

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.457/2002

Wednesday, this the 5th day of November, 2003.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K. Sreekantan Nair,
News Reader-Cum-Translator Gr.III,
Regional News Unit,
All India Radio,
Thiruvananthapuram.

..Applicant

[By Advocate Mr. Thottathil B. Radhakrishnan]

Versus

1. Union of India represented by
The Secretary,
Ministry of Information and Broadcasting,
Sanchar Bhawan, New Delhi.
2. Prasar Bharati (Broadcasting Corporation of India),
Represented by the Chief Executive officer,
P T I Building, New Delhi.
3. The Director General,
All India Radio,
Akashavani Bhawan,
Parliament Street,
New Delhi.
4. The Station Director,
All India Radio,
Thiruvananthapuram.
5. The Director General,
News Services Division,
All India Radio,
New Delhi.

..Respondents

[By Advocate Mr. K. Kesavankutty, ACGSC]

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was selected and appointed as News Reader-cum-Translator Grade III in Malayalam in Artist category at All India Radio, Calicut, in pursuance of A/1. After the process of selection, an offer of appointment vide Annexure A/2 dated 11.10.2003 was issued to the applicant categorically stating that he will be liable to be posted and transferred

within the South zone and that he need not accept the offer if he is not amenable to such a condition. The applicant accepted the same and joined the duty in Calicut on 11.10.1993 and worked for 7 1/2 years. Thereafter, he was transferred to Trivandrum on his own request on the vacancy arisen due to retirement of one Shri Pratapa Verma, News Reader-cum-Translator vide order Annexure A/3, where he is working from 18.12.2000. It is averred in the O.A. that to his utter dismay, vide impugned order Annexure A/4 dated 10.6.2002 the applicant was again transferred from Trivandrum to New Delhi. It is stated that transferring the applicant to New Delhi, outside the southern region, has been passed in total violation of the conditions contained in the offer of appointment. The liability of the applicant to be transferred is confined to south zone only in terms of Annexure A/2 letter and any violation thereof would result in hostile discrimination and will amount to negation of his fundamental right to equality before law and equal protection of the law enshrined in Article 14 of the Constitution of India. His right to equality in the matter of public employment guaranteed by Article 16 of the Constitution of India in so far as the terms of the offer of appointment amounts to a condition of service. The order of transfer has been issued in gross violation of transfer policy dated 7.8.1981 (Annexure A/5) issued on behalf of Director General, All India Radio. The normal tenure at a station belonging to 'A' category will be four years and also that locally recruited employees would normally not be transferred except on promotion or on receipt of a written request from the employee. The applicant having been locally recruited as evidenced by Annexures A1 and A2, is not liable to be transferred except on promotion or on a written request from him. Therefore, the impugned order of transfer is illegal. The applicant made Annexure A/6 representation to the third respondent requesting that his transfer to New Delhi may be cancelled. He also made



another representation (Annexure A/7) to the 4th respondent requesting that he may not be relieved before a decision is communicated by the second respondent on consideration of Annexure A/6 representation. The applicant is the only child and his old aged parents require regular medical attention owing to various ailments. The applicant's children are studying in 9th and 4th standard (under Kerala State Syllabus) in Thiruvananthapuram and if the transfer is made effective, the applicant will be put to great hardship. Aggrieved by the said order, the applicant has filed this O.A. seeking following reliefs:-

- "(i) Call for the records leading to Annexure A4 and quash the same in so far as it affects the applicant;
- (ii) To issue a direction to the third respondent to consider and dispose of Annexure A6 representation within such time as may be fixed by the Hon'ble Court.
- (iii) To issue such other directions as are deemed, fit and proper in the circumstances of the case."

