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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 507/2000

New Delhi, this 8th day of September, 2000

Hon'ble Smt. Shanta Shastry, Member(A)

1. All India Graphic Artists Association(Doordarshan) through Shri S.S.Dhandel, President RZ 57/284, Gali No.1, Geetanjali Park West Sagarpur, New Delhi
2. Miss Manju Bisht J-159, Sarojini Nagar, New Delhi
3. R.N.Das 1-A, CPWD Housing Complex Vasant Vihar, New Delhi
4. G.S.Takulia 45, Doordarshan Enclave Jhalandar (Punjab) .. Applicants

(By Shri Yogesh Sharma, Advocate)

versus

Union of India, through

1. Secretary Ministry of Information & Broadcasting Shastri Bhavan, New Delhi
2. Director(Administration) Dte. General of Doordarshan Copernicus Marg, New Delhi .. Respondents

(By Shri A.K.Bhardwaj, Advocate)

ORDER

1. Applicant No.1 is the Graphic Artists Association (Doordarshan) and applicants 2 to 4 are individuals (artists) who are members of the said association. They have approached this Tribunal against the impugned order dated 21.2.2000 whereby they have been transferred to different places by Prasar Bharati (PB, for short).
2. Applicants 2 and 3 have submitted that they have been working in DD Kendra, Delhi and applicant 4 is working in DDK, Jalandhar as Graphic Artists (GAs, for



short). They have a common seniority list of GAs for purpose of seniority, promotion etc. 19 GAs have been transferred to Relay Kendras alongwith their posts.

3. Learned counsel for the applicants contends that the nature of duties and functions of GAs are totally different to the staff of Relay Kendras and there is no work for GAs in the Relay Kendras. Only technical staff are required in Relay Kendras. While issuing the transfer order, no reasons have been given. Respondents have adopted pick and choose policy. Normally the principle of last come first go should have been followed but the respondents have ignored the same. Similarly, though the applicants have been treated as surplus staff, relevant rules for deployment of surplus staff have not been followed by the respondents. GAs are appointed for a particular region on the basis of the regional language but now they have been transferred to the station where the language of the applicant is not known. Also they have been transferred out of their zone without any reason or justification.

4. Learned counsel for the applicants argues that though respondents claim that the applicants have not been declared surplus, yet their action is clearly covered in the definition of surplus staff of employees as laid down by the Hon'ble Supreme Court in the case of UOI & Ors. Vs. Savithri 1998(2) SLR (SC) 99. Learned counsel submitted later that a similar application has been filed in the Chennai Bench of this Tribunal by the aggrieved artists and judgement has just been pronounced. He stated that he would make available a copy of the judgement within 2-3 days time. However, he

has not been able to produce a copy, instead he has produced now on 4.9.2000 a newspaper report dated 30.8.2000 appearing in the Indian Express, Delhi. According to the learned counsel, the Chennai Bench has quashed the transfer orders. As he has not produced a copy of the judgement of the Chennai Bench, I cannot take note of the newspaper report which is relied upon.

5. Learned counsel for the respondents submits that the application is premature. Applicants have rushed directly to the Tribunal without making any representation. Organisational and functional changes are taking place in Doordarshan (DD, for short) because of the coming into existence of PB. It is therefore necessary to streamline the operation and regulate the services of manpower where necessary in public interest. The applicants have not been declared surplus. They are merely transferred within the organisation itself. Moreover, transfer is one of the service conditions of the applicants. Even the Hon'ble Supreme Court has held that normal transfer orders should not be interfered with unless there is any violation of rules or there is malice or they are issued in colourable exercise of power. Respondents have transferred 52 persons. There is no discrimination. They have kept in mind rotation of staff at a particular station while making the transfer. Seniority is not the criteria for transfer. It is length of stay at a particular station. Respondents have therefore issued the transfer order in public interest.

6. Applicants have also filed a rejoinder, in which a fresh law point is made that the respondents have no competence to issue the transfer order as the applicants are not being employed by PB. They have not been absorbed or transferred to PB by any order or notification issued. They continue to be the employees of Government of India. Unless they are transferred in keeping with the provisions of PB Act, they cannot be declared as employees of PB. According to Section 11(1) of the ACT, it shall be lawful for the Government to transfer by order and with effect from such date or dates as may be specified in the order to the Corporation any of the officers or other employees serving in Akashvani or DD and engaged in the performance of those functions. Applicants have not been transferred in terms of this section and as such PB is not competent to order their transfer.

7. Learned counsel for the respondents however pleads that though no such order has been issued these applicants have been treated as on deputation to PB and also all administrative and financial powers have been delegated to PB and PB is already performing all the functions of erstwhile AIR & DD. Therefore, it is fully within the power of PB to transfer the applicants in the exigency of administration as well as in public interest. Learned counsel cites the judgement of the Bangalore Bench of this Tribunal in OA No.914/1998 in the case of G.M.Shirahatti Vs. UOI decided on 16.8.98 wherein it has been held that transfer of the applicants was justifiable in terms of the delegated powers to the

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PB and the acting Chief Executive Officer. He argued that on the same analogy the present applicants also can be transferred by PB.

8. I have given careful consideration to the arguments advanced by the learned counsel for both the parties. The transfer order having been issued in public interest cannot be found fault with. At the same time no reasoning or justification has been given in the order for such transfer though the respondents have justified it in their counter. In normal course I would not like to interfere with this order as it is not violating any rules. It is not malicious or discriminatory. I am satisfied that the respondents have issued the orders purely on administrative grounds. However I cannot overlook the factual position that as of today these applicants have not been transferred by any formal order or notification issued under section 11(1) of the PB Act. Right therefore PB would have no jurisdiction or competence to issue the transfer order. Even if they are deemed to be on deputation, it is apparent that the status of the staff is still fluid and uncertain. Therefore, unless formal orders of transfer of the staff of DD to PB are issued, it is not proper for PB to issue transfer order of the staff at this stage.

9. I am therefore inclined to grant the prayer of the applicants. This OA is accordingly allowed and I set aside the impugned order dated 21.3.2000. I do not order any costs.

Shanta S.
(Smt. Shanta Shastry)
Member(A)