

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 568 of 2006

Thursday, this the 2nd day of November, 2006

CORAM :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Jahir Huzane,
S/o. Late M. Mohammed Sali,
Asstt. Surveyor of Works (Civil),
Civil Construction Wing,
All India Radio, Kakkanad P.O.,
Kochi – 30

... Applicant.

(By Advocate Mr. Vinod Chandran K)

versus

1. Union of India represented by its Secretary, Ministry of Information & Broad Casting, New Delhi.
2. Prasar Bharati (Broad Casting Corporation of India)
All India Radio, Parliament Street,
New Delhi : 110 001
3. The Executive Engineer (Civil),
Office of the Executive Engineer (Civil),
All India Radio, Kakkanad P.O.,
Kochi – 30
4. The Chief Engineer – 1,
Civil Construction Wing,
All India Radio, Kakkanad P.O.,
Kochi – 30.
5. Mahesh Kumar,
Assistant Engineer (Civil),
Office of the Executive Engineer (Civil),
Civil Construction Wing,
All India Radio, Chelpauk,
Chennai : 600 005



6. O. Jawaharlal,
Assistant Surveyor of Works (Civil),
Office of the Superintending Engineer (Civil),
Civil Construction Wing,
All India Radio,
Chelpauk, Chennai : 600 005
7. V. Sreenivasan,
Assistant Engineer (Civil),
Office of the Executive Engineer (Civil),
Civil Construction Wing,
All India Radio,
Chennai : 600 015
8. A. Marimuthu,
Assistant Engineer (Civil),
Office of the Assistant Engineer (Civil),
Civil Construction Wing, All India Radio,
Madurai.
9. S. Sudarshana Kurup,
Assistant Engineer (Civil),
Office of the Assistant Engineer (Civil),
Civil Construction Wing,
All India Radio, Vazhuthacaud,
Thiruvananthapuram : 14
10. B. Palani,
Assistant Surveyor of Works (Civil),
Office of the Superintending Engineer (Civil),
Civil Construction Wing,
All India Radio,
Chelpauk, Chennai 600 005
11. V.V.S.N.V. Prasad,
Assistant Surveyor of Works (Civil),
Office of the Superintending Engineer (Civil),
Civil Construction Wing, All India Radio,
Chelpauk, Chennai 600 005

... Respondents.

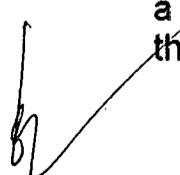
(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

This Original Application having been heard on 5.10.06, this Tribunal
on 2.11.06 delivered the following:

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Transfer is the subject matter in this case. The applicant had served for eight years in 'difficult station' and when asked, he gave his choice as Kochi, Trivandrum and Chennai/Madurai. However, the respondents have posted the applicant to New Delhi. Earlier, the applicant filed OA 375/2006 and the Tribunal by its order dated dated 01-06-2006 held as under:-

"4. We have heard both the sides. We are very much conscious of the judgment of the Apex Court with regard to transfers that they are not to be interfered with by Courts and Tribunals unless there is a proven violation of Rules etc. In this case there is a transfer policy in place, which, as seen from the document placed before us, does not generally encourage transfers except in the interest of the organisation or when there are serious complaints against the employee. The Department had invited options from the employees and they had given certain places of their choice. In that event, certainly it was obligatory on the Department to consider the options given by the employee and if it was not possible to give them their choice stations, they could have been considered for posting to nearby stations. We do not find any satisfactory reasons for the transfer stated in the reply statement filed by the respondents. Moreover, the applicant has submitted a representation detailing the above facts and the Department could have considered this rather than insisting on his relief even on the face of an interim order of this Tribunal. Since our order dated 29.5.2006 is very clear that the transfer order regarding the applicant is stayed till 1.6.2006 it is deemed that the applicant has been continuing since 29.5.2006. We are, therefore, of the view that interest of justice will be met, if a direction is given to the respondents to consider and dispose of the applicant's representation.



5. We, accordingly, direct the respondents to consider and dispose of the representation of the applicant at Annexure A-2 and pass orders within a period of three weeks from the date of receipt of a copy of this order. The interim order in respect of the applicant shall continue till the disposal of the representation. It is also clarified that the interim order dated 29.5.2006 is applicable to the applicants in the O.As only."