2. The respondents have filed a detailed reply statement contending that the applicant remained at All India Radio, Calicut, after his appointment on 11.10.1993 and at his own volition, he was transferred to All India Radio, Thiruvananthapuram. Since then he has been working there. It is stated that after his appointment in the Artist category in the year 1993, the service conditions have undergone a change. The Artist category has been converted into the category of regular Government servant and the applicant has been given the status of Group 'B' gazetted officer on 14.10.1996 with service liability on all India basis and relying upon the terms and conditions of the offer of appointment dated 11.10.1993 is, therefore, unrealistic and devoid of any force of law since he had on his own action preferred the gazetted status in the Group 'B' service from the category of Artist to which he was initially appointed



which can be seen from the seniority list of NRT Grade III [Annexure R4(a)] drawn on All India basis. It is stated that two posts of NRT (Malayalam) were shifted from News Service Division, All India Radio, New Delhi, to All India Radio, Thiruvananthapuram, keeping in view the decision that National level regional news bulletins will be broadcasted from concerned Regional News Units in the State capitals. This decision was withdrawn and the National level Regional News Bulletins are being continued from Delhi. Therefore, the NRTs transferred from Delhi to various Regional News Units are being brought back. Hence the transfer of the applicant has been ordered to Delhi where there is a shortage of staff. One of the NRTs transferred from Delhi to Thiruvananthapuram was Shri P.K.M. Abdul Hakeem who got mutual transfer with Shri Sreekantan Nair, the applicant, who was working at All India Radio, Calicut. Thus, the applicant was posted at Thiruvananthapuram on his own request. The applicant is holding the status of Group 'B' gazetted post which carries All India transfer liabilities. He has been transferred in the exigencies of service inherent of public interest together with administrative convenience which are the factors to be taken into consideration in each and every case on merit. The transfer policy dated 7.8.1981, which the applicant is referring to, has been misquoted. It cannot be read in isolation of its basic inherent principle which stipulates that all these guiding considerations are subject to exigencies of public service. His contention that regular recruited employees would normally not be transferred except on promotion or receipt of a written request from the employees is misconceived. The grounds adduced by the applicant in regard to illness of his parents are not substantial in view of the exigencies of service and public interest involved. In one's service, transfer is a normal incidence inherent of administrative convenience and public interest. Moreover, excellent medical facilities are available in Delhi and



the applicant will not have any problem in securing medical care for his aged parents and other family members. There was no utility of NRTs in excess of the sanctioned strength at All India Radio, Thiruvananthapuram whereas there is shortage of staff in the Malayalam Unit of News Service Division, All India Radio, New Delhi. The decision on transferring the applicant was taken by the competent authority in Prasar Bharati and the respondent No.5 was the executory authority of the orders of the competent authority. No malafide can be attributed to the transfer of the applicant. Therefore, the respondents submitted that the O.A. is devoid of any merit and is liable to be dismissed.

3. The applicant, apart from reiterating the points made in the O.A., submitted a rejoinder contending that the decision of the respondents that the Artist category was converted to the category of regular Government servant on 14.10.1996 is baseless. Even long before the appointment of the applicant, the Ministry of Information and Broadcasting issued a letter dated 29.11.1991 (Annexure A8) to the third respondent stating that all Artists in service as on 6.3.1982 would be deemed to be Government servants and those then in service have to exercise the option. Therefore, even at the time of his appointment as per Annexure A/2, the applicant was a Government servant and the Recruitment Rule does not alter the conditions of service contained in Annexure A/2. If the pleas of the official respondents that the shifting of posts from NSD to the Regional Station, as a matter of policy has been reversed, essentially the two persons namely S/Shri P.K.M.Abdul Hakkim and Alexander Mathew who came to Trivandrum from New Delhi on shifting of posts ought to return to New Delhi on the returning of the two posts back to N S D. However, this fact of change in policy and the consequential reshifting of the posts from the Regions to N S D were kept concealed and the applicant was duped to come to Trivandrum as



against the transfer of Shri P.K.M. Abdul Hakkim from Trivandrum to Calicut and Shri Alexander Mathew was retained in Trivandrum which was regularised subsequently. It can thus be seen that the applicant has been isolated and his legitimate interest has been sacrificed to secure that S/Shri Abdul Hakkim and Alexander Mathew are permitted to be in the places of their choice. Shri Alexander having the longest stay in Trivandrum, should have been deployed to Delhi even as per the law laid down by this Tribunal in O.A.No. 1051/2001 decided on 9.7.2002.

