

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.444/03

Monday this the 26th day of April 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

K.P.Prasad,
Film/Video Editor,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram.

Applicant

(By Advocate M/s.Santhosh & Rajan)

Versus

1. Union of India represented by
the Secretary, Ministry of Information
& Broadcasting, New Delhi.
2. Prasar Bharathi
(Broadcasting Corporation of India)
New Delhi.
Represented by the Chief Executive Officer.
3. The Director General
Prasar Bharathi
(Broadcasting Corporation of India),
Doordarshan Kendra, New Delhi.
4. The Director,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram-43.
5. P.M.Pillay,
Film/Video Editor,
Doordarshan Kendra,
Silchar, Assam.

Respondents

[(By Advocate Mr.R.Prasanthkumar,ACGSC (R 1-4) &
Mr.C.S.G.Nair (R 5)]

The application having been heard on 26th April 2004 the
Tribunal on the same day delivered the following :

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ORDER

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant Film/Video Editor, Doordarshan Kendra, Thiruvananthapuram has filed this application challenging the legality, propriety and correctness of the order No.25/2003-S1 dated 19.5.2003. The material allegation in the application can be briefly stated as follows :

2. The applicant is working as Film/Video Editor in Doordarshan Kendra, Thiruvananthapuram. Earlier he had served for seven years at Jallundhar in Punjab. He is the senior most Film/Video Editor in Thiruvananthapuram, his wife is working in the Office of the Accountant General, Thiruvananthapuram and he has got two children studying in 8th and 1st standards respectively. In Thiruvananthapuram Doordarshan Kendra there are five Film/Video Editors working against six sanctioned posts. According to the guidelines issued by the Government of India regarding transfers if husband and wife are both employed efforts should be made to give them posting in the same station especially when they have children aged below ten years. Under these circumstances while the applicant was working against the sanctioned post of Film/Video Editor, Thiruvananthapuram he came to know that order dated 19.5.2003 has been issued transferring the applicant to Silchar in Assam and posting in his place the 5th respondent, while the applicant was on medical leave. Alleging that the order of transfer of the applicant would bring to bear on him undue hardship inasmuch as his family set up would be jeopardised and that the transfer is not made in administrative exigency, while Group C employees are not generally transferable and that the Prasar Bharathi Corporation has no jurisdiction to transfer the applicant from whom an option

for absorption has not been obtained as yet, the applicant has filed this application seeking to set aside the order dated 19.5.2003 to the extent it concern him declaring that he is not liable to be transferred from Thiruvananthapuram to Silchar as he belongs to a Group C cadre.

3. The respondents resist the grant of prayers in the O.A. Initially a counsel statement was filed wherein it has been contended that in the year 1994 out of six vacancies of Film/Video Editors one post was transferred to Chennai on administrative ground, that owing to the requirement in North East the applicant was transferred to Silchar in exigencies of services, that the Doordarshan Kendra, Thiruvananthapuram can be managed with three Film/Video Editors and that the contention that Prasar Bharathi Corporation has no jurisdiction to transfer the applicant is untenable as it has been held in many cases that the Corporation has got right to deploy its employees who has been placed at their disposal.

4. The applicant filed a detailed rejoinder in which he contended that the contention of the respondents that there is excess of Film/Video Editors at Doordarshan Kendra, Thiruvananthapuram is not true to fact, that two Film Projectionists who have been rendered surplus have been accommodated as Film/Video Editors and in any case the transfer of the applicant being not for any administrative exigency it cannot be sustained.

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5. The respondents have filed a detailed reply statement captioned as additional reply statement. In this reply statement also the contentions taken are that Thiruvananthapuram Doordarshan Kendra can be managed with three Film/Video Editors. The applicant has been transferred to Silchar to meet the exigencies of service there.

6. The 5th respondent has not filed any reply statement. When the application came up for hearing the learned counsel of the official respondents as also the 5th respondent stated that in June 2003 as the 5th respondent had already reported for duty in obedience to the interim order of stay issued by this Tribunal, the 5th respondent was accommodated on an equivalent post of Cameraman and is being retained at Thiruvananthapuram.

