

:: 3 ::

11.9.2000 but he did not hand over hand over the charge and also refused to accept the relieving order as well as letter dated 11.9.2000 appointing Shri F.C.Makhija as drawing and disbursing authority. Thus, the applicant by suppressing these facts obtained interim order dated 13.9.2000. The respondents have referred to order dated 16.8.1999 passed by the Bangalore Bench of the Tribunal in OA No.914/1998, C.M.Shirahatti Vs. Union of India & others, wherein it has been held that the respondents therein are empowered to effect internal transfers. According to the respondents the applicant suppressed information about the judgment in the case of C.M.Shirahatti (supra). However, the Tribunal is stated to be aware of the aforesaid judgment, when it passed the order dated 13.9.2000. The respondents have maintained that when applicant's representation has been rejected by the Secretary, Ministry of Information & Broadcasting, in pursuance of order dated 8.8.2000 in OA 1366/2000 the applicant cannot claim that he has not been transferred by the Secretary, Ministry of Information & Broadcasting. The respondents have contended that the impugned transfer of the applicant is neither in violation of any statute nor is the same issued with ^{any} malafide ^{intention}, rather the same has been issued in public interest and in administrative exigency. The applicant has filed a rejoinder as well.

4. I have heard the learned counsel of both sides and carefully considered material placed on record by both sides.

5. First of all I will like to deal with the charge made by the respondents against the applicant having not come with clean hands and suppressed material

bb

:: 4 ::

facts. The applicant has explained in his rejoinder that he could be relieved only after he had handed over the charge of his duties. The handing/ taking over of the charge had not taken place. Therefore, in fact, he has yet to be relieved. The learned counsel for the applicant stated that pleadings in a case primarily consists of the facts and not judgments or orders of the Courts/Tribunals. The order of the Bangalore Bench in the case of C.M.Shirahatti (supra) as well as Madras Bench in the case of D.Devaraj & ors Vs. Union of India & others, O.A.No.293/2000 decided on 25.8.2000, were discussed in the Court when the OA 1366/2000 was argued and the Tribunal took note of the same and thereafter passed the order on 8.8.2000. He further submitted that the applicant has challenged the orders of the Bangalore Bench in the case of C.M.Shirahatti (supra) by filing OA No.1455/2000 in which notices have already been issued. The respondents have also in their counter stated that the Tribunal was aware of the aforesaid judgment of the Bangalore Bench in the case of C.M.Shirahatti (supra) when it passed the aforesaid order dated 8.8.2000 in OA 1366/2000. Although the applicant had not stated clearly that he had been relieved, the charge of suppression of information of the order of Bangalore Bench in the case of C.M.Shirahatti (supra) is not brought home successfully. In any case, the Tribunal was aware of the same and no undue orders could have been passed by the Tribunal favouring the applicant.

6. The learned counsel of the parties have not taken any exception to the final disposal of the present matter by this Bench even though divergent views in similar matters exist.



7. On behalf of the applicant the following judgments have been relied upon :- (i) order dated 6.9.1999 in OA 416/99, J.C.Bhatia Vs. Union of India and others. In that case the respondents had stated that employees of Prasar Bharti still continue to be Government servants till their services are transferred to Prasar Bharti by a specific order under Section 11(1) ibid. In this view of the matter, the order having been passed by an authority not competent to do so, the said OA was allowed. The learned counsel of the applicant further contended that the applicant's transfer was against the transfer policy as he had not completed 4 years tenure, and various others viz. S/Shri Jagdishwar Parshad, Ishwar Dass and A.K.Kaul who have been posted to Doordrashan News, Delhi prior to the applicant have not been transferred.