4. Shri Thottathil B. Radhakrishnan, learned counsel, appeared for the applicant and Shri K. Kesavankutty, ACGSC, appeared on behalf of the respondents.

5. The learned counsel for the applicant vehemently argued that since the applicant was locally recruited pursuant to a local selection, he is liable to be transferred only within the South Zone as per Annexure A/2, which cannot be altered to his disadvantage. Transfer, if any, in such cadre can only be made on promotion or on a written request from the employees. The impugned order of transfer is violative of fundamental rights of the applicant guaranteed under Articles 14 and 16 of the Constitution of India. The learned counsel for the respondents on the other hand persuasively contended that the Artist category has been converted into the category of regular Government servant and the applicant has been given the status of Group 'B' gazetted officer with service/transfer liability on All India basis. The transfer being an incidence of service inherent of administrative convenience and public interest, the applicant cannot challenge the same. By passing an interim order by this Tribunal on 27.6.2002, the respondent department has put to great inconvenience. Therefore, the respondents prayed that the impugned stay order may also be vacated.

A handwritten signature or mark, appearing to be a stylized 'U' or 'M', located at the bottom left of the page.

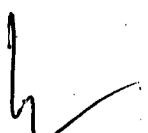
6. I have carefully considered the rival contentions of the parties and perused the material on record.

7. The case of the applicant is that he was selected and appointed as News Reader-cum-Translator Grade III in Malayalam in Artist category on the basis of local advertisement with a condition that he will be liable to be posted and transferred within the South Zone as per offer of appointment Annexure A/2. Since that being the condition of service, his posting cannot be ordered otherwise to his disadvantage. Apart from that as per Annexure A/5 transfer policy, the stations/offices categorised as 'A' and 'B', the normal tenure will be four years and the applicant was transferred to Thiruvananthapuram only on 13.12.2000. The impugned order Annexure A/4 has been issued just after one and a half years and that locally recruited employees would normally not be transferred. It is also an admitted fact that the applicant was appointed as News Reader-cum-Translator Grade III in Malayalam in Artist category at All India Radio, Calicut after following the prescribed procedure and rules in force. He came on transfer to Trivandrum in the year 2000 at his own volition. The case of the respondents is that after the appointment of the applicant in the Artist category, the service conditions have undergone a change. The Artist category has been converted into the category of regular Government servant and the applicant has been given the status of Group 'B' gazetted officer, therefore, the contention of the applicant that his earlier service condition as per the recruitment rules should prevail, cannot be accepted.

8. The fact remains that the applicant preferred and accepted the Group 'B' gazetted post from the category of Artist as is evident from Annexure R4(a) seniority list of NRT Grade III.



Having accepted the new post/status, the applicant is not entitled to claim the benefit being received earlier, if any. Therefore, the contention of the applicant that he is still governed by the conditions contained in Annexure A/2 letter will not stand hold good and cannot be accepted. The further contention of the applicant was that even before his appointment vide Annexure A/2, all Artists in service as on 6.3.1982 would be deemed to be Government servants, therefore, he is not acquired any new status. Admittedly, he was selected as News Reader cum-Transalator Grade III in Malayalam in Artist Category at All India Radio, Calicut. After sometime, two posts of NRT (Malayalam) were shifted from News Service Division, All India Radio, New Delhi, to All India Radio, Thiruvananthapuram, in view of the decision that National level regional news bulletins will be broadcasted from concerned Regional News Units in the State capitals. The same was withdrawn and the National Level Regional News Bulletins are being continued. The status of the Artist was upgraded to that of Group 'B' gazetted post with all enhanced privilege and advantage, which the applicant was also accepted. The applicant has been transferred to All India Radio, Trivandrum, at his own request on a mutual transfer with one Shri P.K.M. Abdul Hakeem. In getting their transfer, they accepted all the advantages and disadvantageous mutually. Now the contention of the applicant is that he has been isolated and his legitimate interest has been sacrificed to secure that S/Shri Abdul Hakkim and Alexander Mathew are permitted to be in the places of their choice. Having stepped into the shoe of Hakkim and opted for a transfer to Trivandrum, the applicant is not entitled to go back and say that he was in Calicut. So also, since Shri Alexander came to Trivandrum on shifting of post, it cannot be said that he had a longest stay in Trivandrum. Therefore, the applicant cannot challenge the NRTs transfer from Delhi to various Regional News Units. Since the applicant has



accepted the Group 'B' post with transfer liability on All India basis, he is not entitled to claim for a posting to Trivandrum for all the time.

