

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH

Original Application No.135/2014

with

Misc. Application No.243/2014

Jodhpur this the 22<sup>nd</sup> day of July, 2014

Reserved on 11.07.2014

**CORAM :**

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)  
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Surendra Kumar Sharma S/o Shri Nathu Lal Sharma, aged about 52 years, R/o Ward No.15 (New), Purana Bazaar, Near Gurudwara, Suratgarh, District Sri Ganganagar, Rajasthan.

Presently working as Upper Division Clerk, All India Radio, Prasar Bharati Suratgarh, Rajasthan.

.....Applicant  
(Through Adv. Mr. Ankur Mathur)

**Versus**

1. The Union of India, through the Secretary, Ministry of Information and Broadcasting, New Delhi.
2. Director General, All India Radio, Prasar Bharati, Akashwani Bhawan, New Delhi.
3. Deputy Director cum Regional Head, All India Radio, Prasar Bharati, Jaipur, Rajasthan.
4. Dy. Director General (Engg.), All India Radio, Prasar Bharati, Akashwani Bhawan, Suratgarh, Rajasthan.

.....Respondents  
(Through Adv. Smt. K. Parveen)

**ORDER**  
**Per Hon'ble Ms. Meenakshi Hooja, Member (A)**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging

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the legality of the order dated 26.03.2014 (Annexure-A/5) by which the applicant has been transferred from AIR Suratgarh to AIR Banswara.

2. The short facts of the case as averred by the applicant are that the applicant was initially appointed as Lower Divisional Clerk in the year 1983 and was subsequently promoted to the post Upper Divisional Clerk in the year 1989. It has been averred that vide order dated 20.04.2011, the applicant was ordered to be transferred from AIR Suratgarh to AIR Bikaner. But looking to the need of the department and the working of the applicant, the respondent authorities issued an order whereby the applicant was ordered to be retained at AIR Suratgarh on the vacant post lying in the department for a period of one year as per the need of the division. Thereafter since the division of the Suratgarh was classified as category C Station (which is sensitive/difficult station on comparative basis) therefore looking to the expertise of the applicant his retention at the station was extended for a period of another two years vide orders dated 30.07.2012 and 27.08.2013 (Annexure-A/2 & A/3) respectively. It has been further averred that the respondent department in 2014 sought the preference for the place of posting of the applicant and other employees and the applicant responded to the same and gave his preferences for choice of station. However, vide order dated 26.03.2014 (Annexure-A/5) ignoring the fact of preference and mandates of policy including the retention orders, the applicant has been ordered to be transferred from AIR Suratgarh to AIR Banswara. It has been averred that the above transfer order has been issued in absolute disregard to the

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earlier decisions of the department for retention of the applicant at AIR Suratgarh issued from time to time. It has been further averred that the action of the respondent authorities in transferring the applicant is in violation of transfer policy, ignoring preference request knowingly and other related factors and suffers from malafide and ill motive. It has also been averred that the applicant is suffering from chronic health problems and resides with his wife and children at the place of posting and his children are also pursuing their academics. Therefore at this stage despite retention order, without any notice or intimation transferring applicant would not be desirable and the same is in utter violation of the norms of the transfer policy. The applicant's higher officer also recommended for his retention for atleast three months vide letter dated 27.03.2014 as at Annexure-A/6. Aggrieved by the action of the respondents, the applicant represented to the respondent authorities to redress the grievance stating that the applicant may be retained at Suratgarh itself, and to the best of the knowledge of the applicant posts of UDCs at Suratgarh are lying vacant. However, the applicant is not hopeful of getting any aid from the authorities and therefore he has filed this application before this Tribunal for the following reliefs:-

- (i) *That record of the case may kindly be called for:*
- (ii) *That by an order or direction, the Transfer Order dated 26.03.2014 (Annexure-A/5) may kindly be quashed and set aside.*
- (iii) *That the respondents may kindly be directed not to relieve applicant from the present place of posting.*
- (iv) *That exemplary cost be imposed on the respondents for causing undue harassment to the applicant.*
- (v) *Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant be granted. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.*
- (vi) *Costs of this application be ordered to be awarded in favour of the applicant."*

