

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 606 OF 2007

Thursday, this, the 27th day of March, 2008.

CORAM :

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

D.Ajayakumar
Assistant Engineer (Electrical)
Civil Construction Wing
All India Radio
Thiruvananthapuram - 695 014 : Applicant

(By Advocate Mr. Cherian Varghese)

vs.

1. Union of India represented by the Secretary
Ministry of Information and Broadcasting
Sasthri Bhavan
New Delhi - 110 001
2. Director General
All India Radio
Akasawani Bhavan, Parliament Street
New Delhi - 04
3. Chief Engineer - I
Civil Construction Wing
All India Radio, Sookhana Bhawan
CGO Complex, Lodhi Road
New Delhi - 110 003
4. Superintending Surveyor of Works (Civil)
Civil Construction Wing
All India Radio, 5th Floor, Sookhana Bhawan
CGO Complex, Lodhi Road
New Delhi - 110 003
5. Superintending Surveyor of Works (Civil)
Civil Construction Wing, AIR
Seminary Hills, Nagpur - 440 006
6. The Executive Engineer (Electrical)
Civil Construction Wing, All India Radio
Mylapore, Chennai - 682 004 : Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 18.02.2008, the Tribunal
on 27-03.2008, delivered the following :



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

This is the second round of litigation. Earlier the applicant had filed O.A 237/07 challenging his posting order on various grounds from Trivandrum to Mumbai . The Tribunal by order dated 05.04.2007 directed the respondents to consider the pending representation sympathetically. Certain valid grounds were given in the representation such as availability of vacancy in the nearby places, children's education and his spouse being employed in State Bank of Travancore in Kerala. The respondents have vide the impugned order dated 17.08.2007 expressed their decision not to accede to the request of the applicant. The said order reads as under :-

"Sh.Ajay Kumar AE(E), Trivandrum has been transferred vide this office order dated 19.6.2006 as ASW(E) Mumbai in the routine transfer for the year 2006.

The representation of Sh.D.Ajay Kumar dated 02.02.2007 has been considered sympathetically and is allowed to stay at Trivandrum till 31st March, 2007. Shri D.Ajay Kumar has completed his tenure of posting at place and he is holding a post which is liable of transfer all over India, as such his request has not been acceded and he is hereby directed to report to his place of posting i.e ASW(E), Mumbai immediately."

2. The applicant has come up against the aforesaid order on various grounds including that consideration of the representation is not in accordance with the directions given, in the Tribunal's order dated 05.04.2007.

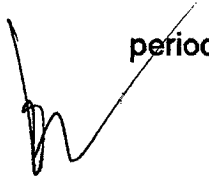
3. Briefly stated the applicant is an Assistant Engineer in the Civil Construction Wing of All India Radio. Initially (vide Annexure A-1 order), he was shifted on 19.06.2006 and posted to Mumbai. However



on his representation, the transfer was deferred (Annexure A-3) . The applicant had indicated as his choice station both Chennai and Bangalore where vacancy was said to be existing . The applicant had penned another representation dated 02.02.2007 to the 3rd respondent, the Chief Engineer. However, without that representation being considered the Superintending Engineer, Nagpur Division issued Annexure A-5 order dated 30.03.2007 whereby the applicant stood relieved from the present place of posting with instructions to report at the new place of posting. This was challenged in OA 237/07 which was, as stated earlier, disposed of vide order dated 05.04.2007, with a direction to the respondents to decide the representation. The result of such decision is the impugned order, extracted above.

4. The applicant in this OA contended that transfer of the applicant is not in public interest. No substitute has been posted at Trivandrum. The applicant's parents are pretty old and solely dependent upon the applicant. The applicant's wife is serving in Kerala in State Bank of Travancore and provision exist for posting the spouse in the same place (order dated 03.04.1986 at Annexure A-8). The applicant has got two school going children. The applicant himself is a patient of Asthma. There is a vacancy available in the nearby area. In addition he has contended that the representation filed by him was not given due consideration.


5. Respondents have contested the O.A. They justified the transfer on the grounds that the applicant has All India transfer liability and due to his domestic circumstances he was retained here in Trivandrum for a period of ten years plus though normal tenure is only of four years.



