

(18)

Central Administrative Tribunal, Principal Bench

Original Application No.416 of 1999

New Delhi, this the 6th day of September, 1999

Hon'ble Mr.N.Sahu, Member (Admnv)

J.C.Bhatia,
Sr.Admn.Officer,
CPC,Doordarshan,New Delhi

Resident of C-6/10,Keshav Puram,
Delhi-110035

.....Applicant

(By Advocate: Shri S.Y.Khan)

versus

Union of India through

1.The Secretary,
M/o Information & Broadcasting,
Shastri Bhavan,New Delhi-110001.

2.Dr.O.P.Kejariwal,
Acting Chief Executive Officer,
Prasar Bharti,(B.C.I.),
Mandi House,
New Delhi.

3..Shri K.N.Pandey,
Director General(Admn.),
Doordarshan Bhawan,
Mandi House,New Delhi-110001

.....Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R(ORAL)

By Hon'ble Mr.N.Sahu,Member(Admnv)

Shri Rajeev Bansal,learned counsel for the respondents has placed before me the order passed by the Ministry of Information & Broadcasting dated 11.3.99. This order reiterates that the Ministry of Law as well as the Ministry of Information and Broadcasting are of the view that the employees of Prasar Bharti still continue to be the Government servants till their services are transferred to Prasar Bharti by an order under Section 11(1) of the Act.

2.

Learned counsel for the respondents made

19

three submissions. The first submission is a reference to letter dated 14.1.99 written by one Shri R.R.Shah, Additional Secretary in the Ministry of I&B to Dr.O.P.Kejariwal, Chief Executive, Prasar Bharti. As this letter is the main plank on which the learned counsel for the respondents presses his submissions, I shall extract both the paragraphs of the letter:

"You may be aware that in matters of internal transfers of IIS officers etc. within Prasar Bharati, doubts had been raised about the competence of Prasar Bharati to transfer such persons within the organisation to places where these cadre posts are operated. Recently, in connection with a CAT case filed by an IIS officer against UOI and others in the Chandigarh Bench, we had the occasion to examine this issue in detail.

2. It has been decided that whenever the services of a Govt. employee are placed at the disposal of Prasar Bharati (emphasis supplied), 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."

3. The second submission made by Shri Rajeev Bansal is that the post which the applicant has been holding is no longer vacant. The two posts available for his posting had been filled up by two incumbents who cannot be dislodged at this stage. His third submission is a reference to the decision passed by the Hon'ble Vice-Chairman Shri S.R.Adige in O.A. 131A/98 dated 27.5.98 in which he pointed out that the

an

VP

applicant has been impleaded as respondent no.4. He was aware that there was no post vacant at this stage for accommodating him.

4. I will not delve at length into all aspects. The only question to be decided is whether the transfer of the applicant is legally valid or not. I have discussed in my order dated 22.2.99 the background facts and the legal objections. The said order may be read as part of this order. It is now clarified by the Ministry of Law as well as Ministry of I&B that the employees of Prasar Bharti still continue to be Government servants till their services are transferred to Prasar Bharti by an order under Section 11(1) of the Act. On the basis of this pleading in Gaekwad's case, the Hon'ble High Court of Delhi had stayed the operation of the order of C.A.T. which dismissed the O.A.

5. I have also gone through the letter of the Additional Secretary. I have repeatedly sought the clarification from the learned counsel for the respondents as to whether the services of the applicant had been placed at the disposal of Prasar Bharti. Shri Bansal categorically stated at the Bar that no order has been passed to this effect. Thus the applicant still continues to be working under the Ministry of I&B. Under these circumstances whether the authorisation given by the Additional Secretary on behalf of the Ministry of I&B to the Chief Executive, Prasar Bharti would still be relevant to transfer the applicant? The answer is clearly "no". The Chief

[Handwritten signature]

Executive, Prasar Bharti gets jurisdiction to transfer the applicant only when the applicant's services are placed under him. Till that time, he does not. As it is clear that the applicant's services are not placed under Prasar Bharti, the impugned order is bad in law and deserves to be quashed. It is accordingly quashed.

6.. Learned counsel for the respondents Shri Rajeev Bansal explained the difficulties in this regard. The law on the question of transfer is well settled. As long as there is a legal order passed by a competent authority, the court should not normally interfere with such an order if it does not infringe the rules and is not malafide. Except these two restrictions, the courts have given complete liberty to the employer to transfer an employee in accordance with the rules and guidelines. Although difficulties have been expressed by Shri Bansal, I am unable to consider them because the order is ab initio void. It is passed by an authority who is not competent to do so. However the Ministry of I&B, the employer respondent, is free to consider all aspects of the matter relating to his transfer and act in accordance with law.

7.. The O.A. is allowed leaving the parties to bear their own costs.


(N. Sahu)
Member (Admnv)

/dinesh/