*See -*

3. By way of reply, the respondent department averred that the applicant has been transferred from AIR Suratgarh to AIR Banswara, and he is working at Suratgarh since last more than 30 years i.e. since his initial date of appointment in the year 1983. Earlier, the applicant was transferred from Suratgarh to Bikaner vide order dated 20.04.2011 due to his long stay at AIR Suratgarh in public interest and direction was issued to relieve him immediately. It has been further averred that the applicant has utilized political pressure to remain at Suratgarh, which is misconduct as per CCS (Conduct) Rules. It is totally wrong/misleading that the applicant was retained at Suratgarh as per the need of department on merits (reference Annexure-R/1) and the transfer of the applicant was never cancelled and he was only given extension at Suratgarh by the Director General, AIR New Delhi in political pressure of VIP's like Bharat Ram Meghwal (MP), Smt. Chandresh Kumari (MP) and Shri Lal Chand Kataria (MP), which is evident by letter dated 21/23.09.2011 (Annexure-R/3). It has been further averred that the contention of the applicant that he has been retained due to his expertise, is totally wrong, misleading and misconceived. It has been further averred that the fact that the applicant was retained at Suratgarh for some period and for one more year w.e.f. 14.10.2013 does not curtail the power of competent authority to transfer the applicant because the applicant has been transferred as per policy decision of the department issued vide letter dated 11.03.2014 (Annexure-R/7) to transfer all the staff members staying at one station for more than 15 years and further in pursuance of order dated 20/21.03.2014 (Annexure-R/8), whereby the competent authority, after re-examining the



matter, has directed to transfer the applicant. Thus, the applicant has no right to continue at Suratgarh. It has been averred that the application of the applicant regarding his choice station was forwarded by the respondent No.4 vide his letter dated 31.03.2014, which was received in the office respondent No.3 on 03.04.2014, whereas the transfer order was issued on 26.03.2014 i.e. before receipt of application of the applicant. It has been further averred that it is a settled preposition of law that the transfer is an incidence of service and no official has right to continue on same place. It has also been averred that the Suratgarh is only a Tehsil Headquarter whereas, Banswara is District Headquarter, therefore, the applicant is having better medical/ education facilities there than Suratgarh. Further, the applicant has been relieved on 02.04.2014 and this fact has not been disclosed in the OA. Therefore, the respondent department prayed for dismissal of the OA.

4. The respondent department has also filed Misc. Application No.243/2014 for vacation of interim order dated 04.04.2014, whereby this Tribunal has stayed the operation of the order dated 26.03.2014 regarding transfer to applicant from AIR Suratgarh to AIR Banswara.

5. Heard both the parties. Counsel for the applicant contended that earlier vide order dated 20.04.2011 (Annexure-A/1) the applicant was transferred from AIR Suratgarh to AIR Bikaner but he was retained at AIR Suratgarh and in this context referred to vide letter dated 30/31.07.2012 (Annexure-A/2) and this retention was further extended for one year w.e.f. 14.10.2013 vide letter dated 27.08.2013 as at Annexure-



A/3 due to his expertise. However, even while the order of retention of the applicant at AIR Suratgarh was in operation i.e. upto 14.10.2014, another order dated 26.03.2014 (Annexure-A/5) in contravention of the same, was issued by which he has been transferred to AIR Banswara, which is also against his choice of stations and preferences and not in public interest or for administrative exigency. Moreover, the applicant who is UDC, a low paid employee, has been transferred to a far away place which is about 900 to 1000 kilometers away and in such circumstances it is very difficult for him to look after his family and carry out his family responsibility including that of looking after his 86 year old father and hence the transfer order Annexure-A/5 may be quashed and set aside.

6. Per contra, counsel for the respondents contended that the applicant is working in All India Radio (AIR), Suratgarh since last more than 30 years since his initial date of appointment i.e. in the year 1983. He was transferred from AIR Suratgarh to AIR Bikaner vide order dated 20.04.2011 (Annexure-A/1) and in this regard vide letter dated 20.06.2011 (Annexure-R/1) the Additional Director General (WR-I and II) Broadcasting Corporation of India, Mumbai, has taken very strict view that "*this transfer was decided upon due to various complaints against Shri Sharma*" and directed the Superintendent Engineer, AIR Suratgarh to relieve the applicant with immediate effect. Subsequently, the applicant was also relieved w.e.f. 21.06.2011 (Annexure-R/2) from AIR Suratgarh to report for AIR Bikaner but under the political pressure of VIP's, as is



evident from letter dated 21/23.09.2011 (Annexure-R/3), the applicant got retention at AIR Suratgarh for one year vide letter dated 30/31.07.2012 and thereafter another one year's retention w.e.f. 14.10.2013 was given vide letter dated 27.08.2013. It was also contended that the applicant was adjusted against higher post as there was no vacancy of UDC at AIR Suratgarh and such arrangement cannot be continued for long. It was further submitted that as per CVC guidelines, respondent No.2 i.e. Director General AIR directed all the Zonal Heads/ Station Heads to transfer all the staff members who are having stay at one zone/station of more than 15 years vide letter dated 11.03.2014 (Annex.-R/7), and further after re-examining the case of the applicant vide letter dated 20/21.03.2014 (Annex.-R/8) directed the Station Director AIR Jaipur to transfer him to any of the following AIR/ DD i.e. AIR Mount Abu, AIR Banswara, DMC Pilani and AIR Bikaner. Hence, on the basis of the directions contained in letter dated 20/21.03.2014, the applicant was transferred from AIR Suratgarh to AIR Banswara and was also relieved w.e.f. 02.04.2014 (Annex.-R/4) and this fact has been concealed by the applicant in the OA. It was further reiterated that the applicant has been working at AIR Suratgarh since last more than 30 years i.e. from the date of his initial appointment and his transfer has been made by the competent authority as per administrative exigency and functional requirement of department. Therefore the applicant has no legal ground to challenge the transfer order dated 26.03.2014 (Annex.-A/5). It was further clarified that the transfer order of the applicant dated 20.04.2011 was never cancelled and he was simply given retention, that too due to political pressures, and

