

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00374/2020

Monday, this the 1st day of February, 2021.

CORAM:

HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER

HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER

Radhakrishna Pillai. C., 55 years,
S/o. P. Chandran Pillai,
Assistant Engineer,
Doordarshan Kendra, Thiruvananthapuram – 695 002.
Residing at T.C. 23/1186(3), Sai Vibhoothi,
Melarannoor, Karamana (P.O),
Thiruvananthapuram – 695 002.

- Applicant

[By Advocate : Mr. Vishnu S. Chempazhanthiyil]

Versus

1. The Deputy Director General,
Doordarshan Kendra, Kudappanakunnu,
Thiruvananthapuram – 695 043.
2. The Additional Director General (E),
South Zone, All India Radio & Doordarshan,
Swami Sivananda Salai, Chennai – 600 005.
3. The Director General,
Doordarshan Kendra, Mondi House,
Copernicus Marg, New Delhi – 110 001.
4. Prasar Bharati (Broadcasting Corporation of India),
Through its Chief Executive Officer,
PTI Building, Sansad Marg, New Delhi – 110 011.
5. Union of India represented by
The Secretary to the Government of India,
Ministry of Information and Broadcasting,
A-Wing, Sasthri Bhavan, 'A' Wing,
New Delhi – 110 001.

- Respondents

[By Advocate : Mr. Sinu G. Nath, ACGSC]

The application having been heard on 28.01.2021, the Tribunal on 01.02.2021 delivered the following:

ORDER

Per: Mr. P. Madhavan, Judicial Member

The applicant filed this O.A seeking the following reliefs:-

- “i. Call for the records leading to the issue of Annexure A-1 and set aside Annexure A-1 to the extent applicant is transferred and posted to DDK Guwahati*
- ii. Direct the respondents to consider accommodating the applicant, in any of his choice stations as indicated in Annexure A-2.*
- iii. Or in the alternative; direct the respondents to consider retaining the applicant at DDK Thiruvananthapuram itself.*
- iv. Call for the records leading to the issue of Annexure A-5 and set aside Annexure A-5.*
- v. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.”*

2. The applicant is an Assistant Engineer working in DDK Thiruvananthapuram. The applicant is transferred to Guwahati DDK as per order dated 11.03.2020 produced and marked as Annexure A-1. According to the applicant, he was not expecting a transfer to such a long distance as there are seniors to the applicant with longer service in the station. Immediately, the applicant submitted a representation dated 16.03.2020 to the 3rd respondent requesting to accommodate him in any nearby stations like Kodaikanal HPT, Srinagar DDK and Cochin HPT and the representation is produced as Annexure A-2. Immediately, after the order of transfer (Annexure A-1), the respondents had ordered for keeping the transfer order in abeyance except the transfer of the persons to difficult stations with two year tenure. Applicant's wife is an Ophthalmologist and working in a private hospital at Thiruvananthapuram and his two daughters are presently in the 8th Standard and their study is very crucial since they are fully depended upon him. One of his daughters is suffering from Kidney related problem. Since the applicant is transferred to a far place, it will put the family in trouble. The respondents did not take any action on the representation of the applicant, which is produced as Annexure A-2. The applicant approached this Tribunal by filing O.A. No.

258/2020 seeking a relief. The Tribunal, as per order dated 07.07.2020 (Annexure A-4) directed the respondents to consider the representation of the applicant in the light of the relevant rules and regulations and pass a speaking order and till that time respondents were directed to maintain status quo. On 10.08.2020, the respondents passed an order rejecting his request and directed the Office to relieve the applicant within 10 days.

3. The disposal of the representation was produced and marked as Annexure A-5. According to the applicant, the order passed by the respondents is arbitrary in nature and did not consider any of the grounds of the relief he had sought in the representation. Even though, the Tribunal had directed the respondents to consider the representation in the light of the relevant rules and guidelines, the respondents did not do the same. According to the applicant, the impugned order Annexure A-5 passed by the respondents is highly illegal and arbitrary and not a speaking order and is liable to be set aside.

4. The respondents entered appearance and filed a detailed reply statement denying the contentions of the applicant. According to them, this OA is filed by the applicant on experimental basis and there is no bonafide grounds. There is no illegality in the orders passed and in the absence of any specific allegation of malafides, the Tribunal is not expected to interfere with the transfer order. According to them, many of the DDK are running with skeleton staff. Annexure A-1 transfer order is a routine transfer order in which 52 Assistant Engineers were transferred and the applicant has completed his tenure at DDK, Thiruvananthapuram and applicant belongs to Group B Gazetted Officer having All India transfer liabilities. Applicant is working in the present station from 10.08.2015. According to the respondents, there is absolutely no legal ground to set aside the speaking order passed in this case

and Annexure A-1 order passed.

