

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.66/2021

This the 02nd day of March, 2021

**Coram : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Smt. Ashlesha,
Wife of Shri Mihir V.Mehta,
Age 58 years,
Working as TREX in the Office of the respondents
Residing at M-14/159, Vidyanagar Flats,
132 feet Ring Road, B/h Himmatlal Park II,
Ahmedabad : 380 015.....Applicant

(By Advocate : Shri M.S.Trivedi)

Versus

1. The Chief Executive Officer
O/o. CEO, Prasar Bharti
2nd Floor, PTI Building
Sansad Marg, New Delhi : 110 001.
2. The Director General (WR-I)
O/o. DG, All India Radio
Prasar Bharti Public Service
India's Broadcaster, Akashwani Bhavan,
Parliament Street, New Delhi – 110 001.
3. The Assistant Director (P)
O/o. SD (P), Prasar Bharti Public Service
India's Broadcaster,
All India Radio
Bhuj, Kachchh – 370 001..... Respondents

ORDER – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

Being aggrieved by the impugned speaking order dated 19.01.2021 whereby the request of the applicant for her transfer from AIR-Bhuj to AIR/ DDK-Ahmedabad was not acceded by the respondents hence, the applicant has preferred

the present OA under Section 19 of the A.T.Act, 1985 and prays for the following reliefs :

- (A) That the Hon'ble Tribunal be pleased to allow this petition*
- (B) That the Hon'ble Tribunal further be pleased to quash and set aside the impugned ex-facie, illegal, arbitrary and unjust action, decision and order No.01/08/2018/S-Vol-/21 dated 19.01.2021 issued by the respondents (Annexure A-1) regarding the request of the applicant dated 10.12.2019 for her transfer at Ahmedabad either in DDK, Ahmedabad or All India Radio, Ahmedabad, on medical grounds.*
- (c) That the Hon'ble Tribunal further be pleased to direct the respondents to file/papers on which impugned order dated 19.01.2021 is issued by the respondents.*
- (D) That the Hon'ble Tribunal further be pleased to direct the respondents to take decision regarding transfer of the applicant from Bhuj to Ahmedabad considering the tenure of more than 8 years at same station and on medical ground.*
- (E) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.*

2. The brief facts of the facts are as under :

2.1 The applicant, while working as TREX was transferred from AIR Ahmedabad to AIR Bhuj in the year 2013 on the ground that the department proceedings were initiated against her and since then, she is working under the respondent No.3 i.e. the Assistant Director (P), SD(P), Prasar Bharti Public Service, at Bhuj, Kachchh.

2.2 It is stated that on 26.4.2014, the applicant preferred an application for her request transfer from Bhuj to Ahmedabad on medical ground. However, the respondents have not considered it. Hence, she approached this Tribunal by way of filing OA No. 457/2014. This Tribunal while disposing of the said OA vide order dated 22.4.2016 directed the respondents to consider the request/ representation of the applicant within a period of two months from the receipt of a copy of the order. On receipt of the said order, the respondents considered the request of the applicant and vide speaking order dated 15.6.2016 (Annexure A-2) the request of the applicant has not been acceded. Accordingly, the representation of the applicant was disposed of by the respondents.

2.3 Aggrieved by the said speaking order dated 15.6.2016 the applicant has filed the OA No. 259/2018 before this Tribunal. During the pendency of the said OA, the applicant had filed MA No.263/2020 wherein it was contended by the applicant that on the opinion of the Vigilances Section and departmental proceedings were initiated against her. Due to it, she was transferred from AIR, Ahmedabad to AIR, Bhuj. It is further stated that since she has completed more than 8 years at the transferred station i.e. AIR, Bhuj, now she is eligible for transfer back to either AIR, Ahmedabad or DDK, Ahmedabad as vigilance point/angle do not exist after a period of eight years. Therefore, the applicant prayed for direction to be issued to the respondents to consider her representation dated 30.11.2019/ 10.12.2019 (Annexure A-3). By considering the said request of the applicant, OA No.259/2018 along with MAs were disposed of as withdrawn vide order dated 28.09.2020 with a direction to the respondents to consider the representation dated 10.12.20019 of the applicant in accordance with the rules within sixty days from the date of receipt of the order (Annexure A-4).

2.4 In compliance of the direction issued by this Tribunal vide order dated 28.9.2020 in OA No.259/2018, the respondents have passed the speaking order dated 19.1.2021 (Annexure A-1) whereby the request of the applicant for her transfer back either to AIR, Ahmedabad or DDK, Ahmedabad, has not been acceded by the respondents. The said decision dated 19.01.2021 is impugned in this OA.

3. Learned counsel Shri M.S.Trivedi for the applicant submits that the applicant had completed her normal tenure of 3-5 years at the same station. Therefore, as per the existing policy, the applicant is entitled to claim her transfer, however, the respondents have not considered the case of the applicant. Not only that the medical ground stated by the applicant has also not been considered. It is further submitted that in the impugned speaking order the respondents has

observed that the applicant was earlier transfer on the observation of the vigilance section, DG: AIR and the fresh representation dated 10.12.2019 for transfer from Bhuj to Ahmedabad was examined in consultation with vigilance section DG: AIR and place it before the Recommending Committee for transfer and posting and the recommendation of the Recommending Committee has been placed before the competent authority. The applicant has been conveyed that her request is not acceded by the competent authority. The applicant has raised the grievance to call upon the file pertaining to proceeding of the Recommendation Committee as well as file/papers on which decision has been taken by the competent authority, on which impugned speaking order was dated 19.01.2021 was issued.

It is further submitted that other similarly placed employee working at Ahmedabad against whom CBI inquiry was pending and cases were registered against them, they have not been transferred from Ahmedabad to out station but in the case of the applicant, she has been transferred from Ahmedabad. Therefore, the impugned order is arbitrary and discriminatory, as also in violation of Articles 14 & 16 of the Constitution of India. It is argued that since there is no reason has been stated in the speaking order for rejected the request of the applicant, the impugned decision is required to quash and set aside.

4. Heard Shri M.S.Trivedi, counsel for the applicant and we have perused the material on record.

5. The Hon'ble Supreme Court, in the case of ***Rajendra Singhand Ors. Vs. State of Uttar Pradesh & Ors.***, reported in [2009] 15 Supreme Court Cases 178, has held that –

“8. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should

continue in such place or position as long as he desires. 9. The Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides.

6. In case of ***Shilpi Bose v. State of Bihar***, reported in AIR 1991 SC 532, the

Hon'ble Supreme Court held :

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the 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 with the order instead affected party should approach the higher authorities in the department.”

7. Considering the factual matrix of the present case and taking note of the law laid down by the Hon'ble Apex Court in aforesaid judgments (*supra*), we are of considered opinion that the respondents have considered the request of the applicant for her transfer and deem it fit not to accept the same, in absence of any material or evidence of *mala fide* action against the competent authority as also in absence of any material for not following any mandatory provision, it cannot be said that the impugned speaking order suffers from any infirmity and hence, we are not inclined to interfere with the impugned order. Accordingly, the OA stands dismissed at the admission stage. No costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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