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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 377 OF 2011

Cuttack this the 16th day of November, 2011

CORAM:

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Jayaram Munda, aged about 49 years, Son of Late Lambodhar Munda, a permanent resident of Village-Ankura, Post-Tangarpada, Via-Srirampatna, Dist-Keonjhar, PIN-758 030, at present working as Programme Executive in All India Radio, Keonjhar, At/PO-Ghatin, Dist-Keonjhar, PIN-758001

...Applicant

By the Advocates: M/s.S.K.Ojha & S.K.Nayak

-VERSUS-

1. Union of India represented through its Secretary, Government of India, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi
2. The Director General, {S-1(B)/Section}, Prasar Bharati Broad Casting Corporation of India, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi-110 001
3. Deputy Director (ER), All India Radio, Akashvani Bhawan, 3rd Floor, Eden Gardens, Kolkata-700 001
4. Station Director, All India Radio, Cantonment Road, Cuttack
5. The Assistant Station Engineer (Head of Office), Prasar Bharati Broadcasting Corporation of India, All India Radio, Keonjhar

...Respondents

By the Advocates: Mr.D.K.Behera, ASC

O R D E R

A.K.PATNAIK, JUDICIAL MEMBER: The applicant by filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985 has sought for the following reliefs:

- i) To quash the order of transfer of the applicant under Annexure-A/2 dated 22nd May, 2009 so also the order of his relieve dated 7.6.2011 in Annexure-A/7.
- ii) AND/OR to direct the Respondents that in case the transfer of the applicant is inevitable he may be posted in any of the place of choice given by him and vacancies exist;
- iii) To pass any other order/orders as deemed fit and proper.

2. The dispute in brief is that while the applicant was working as a Programme Executive in All India Radio, Keonjhar was transferred to AIR Jeypore vide order dated 22.5.2009 under Annexure-A/2, which was kept in abeyance until further orders

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upon consideration of his representation. While the matter stood thus, the order keeping the said transfer in abeyance was revived for which the applicant again submitted a representation. The authorities in response to his representation informed him that "it was not found feasible to keep him at AIR, Keonjhar for one more year". **However, he was asked vide Annexure-A/4 dated 24.8.2010 to furnish three choice places of posting except AIR, Cuttack/CBS, AIR, Cuttack for further consideration of his transfer.** Accordingly, the applicant submitted his option preferring his choice of postings to **STI(P), Bhubaneswar, AIR, Puri and AIR, Baripada.** It is the case of the applicant that without considering the option exercised by him, an order dated 7.6.2011 was issued relieving him of his duties in order to join at AIR Jeypore vide Annexure-A/7. Being aggrieved by such an order, the applicant has approached this Tribunal in the present O.A. seeking the relief as referred to above.

3. Respondent-Department have filed their counter opposing the prayer of the applicant mainly on the ground that the transfer of the applicant was in public interest and, as such, transfer being an incident of service the applicant should not have objected to go on transfer especially when he has been holding a transferable post knowing fully well that he is liable to be transferred anywhere in public interest. Hence, they have stated that the O.A. being devoid of merit is liable to be dismissed.

4. This matter came up for admission on 13.6.2011, when the Tribunal, while directing notice to the Respondents, as an interim measure, directed status quo to be maintained in respect of the applicant.

5. Heard Shri S.K.Ojha, learned counsel for the applicant and Shri D.K.Behera, learned Addl. Standing Counsel appearing on behalf of the Respondents and perused the materials on record.

6. Admittedly, AIR, Keonjhar and AIR, Jeypore are 'C' Category stations. The Rule-xi of transfer policy dated 14.7.1981 states that "**persons who already had a spell of posting at a C station would not be posted to such a station second time if there are candidates in the same grade who are still to be posted to such a station**". This being the situation, *prima facie*, transfer of the applicant from 'C' station".

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category station to another 'C' category station does not appear to be in consistence with the policy as referred to above, particularly when it is not the case of the Respondents in their counter that **there are no candidates in the same grade who are still to be posted to such a station.**

7. In addition to the above, Rule-xviii of Transfer Policy dated 14.7.1981 lays down that "**in case an official posted at a category 'C' station is willing to continue at that station, notwithstanding completion of his normal tenure there, he may not be transferred from that station, unless the conditions other than the tenure justify his transfer from that station**". In this connection, I have gone through Annexure-A/4 dated 24.8.2010 as well as the counter reply. No where, either in Annexure-A/4 or in the counter, the Respondents-Department have made it clear that **conditions other than the tenure have justified the applicant's transfer from Keonjhar to Jeypore.**

8. Besides the above, it would be worthwhile to mention with regard to posting of the applicant on transfer to STI (P), Bhubaneswar, the Respondents have stated that it does not come within the jurisdiction of DDG(ER), AIR. It has further been submitted that there being no vacancy available at AIR, Puri, applicant's posting on transfer could not be materialized. In so far as his choice of posting to AIR, Baripada is concerned, the Respondents have admitted that only one vacancy out of 5 sanctioned posts is available. But AIR Baripada is presently being managed with 3 officers in position while AIR, Jeypore is managed single handedly by only one officer out of sanctioned 5 posts for quite a long time which has become a major administrative constraint for the Department.

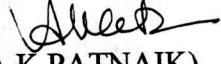
9. I have considered the submissions made by the learned counsel for the parties. In my considered view, while transferring the applicant from one 'C' category Station to another 'C' Category station, viz., Keonjhar to Jeypore, the Respondents-Department although have not considered the rule positions as referred to above for his retention at Keonjhar, but their liability to consider his posting to Baripada against the existing vacancy upon his option being exercised cannot be brushed aside. In this view of the matter, the impugned orders under Annexure-A/2 dated 22nd May, 2009 so also the order dated 7.6.2011 at Annexure-A/7 relieving of his duties, are hereby

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quashed. Respondents are directed to reconsider the applicant's posting on transfer to AIR, Baridapada, having regard to the rules as referred to above keeping in view the option exercised by the applicant within a period of thirty days from the date of receipt of this order.

Ordered accordingly.

The O.A. is allowed to the extent indicated above. No costs.


(A.K.PATNAIK)
JUDICIAL MEMBER

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