

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO: 157 OF 1993

Date of decision: June 18, 1993

Association of Radio and T.V.
Engineering and Others Applicants

— Versus —

Union of India and Others Respondents

For the Applicants : M/s. Devanand Misra,
Deepak Misra,
A.Deo, B.S.Tripathy
and P.Panda, Advocates

For the Respondents : Mr. Ashok Misra,
Sr. Standing Counsel (Central).

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CORAM:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

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THE HONOURABLE MR. H. RAJENDRA PRASAD MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? No'
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENTK.P.ACHARYA, VC

In this application under section 19 of the Administrative Tribunals Act, 1985 it is prayed that a direction be issued to keep the order of transfer in abeyance till May, 1993 and while giving effect to the order of transfer, the Opposite Parties be directed to give the monetary benefit of transfer such as transfer allowance and such other ancillary allowances to the petitioners, and further, a direction be issued to give the benefit of headquarters shifting and a direction be given permitting the petitioners to occupy the quarters after May, 1993, and to direct the Opposite Parties to give the tour allowance and other benefits of the tour commencing from 1st January, 1993 till 11th March, 1993.

2. Shortly stated the case of the petitioners (165 in number) is that they are employees rendering service in different capacities in Doordarshan Kendra. Prior to 31.12.1992, the Doordarshan Kendra was operating at Cuttack. Thereafter the Doordarshan Kendra was shifted to Bhubaneswar. Vide order dated 31st December, 1992, contained in Annexure-1, the Director (Shri G. Nayak) of Doordarshan Kendra ordered that, with effect from 1st January, 1993, Doordarshan Kendra, Bhubaneswar, will start functioning in a full-fledged manner. All the Members of the staff

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under the establishment of Doordarshan, Cuttack, except the staff already working at High Power Transmission, Doordarshan Kendra, Cuttack, will perform their duties (both Shift and General) at Doordarshan Kendra, Bhubaneswar. Those people discharging their duties of the aforesaid nature at Bhubaneswar, will be treated as if on tour till further instructions, and names of those persons have been mentioned in a separate list annexed to the order. Vide order No. 14 (6) /93-A.I dated 11th March, 1993 contained in Annexure 2, the same Director, Shri Nayak, ordered that the officers have been transferred in the same capacity from Doordarshan Kendra, Cuttack, to Bhubaneswar with effect from 6th January, 1993. The claim of the Petitioners on the above-mentioned account was rejected. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the petitioners are entitled to T.A. and other transfer benefits till 5th January 1993 which has already been paid to the petitioners and they are not entitled to any further amount as claimed by the petitioners in this petition. Hence it is finally maintained by the Opposite Parties that the case, being devoid of merit, is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel appearing for the petitioners, and Mr. Ashok Misra, learned Senior Standing Counsel (Central) at a considerable length.

5. At the outset, we would, for the purpose of convenience, state the submission made by Mr. Ashok Misra learned Senior Standing Counsel (Central). It was submitted on behalf of the opposite parties that the petitioners are not entitled to any monetary benefit except what they derive under Annexure 1 till 5th January, 1993, and they are entitled to transfer benefits as per Rules. We cannot comprehend the reason for which the Director Mr. Nayak (a highly placed Officer) in the Ministry of Information and Broadcasting could pass such an illegal and irrational order authorising the petitioners that their journey from Cuttack to Bhubaneswar could be treated as on tour. This is for the first time we have come across such an order by virtue of which huge amount will be drained out from the State Exchequer. Reasons may be two in number. Either the Director has not applied his mind while passing the order or some extraneous considerations have weighed with the Director in passing such an order. The first reason appears to us to be more probable. We leave it to the authorities in the Ministry of Information and Broadcasting to take notice of the fact that huge money of the

