

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.147/2003.

Wednesday this the 30th day of June 2004.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.Michael,
Cameraman Gr.II,
Doordarshan Kendra,
Thiruvananthapuram-43.

Applicant

(By Advocate M/s Santhosh & Rajan)

Vs.

1. Union of India represented by the Secretary, Ministry of Information & Broadcasting, New Delhi.
2. The Prasar Bharathi (Broadcasting Corporation of India), New Delhi represented by the Chief Executive Officer.
3. The Director General, Prasar Bharathi (Broadcasting Corporation of India), Doordarshan Kendra, New Delhi
4. The Director, Doordarshan Kendra, Kudappanakunnu, Thiruvananthapuram-43.
5. J.Ahammed, Cameraman Gr.II, Doordarshan Kendra, Kudappanakunnu, Thiruvananthapuram-43.
6. Senthilkumar,
Cameraman Gr.II, Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram-43.

Respondents

(By Advocate Shri C.Rajendran, SCGSC(R.1-4)

The application having been heard on 30.6.2004, the Tribunal on the same day delivered the following:

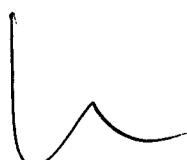
O R D E R (Oral)

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Cameraman Gr. II in the Doordarshan Kendra, Trivandrum. It is averred in the O.A. that as per Section 11 of the Prasar Bharathi Act, options have to be called from the employees who are working under the Prasar Bharathi for becoming employees of the Corporation. No option

has been called for till date and hence the Corporation has no authority to transfer an employee like the applicant. But by Annexure A-1 order the applicant was transferred to Imphal. That the applicant's wife is working as Scientist in Liquid Propulsion System Centre (LPSC for short), Trivandrum, is a non-transferable post. It is contended that the order of transfer is not against the provisions and the spirit of A-4 and A-5 orders of the Government which stipulates that husband and wife are entitled to work in the same station. The applicant submitted A-3 representation which is not yet disposed of. But Annexure A-6 order has been issued transferring the 5th respondent to Trivandrum from Kohima and the 6th respondent to Kohima from Trivandrum. Instead of relieving the 6th respondent, the 3rd respondent is taking steps to transfer the applicant from Trivandrum for accommodating the 5th respondent. Challenging the transfer the applicant has filed O.A.860/2002 before this Tribunal. The Tribunal had disposed of the O.A. directing the respondents to consider the representation of the applicant and allowed the applicant to continue in the same station till the representation is considered and given an appropriate reply. Again another order was passed transferring the applicant to Imphal. Contending that the transfer of the applicant is arbitrary, illegal and is without jurisdiction, the applicant has filed this O.A. seeking the following main reliefs:

- i. set aside the Annexure A-6 order of transfer of applicant from Trivandrum to Imphal is concerned;
- ii. declare that the applicant is not liable to be transferred in implementing Annexure A-6 order of transfer which is a mutual transfer between respondents 5 & 6;
- iii. declare that the applicant is entitled to continue at Trivandrum;
- iv. to direct the 3rd respondent to consider Annexure A-3 representation of the applicant.



2. The respondents have filed a detailed reply statement contending that the Prasar Bharati (Broadcasting Corporation of India) was formed with effect from 23.11.1987 and it is statutory Corporation constituted under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. About 40,000 persons were employed in all these Kendras/stations and that after the formation of the Corporation all of them continued to serve the Corporation and have been receiving their wages, salaries and other emoluments from the Corporation. All the persons employed in the Prasar Bharati are in fact the servants of the Government of India who had worked in the Doordarshan Kendras and Akashvani Stations and in the supporting establishments, and who continue to perform similar duties even after the Corporation was formed under the Control of the Corporation. Therefore, this Corporation has got every right to transfer an employee and the contention of the applicant otherwise do not stand in the lack of law.

3. Regarding the merit of the case it is pleaded in the reply that the Prasar Bharati has full powers to transfer the employees with a view to optimize the use of manpower. The Director General, Doordarshan (3rd respondent) is taking maximum care for posting of incumbents to the difficult stations. The incumbents in the difficult stations are waiting for their turn for posting to their choice stations. In order to accommodate them certain transfers like the transfer of the applicant is inevitable. The tenure in Imphal station is only 2 years and the applicant can apply for transfer to his choice station after working two years in Imphal. The O.M. dated 3.4.1986 issued by the Ministry of Personnel, PG and Pensions (Department of Personnel and Training) in which it is made clear that it is not possible to anticipate



all the categories of cases and each case not covered by the above guidelines will have to be dealt with keeping in mind the spirit in which these guidelines have been laid down and the larger objective of ensuring that a husband and wife are as far as possible and within the constraints of administrative convenience, posted at the same station. The averment that the applicant is entitled to continue in the present station by transferring of his outsiders service is absurd. There is no such rule in Government service. The transfers have been effected with a view to optimize the use of manpower. In terms of the transfer policy, persons who are working in the North East region have to be transferred to their choice stations after completion of their tenure. In order to accommodate them, certain transfers are inevitable. The averment of the applicant that a substitute should be posted in the place of the applicant has no relevance. The 6th respondent has been relieved on 28.2.2003. Therefore, the applicant has no case and the O.A. is devoid of merits.

