

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

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No. O.A. 621 of 2020

Date of order: 25.9.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

Snehasis Sur,  
 S/o. Late Snehas Kumar Sur,  
 Working as TV News Correspondent,  
 Doordarshan Kendra, Kolkata,  
 18/3, Uday Shankar Sarani,  
 Golf Green,  
 Kolkata - 700 095.

... Applicant

## VERSUS -

1. The Union of India,  
 Service through the Secretary,  
 Ministry of Information & Broadcasting,  
 Government of India,  
 A Wing,  
 Shastri Bhawan,  
 New Delhi - 110 001;
2. Prasar Bharati (Broadcasting Corporation of India),  
 A Statutory body incorporated under the  
 Prasar Bharati (Broadcasting Corporation  
 Of India) Act, 1990,  
 Having its Office at Prasar Bharati House,  
 Copernicus Marg,  
 New Delhi - 110 001;
3. The Director General,  
 Doordarshan Bhawan,  
 Copernicus Marg,  
 New Delhi - 110 001.
4. The Deputy Director General (HR),  
 Doordarshan Bhawan,  
 Copernicus Marg,  
 New Delhi - 110 001.

5. Deputy Director General (Engineering)/Head of Office,  
 Doordarshan Kendra Kolkata,  
 18/3, Uday Shankar Sarani,  
 Golf Green,  
 Kolkata - 700 095.

... Respondents

For the Applicant : Mr. I. Dasgupta, Counsel  
 Mr. A. Ghosh, Counsel  
 Ms. E. Banerjee, Counsel

For the Respondents : Mr. S. Paul, Counsel

**ORDER (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) A direction upon the Respondent authorities to grant all benefits applicable to applicant treating him as an Officer of Indian Broadcasting Service as per law laid down by the Hon'ble Supreme Court in Union of India & ors. v. E. Krishna Rao & ors. with due seniority;
- (b) Consider the applicant's representation dated 25<sup>th</sup> February, 2020 seeking service benefits in pursuance of the judgment of the Hon'ble Supreme Court dated 26.9.2018 and pass necessary order in accordance with the judgment;
- (c) Cancel and/or quash and/or set aside Order dated 17.8.2020 being No. A-11019/1/2020-SV/39 Office Order 03/2020 issued by the Dy Director General (HR), Doordarshan thereby transferring the applicant from Doordarshan Kendra Kolkata to Doordarshan Kendra Bhubaneswar;
- (d) Any other order or order and/or direction or directions that this Learned Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. Ld. Counsel for the applicant would submit on behalf of the applicant as follows:-

*Abi*

That, vide orders dated 18.8.1988, the applicant was appointed as a TV News Correspondent (TVNC) on contractual basis for a period of six months and such engagement was extended for five subsequent years. Further, vide orders dated 29.1.1994 (Annexure A-2 to the O.A.), all the existing rules/regulations and benefits including pensionary benefits, the age for retirement etc. as applicable to regular Civil Government Servants were made applicable to such contractual TVNCs, and consequent upon declaring them as Civil Government Servants, their contracts as 'Artists' stood terminated and the applicant was declared a government servant w.e.f. 11.8.1988.

As the TV News correspondents and Assistant News Correspondents were not given promotion for 12 years, some of the aggrieved correspondents filed O.A. No. 916 of 1999 and O.A. No. 1010 of 1999 before the CAT, Hyderabad Bench, which allowed the applications and directed Government to grant them all benefits as per rules, and, to also consider their entitlements for promotion. This decision of the Tribunal was subsequently upheld by the Hon'ble High Court of Andhra Pradesh at Hyderabad and by the Hon'ble Supreme Court in Civil Appeal Nos. 11948-11950 of 2016 (Annexure A-3 to the O.A.).

Pursuant to the orders of the Hon'ble Supreme Court, the applicant, represented before the respondents to grant him benefits at par with other beneficiaries who were similarly situated as the applicant. The applicant's representation was not considered till the date of filing of the instant Original Application.