8. Shri B.S. Oberoi, learned counsel further relied on the following observations made by the Madras Bench in the case of D.Devaraj (supra):-

"10. So looking at many angle and after going through the provisions of the Prasar Bharati Act, 1990, we do not think the Prasar Bharati Corporation has got the right to transfer the applicants they having not yet become the employees of the Corporation. If they had become the employees of the Corporation, as on date, this Tribunal would have no have(sic) jurisdiction over such matters. Since they are Central Government employees still, having not been absorbed in the Corporation in accordance with the procedure laid down under Section 11 of the Act, we are of the view that though they are getting salary from the Prasar Bharti, surely they cannot be transferred. We are aware this will cause the administrative difficulties but we cannot help it. As the official respondent is moving slow and they have not yet finalised the policy with regard to taking over the employees of the All India Rado(sic) and Doordarshan in accordance with Section 11 of the Act, as we have already stated, at best they can be treated as deemed to be on deputation to the Prasar Bharti but have got a lien over the post in the

:: 6 ::

Government service. In view of this conclusion with regard to the jurisdiction of the Prasar Bharati Corporation to transfer these applicants we do not think it is necessary to enter into the merits of the individual cases of transfer.

12. In the result, all the orders impugned in these applications shall stand set aside....."

9. Shri R.V.Sinha, learned counsel of the respondents, contended that the impugned transfer order is neither in violation of any statute nor is the same issued with malafide. On the contrary, it has been issued in public interest and in administrative exigencies. He placed reliance on the followings decisions :- (i) Mrs.Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 SC 532 and (ii) Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani, (1989)10 ATC 396. In the former case it was held that the Courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere the order instead affected party should approach the higher authority in the department. In the latter case it was held that transfer of a Government servant appointed to a particular cadre of transferable post from one place to other is an incident and a condition of service. It is

:: 7 ::

necessary in public interest and efficiency in public administration. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules.

10. Whether PBC has got the authority to transfer the applicant I am inclined to agree with the ratio of the recent judgment of the Madras Bench in the case of D.Devaraj (supra) in which it was held that the applicants had not been absorbed in the PBC in accordance with the procedure laid down in Section 11 ibid, therefore, the Central Government and not the PBC have the authority in matters of transfer of such employees.

11. In the present case impugned order dated 18.7.2000 transferring the applicant from Doordarshan News to DDK Nagpur was passed by the Chief Executive Officer, PBC, New Delhi. Vide order dated 8.8.2000 in OA 1366/2000, a Division Bench of this Tribunal had directed Union of India through Secretary in Ministry of Information and Broadcasting, respondent no.1 to decide upon representation of the applicant. Annexure-A-2 dated 6.9.2000 is an order passed by the Secretary,



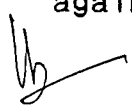
:: 8 ::

Ministry of Information and Broadcasting on representation dated 18.7.2000 of the applicant. The transfer of the applicant has been upheld by the Secretary for the following reasons:-

- "(i) His submissions that the transfer is illegal against transfer policy, discriminatory, issued with malafide intent and not in public interest are unfounded and could not be substantiated;
- (ii) His transfer order has been issued purely in public interest on administrative and the functional requirements;
- (iii) He has already completed the normal tenure of 4 years in Delhi;
- (iv) The transfer policy quoted by Shri Chander Mohan, Administrative Officer, is a set of guide-lines and the operation of these is subject to exigency of service. These guide-lines were kept into view while considering the transfer of Shri Chander Mohan and others before issue of DG:DD's transfer order No.13/S.II/2000, dated 18.7.2000".

12. Whereas I hold that respondent no.2 was not competent to transfer the applicant - his services not having been transferred to PBC - but his representation against the transfer dated 18.7.2000 having been considered by the Secretary, Information & Broadcasting, respondent no.1, who is the competent authority to transfer the applicant, and by giving various reasons respondent no.1 has endorsed the transfer order of the applicant, in this view of the matter, I go along with the respondents to hold that the applicant cannot claim that he has not been transferred by respondent no.1

13. Keeping in view the ratio in the cases of Mrs. Shilpi Bose (supra) and Atmaram Sungomal Poshani (supra) I do not find that the transfer order is in violation of any statute or is issued with malafide. The respondents have claimed that the applicant had completed his normal tenure, so the applicant's transfer cannot be held to be against the transfer policy as well. However, even if



:: 9 ::

it is against the transfer policy, which is nothing more than executive instructions, the Tribunal, ordinarily cannot interfere with such orders.

14. Having regard to what is stated above, I do not find any good ground to interfere with the transfer of the applicant. The O.A. is accordingly dismissed, however, without any order as to costs.

V.K. Majotra

(V.K. Majotra) 10.10.2000
Member (Admnv)

rkv