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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 151 of 1998 decided on 20.3.1998.

Name of Applicant : Smt. Preeti Sharma

By Advocate : Shri S.Y.Khan

Versus

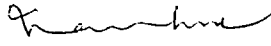
Name of respondent/s Union of India & another

By Advocate : S/Shri P.H.Ramchandani & R.V.Sinha

Coram:

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

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. -~~Yes~~/No

  
(N. Sahu)  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.151 of 1998

New Delhi, this the 20th day of March, 1998

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

Smt. Preeti Sharma, w/o Shri Sunil Kumar  
Sharma, r/o 32A, DDA Flats, Mangalpur,  
Palam Colony, New Delhi - APPLICANT

(By Advocate Shri S.Y. Khan)

Versus

Union of India, through

1. Secretary, Ministry of Information &  
Broadcasting, Shastri Bhavan,  
Dr. Rajendra Prasad Road, New Delhi.
2. Director General, Doordarshan, Mandi  
House, New Delhi. - RESPONDENTS

(By Advocate Shri P.H. Ramchandani along with Shri  
R.V. Sinha)

ORDER

By Mr. N. Sahu, Member (Admnv) -

The applicant challenges an order dated 7.1.1998 (Annexure -A-1) rejecting the applicant's request for cancellation of her posting at Doordarshan Kendra (in short 'DDK') Bareilly; and seeks a direction to adjust her as Programme Executive against one of the vacant posts available at DDK Delhi.

2. The grounds taken by her are as follows - other lady officers were retained at the same station after promotion; there are four vacancies of Programme Executives at DDK Delhi; and her case has been recommended by her immediate superior. She says that one Shri Amar Nath Amar promoted along with her has been retained at Delhi and the same

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consideration had not been extended to her. She has cited the latest instructions of the Ministry of Personnel dated 12th June 1997 (Annexure-A-6) under which wife and husband are to be kept at the same place unless the exigencies of service demand otherwise. It is stated that in Bareilly there are four posts of Programme Executive and the contention that her posting alone could save Bareilly Transmission is incorrect. She stated that three other lady officers have been posted to Bareilly. They are - Smt. Neelam Chaturvedi from Lucknow, Ms. Kamlesh Reman from Lucknow and Mrs. Kuljeet Kaur from Jalandhar. The other ground mentioned by her is that a large number of Programme Executives senior to her are still retained in Delhi and she alone has been singled out for this transfer. She has listed 36 Programme Executives who have not been shifted out of Delhi from the total strength of 50. She also stated that these persons have stayed in Delhi for a far longer tenure than the applicant. Herein are the names of persons who are continuing in Delhi prior to 1990 only to emphasise that they have stayed here for a considerable length of time -

Sl. No.	Name	From
	S/Shri	
1.	D. Rehman Usmani	31.3.1983
2.	Arthur Victor	29.10.1984
3.	S.K. Sadhu	18.4.1983
4.	Jagrinder Kaur	9.11.1981
5.	N.K. Chopra	18.4.1983
6.	R. Mangalam	23.6.1988
7.	Jose J. Mathew	6.7.1988
8.	P.C. Jain	25.7.1989
9.	Satish Chander Vats	30.6.1989
10.	Kirnesh Sharma	4.11.1981
11.	B.D. Mohanty	27.12.1982
12.	Archana Malhotra	27.7.1983
13.	Ashok Kumar Gupta	29.8.1983

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14. Kulwant Kaur Rekha  
15. R.S.Sarang  
16. P.C.Jain

28.6.1983  
30.8.1983  
25.7.1989

3. The applicant's grievance is that when the persons mentioned above who have gained sufficient station seniority are still retained her genuine grievances were not considered. It is a case of arbitrary transfer and no consideration has been shown to her genuine grievances. The learned counsel cited the following decisions - G. R. Gupta Vs. Union of India, ATR 1992 (2) CAT 316; Gunendra Chandra Debnath Vs. Union of India, ATR 1991(2)CAT 565; and Ramadhar pandey Vs. State of U.P., JT 1993(4) SC 72.

4. It is also mentioned that one Ms.V.S.Kumari Geeta working at Thiruvananthapuram has been posted at DDK Mumbai but she was assured of retention within 3-4 months when the post fell vacant there. The learned counsel has also drawn my attention to sub para (ix) of para 1 of the transfer policy (Annexure-RE-1), according to which "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". The applicant states that she has been singled out while several persons senior to her have been retained. In the case of one P. Dorai Raj, Cameraman Grade-I, Doordarshan (O.A.No.2370/96) who has been transferred to Aizwal this Court interfered

and cancelled the order of transfer on the ground that the transfer policy has not been adhered to. She also submits that she has been recently married and is in the family way.