On the other hand, on 18.9.2020, an order was issued transferring him to Doordarshan Kendra, Bhubaneswar. Hence, being aggrieved, the applicant has approached this Tribunal seeking the above noted relief.

4. The respondents would justify the transfer of the applicant as follows:-

- (i) That, the applicant was transferred from Doordarshan Kendra, Kolkata to Doordarshan Kendra, Bhubaneswar, vide orders dated 17.8.2020, and, was relieved on 18.8.2020 with instructions to report for duty as TVNC at Doordarshan Kendra, Bhubaneswar.
- (ii) That, such transfer was made with the approval of CEO, Prasar Bharati who also approved that one post of TVNC was to be shifted from DDK, Kolkata to DDK, Bhubaneswar to accommodate the applicant.
- (iii) That, such transfer was made with the objective to strengthen news reporting for DD India from Orissa and Chattisgarh so as to address a global audience and also to suitably enhance the skill of the news reporting staff.
- (iv) That, as per guidelines/transfer policy dated 14.7.1981, when the question of transfer is considered, as a normal rule, a person with the longest continuous stay at the station irrespective of the rank held by him earlier, should ordinarily be transferred first.
- (v) The respondents would also, in response to para No. (xi) of the transfer policy of year 1981, [that states that although Members of staff, who are within three years of reaching the age of superannuation will be posted at their home town and not be shifted therefrom unless and, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home town to the extent possible], argue all such principles would be subject to exigencies of public service.

Respondents would rely on the judgment/order passed by the Hon'ble Apex Court in **Shilpi Bose & ors. v. State of Bihar & ors. (Civil Appeal No. 5418 of 1990)**, **Union of India & ors. v. S.L. Abbas (Civil Appeal No. 2348 of 1993)**, **Union of India & ors. v. H.N. Kirtania (Civil Appeal No. 2943-45 of 1989)** and, on the judgment and orders of the Allahabad High Court dated 5<sup>th</sup> September in **Dr. Krishna Chandra Dubey v. Union of India**, 2005 all of which clearly laid down that transfer of a public servant made on administrative grounds or in public interest should not be interfered with by Courts unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or on ground of malafide.

5. Ld. Counsel for the applicant would assiduously counter these arguments of the respondents by advancing the following rationale:-

- (i) That, order No. 4/2020/SV dated 17.8.2020 transferring or shifting the post of one TV News Correspondent from DDK-Kolkata to DDK-Bhubaneswar was to be notified and/or uploaded in the website of Doordarshan prior to the transfer, but, as evident from the serial number of the said order, the order on shifting of the post was issued after the issuance of the transfer order of the applicant and only as an afterthought.
- (ii) That, in reply to the contention that the applicant will train and develop skills of the news reporting staff at NABM (National Academy of Broadcasting & Multimedia), Bhubaneswar, the applicant would aver that the faculty of NABM are appointed by seeking applications from interested candidates working under Prasar Bharati and not by transfer and that, in any event, the petitioner has not been transferred to the NABM.

Further, as the training imparted in NABMs is mostly technical and expertise of the applicant is in news reporting, his skills as a trainer is not supported either by his background or by his expertise which is mostly confined to news reporting.

(iii) The respondents have not justified "the exigencies of services" in the transfer order for shifting a post as the applicant does not belong to IBPS or Indian Information Service (IIS) or India Broadcasting (Engineering) Service (IBES) and is not involved in any administrative or decision making process of the organization.

(iv) Further, Office Memoranda dated 12.4.2017 and 4.9.2020 require the approval of the Department of Expenditure prior to shifting of posts which, although required mandatorily, has not been obtained by the respondents in the case of the applicant.

