

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1802 of 1998 decided on 30.10.1998.

Name of Applicant : Shri P.C. Satish Chandran

By Advocate : Shri S.Y. Khan

versus

Name of respondents: Union of India (sic)
Secretary, Min. of J&K & other s

By Advocate : Shri Gajendra Gill

Court List

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

1. To be referred to the reporter - Yes/
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/

N. Sahu
(Mr. Sahu)
Member (Admn)

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A.No.1802/98

New Delhi, this the 30th day of October, 1998

HON'BLE MR.N.SAHU, MEMBER(A)

Shri P.C.Satish Chandran,
S/o Shri P.Chandrasekhara Pillai,
A-133, Neelgiri Apartments,
Alaknanda, Kalkaji P.O.
New Delhi-110019.
posted as Assistant Director of Programmes.
All India Radio Building,
Parliament Street.
New Delhi-110001.

....Applicant

(By Advocate: Shri S.Y.Khan)

versus

Union of India, through

1. Secretary,
Ministry of Urban Affairs & Employment.
Nirman Bhavan,
New Delhi.

2. Director of Estates,
Nirman Bhavan,
New Delhi.

3. Secretary,
Ministry of Information & Broadcasting,
Shastry Bhawan,
New Delhi.

....Respondents

(By Advocate: Shri Gajendra Giri)

O R D E R (ORAL)

HON'BLE MR.N.SAHU, MEMBER(A)

On admission, notice was issued and this case has come up for grant of interim relief today. I have heard both the counsel. Ld. counsel for respondents has no objection that in the light of the discussion hereunder, the O.A. can also be disposed of without waiting formally for a counter. The facts are as under:-

2. The applicant is an employee of the Director General, All India Radio, a media unit of the Ministry of

information and Broadcasting, Govt. of India, who was working as Assistant Station Director, All India Radio, Trivandrum. By an order dated 30.3.98 at Annexure A-3, he has been transferred in the same capacity to All India Radio, New Delhi. He joined the new post in the month of May, 1998 and applied for General Pool accommodation on 12.5.98. He makes an averment at para 4.4 of the O.A. that he is entitled to general pool hostel accommodation in terms of his priority date 1.12.76. His pay in the pre-revised scale was Rs.3100/- on the priority date. The application of the petitioner has not been disposed of so far. It has neither been accepted nor rejected. Ld. counsel for applicant submits that the respondents by an O.M. No. 11013(D) (37)/89-Pol. IV/I, dated 20.8.98 stated that as the employees of DG: Doordarshan and DG: AIR have since come under Prasar Bharati which is a new Corporation, no fresh allotment, initially as well as for a change, would be made to an employee working in the erstwhile offices of the DG: Doordarshan and DG: All India Radio. The court is informed by Shri Khan that the names of All India Radio and Doordarshan have been struck off from eligible entities for allotment under general pool accommodation. The applicant has resisted this and states that the matter was referred to the Law Ministry for its comments. It has been explained by the Law Ministry that since Corporation has still to evolve its own rules and is not in a position to offer facilities that are sought to be withdrawn, the Ministry of U.A.E. should defer the matter for the time being. Ld. counsel for applicant has placed before me a copy of the D.O. letter No. 15/13/97/PBC dated 16.10.98 addressed by

[Signature]

the Additional Secretary, Ministry of I&B to the Secretary, Department of Urban Development. The Addl. Secretary, I&B has drawn the attention of his counterpart to the opinion of the Law Ministry in this regard. Para 8 of the letter, which extracts a copy of the legal position enunciated by the Law Ministry is extracted hereunder:-

"In view of the position above, it may be legally inferred that all employees are to be treated as employees of the Central Govt. and they would be called the employees of Corporation only when a formal order of their transfer is issued under Section 11(1) of the Act. As such, they will be entitled to all benefits of Central Govt. employees till they cease to be so."

3. Ld. counsel for applicant has also cited the decision of the Hon'ble Supreme Court in the case of S.K.Saha vs. Prem Prakash Agarwal & ors. - JT 1993(6) SC 441. The relevant ruling on the status of a departmental employee after the department is converted into a Public Corporation finds place in paragraphs 9 and 10 of the order. The Supreme Court states that State can give option to such employees who are holders of civil posts. Once any such employee of the State opts for the service of the Corporation, he shall cease to be in the service of the State. Otherwise it cannot be held that he ceased to enjoy the protection of Article 311. Only such employee who opts for the service of the Corporation shall cease to be in service of the State. The Supreme Court further held as under:-

Prakash Agarwal

"In view of Article 311(1) no person who is a member of civil service of the Union or of a State or who holds a civil post

under the Union or the State can be removed from service except after an enquiry as contemplated by the said Article. A Constitution Bench of this Court, in the case of State of Mysore v. H. Papanna Gowda, AIR 1971 SC 191, has held that in view of the provisions of Article 311, it is not open to the State Government to declare even by a statutory rule that after transfer of the department, alongwith posts to a University, the holders of such posts under the Government in such department shall cease to be in the service of the State Government, because that will be violative of Article 311 of the Constitution."

4. Id. counsel for the applicant further states that depriving the applicant of the benefits of accommodation deprives him also of the basic amenities to carry on his official work, to settle down with his family and also to permit his children to continue their studies.

5. I am impressed by the argument that depriving a transferred employee of accommodation hurts him the most. He cannot concentrate on work, suffers from a sense of insecurity and he does not enjoy the poise to attend to office and do the work. Under the circumstances, after hearing the Id. counsel for respondents, this O.A. can be disposed of by a direction to respondent no.2, the Director of Estate.

6. Respondent no.2, Director of Estate shall consider the application of the petitioner which is pending before him, consider the opinion of the Law Ministry extracted above, the decision of the Supreme Court and dispose of the same in the light of the opinion of the Law Ministry within a period of two weeks

Manohar Aiyar

from the date of receipt of a copy of this order: even ad-hoc accommodation sought for by the applicant can be considered for him.

7. The O.A. is disposed of as above. No costs.

Narayan Sahu
(N. Sahu)
Member(A)

/mishra/