

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 569 of 2006

Thursday, this the 2nd day of November, 2006

C O R A M :

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

P. Sunil,
Assistant Engineer (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, 6th Floor, CGO Complex, Lodhi Road, New Delhi - 3
5. Mahesh Kumar, Assistant Engineer (Civil), Office of the Executive Engineer (Civil), Civil Construction Wing, All India Radio, 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. Rosy George
Assistant Surveyor of Works (Civil),
Office of the Executive Engineer (Civil),
Civil Construction Wing, All India Radio,
Kakkanad, Cochin - 30
9. B. Geetha Kumari,
Assistant Engineer (Civil),
Office of the Executive Engineer (Civil),
Civil Construction Wing, All India Radio,
Kakkanad, Cochin - 30
10. V.S. Ramesh,
Assistant Surveyor of Works (Civil),
Office of the Executive Engineer (Civil),
Civil Construction Wing, All India Radio,
Bangalore
11. K. Govardhan,
Assistant Engineer (Civil),
Office of the Assistant Engineer (Civil),
Civil Construction Wing, All India Radio,
Bangalore ... Respondents.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC for R1 to R4)

The Original Application having heard on 5.10.06, this Tribunal on 2.11.2006, 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 four years in 'difficult station' and when asked, he gave his choice as



Kozhikode/Thiruvananthapuram/Chennai. However, the respondents have posted the applicant to New Delhi. Earlier, the applicant filed OA 374/2006 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 place of their choice. In that event certainly it was obligatory for 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. The applicant's side also submitted that Serial No.13 Smt.Rosy George has been transferred from Chennai to Kochi and she has already assumed charge as per Annexure R-2 which has resulted in a vacancy at Chennai. The applicant also having given one of the options as Chennai could have been considered against this post or in any other near station. We do not find any satisfactory reasons for effecting the transfers in the reply statement filed by the respondents. Regarding the respondents submission that the applicant had given a representation in which he had cited his daughter's illness as a ground for retention at Kochi, the respondents in the reply statement submitted that the children had better opportunities in New Delhi schools which shows a complete non application of mind. Moreover the applicant has submitted a representation detailing the above facts and the Department could have considered this rather then 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-7 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 these 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. 473/06 which was disposed of by the Tribunal by order dated 28-06-2006 with the following direction:-

4. In this view of the matter, I specifically direct the 4th respondent to consider the Annexure A-5 representation dated 26.5.2006 of the applicant in the light of the observations made in this Tribunal's order in O.A.374/06 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 Kozhikode/Thiruvananthapuram/Chennai have been given as under:-

"1. He is continuously working at Kochi from 21.6.1999 and has completed more than 7 years, which is much more than



the normal tenure in the grade of Assistant Engineer.

2. Smt. Rosy George, who had completed a similar tenure at Chennai has completed a lengthy tenure of 07 years away from her native place, had to be accommodated at Cochin and in the process Sh. P. Sunil has to be transferred.

3. He has given choice of places as Kozhikode (Calicut), Thiruvananthapuram and Chennai Circle Office and it is not possible to accommodate him in any of these places due to following reasons:

(a) It is not found possible to consider his request to Calicut as the present incumbent, Sh. M. Vijayan was transferred and joined very recently on 19.12.2005 and has, thus, not completed his tenure.

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

(c) The transfer choice to Chennai Circle office also cannot be considered as there are more number of 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 as there is no vacancy available."

4. It is against the above order that the applicant has approached this Tribunal. Grounds of challenge as contained in the OA could be summarized as under:-

(a) The applicant is an Assistant Engineer (Civil) working in the Broad Casting Corporation of India, All India Radio at its Civil Construction Wing, Kakkanad, Kochi. He was earlier posted to Port



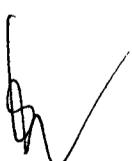
Blair, a difficult station as per the fundamental rules applicable to the Civil Construction Wing of the 2nd respondent from November 1990 to July, 1993. The applicant was entitled to be transferred to his home station immediately after his service in the difficult station. However, he was transferred to Chennai where he continued for more than six years before being transferred to Kochi. The applicant has been continuously being harassed during his tenure at Kochi.