5. We have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel appearing for the applicant and Mr. Sinu G. Nath, learned ACGSC for the respondents.

6. We have gone through the earlier order passed by this Tribunal in O.A No. 258/2020 dated 07.07.2020. As per the said order, the respondents were directed to consider Annexure A-2 representation of the applicant within a period of three weeks and pass a reasoned speaking order. The respondents had passed an order rejecting the representation of the applicant on 07.08.2020, which is produced as Annexure A-5. We have carefully gone through Annexure A-5 and what we could find is that the respondents had cited a lot of judicial decisions, wherein it was held that transfer is an incidence of Government Services and unless the transfer is vitiated by malafides or is made in violation of statutory provisions the Court cannot interfere with that.

7. In the last three paragraphs, the respondents stated that the transfer was made purely on administrative reasons and there is no violation of statutory provisions. The request for transfer from DDK Guwahati to a *place with one year tenure* Or '*somewhere near to our home town*' stations had been duly considered by the Directorate as per directions and it was not acceded to due to functional requirement of the organisation. From this, it can be seen that the respondents have not seriously considered the request submitted by the applicant as Annexure A-2 dated 16.03.2020, wherein he had given his difficulties in joining Guwahati station and he had also stated his willingness to be posted at Kodaikanal HPT, Srinagar DDK and Cochin HPT in his representation. The Competent Authority, who had passed Annexure A-5 impugned order has not considered any of the request made by the applicant

and he has not even considered whether vacancies exist in those stations and whether it is possible to give a transfer to the applicant to those stations as requested in the representation. We have gone through the transfer guidelines produced as Annexure A-10, a portion of which is extracted below:-

*“8.4 Organization interests being paramount, **priority may be given** to the following categories of employees in transfer /postings:-*

***1st priority :** Widows and unmarried female employees appointed on compassionate grounds may be posted to a place of their choice for normal tenures, if they so desire, in the beginning of their careers (initial tenure). Normal rules will thereafter be applicable to them.*

***2nd priority :** Employees who have:*

(I) Valid medical grounds supported by Medical Certificate at least from a Civil Surgeon or Medical Board.

(ii) Valid personal grounds supported by documentary evidence.

***3rd priority :** On completion of fixed tenure in such difficult areas as listed in Annexure A-1 under Category C and Category D stations, officers may be considered for posting to a station of their choice as far as possible.*

***4th priority :** Keeping in view exigencies of work, officers due for retirement on superannuation **within a period of two years** may, as far as possible, be transferred /retained at the place of their choice, unless they have already completed laid down tenures, in which case anticipatory action should be taken by the competent authority well in time to avoid unpleasantness.*

***5th priority :** Keeping in view exigencies of work, officers due for retirement on superannuation **within a period of three years** may, as far as possible, be transferred / retained at the place of their choice, unless they have already completed laid down tenures, in which case anticipatory action should be taken by the competent authority well in time to avoid unpleasantness.”*

8. On going through the pleadings in this case, we find that the applicant's daughter is studying in 8th Standard and one of the daughters' is suffering from Kidney related problems and he has produced a medical certificate to show that she is undergoing treatment with steroids for multiple relapses and she needs prolonged treatment and regular follow up in Pediatric Nephrology for complete cure (Annexure A-6). He had also produced a copy of the representation submitted by Mr. D. Ravikumar, Assistant Engineer, Doordarshan HPT, Kodaikanal dated 04.06.2020 requesting for a transfer to HPT, Cochin (Annexure A-8), which shows that there may arise a vacancy at

