up such of those people who are suitable for the purpose and transfer them to man the new station. Hence, long standing in a particular station cannot be a relevant or valid constitution. 8

9. There appears to be, at the first blush, some substance in the last contention. It is the contention that an employee of the Ministry of Information & Broadcasting cannot be validly transferred by the Directorate of Prasar Bharati. It is true that in OA-416/99 by order dated 6.9.99 the learned single Member of this Bench of the Tribunal has taken the view that the Prasar Bharati was not competent to transfer the employee of the Ministry of Information & Broadcasting. The learned counsel for the applicant places strong reliance upon the above judgement. Let us examine the validity of the contention.

10. The applicant though an employee of the Government of India, it is the common ground that he has been actually working in Prasar

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Bharati after the Prasar Bharati came into existence and after the work of broadcasting has been taken over by it. It is true that the applicant's services have still not been legally transferred to Prasar Bharati in the manner contemplated under Section 11 (1) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1980 (for short the Act). Under Section 11 (1) of the Act it is lawful for the Central Government to transfer by order any of its employees to the Corporation. Admittedly, in the present case no such order has been passed by the Central Government. Hence, the applicant continues in law, to be the employee of the Ministry of Information & Broadcasting. An identical question as to the competence of an officer of Prasar Bharati to transfer an officer of the Government of India who has been working in the Prasar Bharati, has also come up for consideration before the Bangalore Bench (DB) of the Tribunal in OA-914/98. The Bench has taken the view that the applicant therein must be working only as a deputationist. The Bench observed:

"When once it is not disputed that the applicant continues to be an employee of the Government of India, then the only other mode by which the applicant could be working in Prasar Bharati is as a deputationist. It is true that there is no specific provision to deal with the status of the employees who would continue to work in Prasar Bharati after that institution came into being till the Government of India makes an order of transfer of service under Section 11. Even in the absence of a specific provision, the only conclusion that can be drawn from the circumstance that the employee or officer who was previously



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working in AIR or Doordarshan and who is an employee or officer of Government of India continues to work in Prasar Bharati, is that he must be deemed to have been on deputation to Prasar Bharati."

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It was also held that the applicant who was deemed to be on deputation to Prasar Bharati cannot question the right of Prasar Bharati to transfer him from one place of work to another within Prasar Bharati.

11. We are in respectful agreement of the reasoning given by the learned Judges. The learned counsel for the applicant, however, submits that the above judgment is based upon the admission made by the applicant in that OA that all the employees of the Central Government working in AIR and Doordarshan were deemed to have been on deputation to the Corporation. I do not agree. A reading of the judgment makes it clear that the admission made by the applicant therein has been mentioned in support of the view taken by the Bench.

12. There can be no other rational explanation as to the status of the applicant whose services are at the disposal of the Prasar Bharati which is a statutory Corporation established under the Act, than on deputation. It is true that the applicant has not severed his connections with the Central Government. He continues to be the employee of the Ministry of Information and Broadcasting. Hon'ble Member

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(Admnv) Mr. N. Sahu in OA NO.416/99 has taken the view that the transfer was without jurisdiction only on the ground that the employee continued to be ^{an} employee of Central Government. But an employee on ^{deemed} deputation ^{continues to be the employee of the central govt} can be shifted from one place to another, by the authority under whom he works. In the circumstances, following the decision of Bangalore Bench which is also binding on me, I have to reject the contention raised.

13. The O.A. is, therefore, dismissed.

No costs.

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)

"San."