Ld. Counsel for the applicant would also rely on the Transfer Policy of 2007, on the compendium of instructions on Transfer policy dated 12.4.2017 (Annexure A-6 colly. to rejoinder), and, particularly, on para 5.1.a. thereof on "creation" as well as on para 7 on "transfer of posts" to agitate that prior approval of Department of Expenditure is required for creation or movement of posts to particularly highlight that creation of posts and shifting thereof is irrespective of any delegation accorded for the purpose of transfer as per DOE's O.M. dated 4.9.2020 (Annexure A-6 colly. to the rejoinder).

Further reliance is placed by the applicant on Office Memorandum dated 16.7.2020 and, particularly, para 4 thereof which reads as follows:-

"4. In accordance with Order dated 20.4.2020, all the transfer orders to and fro difficult stations need to be implemented immediately. However, the other transfer orders including on completion of tenure at normal station or request transfers etc. need to be reviewed in accordance with order dated 20.4.2020. The transfer orders in case of exigency of work may continue to be issued and implemented. However, there should not be any transfers of DMCs/LPTs and PGFs till further order."

6. Having vociferously assailed the transfer order of the applicant, however, his Ld. Counsel would at the same time submit, that the *prima facie* grievance of the applicant is non-sanction of benefits as per the judgment and order of the Hon'ble Supreme Court in Civil Appeal No. 11948-11950 of 2016 at Annexure A-3 to the O.A., and, that, once promoted, the applicant would not have any quarrel with subsequent promotional postings, rendering his challenge to transfer to DDK, Bhubaneswar in his existing level of seniority, largely infructuous.

As the primary grievance of the applicant emanates from non-receipt of benefits in terms of the orders of the Hon'ble Apex Court, this issue resultantly, acquires precedence.

7. During pendency of this O.A., the respondents disposed of the representation of the applicant praying for benefits in the light of the Hon'ble Apex Court's judgment (Annexure A-4 to the O.A.).

Ld. Counsel for the respondents would furnish before us a speaking order dated 24.9.2020 in which the claim of the applicant has been rejected on the ground that he is a fence sitter, and, as he did not challenge the matter at any stage and woke up after long delay only because of the reason that his counterparts who had approached the Court earlier in time, succeeded in their efforts, he cannot be given similar benefits as those who had approached the Hon'ble Supreme Court. The respondents, while issuing the rejection order, have relied on

(i) **Civil Appeal No. 9849 of 2014 in State of UP & ors. v. Arvind Kumar Srivastava & ors.**

(ii) **Civil Appeal No. 4369 of 2006 of Bharat Sanchar Nigam Limited v. Ghanshyam Dass and ors.**

*Ans*

to argue that the applicant, who was sleeping over his rights, is guilty of laches, delays and acquiescence and therefore deserves no consideration unlike his vigilant petitioner colleagues.

1d. Counsel for the applicant would vociferously challenge the decision of the respondent authorities on the ground that the orders of the Hon'ble Apex Court was not *in personem* but was a judgment *in rem*, and, accordingly, the respondents cannot reject the applicant's claim on grounds of being a fence sitter.

8. A judgment *in rem* has been explained in **Black's Law Dictionary, 9th Edition**, edited by **Bryan A Garner**, (*Published by Thomson-West*) to mean:-

"A judgment that determines the status or condition of property and that operates directly on the property itself. The phrase denotes a judgment that affects not only interests in a thing but also all persons' interest in the thing."

The Hon'ble Supreme Court has had the occasion to lay down the law as to what constitutes a judgment *in rem* in India. In the case of **Satrucharla Vijaya Rama Raju -v.- Nimmaka Jaya Raju and others** reported in **AIR 2006 SC 543** the Apex Court has been pleased to hold that

"A judgment *in rem* is defined in English Law as 'an adjudication pronounced (as its name indeed denotes) by the status, some particular subject matter by a tribunal having competent authority for that purpose'.

In **Halsburrys Law of England, 4th Edition, Vol. 16**, the meaning of Judgment *in Rem* is given at para 1522, as below:-

"1522. Meaning of judgment *in rem*. A judgment *in rem* may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing, as distinct from the particular interest in it of a party to the litigation. Apart from the application of the term to persons it must affect the res in the way of condemnation, forfeiture, declaration of status of title, or order for sale or transfer."