HPT Kodaikanal, if it is granted. As per the guidelines of transfer and priority of employees, it can be seen that the 2nd priority is given to employees having a *(i) valid medical grounds supported by Medical Certificate at least from a Civil Surgeon or Medical Board (ii) valid personal grounds supported by documentary evidence.* On going through the pleadings, it can be seen that the case of the applicant comes under 2nd priority (ii), where he has put forward some personal ground relating to the illness of one of his daughters and her continued stay at Thiruvananthapuram even though the applicant is ready to be transferred and posted to any of the stations like Kodaikanal HPT, Srinagar DDK and Cochin HPT. We could find that this is not a case, where the applicant is not willing to come under orders of transfer, but he had given a representation to the Department as per the procedure established in the Department and the said representation was not considered by the Competent Authority till he approached the Tribunal with O.A No. 258/2020. Even though an order dated 07.08.2020 was passed, it seems that the Competent Authority has not considered the request made by the applicant and he had not given any reasons for rejecting the application. The order passed is not a speaking order and is liable to be set aside, when the representation is given, it is the duty of the Competent Authority to take a decision on the points raised in the representation and pass a speaking order and on the basis of relevant facts and materials before him. In this case, Annexure A-5 order is not at all satisfactory and a substantial portion of the order is only various decisions of the Hon'ble Supreme Court regarding how transfer cases are to be dealt with. This is not a speaking order as directed by this Tribunal. Hence, we find merit in the contention put forward by the applicant that Annexure A-5 order is not a speaking order and is liable to be set aside.

9. In view of the above, we hereby set aside Annexure A-5 order passed by the respondents. **The applicant is directed to give a fresh representation stating all his grievances to the Competent Authority within two weeks and Competent Authority will go through the various aspects of the relief claimed by the applicant in an impartial manner and pass a reasoned speaking order on the basis of the guidelines issued by the Department regarding transfer and taking into consideration of the various aspects of the case within a period of one month from the date of receipt of a copy of this order. The respondents shall maintain status quo till the representation is disposed of in the light of the discussions made above**

10. The O.A is disposed of as above. No order as to costs.

(Dated, 1st February, 2021)

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

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Applicant's Annexures

Annexure A-1	-	True copy of the order No. 8/1/2020-S(IV)/HRD-2 dated 11.3.2020 issued by the 3 rd respondent.
Annexure A-2	-	True copy of representation dated 16.3.2020 to the 3 rd respondent.
Annexure A-3	-	True copy of the communication No. A-10011/NTP/2019-PPC dated 20.04.2020 issued by the Office of the 3 rd respondent.
Annexure A-4	-	True copy of the order dated 7.7.2020 in O.A No. 180/00258/2020 of the Hon'ble Tribunal.
Annexure A-5	-	True copy of the order No. 3/C Radhakrishna Pillai/2020 S.IV/1638 dated 07.08.2020 issued by the 3 rd respondent.
Annexure A-6	-	True copy of the medical certificate issued by the Department of Pediatric Nephrology, S.A.T. Hospital, Govt. Medical College, Thiruvananthapuram.
Annexure A-7	-	True copy of the certificates issued by the Principal, Holy Angels School, Nanthancode, Thiruvananthapuram.
Annexure A-8	-	True copy of the request of Shri D. Ravikumar along with forwarding letter of the Head of the Office.
Annexure A-9	-	True copy of O.M. No. 28034/9/2009-Estt. (A) dated 30.09.2009 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions.
Annexure A-10	-	True copy of the Transfer Policy, 2014 issued by Prasar Bharati (relevant portion).
Annexure A-11	-	True copy of the order issued under RTI Act vide No. 20/41/2020/HRD/RTI-65 dated 23.09.2020.
Annexure A-12	-	True copy of the Office Order No. 05/2020-SIV(E-HR) dated 23.10.2020 issued by the DDK, New Delhi.
Annexure A-13	-	True copy of the Office Order No. 8/01/2019-S(IV)/182 dated 08.01.2020 issued by DDK, New Delhi.
Annexure A-14	-	True copy of Office Order No. 8/4/2019-S.IV/4636 dated 29.11.2019 issued by the DDK New Delhi.
Annexure A-15	-	True copy of Order No. 8/1/2019-S(IV)/2383 dated 17.06.2019 issued by the DDK, New Delhi.

- Annexure A-16 - True copy of order No. 01/2020-SIV(E-HR) dated 28.08.2020 issued by the DDK, New Delhi.
- Annexure A-17 - True copy of RTI reply file No. HPT/DD/KKL/2020-21/ RTI/182 dated 09.10.2020 obtained from HPT, Kodaikanal.

Annexures of Respondents

- Annexure R-3(a) - True copy of the O.M. No. 10011/NTP/2019-PPC dated 16.07.2020.
- Annexure R-3(b) - True copy of the PB Sectt order dated 20.04.2020.
- Annexure R-3(c) - True copy of the PB Sectt order dated 24.08.2020.
- Annexure R-3(d) - True copy of the DG:DD orders order 03/2020-SIV (E-HR) dated 28.08.2020.
