

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 938 of 1990

Present: Hon'ble Dr. B. C. Sarma, Administrative Member

Hon'ble Mr. D. Purkayastha, Judicial Member

1. All India Radio & Doordarshan Technical Employees Association, Akashvani Bhavan, Calcutta, represented by Shri Anjan Kumar Chakraborty, Zonal Secretary, East Zone.

2. Shri Indu Bhusan Das son of late S.N. Das MATILAL Para, Dum Dum, Calcutta-700 051 working as Senior Engineering Assistant, A.I.R. at present posted at Doordarshan Kendra, Kohima, Nagaland

... Applicants

VS

1. Union of India, represented through the Secretary to the Govt. of India, Ministry of Information & Broadcasting, New Delhi

2. Director General, All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-110 001

3. Deputy Director (Administration), Office of the Director General, A.I.R., Parliament Street, New Delhi-110 001

For Applicants: Mr.R.K.De, counsel

For Respondents: Mrs. U. Sanyal, counsel

Mr. B. Chatterjee,
Counsel

4. The Chief Engineer, East Zone, All India Radio, Akashvan Bhavan, 4th Floor, Calcutta-700 001

... Respondents

Heard on 10.9.1997 & 11.9.1997 : :

Date of order: 12.9.997

O R D E R

B. C. Sarma, AM,

This application has been filed by two applicants, one being the All India Radio & Doordarshan Technical Employees Association, Akashvani Bhavan, Calcutta assailing the impugned order dated 17.6.1996 issued by respondent No.3 alleging that the impugned order interferes with the declared transfer policy, adversely affecting employees with transfer liability to North-East Region as well as the order dated 1.8.1996 issued by the Chief Engineer(EZ), respondent No.4 in furtherance of the aforesaid order. Briefly stated the facts of the case are as follows :

All India Radio by a circular letter dated 4/7.8.1981

Contd...2/-



accepted the transfer policy in respect of its staff and officers, as declared by the Ministry of Information and Broadcasting by a memo dated 14.7.1981. According to this policy, the stations/offices of All India Radio was categorised into 'A', 'B' and 'C' stations for the purposes of fixation of tenure of postings. ~~Most of the~~ 'C' stations are coming under the North-Eastern Region. As living conditions in North East were hazardous, Government of India in the Ministry of Finance (Department of Expenditure) announced a new transfer policy in tune with the recommendations of the expert committee headed by the Secretary to the Government of India in the Department of Personnel & Administrative Reforms vide its O.M. No.20014/1/83-E.IV dated 14.12.1983. It has been annexed with the application as Annexure/A2. The aforesaid O.M. clearly indicated the demographic area coming under the North Eastern Region comprising the states of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram (the last two at that time were Union Territories) and laid down a tenure of three years at a time for officers with services of 10 years or less and of two years at a time for officers of more than 10 years service. The Office of the Director General vide its office memorandum dated 23.4.1987 further declared that stations/offices in the North East Region were difficult stations and that each and every officer must serve at a difficult station at least once in his career. In that O.M. there was a note indicating the same tenure as laid down by the Finance Department O.M. dated 14.12.83. Applicant No.2 was transferred by respondent No.4 by an order dated 4.1.94 on promotion to the post of Senior Engineering Assistant. His tenure of two years was to end on or about January, 1996 since he had completed more than 10 years of service. Therefore, he was expected a normal transfer from Kohima on completion of his tenure in the difficult North East Stations, but his transfer was withheld by respondent No.4. The applicant No.1 which is the Association contends that the organisation had taken up the matter of effecting the tenure of effecting the fixed tenure of two or three years the case may and laid down various memorandum mentioned therein.