4. When the matter came up before the Bench, Shri Santhosh appeared for the applicant and Shri C.Rajendran, SCGSC appeared for the respondents.

5. Learned counsel have taken me to various pleadings, evidence and materials placed on record. Counsel for the applicant argued that the applicant's wife is working as a Scientist in Liquid Propulsion System Centre (LPSC) of Space Department, which is a non-transferable post and having two children of 8 and 5 years old. As per the Memorandum issued by the Government of India, husband and wife are entitled to



continue to work in the same station and the applicant brought to my notice O.M. A-4 and A-5 to substantiate this contention. The applicant was transferred to Imphal and no substitute has been posted in the place of the applicant as in A-1. As per A-5 order the applicant should not be transferred. The applicant has also filed a M.A.(not numbered) in which it is contended that more senior members than the applicant has joined the service earlier than him is being retained in the same station i.e. Delhi without facing any transfer from the date of initial appointment and has given eight names of such persons in the M.A. to substantiate his contention. It is also contended that the attitude of the administration is a clear discrimination shown to uninfluential employees like the applicant. Therefore, this is a case of arbitrariness, nepotism and violation of the provisions under the Act.

6. Learned counsel on the other hand persuasively argued that the guidelines and the circulars are issued by the appropriate authorities from time to time. It is not applicable in all cases. It is also submitted that it is not exhaustive but it is applicable in individual cases and the concerned department. He has specifically emphasized the point that a transfer of an employee is necessitated with a view to optimise the use of manpower in the department. and in light of the fact that different stations have been already started in various centres and no fresh appointment has been initiated. The transfer of an employee has become inevitable and that too on administrative reasons.

7. I have heard the learned counsel on either side and have given due consideration to the arguments put forward by them



before the Bench. The applicant has submitted that as per Section 11 of the Prasar Bharathi Act, options have to be called from the employees who are working under the Prasar Bharathi for becoming employees of the Corporation. The Corporation has no authority or power not to exercise their option as per the said provisions. Learned counsel for the respondents on the other argued that the employees employed in the Prasar Bharati are in fact the servants of the Government of India who are working in the Doordarshan Kendras. Respondents' counsel also relied on the judgement of the Madras High Court dated 17.1.2001 in W.P.Nos. 20051, 20068 to 20084 and 21210 of 2000 which has conferred the jurisdiction of the Prasar Bharati to transfer such employees. However, the matter has been settled by the decision of the Hon'ble High Court of Kerala reiterated in W.A.No.2440 of 2002 dated 31.3.2004 against the judgement in O.P.23419/2002 dated 14.8.2003 in the case of Raveendran Nair and others Vs. Union of India and Others. The Hon'ble High Court has observed as follows:

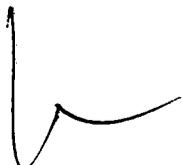
"2. We have heard learned counsel for the appellants and find no merit in the writ appeal. What is contended by the learned counsel is that since there is no separate notification issued under Section 14 of the Administrative Tribunal's Act, the said Act has not become applicable to them as they are working with the Corporation. We are unable to accept this contention. The appellants are still Central Government employees and have yet to be transferred to the Corporation. They have been sent on foreign service. This being so, no separate notification under Section 14 was necessary to make the Act applicable to them because they are not the employees of the Corporation as is sought to be contended. In this view of the matter, the learned single judge was right that being Central Government employees they should approach the Central Administrative Tribunal. There is, thus, no merit in the writ appeal and the same is dismissed."



8. Considering the legal position I am of the view that the contention of the applicant as to jurisdiction/authority to transfer as per A-11, cannot stand hold good and the Prasar Bharati has got authority to transfer the applicant and its employees, therefore, cannot be faulted.

9. It is not in dispute that the applicant was initially appointed as Cameraman Grade II in 1989 in Srinagar which is a difficult station and he came on transfer to Trivandrum in January 1993 with a view to settle himself in the present station. His wife is also employed in Trivandrum in LPSC (Space Department in Trivandrum) as a Scientist which is a non-transferable post. The fact remains that the applicant has been working for the last 11 years in Trivandrum. Admittedly Imphal is a difficult station. The contention of the respondents is that if he is accepted the transfer and joined at Imphal, after two years service in that station, he can make a representation and seek a transfer to a convenient choice station, it would not put him in prejudice. But the contention of the applicant that A-4 and A-5 have not been looked into by the respondents in the true spirit. Annexure A-4 issued by the M/o Personnel , PG Pensions(Department of Personnel & Training) deals with the post of husband and wife at the same station in evaluating the difficulties that are faced by the spouses in two stations have been laid down in paragraphs 2 and 3 as follows;

"2. The Govt.of India have given the utmost importance to the enhancement of women's status in all sectors and all walks of life. Strategies and policies are being formulated and implemented by different Ministries of the Central Govt. to achieve this end. It is also considered necessary to have a policy which can enable women employed under the Govt. and the Public Sector undertakings to discharge their responsibilities as wife/mother on the one hand and productive workers on the other, more effectively. It is the policy of the Govt. that as far



as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children.

