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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. NO. 342/97

Date of Order : 19.3.1998.

Ved Bajaj s/o Sh. Hans Raj r/o Pacta C 4th Road,
Jodhpur at present employed on the post of Announcer
All India Radio, Churu. Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Ministry of Information and Broadcasting Akashwani Bhawan, Parliament Street, New Delhi
2. The Director General, All India Radio Akashwani Bhawan, Parliament Street, New Delhi
3. The Station Director, All India Radio, Jodhpur
4. The Station Director, All India Radio, Churu.
5. Sh. Jaffar Khan Sindhi, Announcer, All India Radio Pacta C Road, Jodhpur.

.... Respondents.

PRESENT

Mr. O.P. Sawhney, Counsel for the Applicant.

Mr. K.S. Nahar, Counsel for the respondents 1 to 4

None for the respondent No. 5.

CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER.

ORDER :

PER HON'BLE MR. A.K. MISRA :

The applicant has filed this OA with the prayer that impugned orders dated 24.6.97 Annex.A/1 and 14.7.97 Annex. A/2 modifying their earlier order dated 28.8.95 be quashed and consequent benefits be granted to the applicant.

2. Notice of this OA was given to the respondents who have filed their reply stating therein that as per the directions of the Hon'ble Supreme Court the respondents

were within their rights to pass ~~to~~ transfer orders since the educational year has come to an end. The OA, therefore is liable to be rejected. The applicant has not filed any rejoinder.

3. We have heard the learned counsel for the parties and gone through the record.

4. In order to appreciate the present controversy some details in respect of the earlier litigation between the parties are required to be given.

5. The applicant was transferred vide order dated 28.8.95 passed by Director General, All India Radio New Delhi, ~~on~~ ~~application~~ from Jodhpur to Churu vice Shri Jaffar Khan Sindhi. The applicant challenged the transfer by moving an OA which was registered at No.395/ on various grounds. Initially the operation of order was stayed by the Tribunal but subsequently, the stay was vacated. Consequent to that applicant joined as Announcer at All India Radio, Churu. After hearing the parties on merits, the OA filed by the applicant was decided by the Tribunal on 2.8.96 vide order Annex.A/3

Observing as follows :-

" In the light of discussions as above, it is established that the impugned order has been issued in violation of norms at Sl.Nos. (ii), (iii) and (vi) set out in para 5 aforesaid. The present OA, therefore, succeeds on merits and is accordingly allowed. The A/1 order dated 25.8.95 by which the applicant has been transferred in the mid session is set aside. Liberty is given to the respondents to transfer the applicant after the current academic session provided that such transfer is in public interest and is in accordance with the rules/guidelines laid down."

Against this order the respondents had filed Special Leave Petition before the Hon'ble Supreme Court in which on 28th Feb., 1997, it was ordered "Issue notice on t

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application for condonation of delay as well as on SIP. Interim stay in the meanwhile." Thereafter, the Hon'ble Supreme Court vide its order dated 28.4.97 Annex. A/4 decided the Civil Appeal filed by the Govt. of India in which it was observed by Hon'ble the Supreme Court as follows :

" The case relates to the transfer. Since the academic year has now closed, it is open to the applicants to pass appropriate order of transfer in accordance with the rules.

The appeal is accordingly disposed of. No costs."

After the decision of Hon'ble the Supreme Court, the respondents have passed the orders Annex.A/1 and A/2 as indicated above.

6. It was argued by the learned counsel for the applicant that the earlier transfer order dated 25.8.95 passed by the respondents was set aside by the Tribunal however, liberty was given to the respondents to transfer the applicant after the current academic session provided the transfer is in public interest and as per rules. The same view was taken by Hon'ble the Supreme Court but the respondents have transferred the applicant again in violation of rules and guidelines. Therefore, the transfer order is required to be quashed. On the other hand, it was argued by the learned counsel for the respondents that applicant was transferred to Churu earlier. Order of the Tribunal setting aside the transfer order was stayed by Hon'ble the Supreme Court and the appeal of the appellant was decided with the observation that after the end of the academic session the appropriate transfer orders could be passed as per Rules. Therefore, the orders under challenge have been passed which are according to the rules.

7. I have considered the rival arguments. Earlier order passed by the respondents transferring the

applicant from Jodhpur to Churu was quashed on many counts as observed in the operative part of the order of the Tribunal. It was held by the Tribunal that the transfer was in colourable and malafide exercise of power, arbitrary and on complaints. It was also held by the Tribunal that it was mid term transfer. This judgment of the Tribunal was not set aside by Hon'ble the Supreme Court but the respondents were given a liberty to transfer the applicant as per the rules since the educational session had come to an end. In spite of this observation of Hon'ble the Supreme Court the respondent No. 2 had passed the impugned orders reiterating the earlier transfer order after the commencement of the educational session. Therefore, the orders of the respondents cannot be said to be as per rules. Earlier order was found to be violative of certain principles, therefore, those grounds are not now available to the respondents for giving validity to the earlier transfer of the applicant.

8. Assuming that the respondents are well within their right to pass fresh transfer order then it would pre-suppose the posting of the applicant at Jodhpur. The applicant was never brought back to Jodhpur, therefore, he could not be transferred from Jodhpur with an earlier date. Even otherwise the present orders have been passed after the educational session has started, therefore, these orders clearly violate the liberty granted by Hon'ble the Supreme Court. Educational session in Rajasthan starts from

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15th May, therefore, order passed on 26th June, 1997 and modified orders passed on 14.7.1997 will be treated as having been passed during new educational session and thus can be safely categorised as mid educational session transfer orders, therefore, the orders deserve to be set aside.

9. The O.A., therefore, deserves to be accepted and orders Annex. A/1 and A/2 are liable to be quashed.

10. The O.A. is, therefore, accepted, the orders Annex. A/1 and A/2 are hereby quashed. Parties to bear their own costs.

(A.K.MISRA)
Judicial Member

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