Government has been squandered and suitable action should be taken. Even if at the instance of a particular officer, and due to his negligence, Government money has been squandered, yet, if the claimants are entitled to the relief claimed by them under the Law, such relief must be granted in their favour. Strenuous argument was advanced by Mr. Deepak Misra, learned counsel appearing for the petitioners, that once the authority has passed orders that the petitioners are entitled to Tour Allowance as their journey from Cuttack to Bhubaneswar would be treated as on Tour, the authority has no other option but to pay the amount to which the petitioners are legally entitled to. There cannot be a second opinion that the petitioners are now taking advantage of an inconceivable order passed by the Director. Once an order has been passed, the petitioners are entitled to the benefit of the order irrespective of the fact that there was no justification on the part of the Director to pass such an order. The contention of Mr. Ashok Misra learned Senior Standing Counsel (Central) that the transfer has been given effect to by the concerned authority contained in Annexure 2 with effect from 6th January, 1993 is devoid of merit. No transfer order can have a retrospective operation. This is the settled position of law. Transfer order is effective

from the date on which it is passed. Therefore, the order, contained in Annexure 2 transferring the Petitioners from Cuttack to Bhubaneswar shall be effective from 12th March, 1993 and not a day prior to that date. Therefore, the petitioners are entitled to their T.A. for having performed their journey from Cuttack to Bhubaneswar as per the order contained in Annexure A/1, and if on any dates any of the officers have not attended their duties, they are not entitled to any TA; and this amount they are entitled with effect from 1st January, 1993 to 11th March, 1993.

5. After the transfer order contained in Annexure 2 is passed on 11th March, 1993 the petitioners would be entitled to their emoluments as per rules when an officer is transferred from one station to the other. Nothing more nothing less. We would caution the Director that henceforth he must apply his mind fully and should not be as careless as that to give any higher amount to the claimants other than what they are entitled to as per rules. Mr. Deepak Misra submitted that the petitioners are entitled to advance pay of two months as per rules because of headquarters shifting. We did not have the advantage of going through the rules because neither parties have filed the rules. In case the Rule permits for payment of two months advance pay for the headquarters-shifting the said

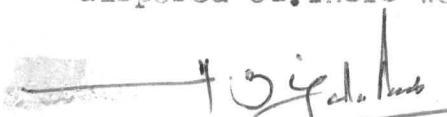
amount be paid to the petitioners which would be deducted from their pay as per rules. Other prayers are dismissed. Stay order stands vacated.

6. Mr. Deepak Misra, learned counsel appearing for the petitioners, submitted that direction be given to the Director to allow the petitioners to occupy the quarters allotted to each of them after 30th June, 1993. Petitioners may make an application to the Director who may pass orders according to law. Irrespective of the fact that if the Director allows their application even then the petitioners would be liable to pay rent for the quarters because Government cannot be put to a loss on the ground that the petitioners will be inconvenienced to move to Bhubaneswar and occupy the quarters.

7. Vide order dated 30th March, 1993, it was directed that the petitioners must occupy their quarters by 20th April, 1993. The stay order ^{was} extended till 21st June, 1993. Since the quarters have remained vacant at the instance of the petitioner who did not like to move to Bhubaneswar due to their personal inconvenience, including children's education, it is directed that rent prescribed for the quarters allotted to each of the petitioners be paid by each of them for the months of May and June, 1993. In case the Director extends the period of occupation

of the quarters by the petitioners to a date subsequently to June, 1993, the petitioners must pay the rent for the future period after June, 1993. Amount payable by the petitioners on this account, be calculated and deducted from their entitlement towards the TA emoluments as directed above. In case the petitioners have already drawn any amount on the items mentioned above, the same should be deducted and the balance amount should be paid. We hope and trust all these directions would be implemented within sixty days from the date of receipt of a copy of the judgment.

8. Thus, the application is accordingly disposed of. There would be no order as to costs.


MEMBER (ADMINISTRATIVE)
18 JUN 93.


18.6.93.
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. M. Bhanty,
18.6.1993.