6. The applicant has filed his rejoinder in which he has spelt out that he has been unduly discriminated in as much as others have been retained in their respective places while the applicant stood transferred. There are seniors to the applicant who could have been shifted to Mumbai but they were not willing to be transferred. He has again reiterated about the availability of vacancy in the nearby area.

7. Respondents have filed reply to the rejoinder in which the applicant's All India transfer liability was stressed and it has been stated that the speaking order dated 17.08.2007 was passed after taking into account the representation submitted by him, Thereafter, Counsel for the applicant submitted that in the earlier order dated 5th April, 2007 in OA No. 237/07, the direction was to consider the representation of the applicant. The order reads, "However, since he has pointed out the availability of two vacant posts at nearby places and also the problems regarding school going children studying in 3rd and 9th standard, we consider that respondents shall look into the representation of the applicant at Annexure A-4 sympathetically." The grievance of the applicant was that the respondents have not considered the case on the above lines when they had passed the speaking order vide Annexure A-7. In order to verify the factual situation, original records were called for, vide order dated 01-01-2008, which reads as under

"Heard the parties. In order to ascertain whether the impugned order passed vide Annexure A-7 is after a due consideration of the representation of the applicant as directed vide Annexure A-6, as also the ground taken in the OA No. 237/07, respondents are directed to produce the relevant records containing the representation and the copy of OA No. 237/07 and the notings recorded in respect of the same for the perusal of the court....."



8. The records produced had been scanned. The following are the notings in this regard:-

" PUC received from SE(E) Nagpur alongwith Additional Central Government Standing Counsel, Ernakulam letter dated 25.04.2007 regarding OA No.237 of 2007 filed before the Central Administrative Tribunal, Ernakulam Bench by D.Ajay Kumar.

CAT Ernakulam has passed the order on 5.4.2007, in which it is stated that the representation of Shri D.Ajay Kumar is disposed off and also directed by the court that the applicant shall not be disturbed from the present place of posting.

Submitted please.

Sd/- "

" Put up. Speaking order on Annexure A-4.

Sd/- "

" As per Annexure A-4 Shri D.Ajayakumar, AE(E) stating in his representation dated 02./02.2007 that the one post of ASW(E) is vacant at Chennai and a post of AE(E) is vacant at Bangalore. Further he has stated that no substitute has been posted against him at Thiruvananthapuram.

Therefore he is requesting to consider his transfer either Chennai or Bangalore, so he can attend his old parents atleast once in a while.

*Further line of action may please be intimated.
Submitted for consideration please.*

Sd/- "

" Put up a separate order addressed to the applicant as per directions of CAT.

Sd/- "

" Speaking order is placed on the file for signature of SSW II.

Sd/- "

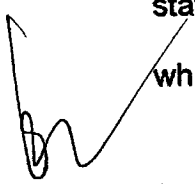
" Direction of CAT 'A' is considered and please issue modified speaking order.

Sd/- "

9. A glance at the above would go to show that there has been absolutely no discussion about the two relevant points as contained in

the representation. The speaking order is of 8 lines, which states that representation has been considered and is allowed to stay at Trivandrum till 31st March, 2007. This letter is dated 17-08-2007. In other words, the representation and the manner in which it has to be considered vide order in OA 237/07 had not been considered at all. All that was informed to the applicant was that he is under all India transfer liability and he has to move. And the respondents maintain, vide para 7 of their reply to rejoinder, "It is submitted that while considering his representation the respondent department had taken all his grievances and given due consideration within the framework of rules and administrative feasibility. Accordingly, as directed by this Hon'ble Tribunal a speaking order dated 17-08-2007 was issued." What is stated in the reply to the rejoinder and what is contained in the relevant records have absolutely no link. None of the points had been considered in the file. The speaking order is a simple mechanical order, without any application of mind. This kind of consideration by the Respondents was not expected at all.