(b) The applicant was issued with an order bearing No. EEC/CHN/1(10)/20065-S/1694 dated 26.05.2006, directing another Assistant Engineer to take over charge from the applicant. In fact, the 2nd respondent had circulated a circular seeking options to be exercised for transfer in obedience to which the applicant had exercised his option and had forwarded the same by letter No. AE(C) 1/CCW/PS.1(21)05-06/299 dated 16.01.2006. The applicant in view of the continued treatment of his daughter had opted for Kozhikode, Thiruvananthapuram or Chennai, in that order.

(c) The transfer policy in the respondent organisation does not encourage transfers except in the interest of the organisation or when there are serious complaints against the employee. As far as possible an employee working at a post in a Station should not be

[Handwritten signature/initials]

displaced unnecessarily without any valid reason. This is the policy. Further, the applicant is a Government employee and after the formation of the 2nd respondent Corporation was not transferred to Prasar Bharathi in terms of Section 11 (1) of Prasar Bharathi Corporation of India Act, 1990, and the second respondent has no authority to transfer the applicant. He is deemed to be on deputation from the Government of India and is continuing as such in the 2nd respondent Corporation without deputation allowance. The applicant was not issued with any orders of transfer. On enquiry, the applicant came across an order bearing No. 22013/2/2006/AE-C/CW1/712 dated 25.5.06 issued from the office of the 4th respondent directing the transfer of the applicant to a vacant post in the office of the Superintending Surveyor of Works (Civil)-III at New Delhi as Assistant Surveyor of Works (Civil). The applicant is not liable to be transferred by the 2nd respondent Corporation. In any event, the transfer of the applicant is against the norms for transfer and the fundamental rules applicable to the Civil Construction Wing of the 2nd respondent. Further, the applicant due to his daughter's illness has to be in his home station or at least in a nearby station to attend to his sick daughter. The applicant also had clearly exercised his option and the present transfer of the applicant to New Delhi was Arbitrary and illegal and prejudiced the applicant.



(d) The applicant approached this Tribunal in O.A. No. 374 of 2006 in which in which there was an interim order staying his transfer. Subsequently, the respondents filed a detailed counter affidavit and the matter was heard and passed an order dated 1.6.06 directing the respondents to consider the representation of the applicant within a period of three weeks and also not to relieve the applicant till such time as the representation was considered. Subsequently, the applicant was issued and order dated 23.06.2006 by the Superintending Surveyor of Works intimating that his representation has been examined and it is not possible to accede to his request to accommodate him. Since the order was a non-speaking order passed without any application of mind the applicant was constrained to again approach this Tribunal in O.A. No. 473 of 2006. This Tribunal by order dated 28.6.06 again directed consideration of the representation of the applicant in the light of the observation made in O.A. No. 473/06.

(e) The applicant has now been issued with an order bearing No. A33022/3/2006-CW.1/1315 dated 3.8.06, rejecting the representation of the applicant. Reasons cited for rejecting the applicant's representation are factually incorrect, discriminatory and made without any application of mind or reference to the actual situation existing in the various offices of the 2nd respondent



Corporation. The Tribunal while passing the orders had specifically directed that the 4th respondent while considering the representation of the applicant for posting in the stations opted by him shall also consider to accommodate him in any other nearby station, which direction has not at all been complied with by the 4th respondent. The respondents called for option for transfer and the applicant had specifically exercised his option which was not considered at all by the respondents in the spirit of the orders passed by the Tribunal and considering the totality of the circumstances. The applicant understands that there are vacancies existing in nearby stations and many Assistant Engineers are retained and transferred to additional posts which is a clear act of nepotism and is arbitrary. The applicant is prejudiced by his transfer to a far of station especially when the respondents themselves had sought for options from the employees and this Tribunal had directed that such options be considered. The transfer now made are total violation of the norms applicable to transfers in the Civil Construction Wing of the 2nd respondent and is tainted by extraneous reasons. Further, many of the employees now given transfers have been accommodated in convenient posts without considering whether they have undergone difficult station service and many have been retained at their places for long periods without any basis and the actions of the official respondents are

tainted with nepotism. The order does not reveal any reason for rejecting his representation and has not considered the grievances of the applicant or considered why his transfer cannot be made to a nearby place.