2. In a seemingly compliance of the above judicial order, an administrative order dated 23-06-2006 was passed by Superintending Surveyor of Works, which was neither a speaking one, nor issued by the competent authority. Hence, the applicant moved another OA No. 474/06 which was disposed of by the Tribunal by order dated 28-06-2006 with the following direction:-

"3. In these view of the matter, I specifically direct the 4th respondent to consider the Annexure A-2 representation dated 11.1.2006 of the applicant in the light of the observations made in this Tribunal's order in O.A.375/06 and pass a speaking order within a period of two months from the date of receipt of a copy of this order. Till then the applicant may not be relieved from the present place of posting. No order as to costs."

3. Now, in compliance with the aforesaid order dated 28-06-2006, the impugned order dated 03-08-2006 has been passed. Reasons for not being able to accede to the request of the applicant for transfer to Kochi/Trivandrum/Chennai/Madurai have been given as under:-

"1. The transfer choice to Chennai Circle office cannot be considered as there are more number of officers in the cadre

of AE(C)/ASW(C)s at Chennai Circle office than the sanctioned strength. Therefore, four ASW(C)s have been transferred out of Chennai Circle office recently. Even it is not possible to accommodate him in the Civil Division office, Chennai, as there is no vacancy available.

2. It is also not possible for posting him at Thiruvananthapuram as the present incumbents have served there lesser period than the applicant.

3. It is also not possible to consider his request for "Madurai" as the present incumbent has joined in Madurai in the year 2003 and has not completed his tenure.

Shri M. Jahir Huzane, ASW (C) is therefore informed that under the circumstances and facts brought out above it will not be possible to accede to his request and he should follow the orders already issued vide No. 22013/2/2006/AE (C)/CW-1/712 dated 25.05.2006 and join at Delhi."

4. It is against the above order that the applicant has approached this Tribunal. Apart from the contention that the applicant's transfer is only with a view to accommodating Respondent No. 10, other grounds of challenge as contained in the OA could be summarized as under:-

- (a) Respondent while considering the representation of the applicant has not considered any of the relevant aspects and has failed to properly appreciate the personal grievances of the applicant and has rejected the representation based on factually incorrect reasoning and on the basis of totally irrelevant considerations. (Ground B)
- (b) The transfer is against the very policy of the Respondents, inasmuch as, the transfer policy does not encourage transfers except in the interest of the organization or when there are serious complaints against the



employee. Further, when choice as asked for was given, the same had been ignored. Above all, "*The applicant was originally appointed in the All India Radio under the Ministry of Information and Broadcasting was a government employee and after the formation of the Corporation, he was not transferred to the said Corporation in terms of Sec 11(1) of Prasar Bharati Corporation of India Act, 1990 and as such the 2nd respondent has no authority to transfer the applicant.*" The applicant is only on deemed deputation to the Corporation. (Ground C)

- (c) When the applicant has served difficult station for over eight years, while the normal tenure is only two years, his choice has been ignored while others who have not served in any such 'difficult station' they were accommodated in nearby stations and in accordance with their choice (Ground D)
- (d) Non application of mind by the authorities in rejecting the request of the applicant (Ground E).

5. By a Misc. Application, the applicant had annexed two documents, one relating to higher scales granted by the Government to certain categories of employees working in the Corporation subject to exercising of option to remain in the Corporation or else to refund the monetary benefits on account of the aforesaid order and the same confirms that the applicant has not been transferred to the Corporation till now.

6. Respondents have contested the OA. According to them, the transfer was not with a view to accommodating Respondent No. 10. Transfer of



Respondent No. 10 is a normal tenure transfer, as he had already done four years in the previous station. Applicant had, right from the beginning, been attempting only to establish malafide against him by his superior for selfish motive without any success. In fact, he has been allowed to remain in his own state for almost 8 years, which by itself confirms that there has been no ill will against him by superiors. Transfer of the applicant is keeping in view the organizational interest and thus within the provisions of the transfer policy. As regards competence of Corporation to effect transfer, it has been submitted by the respondents that earlier transfer orders too having been passed only by the Corporation and not by the Government, these were accepted by the applicant as the same suited him, while this time, when the transfer does not suit him, the question of competence of the authority has been raised. Transfer is an incidence of service and a catena of decisions are available to the effect that transfer is not interfered with save for certain specific grounds.(A number of decisions of the Apex Court have been cited in the counter).

7. The applicant has filed his rejoinder wherein he has contended that in so far as malafide is concerned, what the applicant has alleged in the OA is that his attempts to get his grievances redressed by the Chief Engineer has antagonized his superiors and the same has resulted in his instant transfer. He has also cited denial of medical reimbursement to the applicant which could be set right only at the intervention of the Tribunal, vide Annexure

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A-10 order. As regards authority to transfer, the applicant has stated that the Apex Court has clearly held that an authority having no powers of transfer cannot exercise the same.