9. No malafide has been attributed or pleaded to the transfer of the applicant. It is prerogative of the administration to effect the transfer of an employee in exigencies of service and public interest. In the present case, the fact that there was no utility of NRTs in excess of the sanctioned strength at All India Radio, Trivandrum, whereas there is a shortage of staff in the Malayalam Unit of News Service Division, All India Radio, New Delhi. The decision in transferring the staff, including the applicant, was taken by the competent authority. The transfer has been effected in administrative exigencies and public interest.

10. The following decisions of the Apex Court will enlighten the point that the transfer in public interest and administrative exigencies should not be interfered in a judicial review.

- (i) Mrs. Shilpi Bose & Ors. vs. State of Bihar, AIR 1991 SC 532.
- (ii) Gujarat Electricity Board & Ors. vs. Atma Ram, 1998 (10) ATL 396.
- (iii) Union of India vs. S.L. Abbas, (1993) 4 SCC 357.
- (iv) N.K. Singh vs. Union of India, (1994) 6 SCC 98.
- (v) Rajender Roy vs. Union of India & Ors., (1993) 1 SCC 148.
- (vi) Alok Nath Mitra vs. Union of India & Ors., (1991) 17 ATC 786.
- (vii) State Bank of India vs. Anjan Sanyal, 2001 (3) SLJ SC 270.
- (viii) National Hydro-Electric Power Corporation Ltd. vs. Shri Bhagwan & Anr., 2001 (8) SCC 574.
- (ix) S.John Britto vs. The Chief Educational Officer, Cuddalore, 2002 (3) SLR 79 (Madras).
- (x) K.R.Mallesh Gowda & Anr. vs. Karnataka Administrative Tribunal & Ors., 2002 (3) SLR 499.



(xi) Rakesh Kumar Mishra vs. State of U.P. and Anr., 2002 (3) SLR 721 (Allahabad).

11. Hon'ble Supreme Court in the case of Mrs. Shilpi Bose & Ors. vs. State of Bihar, AIR 1991 SC 532, made the following observations:

"4. In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administrative which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

In a recent pronouncement in the case of National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash, (2001) 8 SCC 574, the Apex Court has held as under:

"Transfer of employee, held, is not only an incident but a condition of service - Unless shown to be an outcome of mala fide exercise of power or violation of any statutory provision, held, not subject to judicial interference as a matter of routine - Courts or Tribunals cannot substitute their own decision in the matter of transfer for that of the management."

12. If one has regard to the above decisions, to sum up, transfer is a part of condition of service and is also an incident of service as well, which cannot be interfered in a judicial review by the Court unless the same is mala fide or violative of statutory rules and established transfer guidelines. In the given case, I am of the view that none of the above principle has been violated/flouted and therefore, there is no reason to interfere with the impugned order. In a judicial

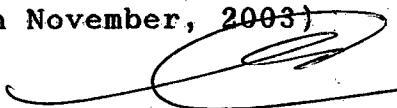


review, this Court cannot sit as an appellate authority over the transfer order issued. Wheels of administration should be allowed to run smoothly and would not be stalled by interference of this Tribunal. One has no right to pick his choicest place of posting.

13. Keeping in view of the aforesaid facts and applying the ratio of the decisions, in the conspectus of the present case, I am of the considered view that the applicant has not succeeded in establishing that his transfer order was issued in violation of any statutory rules or established transfer guidelines. In the result, for the foregoing reasons, the Original Application is found bereft of merit and is accordingly dismissed. The interim order granted on 27.6.2002 shall also stand vacated.

14. In the circumstances, the parties are directed to bear their own costs.

(Dated, the 5th November, 2003)


(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

CVR.