In February, 1976 the then Department of Social Welfare has issued a circular D.O. letter to all Ministries and Departments requesting them to give serious consideration to the question of posting husband and wife at the same station. However, representations continue to be received by the Department of Women's Welfare in the Ministry of Human Resources Development from women seeking the intervention of that department for a posting at the place where their husbands are posted. It has therefore, now been decided to lay down a broad statement of policy at least with regard to these employees who are under the purview of the Govt./Public Sector Undertakings. An attempt has, therefore, been made in the following paragraphs to lay down some guidelines to enable the cadre controlling authorities to consider the requests from the spouses for a posting at the same station. At the outset it may be clarified that it may not be possible to bring every category of employees within the ambit of this policy as situations of husband/wife employment are varied and manifold. The guidelines given below are, therefore, illustrative and not exhaustive. Govt. desire that in all other cases the cadre controlling authority should consider such requests with utmost sympathy."

10. Annexure A-4 further deals with classes of cases that may arise, and the guidelines for dealing with each class of case, clause iv has narrated as follows:

(iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:-

The spouse with the longer service at a station may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station, or if there is no post in that station to the State where the other spouse belonging to the other Central Service is posted."

Thereafter these facts have been reiterated in O.M. dated 12.6.1997 (A5) and emphasized the point that the 5th Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the



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organisation at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age."

Further the same O.M. emphasize the point that:

"While deciding on the requests for posting of Husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts of the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence."

11. Respondents' contention is that these guidelines cannot be implemented in the strict sense. It has to be done within the constraints of the department and also submitted that A-5 instruction is only applicable to in case of both the spouses are working at the same department. Since the applicant and wife are working in different department this O.M. may not be strictly applicable. In clause iv of A-4 it is made clear by the department of Personnel and Training that whether the spouse belong to one Central Service and or belongs to another Central Service, such persons has to be considered.

12. The contention of the respondent that the applicant has served in a difficult station in his initial appointment at Srinagar is of no advantage. I am unable to accept this proposition because no employee in his initial appointment will

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be willing to work at a difficult station. According to the applicant there are employees who are occupying in the same station for a long time since from their initial appointment without visiting any transfers. Such is being the facts of the case the department should have had a policy that those who have worked in a difficult station should not be repeatedly asked to go to any difficult station sparing the other employees who continue to work in the same stations. I am also of the view that if a person is continued to be worked on transfer in a difficult station for more years, the very purpose of working for two years more in a difficult station will have no meaning/reason. Therefore, the fact that the applicant is occupying at Trivandrum for 11 years has not much material since the aspect that should have been considered is whether his wife is working in Trivandrum or not and whether A-4 and A-5 guidelines have been applied or not. It is also true that the guidelines probably may not have a statutory effect. If a guideline is adopted by the Government it should be uniformly applied. When the specific contention of the applicant that similarly situated employees at Delhi are being retained for a long time since their initial appointment without any transfer, naturally it is nothing but a discrimination and an element of arbitrariness, violative of Articles 14 & 16 of the Constitution. Therefore, I am of the view that the transfer order issued by the respondents transferring the applicant from Trivandrum to Imphal was not in true spirit of the guidelines of the department. From a reading of the order it would be clear that no proper application of mind has been adverted to go with special reference to A4 and A5 guidelines. No substitute has been posted to Trivandrum to replace the applicant. This will naturally



indicate that the vacancy is still available at Trivandrum. Since a post at Trivandrum in the appropriate level exists in the organisation at present, I am of the view that the transfer of the applicant again to a difficult station is not called for at this juncture. The Hon'ble High Court of Kerala in a decision reported in 1999 KLT 673 Rajan Vs. Director General of Police laid down that a transfer can be done in public interest and such action should be based on valid, lawful and relevant consideration.

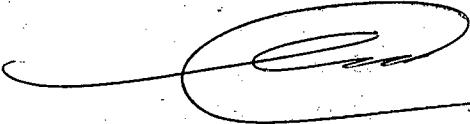
13. On going through A-1 order also there is not even a whisper that this order has been issued in administrative exigency. Therefore, I am not convinced that the impugned order to the extent it relates to the applicant has been issued without proper application of mind on the relevant facts. Such as his wife is working at Trivandrum and he has got two young children of 8 and 5 years of age, will undoubtedly be hardship and disruption to domestic life. Any pressing administrative exigency is brought into, in the impugned order of transfer which has been passed without proper consideration. Therefore, as far as the applicant is concerned it is to be set aside. In the facts situation also the impugned order of transfer is arbitrary.

14. In the light of what is stated above, the impugned order of transfer of the applicant from Thiruvananthapuram to Imphal is set aside (Applicant's case only) and direct the respondents to permit the applicant to continue at Trivandrum at least for further two years.



15. The O.A. is allowed and in the circumstance no order as to costs.

30th June 2004.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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