CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

1) OA No.1137/2000

2) OA No.1143/2000

3) OA No.1266/2000

New Delhi: this the 11th day of September 2001.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN(A).

HON'BLE DR.A.VEDAVALLI MEMBER(J)

1. OA No.1137/2000

AND

2. OA No.1143/2000

Programme Staff Association of
All India Radio & Doordarshan & Ors.
(Regd.Association) Akashvani Bhawan,
Room No.406, Parliament Street,
New Delhi.

through Shri S.P.Singh, President.

2. Shri D.P.Banerjee,
General Secretary,
Programme Staff Association,
AIR & DD, Room No.406,
Akashwani Bhawan,
New Delhi-1

...Applicants in both OAs.

Versus

Union of India,
through
Secretary,
Govt. of India,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi-1

2. Chief Executive Officer,
Prasar Bharati,
Directorate General,
Akashwani Bhawan,
Parliament Street,
New Delhi-1

3. Director General,
AIR, Akashwani Bhawan,
Parliament Street,
New Delhi-1

.....Respondents in both OAs.

22

3. OA No.1266/2000

1. Akashwani & Doordarshan Admn.
Staff Association(Regd.) through
its Vice President,
Shri R.S.Bhandari,
S/o Shri G.S.Bhandari,
Office of the Supdtg. Engineer,
Civil Construction Wing,
AIR & Doordarshan,
Soochna Bhawan,
CGO Complex, Lodi Road,
New Delhi-3.

2. K.P.Sasidharan,
S/o Late Shri T.C.P.Nambiar,
Asstt. General Secretary,
Akashwani & DD Admn. Staff
Association(Regd),
4th Floor, D.D.Kendra,
Akashvani Bhawan,
New Delhi.

3. Surender Singh,
S/o Late Shri Puran Singh,
R/o E 50, Gautam Nagar,
New Delhi.
O/O Chief Engineer,
North Zone,
Jamnagar House,
New Delhi.

.....Applicants.

Versus

Union of India
through

1. Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi.

2. Chief Executive Officer,
Prasar Bharti,
Doordarshan Bhawan,
Mandi House,
New Delhi.

3. Dy.Director General (Admm),
Dte. General of Doordarshan,
Doordarshan Bhawan,
Mandi House ,
Copernicus Marg, New Delhi.

(23)

4. Dy. Driector General (Admn.)
Dte. General of All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi ....Respondents.

Advocates: Shri S.Y.Khan for applicants.
Shri A.K.Bhardwaj for Respondents in OA No.1137/2000 & O.A.1143/2000, and Shri N.S. Mehta for Respondents in OA -1266/2000.

ORDER

S.R.Adige, VC(A):

As these three OAs involve common questions of law and fact, they are being disposed of by this common order.

2. In OA No.1137/2000 filed by Programme Staff Association of All India Radio and Doordarshan through their General Secretary, applicants impugn respondents' transfer order dated 12.6.2000(Annexure-A1 of that OA). Similarly in OA No.1143/2000 filed by Programme Staff Association of AIR and Doordarshan, applicants impugn transfer order dated 29.5.2000 (Annexure-A1 of that OA).

3. Similarly in OA No.1266/2000 filed by Akashwani and Doordarshan Admn. Staff Association applicants impugn the transfer ordersdated 15.3.2000 and 22.6.2000.

4. A common ground taken in the 3 OAs was that applicants continued to be Govt. employees and as their services had not been transferred to Prasar Bharti, that organisation could not have issued the impugned orders transferring them.

5. Owing to conflict of decisions, a Full Bench was constituted to answer the following reference:

(24)

i) Whether Govt servants who were sent to Prasar Bharti Corporation on deputation or otherwise could be transferred by that corporation in terms of the provisions of the Act; or

ii) the Govt. employees even if working with the Prasar Bharti continued to be Govt. employees governed under the relevant rules and instructions issued by Govt. of India; and

iii) Generally.

6. The full Bench of the Tribunal in its order dated 5.7.2001 answered the reference as follows:

i) Govt servants who were sent to Prasar Bharati Corporation on deputation or otherwise can be transferred by the Corporation in terms of the provisions of the Act.

ii) As the second paragraph of the reference had been posed only as an alternative to the first paragraph, and the first paragraph had been answered in the affirmative as above, the second paragraph did not require a separate answer.

7. In arriving at aforesaid decision, the Full Bench had relied heavily upon the Madras High Court's order dated 17.1.2001 in W.P.No.20051, 20068 and 20084 and 21210 of 2000 UOI & Ors. Vs. D.Dev Raj & Ors.