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therefore it is wrong to say that he was given extension due to his expertise. It was further contended that it is a settled principle of law that transfer is an incidence of service and this principle has been upheld by the Hon'ble Apex Court in a catena of judgments. In this case, the transfer order has been made by the competent authority and is in accordance with the transfer policies and in public interest, administrative exigency and functional requirement, that too after applicant's stay of over 30 years at one station, and hence the applicant is not entitled to any relief and the OA may be dismissed.

7. Considered the rival contentions of both the parties and perused the record. It is seen that earlier the applicant was transferred from AIR Suratgarh to AIR Bikaner vide Annexure-A/1 order dated 20.04.2011, and directions were issued to relieve the applicant and accordingly he was relieved vide order dated 21.06.2011 from Suratgarh for Bikaner (Annexure-R/2). However, vide letter dated 21/23.09.2011 (Annexure-R/3) on the basis of requests from various VIP's including MP's, directions were issued to Additional Director General (WZ) to see whether the applicant could be retained at AIR Suratgarh against vacant posts of Accountant/Assistant/ SSK. It appears that in the context of this letter, retentions were issued vide letter dated 30/31.07.2012 (Annexure-A/2) and 27.08.2013 (Annexure-A/3), though there is nothing on record to show that he was retained on the basis of his expertise. It is also noted that as per Annexure-R/7, dated 11.03.2014, that directions were issued by Directorate General, All India Radio that all the staff members who are



staying at one Zone/Station for more than 15 years may be transferred in view of CVC guidelines issued vide letter dated 11.09.2013. Further instructions were issued vide the office of Director General vide Annexure-R/8 dated 20/21.03.2014 that the case of the applicant has been re-examined and it has been decided that he may be transferred to any of the AIR/DD i.e. AIR Mount Abu, AIR, Banswara, DMC Pilani or AIR Bikaner, against clear vacancy of UDC. In compliance of these directions, the applicant was transferred from AIR Suratgarh to AIR Banswara vide order dated 26.03.2014 (Annexure-A/5) and accordingly he was relieved on 02.04.2014 (Annexure-R/4). It is clear from the above position that the applicant has been continuing at AIR Suratgarh for last about 30 years i.e. since the date of his initial appointment and that his case for transfer was covered by the directions as per Annexure-R/7 i.e. he had completed more than 15 years of stay at one station. As far as letters dated 30/31.07.2012 (Annexure-A/2) and 27.08.2013 (Annexure-A/3) are concerned, where one year retention was conveyed to retain the applicant at AIR Suratgarh w.e.f. 14.10.2012, and another one year retention w.e.f. 14.10.2013 respectively, there were issued by the Director General and the same authority i.e. Director General, AIR vide letter dated 20/21.03.2014 (Annexure-R/8) after re-examining the case of the applicant regarding his transfer directed the Station Director, All India Radio, that he may be transferred to any of the following stations against clear vacancy viz. AIR Mount Abu, AIR Banswara, DMC Pilani or AIR Bikaner and in compliance of these directions the transfer order dated 26.03.2014 (Annexure-A/5) has been issued and relieving order

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Annexure-R/4 issued on 02.04.2014. Thus, there appears to be no force in the contentions of the counsel for the applicant that the transfer order dated 26.03.2014 has been issued in contravention to Annexure-A/3 dated 27.08.2013. Moreover, it is a settled principle of law that transfer is an incident of service and an employee can be transferred by the competent authority in public interest and in administrative exigency and in this case the applicant has been transferred after more than 30 years of stay at one place from initial appointment and there are also references to complaints (Annexure-R/1) and use of political pressures (Annexure-R/3) in the documents placed before us by the respondents. Thus, the applicant has failed to establish any ground to set aside or interfere with the transfer order dated 26.03.2014 (Annexure-A/5) whereby the applicant has been transferred from AIR Suratgarh to AIR Banswara, and subsequently relieved vide order dated 02.04.2014 (Annexure-R/4), though this fact was not mentioned in the OA filed on 04.04.2014. Therefore, the OA lacks merit and the same is dismissed with no order as to costs.

8. In view of the above order, MA No.243/2014 for vacation of interim order stands disposed of.

*Meenakshi*  
(MEENAKSHI HOOJA)  
Administrative Member

*K.C.Joshi*  
(JUSTICE K.C.JOSHI)  
Judicial Member

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