8. Arguments were heard. The counsel for the applicant has produced the following decisions in support of his case:

- (a) Judgment dated 6th July, 2001 in OP No. 17112 of 2001 P, wherein the Hon'ble High Court has held, "*If the petitioner is not the employee of Prasar Bharati as contended by the Standing Counsel, the said corporation cannot transfer the petitioner from Cochi to Thrissur.*".
- (b) Judgment dated 31-10-2002 in WA No. 249 of 2002 (against the judgment in the aforesaid OP), wherein it has been held, "*If the contention that the respondent is a Government employee sent on deputation is accepted, so long as the deputation as directed by the Government is not over, he should be continued in the place till the deputation ends or till he is deputed by the Government in another place.... If the respondent is to be transferred in view of the conditions at present, it is for the appellants to do the same in accordance with the Rules.*"
- (c) Judgement dated 22.11.2005 in O.P. No. 5956 of 2002 (S) and W.P.(C) No. 30715/04, in which it has been held : " The issue raised in these writ petitions pertains to the question regarding power of Prasar Bharathi Corporation in the matter of transfer. It is submitted that the issue is now pending before the Supreme Court in Civil Appeal No. 3244/02. Parties to these writ petitions submit that they shall await the

outcome of the said case. These writ petitions are accordingly disposed of making it clear that subject to outcome of the Civil Appeal No. 3244/02 pending before the Supreme Court, it will be open to the petitioners as well as the party respondents, to take appropriate action in the matter in the light of the judgement. Needless to say that the status quo obtaining between the parties will continue till such time."

9. The counsel for the respondents in his argument submitted that the following order is sufficient to transfer the applicant.

Order dated 2nd September, 1999 of the Government of India, Ministry of Information and Broadcasting whereby it has been stated:

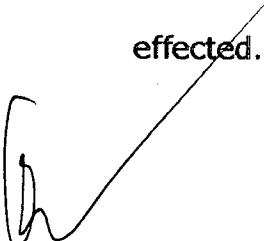
"it is hereby clarified that whenever services of a Government employee are placed at the disposal of Prasar Bharati, the Chief Executive Officer of Prasar Bharati is competent to take their placement decision and he is also competent to move/transfer those employees internally within Prasar Bharati wherever their cadre posts are operated."

10. The Judgment of the Hon'ble High Court as extracted above does not seem to have been challenged in the Apex Court. As such, the same has attained finality. Admittedly, the applicant is a government employee and on deemed deputation to the Prasar Bharati. It is not exactly clear from the terms of deputation whether he had been sent by the Government, on

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deputation to a particular place or his services made available to the Prasar Bharati. If former, then it is the government which alone has the competence to issue transfer. Instead, if the applicant's deputation is such that his services were made available to Prasar Bharati without station specific, then, order dated 2nd September, 1999 relied upon by the counsel for the respondents shall hold the fort, for, the said order has not been challenged, much less, nullified by the Hon'ble High Court.

11. The situation thus stands at this stage that the respondents shall first verify the terms of deputation and if the deputation is with particular reference to a station or post, then, as long as the applicant is only on deemed deputation, the authority competent to issue transfer orders is only the Government. Nothing, of course, prevents the Corporation to take steps in this regard to have the decision of the Government, by explaining the service exigencies on the one hand and the representation of the applicant for retention on the other. Until this is accomplished, transfer by Prasar Bharati, in view of the decision of the Hon'ble High Court, extracted above, cannot be held valid. On the other hand, if the terms of deputation is only to the effect that the services of the applicant are lent to Prasar Bharati, then the applicant could be moved from one place to another, within Prasar Bharati as per the order dated 2nd Sep. 1999. But, till such time this exercise is done by the respondents, the transfer of the applicant to Delhi shall not be effected.



12. Thus, the OA is disposed of with the direction to the respondents to verify from the records as to the term of deputation (whether station specific or general) as discussed in the preceding para and arrive at a decision accordingly in respect of authority competent to effect transfer. In case the deputation is one of general and not station specific, then the authority are at liberty to revalidate the transfer order, but taking into account the children education etc., of the applicant and if the transfer on account of service exigencies is inevitable, then also such a transfer should be giving adequate time (at least six weeks) before effecting the transfer, if so ordered. Till then, the applicant shall continue working in the same station as of date.

13. No costs.

(Dated, 2nd November, 2006)



K B S RAJAN
JUDICIAL MEMBER

cvr.