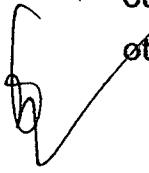
5. By a Misc. Application, the applicant had annexed one document relating to higher scales granted by the Government to certain categories of employees working in the Corporation subject to exercising of option to remain in the Corporation or else to refund the monetary benefits on account of the aforesaid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

6. Respondents have contested the OA stating that :

(a) After serving in the difficult station at Port Blair, the applicant's option for choice station was considered by posting him at Chennai and thereafter to Kochi which was feasible to consider at that time of issue of transfer order. Option is to accommodate the staff as far as possible and the applicant has opted knowing fully well that the incumbents at Calicut and Trivandrum are junior to him in terms of stay and one of the sub divisions in Trivandrum is very shortly going to be closed as the incumbent is additional and due to insufficient work load. The applicant was also aware of the excess staff strength at Chennai. Posting is not possible at any of the choice stations which has resulted on his own consideration. It is certainly not a

right for the employees that one shall be posted only to the place opted by him. The competent authority did consider the option exercised by the applicant. The respondent issued the speaking order Annexure A7 explicitly stating the circumstances under which it was not possible to accede to the request/options exercised by the applicant. The applicant has failed to prove the malafides alleged.

(b) The applicant who had completed the tenure period of four years represented not to disturb him by transfer vide representation dated 9.12.2004 requesting for retaining him for one year period at Cochin due to his accident injury and this was sympathetically considered and he was transferred after 1 1/2 years only. The request of the applicant in his representation dated 11.01.2006 could not be acceded to for reasons stated in the speaking order dated 3.8.06. The respondent No.8 who has been serving outside the home State for almost seven years had to be considered for posting in Kerala State though had a longer period of service during which period did also serve outside South India when compared to the applicant. The post the applicant holding is liable for All India transfer and also only against sanctioned post. The applicant, the second seniormost in Kerala region is unless shifted, shifting of others, who are junior to him will be affected by questioning his retention. The transfer of the applicant does have valid reason, organisational interest, which the applicant fails to see for selfish reasons. The applicant very conveniently forgets that the same transfer policy adopted by the department only helped him to get posting at his home State after his service outside the home State and the inconvenience being caused to others, who are equally interested for posting in his choice place.



The applicant's submission that he is not liable to be transferred by the 2nd respondent Corporation is a statement without merit. The present transfer of the applicant is direct result of the applicant's representation against harassment and victimization meted out to him because these allegations the applicant has on several occasions raised through Original Petitions and Original Application to establish malafides by respondents but in vain.

(c) 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 the main plank of his attack is competence to effect transfer. His transfer is not justified as respondents No. 8 and 9 have not done difficult station whereas he had already done difficult station. Respondents No. 5 to 11 have been accommodated in violation of transfer policy.

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."

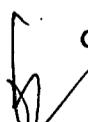
10. The Judgment of the Hon'ble High Court as extracted above does not seem to have been challenged in the Apex Court. As such, the same has attained finality. Admittedly, the applicant is a government employee and on deemed deputation to the Prasar Bharati. It is not exactly clear from the terms of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

A handwritten signature in black ink, appearing to read 'Ch' or 'Chand', is written over a diagonal line.

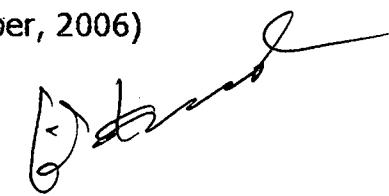
in this regard to have the decision of the Government, by explaining the service exigencies on the one hand and the representation of the applicant for retention on the other. Until this is accomplished, transfer by Prasar Bharati, in view of the decision of the Hon'ble High Court, extracted above, cannot 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.

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character.

13. No costs.

(Dated, 2nd November, 2006)



K B S RAJAN
JUDICIAL MEMBER

CVR.