7. I have carefully gone through the entire pleadings and materials brought on record and have heard Shri.Santhosh Kumar, learned counsel of the applicant and Shri.R.Prasanthkumar,ACGSC learned counsel for respondents 1-4 and Shri.C.S.G.Nair, learned counsel who appeared for the 5th respondent. The contention that Prasar Bharathi Corporation has no jurisdiction to transfer the applicant who is undisputedly working under it for the time being although not absorbed in the Corporation has no merit because the Prasar Bharathi Corporation which is paying salaries of the applicant who is admittedly working under it, although not absorbed, has got the right and liberty to deploy the applicant's service within the establishment wherever such services are required. Taking note of the position the learned counsel of the

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applicant submitted that the contention regarding lack of jurisdiction of the Corporation to transfer the applicant is not stressed.

8. Before coming to the merits of the case on facts it is necessary to state here that the transfer of an official holding a transferable post is an incident of service and such order of transfer is not liable to be interfered with by Courts and Tribunals unless it is made out that the order has been made malafides or in excess of power or in a totally arbitrary manner without application of mind to the relevant facts. If the transfer of the applicant from Thiruvananthapuram to Silchar has become absolutely essential to meet the exigencies of service, even if normally a Group C employees is not to be transferred, the transfer can be sustained. But from the materials available on record can it be held that the transfer was to meet the exigencies of service ? I requested the learned counsel for the official respondents to show from the pleadings and materials on record as to what is the administrative exigency that necessitated the transfer of the applicant. The counsel first stated that Thiruvananthapuram Doordarshan Kendra does not have a post to hold the applicant and secondly he stated that the service of the applicant at Silchar is urgently needed to meet the administrative exigencies. However the allegation in the application that there are six sanctioned posts of Film/Video Editors in Thiruvananthapuram, one has been transferred to Chennai and that at present there are only four persons against five sanctioned posts is not disputed, if, Thiruvananthapuram Doordarshan Kendra need only three Film/Video Editors, the excess

sanctioned posts would have been abolished or shifted elsewhere. That has not been done. If three Film/Video Editors were sufficient and one person therefore can be redeployed elsewhere then the transfer of the 5th respondent to the Doordarshan Kendra, Thiruvananthapuram which again would make incumbency into four would not be justified. If the official respondents had pleaded that it was necessary to give a posting to the 5th respondent to Thiruvananthapuram and that there was an administrative exigency and therefore the applicant had to be shifted out the situation could have been understood but the official respondents have no such case. The action on the part of the respondents 1-4 in shifting the applicant to Silchar on the ground that his services are required there and that at Thiruvananthapuram one Film/Video Editor is in excess of requirement, and then the posting of the 5th respondent is inconsistent and unsustainable. So I find that the official respondents have no consistent case regarding the requirement of transferring the applicant from Thiruvananthapuram to Silchar while there are sufficient number of posts sanctioned and existing at Thiruvananthapuram. The respondents have admitted through counsel today that the 5th respondent has already been accommodated on an equivalent post. Under these circumstances, I am not convinced that the impugned order to the extent it relates to the transfer of the applicant has been issued after proper application of mind to the relevant facts and issues. The transfer of the applicant from Thiruvananthapuram to Silchar while his wife is working in Thiruvananthapuram and he has got a very young child studying in 1st standard would undoubtedly cause him great hardship and disruption to domestic life. If it is not

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as if a transfer under such circumstances is not at all permissible but it should be made only when there is any pressing administrative exigency. From what is stated above it is clear that the official respondents have not been able to show that there has been any administrative exigency in transferring the applicant or that the decision to transfer the applicant has been taken in public interest after application of mind to all the relevant facts.

9. In the light of what is stated above I find that the impugned order to the extent it transfer the applicant to Silchar is set aside. No order as to costs.

(Dated the 26th day of April 2004)


A.V. HARIDASAN
VICE CHAIRMAN

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