8. After answering the aforesaid reference the OAs were ordered to be returned to the appropriate Benches for disposal on merit in accordance with law. Accordingly these OAs have now been placed before us

25

and we have heard both sides.

9. Applicants' counsel Shri S.Y.Khan has advanced various arguments while challenging the impugned transfer orders.

10. Firstly he has contended that these transfer orders were made in violation of SIU norms; secondly he has contended that the transfer orders violate respondents' adhoc norms also; and thirdly that they have been made in violation of respondents' own transfer policy.

11. As regards the alleged violation of the transfer policy, it has been contended that those with the longest stay have not been transferred first; husband and wife teams have not been transferred to the same place; those attaining the age of 56 years have also been transferred; Group 'C' staff have been transferred out of their zone. It has also been contended that if the available vacancies were filled up, the transfers might not be necessitated and in the case of Transmission/Programme Executive, they have been transferred outside of their linquistic zone. It has also been contended that representations filed by applicants have not been responded to.

12. On behalf of respondents, it has been contended that many of the aforesaid grounds advanced by applicants' counsel during hearing are outside the pleadings and find no mention in the OAs itself. It is contended that while these grounds such as that of persons with the longest stay not being transferred first; husband and wife teams not being posted at the same place; persons attaining the age of 56 years also being transferred etc., might be the ground for an individual employee to challenge the transfer order, the same cannot

be advanced as a ground by an Association, and in any case, those who are likely to be adversely affected if any such ground were allowed, would also have to be specifically impleaded in the OAs so that they could also be heard in the matter which has not been done by applicants.

13. We have considered the matter carefully.

14. The scope of judicial review in transfer matters has been defined by the Hon'ble Supreme Court in a catena of rulings.

15. In Union of India Vs. H.N.Kirtania JT 1989 (3) SC 131 the Hon'ble Supreme Court has held that the transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides (emphasis supplied).

16. In Union of India Vs. S.L.Abbas 1993(2) SLR 585, it has been 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 (emphasis supplied), the Court cannot interfere with it.

17. In the present cases before us, there are no statutory rules which have been brought to our notice as having been violated. Furthermore in the grounds taken in the OA, there are no allegations of malafides against any particular individual. It is well settled that where malafides are alleged, the same should rest on a firm foundation, and the person(s) against whom the malafides are alleged should be specifically

impleaded as a party to enable him to reply to the allegations. In the present cases, as stated above, in the grounds taken in the OAs, there are no allegations of malafides against any individual let alone that individual being specifically impleaded as a party.

18. As already stated above, the Full Bench in its order dated 5.7.2001, had relied upon heavily on the Madras High Court's ruling dated 17.1.2001 in which it was observed that

> "it was not in dispute that all these employees were in transferable service as employees of the Govt. of India and everyone of them was subject to the liability for transfer. By serving in the Corporation, they did not gain any immunity from transfer, except the field of transfer was to be limited to within the Corporation, and not, beyond. ... It was not open to the employees to contend that they were not required to work at any place other than the one they choose. As long as they by their conduct had not disputed their implied deputation to the Corporation, and as long as they received the salary and other remunerations from the Corporation, they were subject to reasonable control and supervision by the authorities of the Corporation. The decision to redeploy the existing personnel in such a manner as to make everyone of the Kendras and stations fully operational thereby maximise the revenue of the Corporation which was presently being run with huge subsidy amounting to Rs.900 crores from the public exchequer could by no means be regarded as arbitrary or unreasonable. The Tribunal had proceeded on the wholly erroneous assumption that a deputationist to the

28

Corporation who had nowhere questioned such deputation, had still a right to demand that his services be rendered only at the place of his choosing and not at the place where the work of the Corporation to which he was deputed, required such performance."

19. In the light of aforesaid Madras High Court's ruling dated 17.1.2001 which is squarely binding upon us and the facts and circumstances discussed above, these three OAs warrant no interference. In case any individual employee on whose behalf these OAs have been filed is aggrieved by the transfer orders, it is open to him to represent to respondents in regard to his grievance. Subject to that these OAs are dismissed. Interim orders are vacated. No costs.

20. Let a copy of this order be placed in each case record.

(DR.A.VEDAVALLI)
MEMBER(J)

(S.R.ADIGE)
VICE CHAIRMAN(A).

/ug/

True Copy
Attested

11/9