

CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. No.351/1099/2017.

Date of order : This the ^{April 10} ~~21st~~ Day of February, 2021.

Hon'ble Mrs.Bidisha Banerjee, Judicial Member

Hon'ble Mr Tarun Shridhar, Administrative Member



Shri P.S.Saighal
S/o Late Sivasankaran aged about 47,
Working as Programme Executive,
All India Radio,
R/o AIR Colony,
Buniyadabad, Port Blair
Pin- 744102.

.....Applicant

By Advocate : Mr A. Prasanth

-Versus-

1. Union of India,
(Service through Secretary,
Govt. of India, Ministry of Information and
Broadcasting), New Delhi – 110011.
2. The Prasar Bharati Broadcasting Corporation
Of India (through the Director General,
Welfar Section, All India Radio, Akashvani Bhavan,
Sansad Marg, New Delhi – 110001).
3. The Chief Executive Officer,
Prasar Bharati, 2nd Floor, PTI Building,
Parliament Street, New Delhi – 110001.
4. The Director General,
Welfar Section, All India Radio, Akashvani Bhavan,
Sansad Marg, New Delhi – 110001).
5. The Additional Director General (Southern Region-II)
AIR Campus, Bangalore – 560001.
6. Assistant Director (P)
All India Radio Campus, Chennai – 600 004.
7. The Station Director,

Prasar Bharati/Broadcasting Corporation of India, All India Radio, Port Blair – 744101.

8. Shri R. Venkateshwarlu,
Advisor (Southern Region)
AIR Campus, Bangalore – 560001.

.....Respondents

By Advocate : Mr V.D.S. Balan.



ORDER

Ms Bidisha Banerjee, Member(J)

The applicant, a Programme Executive in All India Radio, Port Blair has assailed the transfer order dated 20.07.2017 on the ground that as Programme Executive appointed in Andaman & Nicobar Islands he does not have a transfer liability to Chitra Durge, Karnataka, where he has been transferred to. The applicant has alleged that there cannot be any inter zonal transfer for the cadre recruited on zonal basis for zone Andaman & Nicobar Islands. The applicant has also challenged the competence of private respondent in issuing the transfer order in his capacity as Adviser that too after his retirement which according to the applicant is de hors the rules, assuming the power of Additional Director General without any authority.

2. At hearing Ld. Counsel for the applicant would draw our attention to following :

- (i) That Order No.117/2011-PPC dated 02.09.2011 that there will be no inter zonal transfer in those cadre recruited on zonal basis issued with the approval of the competent authority from the Prasar Bharati Secretariat.
- (ii) Order dated 28.09.2018 in M.A.026/2018 preferred by the applicant that the private respondent No.7 namely, R. Venkateshwarlu, Adviser who has retired from service as far back on 31.01.2014 did not have the

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authority to pass such order. Id. Counsel would submit that said R.Venkateshwarlu as an Adviser could not have written the APARs and he cannot be expected to have the power to transfer the applicant. The Writ Petition 475/2017 decided on 06.07.2018 that the said respondent as a contractual employee could not have made entry in the ACR.

3. Per contra, Id. Counsel for the respondents in denying the allegations of the applicant would submit the following :

That the Prasar Bharati order dated 02.09.2011 prohibits inter zonal transfer was not a statutory order but made for administrative convenience in public interest.

That the applicant had been serving Port Blair for last 27 years and he has developed certain vested interest and therefore his retention at Port Blair is prejudicial to the interest of the organisation and maintenance of congenial atmosphere at the station.

That such transfer was permissible in view of the decision of the Hon'ble Apex Court in Janardhan Debnath and another.

That the transfer was strictly on merit and similarly placed persons would be considered for the transfer to other AIR stations at the appropriate time.

That as an Adviser the respondent No.7 was entrusted with the supervisory responsibility and was competent enough to review the ACR.

That the transfer order of the applicant from Port Blair to Chitra Durge was issued after formal approval from the Director General and without any malafide intention.

That AIR, Chitra Durge faces acute shortage of staff and applicant's posting is in the best interest of service as well as station concerned.



That the applicant who was serving as a Transmission Executive stands promoted to the post of Programme Executive on 02.12.2013 and as a Programme Executive he has all India transfer liability.

4. In the rejoinder, the applicant has denied the fact that as a Programme Executive he has an all India transfer liability and his duties involved language and dialect and having no knowledge of Kanada would seriously prejudice him.

The applicant has further alleged that the moment applicant raised an objection about a retired Govt. employee reviewing his APAR, in no time the transfer order was issued. Therefore, the transfer order was issued with mala fide intention.