5. The learned counsel for the respondents submitted that she has been posted at DDK Bareilly in view of administrative requirements. The post of Programme Executive is a Group 'B' post and carries all India transfer liability. Her representation was considered along with the representation of Shri Amar Nath Amar and Shri Manoj Srivastava. Shri Amar Nath Amar's case was one of continuous illness and, therefore, it was thought fit to retain him at Delhi. The two other representations including that of the applicant were rejected on the ground of public interest. In respect of the O.M. dated 12.6.1997 it is stated that those instructions are subject to the condition of administrative convenience and public interest. At the time when the applicant was posted all the posts of Programme Executives were vacant at Bareilly whereas in DDK Delhi 48 Programme Executives are in position against 50 posts. The respondents, therefore, thought that the services of the applicant are more urgently required at Bareilly than at Delhi. It is further submitted that transfer/posting is a normal administrative activity and the applicant has been posted on promotion to Bareilly in public interest. Admittedly, there is no malafide involved even according to the applicant and there has been no violation of any statutory rules. The learned

counsel has drawn my attention to a judgment of Chandigarh Bench of this Tribunal in the case of Ravi Prakash Vs. Union of India & another, O.A.No.869-PB of 1997 decided on 28.3.1997. The learned counsel stressed that the applicant was transferred on promotion. There is an essential difference between a transfer on promotion and a regular transfer in the same post. Bareilly is also situated very near Delhi. As she has accepted the promotion and as there is an all India transfer liability and the transfer is an incident of service, the applicant cannot question the said transfer. He relied on a decisions of the Hon'ble Supreme Court in the cases of Union of India Vs. S.L.Abbas, 1993(2)SLR 585, N.K.Singh Vs. Union of India & Ors. (1994) 28 ATC 246; and Union of India Vs. H.N.Kirtania, JT 1989(3) SC 131.

6. I have considered the rival contentions. It is important to examine the instructions of the Ministry of Personnel dated 12.6.1997. The first three paragraphs need to be extracted because this has not received any judicial interpretation before

The undersigned is directed to say that on the subject mentioned above, Government had issued detailed guidelines vide CM No.28034/7/86-Estt.(A) dated 3.4.86. The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organisation at the same station, the husband and wife may invariably be posted together in order to

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enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in OM No.28034/7/86-Estt.(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station, and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence.

3. It is further clarified that even in cases where only the wife is a government servant, the concession elaborated in para 2 of this O.M. would be admissible to the government servant."

7. The respondents cannot deny that these instructions are binding on them. If they have to deviate from these instructions they should record their reasons. They should establish that they are not complying with these instructions because of either administrative exigencies or public interest.

8. It is no doubt that in the case of S.L.Abbas(supra) their Lordships held that guidelines issued relating to transfer do not create any enforceable right for a transferee, at the same time their Lordships have laid down a law with regard to the role of guidelines and principles finalised by the controlling authorities of a particular department. In the case of Rajendra Roy Vs. Union of India, 1993(1) SCC 148 their Lordships held at page 153 that order of transfer can be

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challenged "when it is in violation of rules or service guidelines" emphasis supplied. In the case of N.K.Singh (supra) their Lordships had held at para 23 page 255 that a transfer can be impugned if there is "infraction of any professed norm or principle governing the transfer". In yet another case Union of India & others Vs. D.Mohan & others, 1995(3) SCC 115 their Lordships stated that the policy/ parameters laid down in respect of transfer should not be violated and if they are violated this would give rise to a cause of action.

9. The instructions dated 12.6.1997 of the Ministry of Personnel are binding on the respondents and they are obliged to obey those instructions. If it has become inevitable for them to transfer an official deviating from those instructions, they should record reasons that such a transfer was purely on the grounds of administrative exigencies and public interest. The applicant states that she is married and her husband is also staying in Delhi. She points out that seniors have not been touched and she alone has been singled out. It is not a fact that all the four posts at Bareilly are vacant. Besides the applicant three others have been transferred to Bareilly. The second aspect, as emerges from the pleadings, is that several other Programme Executives who are senior to the applicant and listed above are at the same station and the respondents have violated their own transfer guidelines. The learned counsel for the respondents states that the others who are senior to the



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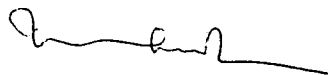
applicant are not facing transfer on promotion and, therefore, her case is distinguishable. To this the applicant's counsel has retorted saying that some of those seniors were never disturbed even on promotion. One fact that has emerged is that the applicant is stated to have a satisfactory record of service. In the altered situation, namely, that three out of four vacancies having been filled up in Bareilly and vacancies are available at Delhi in the cadre of Programme Executive, the respondents should consider in the light of the above instructions of the Ministry of Personnel as to whether the retention of the applicant in Delhi is going to hurt the larger interests of the organisation. They should also record a justification as to how several seniors are retained and the applicant is singled out for transfer.

10. I hold that the rejection of the representation of the applicant appears to me to be irrational in the light of the above discussion. Even so, according to the Hon'ble Supreme Court how and when and where an officer's service ought to be utilised could be best left to the employer and the Court or Tribunal cannot substitute itself in their position.

11. In the light of the above, I direct the respondents to reconsider the representation in the light of the altered circumstances and if still it perceives that the public interest and the interests of the organisation as well as administrative

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interest would be subserved only if the applicant is transferred, then respondent no.2 shall record his reasons, justifying the transfer, within a period of four weeks from the date of receipt of a copy of this order and communicate the same to the applicant. Till such time the status quo shall be maintained for the applicant. The O.A. is disposed of as above. No costs.



(N. Sahu)  
Member (Admnv)

rkv.

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