

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.92/07 & O.A.93/07

Thursday this the 1st day of March 2007

C O R A M :

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

O.A.No.92/07

P.Sunil,
Assistant Engineer (Civil),
Civil Construction Wing,
All India Radio, Kakkanad P.O.

...Applicant

(By Advocate Mr.Vinod Chandran K)

Versus

1. Union of India represented by its Secretary,
Ministry of Information & Broadcasting,
New Delhi.
2. Prasar Bharathi (Broadcasting Corporation of India)
represented by Director General,
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. Superintending Surveyor of Works – II,
O/o.the Superintending Surveyor of Works – II,
Civil Construction Wing, All India Radio,
5th Floor, Soochna Bhavan, CGO Complex,
Lodhi Road, New Delhi – 110 003.

...Respondents

(By Advocate Mr.MM Saidu Muhammed,ACGSC)

O.A.No.93/07

Jahir Huzane,
S/o.late M.Mohammed Sali,
Assistant 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 & Broadcasting,
New Delhi.
2. Prasar Bharathi (Broadcasting Corporation of India)
represented by Director General,
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. Superintending Surveyor of Works – II,
O/o.the Superintending Surveyor of Works – II,
Civil Construction Wing, All India Radio,
5th Floor, Soochna Bhavan, CGO Complex,
Lodhi Road, New Delhi – 110 003.

...Respondents

(By Advocate Mr.P.Parameswaran Nair,ACGSC)

This applications having been heard on 1st March 2007 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

O.A.No.92/07 and O.A.93/07 were heard together as the reliefs
prayed for are same. The applicants are Assistant Engineer and Assistant
Surveyor of Works in the Broadcasting Corporation of India, All India Radio
at its Civil Construction Wing, Kakkanad, Kochi. They were transferred to

New Delhi vide Annexure A-2 order along with others. The applicant in O.A.92/07 initially challenged their transfer in O.A.374/06 and O.A.473/06 and applicant in O.A.93/07 in O.A.375/06 and O.A.474/06. They were disposed of by this Tribunal directing that representations made by the applicants shall be disposed of. These representations were disposed of accordingly vide Annexure A-4 order dated 3.8.2006. Since the requests of the applicants were rejected, these were again challenged in the third round of litigation before this Tribunal in O.A.568/06 and O.A.569/06. In these O.As the applicants had impleaded party respondents 5 to 11 and it was contended that they had been transferred without reference to their station seniority and also on the ground that the High Court had held that in accordance with the provisions in Section 11(1) of the Prasar Bharathi Act, employees are treated as deputationists and hence the Corporation has no power to transfer such employees. These O.As were disposed of by order dated 2nd November 2006 with the following directions :-

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.

.4.

2. Thereafter, the respondents considered the matter in accordance with the directions of this Tribunal and passed Annexure A-6 order dated 11th January 2007 holding that employees are on deemed deputation basis in Prasar Bharathi and the Prasar Bharathi is competent to transfer its employees and directing that the applicants should get relieved and report at the place of posting at New Delhi within six weeks. The present O.As have been filed against this order.

3. Respondents have filed a reply statement stating that the issue of competence of the respondent Corporation to transfer its employees without seeking an option has been decided by the Hon'ble Supreme Court in Civil Appeal No.3244/02 with other Civil Appeals and in the judgment delivered on 2.2.2007 at Annexure R-3, the power of the Prasar Bharathi Corporation to transfer its employees on deemed deputation has been upheld which reads as follows :-

We, therefore, are of the opinion that the High Court was not correct in opining that the respondents could not be transferred by the Corporation. We would, however, before parting with the case, in exercise of our jurisdiction under Article 142 of the Constitution of India issue a direction upon the Union of India. We have noticed herein before that the Union of India itself had been filing writ petitions before the different High Courts. It did not do so in the instant case. It had to be impleaded as a party respondent.

4. Therefore, the applicants who are Group B employees having all India transfer liability, can be transferred by the Corporation as and when required. The respondents also submitted that the other contentions of the applicants regarding posting in difficult station etc. have also been considered while taking the decision.

.5.

5. Applicants have filed a rejoinder. It may be taken on record. They have contended that the respondents have now issued letters seeking options for transfer from all the employees but the applicants had not been issued with any such letters and that it is understood that there are some vacancies arising in Bangalore and Chennai offices in the Southern Zone and their request for transfer to these posts may be considered in view of the circumstances stated.

6. I have heard both the sides today. Counsel for the applicants submitted that in view of the decision now rendered by the Hon'ble Supreme Court that the Prasar Bharathi Corporation is competent to transfer its employees on deputation basis, that part of the relief prayed for has become infructuous. Counsel further submitted that the children of both the applicants are studying in 9th and 10th classes in the local schools in Kochi and it would cause immense hardship at this stage if the applicants are required to shift to Delhi and therefore would only seek compassionate treatment at the hands of the respondents by retaining them till the end of the academic year and also that the applicants may be given an option to state their choice stations of transfer as granted to other employees in the office. The applicants would make a fresh representation to the respondents in this regard.

7. Considering the issue from the point of the original prayers of the applicants, I am of the view that nothing more remains to be adjudicated as the grounds urged by the applicants regarding competency of the Corporation to transfer the deputationists and keeping in view the all India transfer liability of the applicants herein, the matters have become

.6.

infructuous. The only request now submitted by the counsel is that the applicants be allowed to continue in the present place of posting so that the children are not disturbed at the end of the academic year. I consider it a reasonable request and is also covered by judicial pronouncements. In this view of the matter, I direct the 4th respondent that the applicants shall not be disturbed from the present place of posting till the end of the academic year. 4th respondent is also directed to provide an opportunity for exercising option to the applicants if such an opportunity is granted to other employees in the office and to consider such options in accordance with the Rules. With these directions the O.As are disposed of. No order as to costs.

(Dated the 1st day of March 2007)

Sathi Nair
SATHI NAIR
VICE CHAIRMAN

asp