10. Now a look at the counter. It has been emphasized that while the normal tenure of posting is only 4 years, the applicant has been retained in Trivandrum since 1996 and he has all India Transfer liability. As such he has been transferred. This contention cannot be marginalized. However, what is to be seen is as to whether the respondents have taken the same decision in respect of all those who have put in ten years of service in the same station. What is to be seen is whether the applicant has been subjected to hostile discrimination in matters of transfer or uniformly, all those who have spent adequate period in a station have been shifted. The applicant has mentioned a few cases where individuals have been adjusted in the same place or nearby



places. It is clear from the records that judicious consideration has not been given in this case. The Tribunal is conscious of the fact that transfer is only an incidence of service and judicial interference is limited. But it has to be emphasized here that where there is hostile discrimination, and where there is infraction of professed norms, the Tribunal could well interfere in matters of transfer. In the instant case, examples have been cited wherein certain individuals who have been transferred had stay put in their own place without moving out. Again, examples have been cited wherein the seniors to the applicant were available for posting to Mumbai, whereas they have not been asked to move. These were so specifically mentioned in the rejoinder and the respondents had also filed their reply to the rejoinder, but none of the above contentions have been rebutted. This shows that the applicant has been meted with hostile discrimination.

11. The applicants' spouse has been employed in State Bank of Travancore in Kerala. Provision exists that when a government servant and the spouse are employed, for the purpose of ensuring welfare of the children, invariably posting should be in the same station or nearby stations. Despite the applicant pointing out the relevant rule position, this has not been considered.


12. The applicant's children have been studying in 3rd and 9th standard. Their education would be disturbed if transfer took place during the middle of the academic session. This has also not been given due consideration.

13. The applicant is as of date 45 years plus and he has further tenure to serve. He is not reluctant to move out of Kerala but wants a

nearby posting, as the same would be convenient to attend to his social responsibility too. Records show that he hails from an orthodox family and his father is an octogenarian and his mother met with a bus accident. Representation has been made by the father of the applicant also, which, however, could not be decided due to pendency of the court case.

14. Again, there may be some inconvenient places and individuals may be reluctant to undergo transfer to those places. The inconvenience may be on various grounds, such as children education, or lack of facility, high cost of living, non availability of accommodation, and the like. If the contention of the applicant vide para 3 of the rejoinder be taken as correct, then Mumbai posting is one such inconvenient posting as many do not want to move to that place. In such circumstances, the vacancy may have to be filled up by rotation, starting from the senior most for a specific period - say one year or two years, such a tenure duly specified.

15. Taking into account the entire conspectus of the case, it is seen that due consideration has not been given by the respondents while disposing of the representation. The contention of the respondents that the applicant has all India transfer liability and he has spent ten years at Trivandrum and hence is being transferred would be fully tenable, provided, such a stand is taken in respect of all those who have put in more than ten years of service in the same station. If in the department no individual with more than 10 years of station seniority has been retained in the station and the applicant has also to move accordingly, this Tribunal would not interfere with such transfer. Instead, if there are



persons with longer station seniority and they have not been shifted while the applicant has been, then the transfer has to be held as illegal.

16. In view of the above discussion, it is only appropriate that the matter is reconsidered at the level of Chief Engineer I, Civil Construction Wing, All India Radio, New Delhi who would, dispassionately, consider the case of the applicant and see whether the applicant has been discriminated and also to see whether the applicant could be accommodated in Bangalore or Chennai as per his request and if feasible, the applicant could be transferred to such places. As the statistics of all the individuals (of the rank of the applicant) must be available at that level, it would be easy for the Chief Engineer to verify as to whether the applicant has been discriminated. He may come to a judicious decision, keeping in view of the instructions on the subject and also keeping in view the service exigencies. After such consideration, the Chief Engineer may pass suitable orders. This drill be performed within a period of two months from the date of communication of this order. If the decision is to shift the applicant out of Trivandrum to Chennai or Bangalore or any other place, such an order may have to be passed preferably before the commencement of the next academic session after the summer vacation – say by July, 2008. Till then the applicant shall not be disturbed from the existing place of posting. O.A is disposed of with the above directions. No cost.

Dated, the 27th March, 2008.



K.B.S. RAJAN
JUDICIAL MEMBER