

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.101 of 2007

Friday this the 4th day of May, 2007

CORAM :

HON'BLE Mr. JUSTICE M.RAMACHANDRAN, VICE CHAIRMAN

V.Sathyabhama,
Accountant/Assistant,
All India Radio,
Thrissur. : **Applicant**

(By Advocate Mr. Nagaraj Narayanan)

Versus

1. The Deputy Director General(SR),
All India Radio, Mylapore,
Chennai.
2. The Station Director,
All India Radio,
Trivandrum.
3. The Station Director,
Doordarshan Kendra,
Trivandrum.
4. Smt.R Sreedevi,
Upper Division Clerk,
All India Radio,
Trivandrum. : **Respondents**

(By Advocate Ms Mini R Menon, ACGSC)

The application having been heard on 04.05.2007, the Tribunal on the same day delivered the following :



ORDER

HON'BLE Mr. JUSTICE M.RAMACHANDRAN, VICE CHAIRMAN

The O.A is filed principally on an apprehension that the 4th respondent is likely to be accommodated as Accountant/Assistant in a vacancy which has arisen at the All India Radio, Thiruvananthapuram. As far as the applicant is concerned, while working as Upper Division Clerk, she had been promoted and transferred to Thrissur from Thiruvananthapuram, and she had joined duty at Thrissur on 18.2.2005. According to her, she had accepted the promotion, although it was inconvenient to her since non-acceptance of the promotion would have put her to prejudice. However, she had been striving for a transfer to her home town on compassionate ground which were highlighted in the representations sent. According to her, three retirement vacancies in the post of Accountants were to arise in February 2007 at Thiruvananthapuram and in any case, and the 4th respondent who is likely to get promotion as Accountant, stand inferior to her vis-a-vis the claim for continued accommodation at Thiruvananthapuram. But because of extraneous considerations, applicant apprehends that her rightful posting at Thiruvananthapuram is likely to be blocked because of a decision that has already been taken by the respondents for accommodating the 4th respondent, and giving her posting on promotion. This according to the applicant, is highly irregular and violates her fundamental rights of equality.

2. The Central Government Standing Counsel had taken notice on behalf of the Deputy Director General and Station Directors of All India Radio and Doordarshan, Thiruvananthapuram. This Tribunal had not found it necessary to issue notice to the 4th respondent at admission stage since the official respondents had been directed to present factual details without any delay. It has also been directed that the respondents shall not fill up the vacancy.

3. In the reply statement filed, it has been submitted that even before receipt of the interim orders of this Tribunal, one post had been filled up. The maintainability of the application is in dispute since according to the respondents, in matters of transfer, normally the Tribunal will not intervene. It is further submitted that at the time of filing of the application, there was no cause of action for the applicant. She had been offered a promotion which she had accepted and the normal tenure for an officer is three years, in the transferred station. It is further submitted that even on promotion an employee is transferred only in case there is no vacancy available, at the station where the officer is working. Since a vacancy was available during 2005 only at Thrissur the applicant had been transferred.

4. However, certain materials have been incorporated in the statement which may suggest that the case of the 4th respondent is viewed with sympathy. It is stated that she belongs to Scheduled Caste, and the officer is likely to retire, on 31.3.2008 on superannuation. It is further submitted that she is one of the seniormost UDC, and a representation had been received from her (R-2), showing compassionate circumstances which according to the official respondents are good reasons for accommodating her at Thiruvananthapuram even after her promotion. It is pointed out that the applicant has no legal right to insist for a transfer, or to contend that the 4th respondent should be moved out so as to accommodate her.

5. In the matters of transfer, a large amount of discretion is vested in the executive authority and as suggested by the standing counsel, the Tribunal is expected to intervene in such matters only if there is element of arbitrariness or discrimination. It may be at the discretion of the authority to consider an employee against a vacant post, where the person has only a few months alone for retirement. The suggestion as could be gathered from paragraph 3 of the reply statement appears to bring to the notice of the Tribunal the above aspect:

"If Smt Sreedevi, the 4th respondent is promoted and posted at Thiruvananthapuram, the applicant be accommodated Thiruvananthapuram even before the completion of her tenure at Thrissur against the retirement vacancy of Smt. R Sreedevi on 1.4.2008."

The idea attempted to be conveyed appears to be that after the retirement of Sreedevi, the applicant could be brought back to Thiruvananthapuram when she has still more service left.

6. A Scheduled Caste employee as a matter right will have no preference to be accommodated against a particular post when she is promoted. As far as the 4th respondent is concerned, it is evident that offer for promotion came to her from 1996 onwards but for her personal reasons she was avoiding the promotion. Therefore, it can be only in her own interest that she lost chances of a promotion and opted to accept it at her convenience. However, this conduct by itself will not confer her weightage against the rights and aspirations of her colleagues in the department. A person cannot have any absolute right to insist that the posting of her choice should be given when an offer or promotion forthcomes. If a transfer is likely to disturb her family life, it may be within her right to opt to continue in the lower post.

7. The above discussion, are only intended to ensure that a balanced approach always has to be there on the part of the Department and a discriminatory treatment or choice of favorites always need to be avoided. It is hoped that while filling up the post of Accountant which is vacant at Thiruvananthapuram the department will bear in mind the above aspects. If after weighing the situation, respondents decide to accommodate the 4th respondent at Thiruvananthapuram, it should be ensured that in the next vacancy or the vacancy which arises after departure of 4th

respondent, should be offered to the applicant, to preserve her legitimate expectations. A fortuitous circumstances that at the time of promotion a vacancy was not here in the station is hardly sufficient reason to deny accommodation for all times to an officer.

8. The O.A is disposed of with the above observations, but I hasten to add that I have not issued any positive directions as far as this case is concerned. The interim order will stand vacated as it may not be necessary to bind the hands of the department as it is hoped that they would act justly. No costs.

Dated, the 4th May, 2007.


M.RAMACHANDRAN(J)
VICE CHAIRMAN

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