

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 153 of 2003

Friday, this the 5th day of March, 2004

CORAM

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Ramesh Narayan,
S/o Narayan Vaidyar,
Music Composer, Grade IV,
All India Radio, Kannur, Kerala,
Residing at KLRA-56, DPI Junction,
Jagathy, Thiruvananthapuram, Kerala.Applicant

[By Advocate Mr. Reju Joseph]

Versus

1. The Director General,
Prasar Bharathi (Broadcasting Corporation
of India), All India Radio,
Akashawani Bhavan, Parliament Street,
New Delhi.

2. The Station Director,
Prasar Bharathi (BCI), All India Radio,
Vazhuthacad, Thiruvananthapuram,
Kerala State.

3. The Station Director,
Prasar Bharathi (BCI), All India Radio,
Kannur District, Kerala State.

4. The Station Engineer,
Prasar Bharathi (BCI), All India Radio,
Kannur, Kerala.

5. Union of India, represented by its
Secretary, Ministry of Information &
Broadcasting, New Delhi.Respondents

[By Advocate Mr. R. Madanan Pillai, ACGSC]

The application having been heard on 5-3-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

This is the second round of litigation involving the
question of transfer of the applicant, who is working at
present as Music Composer Grade IV in All India Radio, Kannur.

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By the order dated 4-10-2002 (Annexure A4) in OA.No.683/2002, this Tribunal had directed the 1st respondent to consider the applicant's representation (Annexure A4 in OA.No.683/2002) and to give him an appropriate reply within two months from the date of receipt of the copy of that order. Apparently, since the applicant did not receive the order in compliance with the Tribunal's direction, a Contempt Petition (Civil) No.4/2003 was moved. When the CPC came up for consideration, it was submitted by the respondents that by order dated 30-1-2003 the applicant's representation had been disposed of albeit some delay. While disposing of the CPC, this Tribunal took note of the fact the order dated 30-1-2003 was a sufficiently speaking order and that therefore there was adequate and constructive compliance with the Tribunal's directions contained in the order in OA.No.683/2002. However, it was made clear in the said order that if the petitioner (applicant) had got any grievance extraneous to the Contempt Petition, but arising out of the order dated 30-1-2003 (referred to as Annexure R(a) in the CPC), he was at liberty to seek appropriate relief. This OA has been filed with the purpose of seeking redressal of the grievance arising out of the order dated 30-1-2003, which is incorporated as Annexure A5 in the OA. According to the applicant, the respondents have failed to consider fairly and judiciously the representation made by him. There are vacancies at the moment at Thiruvananthapuram caused by the retirement of Shri M.G.Radhakrishnan, Music Composer Grade-I as also on account of the promotion of Shri V.Muraleedharan from the post of Music Composer Grade-IV to Music Composer Grade-III. The applicant has been struggling to get a transfer to Thiruvananthapuram, since has has already spent nearly 8 years in Kannur. The transfer from Kannur to Thiruvananthapuram is insisted on account of the fact that the

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applicant's old and widowed mother is residing in Thiruvananthapuram requiring the care and attention of the applicant, that his wife is a final year Ganabhooshanam student of Swathi Thirunal Sangeetha Academy at Thiruvananthapuram, that his 10 year old daughter is studying in Kendriya Vidyalaya, Thiruvananthapuram and that the applicant himself is under regular treatment at Government Ayurveda College Hospital, Thiruvananthapuram. Necessary documents in support of the applicant's physical disability has been filed as Annexure A1 and A2. The applicant seeks the following reliefs:-

- "a) call for the records leading to the issue of Annexure A5 and to quash the same;
- b) declare that the non-feasance or refusal on the part of the respondents to consider the applicant for a transfer to the existing vacancy of Music Composer Grade IV at (2nd respondent's office) All India Radio, Thiruvananthapuram is arbitrary, discriminatory and unconstitutional;
- c) direct the respondents to consider the applicant for a transfer to the existing vacancy of Music Composer Grade IV at All India Radio, Thiruvananthapuram (the 2nd respondent's office) and to grant the consequential benefits thereof;
- d) award costs of and incidental to this Application; and
- e) pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. In their reply statement, the respondents have stated that the applicant's representation had been very carefully examined in compliance with the directions of the Tribunal as per order dated 4-10-2002 in OA.No.683/2002, that at present there is no clear vacancy of Music Composer Grade-IV at Thiruvananthapuram, that, in any case, the vacancies arising on account of the retirement or death of any person cannot be

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filled up on account of the existing ban on filling up of vacancies, that the applicant being the only Music Composer at Kannur cannot be shifted unless there is a substitute available and that there being sufficient medical facilities including a Government Ayurveda Medical College at Kannur, the applicant's case that he can be treated only at Thiruvananthapuram Government Ayurveda College Hospital does not contain much substance. It is also submitted by the respondents that the applicant is a native of Kannur. It is also averred that the respondents have not acted arbitrarily and illegally as alleged by the applicant.