Cheshire in his "**Private International Law**" (pg. 653) had observed that

"If (*judgment in rem*) has been defined as judgment of a court of competent jurisdiction determining the status of a person or thing (as distinct from the particular interest in it of a party to the litigation); and such a judgment is conclusive evidence for and against all persons, whether parties, privies or strangers of the matter actually decided .... a judgment *in rem* settles the destiny

*See*

of the res itself and 'binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence. A judgment in personam, although it may concern a res, merely determines the rights of the litigants inter se to the res."

9. The Punjab and Haryana High Court had the occasion to consider a similar controversy in the case of **Satyapal Singh and others vs. The State of Haryana and another, 1999 (2) RSJ 377**. The relevant observations are extracted as below:-

5. After hearing learned counsel for the parties, we are of the view that the judgment of the learned Single Judge was really not a judgment in personam but was judgment in rem inasmuch as law had been laid down and the petitioners in that case were held entitled to the relief claimed by them. Really speaking, the State Government should have itself granted the same relief to other similarly situated persons though they may not have come to the Court. The State government should under such circumstances apply the law itself to the similarly situated persons instead of forcing any individual or a Union to resort to unnecessary litigation as law is already settled and only the same has to be applied to the facts of a particular case. The petitioners in the present case had, through their Union, filed a representation in August, 1992 after the judgment of the learned single Judge. If the respondents failed to comply with the judgment because of the pendency of the Letters Patent Appeal and then the appeal before the Apex court, the petitioners cannot be denied the same benefit as was granted to the petitioners in the aforesaid writ petitioner. The respondents as a Welfare State should rather see to it that the litigation in the courts is minimized. After this Court or the Apex Court lays down the law, it should see to it that similarly situated persons automatically get the same relief without resorting to litigation. In another case of **Satbir Singh v. State of Haryana, 2002 (2) SCT page 354**, the Hon'ble High Court has held that when a judgment attains finality, the State is bound to grant relief to its employees who are similarly situated even though they are not party to the litigation. A final decision of the Court must not only be respected but should also be enforced and implemented evenly and without discrimination in respect of all the employees who are entitled to the benefit which has been allowed to the employees who have obtained orders from the Court. The matter is one of principle and should not depend upon who comes to the court and who does not.

The judgments which have been implemented cannot be considered to be a judgment in personam as identical employees cannot be treated differently.

The Apex Court as early as in 1975 in the case of **Amrit Lal Berry v. CCE, (1975) 4 SCC 714**, held as under:-

"We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court."

The judgment of the Full bench of Central Administrative Tribunal, Bangalore in the case of **C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1992)**, had held that the entire class of employees

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who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. This principle was upheld by the Hon'ble Supreme Court not only in this case but also as in other judgments as in **G.C. Ghosh v. UOI**, [(1002) 19 ATC 94 (SC)], **K.K. Shepherd v. UOI & ors.** [(JT 1987. (3) SC 600)] and in **Abid Hussain v. UOI** [(JT 1987 (1) SC 147)].

In a latter case of **Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of UP**, (2006) 10 SCC 346, the Apex Court has referred to the decision in the case of **State of Karnataka v. C. Lalitha** (2006) 2 SCC 247 as under:-

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

We would also refer to Para 22.3 of the Hon'ble Apex Court's judgment in **Arvind Kumar Srivastava & ors.** (supra), (relied upon by the respondents) which states as follows:-

"(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

The ratio in **Arvind Kumar Srivastava & ors.** (supra) clearly lays down that when the judgment pronounced by the Court is a judgment in rem with an intention to give benefits to all similarly situated persons, whether they approach the Court or not, an obligation is caused upon the authorities to itself extend the benefits thereof to all similarly situated persons. The Hon'ble Apex Court would further ordain that such a situation

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could occur when a subject matter of a decision touches upon policy matters.