That the respondents have admitted in a reply to a RTI application that no transmission executive has ever been transferred to Andaman & Nicobar during 1996 to 2017. Therefore, the applicant has been singled out in the matter of transfer.

That in situ personnel up-gradation as an administrative measure without any financial benefit does not amount to a regular promotion to the post of Programme Executive. Therefore, even as a Programme Executive he had no transfer liability.

That the applicant being appointed for Andaman & Nicobar Zone, the respondent authorities are not providing him any rent free accommodation as provided to an employee with all India transfer liability. The applicant is being made to pay licence fee for the official accommodation.

5. At hearing Ld. Counsel for the applicant would also place the duties of a Transmission Executive which includes the following :



"The Programme Cadre in AIR starts from the post of Transmission Executive. The duties of the Transmission Executives are multifarious in nature. These are broadly indicated below :

1. The Transmission Executive is placed incharge of the Station's transmissions and he functions as the Duty Officer. He coordinates between the performing artists/talkers, the programme presentation staff and the Engineers. He is responsible for collection and issue of all the programme material and their broadcast according to the programme cue sheet. Outside office hours he is also placed incharge of duty vehicles and functions as contact officer assisting the Station Director.
2. The Transmission Executive is responsible for carefully watching the various items of programmes broadcast and preparing the Daily Report in form AIR-P-29. Any deviations from the scheduled programmes are noted in the form each day and a consolidated report for a month sent to the Director General, All India radio, by the 1st week of next month.
3. The Transmission Executive should evaluate programmes at All India Radio Stations/Offices and enter their assessment in the column "Remarks for Card Index" of the Daily Report for the day's broadcast. The assessment should be discussed in the next programme meeting and modified or revised in the light of comments of Senior Programme Officers concerned etc. in the meeting. Thereafter the final assessment should be entered in the Card Index (AIR-P-34).
4. Those Transmission Executives who are on duty in the morning shift should attend the programme meeting to be held on that day. These Transmission Executives will later apprise their colleagues, that is other Transmission Executives, of the discussion taken in the meeting, which concern them.
5. Detailed entries should also be made in the Studio Log Book (AIR-P-30) by the Transmission Executives. Great care should be taken for making entries in this book as it is the main initial record for making payments to artists, talkers, gramophone record companies etc. Every entry in the Log Book should be initialled by the Transmission Executives in Column 10. While making entries of Broadcast of tapes he should also indicate when possible the date of recording and payment position in the Studio Log Book so that the Accountant could complete the entries in the separate Pay Order Book (for pre-recorded programmes) and ensure that all such programmes are broadcast."

Citing the aforesaid, Lt. Counsel would submit that he would have a dialect problem in Karnataka.

Lt. Counsel for the applicant also placed an order dated 22.03.2013 in O.A.134/AN/2012 which was preferred by the applicant when he was transferred from AIR Port Blair to AIR Shantiniketan. This Tribunal had recorded as under :

18. The respondents have subsequently issued an OM dated 2.9.2011, it has been decided that henceforth there will be no inter zonal transfer in those cadres recruited on zonal basis.

19. It has also been contended by the Ld. Counsel for applicant that respondents cannot on one hand decline payment of Islands allowance and on the other hand content that he has a All India transfer liability. They cannot be allowed to raise such mutually inconsistent pleas. There is no specific reply to this averment.

20. xxxxxxxxxxxxxxx

The 1994 selection notification, in terms of which, the applicant has been appointed, refers to essential qualification. One of the essential qualifications is proficiency in the language relevant to the vacancy. Perusal of the notification further reveals that all these zones as well as language of the zones had to be indicated. The applicant has also been recommended against Hindi language. We have not been addressed as to whether the Zone for recruitment and Zone in organisational structures are one and the same. The respondents have also issued a policy instruction on 2.9.2011 that henceforth there shall be no inter zonal transfer in those cadres recruited on zonal basis. They have not considered the denial of Island allowance.

22. The speaking order does not refer to these aspects and accordingly cannot be sustained. It is quashed and set aside. The respondents are granted liberty to consider this limited aspect and pass fresh order on the issue referred to in para 21 above. No costs."

The respondents had recalled their transfer order.

6. In view of the foregoing paragraphs we have noticed that the respondents have failed to justify that the applicant has an all India transfer liability, and that the respondent who had caused his transfer was competent to issue such order. Accordingly, we set aside and quash the transfer order to Chitra Durge and direct the authorities to retain him at Port Blair.

O.A stands allowed. No costs.


(MR TARUN SHRIDHAR)
MEMBER (A)


(BIDISHA BANERJEE)
MEMBER (J)