Contd...3/-

letters
Respondent No.4 who is the Chief Engineer, Eastern Zone by a circular/
dated 10.4.96 and 15.4.96 indicated that the transfer/tenure period
fixed by the Government of India and accepted by the Director General,
All India Radio would be continued to be adhered to, as shown in
Annexure/A5 to the application. However, by a sudden order dated
17.6.96 as shown at Annexure/A6 to the application the Deputy Director
(Administration), respondent No.3 had issued an order keeping the
instructions contained in the DG:AIR's circular of even No. dated
8.12.95 and 14.12.95 in abeyance. The applicants contend that the
impugned order is arbitrary and whimsical and it has far reaching
consequences. They had also taken up the matter with the authorities
concerned for giving effect to the earlier circular, but those have
not elicited any favourable response. Being aggrieved thereby the
instant application has been filed with the prayer that a declaration
be issued that the decision contained in the impugned order dated
17.6.96 issued by respondent No.3 be inoperative being contrary to
the Government of India policy regarding tenure period for transfers
to North Eastern Region and also for the issue of a declaration that
the listed difficult stations/offices in the North Eastern Region
as circulated by the DG:AIR by a memo dated 23.4.87 is operative
and tenures to those stations/offices will be two or three years
as laid down by the 1983 circular by the Finance Ministry. Upon such
declaration a direction be issued on the respondent No.4 to issue
necessary transfer order in respect of applicant No.2 from Kohima
to a Station of his choice.

2. The case has been opposed by the respondents by filing
a reply. The stand taken by the respondents has been that the impugned
order dated 17.6.96 was only in respect of keeping in abeyance of
recirculation of Ministry of Finance, Department of Expenditure order
dated 14.12.83 pursuant to discussions held with other related members
of staff. The matter was discussed with office bearers of various
Associations of staff members of DG,AIR including AIR and DD Technical
Employees Association representing the applicants and the action
for respondents was endorsed by the representatives in larger interest



Contd...4/-

and welfare of all sections of staff in the interest of smooth functioning of the organisation. In pursuance of the decision/^{taken} in the meeting the AIR and DD Technical Employees Association had submitted a proposal to reduce the tenure of posting at AIR stations at Tezu, Lutherpock, Mukukchang, Lungle(Mizoram) and Ukhrul (Manipur) in North-Eastern Region to one year whereas it cannot be less than 2 years in terms of Ministry of Finance O.M. dated 14.12.83. A list containing the note was circulated by the Director General, A.I.R. by No.3/20/87 dated 20.8.87 and withdrawn by Memo dated 1.9.87. The respondents contend that on the one hand the representatives of the Association want relaxation of the provisions of Ministry of Finance O.M. dated 14.12.83, and on the other hand, they want it to be followed rigidly which is practically not possible for the reasons explained in here-in-before. They have, therefore, prayed for the dismissal of the application on the ground that it is devoid of merit.

3. Mr. B. Chatterjee, learned counsel had earlier filed an M.A. bearing No.376/96 in this OA and that M.A. was filed by the Association of Radio and Television Engineering Employees, Akashvani Bhavan, Calcutta. However, when that M.A. was taken up for hearing and order on 18.2.97, Mr. Chatterjee submitted that it would be enough if the Court allow^s the applicants therein to intervene in the matter as interveners. Mrs. Sanyal, learned counsel for the respondents did not have any objection to the said prayer and submitted that if Mr. Chatterjee intervenes at the appropriate stage that will help adjudication of the matter. Accordingly he was given liberty to intervene in the matter. Mr. Chatterjee did not submit any written argument or any reply in this case.

4. Mr. De, learned counsel for the applicants submits that as a result of the impugned order, the prospects of getting suitable posting of their choice of Senior Officers putting in more than ^{ten} two years of service like applicant No.2 has been hampered. He also submitted that the impugned order is clearly not sustainable since it is contrary to the Presidential order issued in 1983. Mrs. Sanyal learned counsel for the respondents particularly stressed the fact that the employees themselves had a discussion with the authorities concerned in this regard and that is why the impugned order was passed

Mr. Chatterjee submitted as an intervener that the employees entered into an agreement with the authorities concerned and that agreement is binding on everybody since that is an agreement under the Trade Union Act, 1926.