10. At this juncture, we would refer to the orders of the Hon'ble Apex Court in Civil Appeal No. 11948-11950 of 2016 (Annexure A-3 to the O.A.) and we note that the Hon'ble Apex Court, while disposing of the said Civil Appeal, had directed as follows:-

"9. Rule 6 which provides for the initial constitution of the service stipulates that from the date of the commencement of the Rules, departmental candidates who held posts on a regular basis in the stipulated pay scales would be deemed to have been appointed to corresponding posts and grades in the service. Rule 2(c) provides for the definition of the expression "departmental candidates". The effect of Note 3 to Schedule I is that posts sanctioned after 1 January 1985 in All India Radio and Doordarshan would be deemed to have been included in the service and will be added to the strength shown therein. The High Court has observed that on the date of the commencement of the Rules, the pay scales of the applicants were Rs. 3000-4500 and Rs. 2200-4000 respectively. As a result of the deeming provision in Note 3, it was held that they would be appointed to corresponding posts and grades in service. This finding is unexceptionable. It was not in dispute before the High Court that the posts of TV News Correspondent and TV Assistant News Correspondent were regular sanction posts. Based on this, it was held that having due regard to Rule 6 read with Rule 2(c) and Note 3 of Schedule I, the posts held by the Respondents shall be deemed to have been included in the service. This interpretation of the High Court is borne out by the Rules. Once they were declared to be government servants, it would be unfair and inequitable to deny to them all the benefits, including of pay scales and other conditions of service applicable to posts in the equivalent pay scale..

10. While affirming the judgment of the Tribunal, we clarify that

- (i) promotions which have already been effected and the existing seniority shall not be affected;
- (ii) in the case of employees who have retired, a notional pay fixation shall be carried out and retiral benefits, including pension, if any, shall be determined on that basis; and
- (iii) individual cases for promotion would be considered against vacancies available, keeping seniority in view."

We, would particularly note the following observations of the Hon'ble Apex Court:-

"Once they were declared to be government servants it would be unfair and inequitable to deny to him all the benefits, including of pay scales and other conditions of service applicable to posts in the equivalent pay scales."

Clearly this observation emanates from a policy statement highlighting that, once declared as a government servant, employees cannot be denied benefits applicable to posts in the equivalent pay scales. The Hon'ble Apex Court, in reiteration of the policy context, had

highlighted that even retired employees would also be entitled to notional fixation and consequent retirement benefits.

11. Hence, we would logically infer, that:

- (1) This judgment of the Hon'ble Apex Court being essentially related to policy, is a judgment in rem and its orders are not confined to only the petitioners of the instant Civil Appeal.
- (2) Hence, having concluded on a policy matter, the judgment pronounced by the Hon'ble Apex Court was "in rem" which could have been logically translated into a policy statement by the respondent authorities without expecting individual applications from similarly situated employees.

The respondent authorities, however, concluded that the orders of the Hon'ble Apex Court was inapplicable to the applicant as the order was "in personem" although no such implications could be inferred either from the tenor or the language of such judgment.

12. Having analyzed the ratio laid down by the Hon'ble Apex Court in this regard, we would hesitate to accept such reasoning contained in the speaking order, and, accordingly, would quash the speaking order dated 24.9.2020 and remand the matter back to the competent respondent authority to reconsider and decide afresh on the applicant's representation at A-4 to the O.A. in the light of para 22.3 of the orders in **Arvind Kumar Srivastava (supra)** as well as the judgement and orders of the Hon'ble Apex Court in paras 9 and 10 of **E. Krishna Rao & ors (supra)**.

The authorities should convey their decision to the applicant within a period of eight weeks from the date of receipt of a copy of this order.

As the posting of the applicant would ultimately depend on the fate of his representation, the respondent authorities may not compel him to

join his place of posting at DDK, Bhubaneswar till such time that the representation is not disposed of and further restrain themselves from initiating any coercive actions against the applicant thereupon.

13. With these directions, the O.A. is disposed of. No costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

SP