3. The applicant has filed a rejoinder contesting the averments of the respondent and pointing out that the argument that the applicant could not be transferred to Thiruvananthapuram for want of vacancy and that it was not possible to find a substitute for the applicant at Kannur was not logical or factually correct.

4. I have heard Shri Reju Joseph, learned counsel for the applicant and Shri R. Madanan Pillai, learned ACGSC.

5. According to Shri Reju Joseph, learned counsel for the applicant, the respondents have not considered the applicant's representation in an objective and fair manner and to that extent the resultant order is perverse. Having admitted that the vacancy arising out of retirement or death of a Music Composer in a higher position of Grade-I would be considered only at the lower position of Grade-IV and not in the appropriate grade which a person retiring or dying had been occupying, it would be illogical to say that there was no vacancy of Music Composer Grade-IV in Thiruvananthapuram in as

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much as retirement of Shri M.G.Radhakrishnan, a Grade-I Music Composer, and promotion of Shri V.Muraleedharan from Grade-IV to Grade-III resulted in vacancies in Music Composer Grade-IV posts in Thiruvananthapuram, according to the learned counsel. Thus, there were clear vacancies in Grade-IV in Thiruvananthapuram. It is also pointed out by the learned counsel that recently on 1-2-2004 another vacancy of Music Composer has arisen on account of the retirement of Shri Perumbavoor G.Ravindranath from the post of Music Composer Grade-II at Thiruvananthapuram. The applicant, having spent for more than 7 years in Kannur, had compelling personal reasons, like widowed mother residing in Thiruvananthapuram, child studying in Thiruvananthapuram, wife prosecuting a course in Swathi Thirunal Sangeetha College, Thiruvananthapuram and the applicant himself receiving medical treatment in Thiruvananthapuram Government Ayurveda College Hospital, for a transfer to Thiruvananthapuram. The impugned order does not appear to have taken into consideration these problems and also the fact that the applicant has put in sufficiently long years of service in Kannur, according to the learned counsel. It is also submitted by the learned counsel that ban on filling up of the vacancy is not substantiated by any document and as such, that argument cannot be taken seriously.

6. Shri R.Madanan Pillai, learned ACGSC, on the other hand, argued that the applicant could not claim transfer as a matter of right. He had explained the facts and circumstances necessitated a transfer as per his representation, which the respondents were directed to consider. The respondents did not consider the representation in detail. It is not as though any person in preference to the applicant has been accommodated in Thiruvananthapuram. In any case, nobody with a less deserving

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case has been considered for transfer. The ban on filling certain vacant posts is a matter of general policy of the employer. This has not been violated and the applicant should have no grievance in this regard. The applicant is a native of Kannur. His widowed mother could as well stay with him at Kannur. It may be true that his wife and child are prosecuting their respective studies in Thiruvananthapuram. But the administration has to take into account the overall need of the organization and decide upon questions of transfer in the best interest of the organization. Since there is only one vacancy of Music Composer and that too in Grade-IV in Kannur, it would not be expedient to transfer the applicant at the moment. The administration certainly would consider his case as and when a transfer to Thiruvananthapuram as requested for by him would be feasible, according to the learned counsel.

7. On a consideration of the relevant facts and having gone through the impugned order Annexure A5 dated 30-1-2003, I find that it is a speaking order elaborately dealing with the various aspects and the representation made by the applicant. It is true that the applicant's very exclusive personal preference has not been acceded to so as to enable him to be with his mother at Thiruvananthapuram or his other family members. I do not see any reason why the applicant's mother cannot go and stay with him at Kannur. As far as the medical treatment is concerned, I am satisfied that there are sufficient medical facilities at Kannur even in regard to the Ayurvedic treatment as there is a full-fledged Ayurveda Hospital in Kannur. The administration should have the freedom to so organize its matters as to maximize its efficiency and minimize disturbances for the majority of the employees. I find myself unable to interfere in the matter. The impugned

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order cannot be faulted. It is, however, encouraging to note that the learned ACGSC has expressed the view that the applicant's case would receive proper consideration as and when his transfer to Thiruvananthapuram is feasible.

8. In the light of the above, the Original Application being without merit is dismissed. No order as to costs.

Friday, this the 5th day of March, 2004



**T.N.T. NAYAR
ADMINISTRATIVE MEMBER**

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