5. We have heard the submissions of the learned counsel of both the parties, perused the records and considered the facts and circumstances of the case. We are not impressed by the argument of Mr. Chatterjee that the agreement entered into by a section of the employees is an agreement under the Trade Union Act and, therefore it is binding on all parties. We note that the impugned order was passed as a result of having a discussion with a section of the employees but the Association did not approve of such discussion as is apparent from the letter dated 20.9.96 addressed to the Director General, A.I.R., Akashvani Bhavan, Parliament Street, New Delhi, as set out in Annexure-XX-I to the rejoinder filed by the applicants. In fact, the Association had protested. Moreover, the Government employees have not been given Trade Union rights, ^{like industrial workers.} They have only been given the rights of forming Association and discussing the grievances through a system which is known as Joint Consultative Machinery. It is, therefore, not correct to say that the impugned order was passed as a result of an agreement under the Trade Union Act. Besides, the expression 'Trade Union' is synonymous with 'Labour union', ^{the} and employees are neither labours nor workers.

6. The limited issue to be decided in this case is whether the impugned order is in tune with the overall policy of the Govt. of India enunciated by the Ministry of Finance in their memo dated 14.12.83, as set out in Annexure/A2 to the application. We find that the said office memorandum was issued in the name of the President after considering the recommendations made by a committee under the Chairmanship of the Secretary, Department of Personnel and Administrative Reforms, Govt. of India. Under Art. 53 of the Constitution the executive power of the Union vests in the President and such powers shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Ministers are Officers subordinate to the President ^{under} Art. 53(1)

or the Governor under Art. 154(1) of the Constitution, as held by the Hon'ble Apex Court in the case of Shiv Bahadur v. State of V.P., reported in (1953) S.C.R. 1188. Therefore, an order passed by the Minister is an order passed in the name of the President depending on the business rules of the Government of India and also in exercise of the power delegated by the President. It is not necessary that every Government decision need to be communicated through a Presidential order, but when a Presidential order is communicated that should get precedence, for obvious reason, over any other order viz., an office memorandum; circular letter or even a note. We further note that the O.M. issued by the Ministry of Finance is applicable to all Ministries and Departments of the Government of India and D.G. it has been circulated to CAG and UPSC./A.I.R. is a Directorate of the Ministry of Information and Broadcasting and therefore, it S.S. offices at various places are subordinate offices and, hence, the office memorandum equally applies to A.I.R. The said memo has been extended from time to time as it would appear from the Ministry of Finance O.M. dated 1.12.88 regarding the tenure of posting/deputation and also, subsequently, as it would appear from Swamy's Annual 1988, Swamy's Compilation of F.R. S.R. upto July, 1992 and Swamy's Compilation of F.R. S.R. part-I upto January, 1997. The said memorandum contains a specific important policy decision of the Govt. of India which was issued after careful consideration on the basis of the recommendations made by a committee headed by the Secretary of the Department of Personnel and Administrative Reforms. The objective of such memorandum has been clearly stated in the preamble therein stating as below:

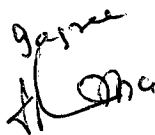
"The need for attracting and retaining the services of competent officers for service in the North-Eastern region comprising the States of Assam, Meghalaya, Manipur Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Govt. and the president is now pleased to decide as follows:....."



Contd...7/-

It is, therefore, clear that the impugned order is in conflict with this important policy decision and in fact, the said order frustrates the very objective of fixation of tenure in that important policy decision office memorandum. We have already said that a Presidential order must get precedence over any such other order. Furthermore, the reasons for passing such an order has not been clearly explained by the respondents. Even if there was a need to review the order, in our view, it can be done only with the approval of the Ministry of Finance who had issued the Presidential order. We are, therefore, clearly of the opinion that the impugned order being repugnant to the spirit, objective and contents of the O.M. of Finance Ministry issued in 1983 and extended from time to time till the date of the impugned order and even beyond is not sustainable in the eye of law and has to be quashed.

7. For the reasons given above the application is allowed. The impugned order dated 17.6.96 is hereby quashed and set aside. The respondents are directed to consider the prayer for transfer of the applicant No.2 in the light of the said office memorandum of Finance Ministry recirculated by the different circular letters issued by DG:AIR itself. No order is passed as regards costs.



(D. Purkayastha)

MEMBER (J)

12.9.1997

AKK/



(B.C. Sarma)

MEMBER (A)

12.9.1997