

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 202/2006

Wednesday this the 13th day of September, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

C.P. Rajasekharan

Station Director

All India Radio

Calicut.

Applicant

By Advocate Mr. P. Vijayakumar

Vs.

1 Chief Executive Officer

Presar Bharathi

Broadcasting Corporation of India

2nd Floor, PTI Building

Sansad Marg,

New Delhi.

2 Director General

All India Radio

Akasavani Bhavan

New Delhi.

3 Deputy Director (Administration)

All India Radio

Akasavani Bhavan

New Delhi.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this Original Application is working as a Station Director, All India Radio, Calicut. He has approached this Tribunal aggrieved by the impugned order dated 21.3.06 (Annexure A-1) transferring him from Calicut which is

purportedly in violation of the guidelines, against public interest and is therefore alleged to be punitive in nature.

2 The facts are: The applicant entered the service of the All India Radio in 1976. While he was working as the Deputy Director of Doordarshan Kendra, Trivandrum he was transferred as Station Director, All India Radio, Calicut (Annexure A-2). While so, some news paper reports appeared in respect of a public programme attended by him at Vadakara where some political workers attempted to assault and discredit him. An official explanation was sought from the applicant as per Annexure A-6 to which he gave the explanation that he was innocent of any misconduct (Annexure A-5). The respondents have not taken any decision on his representation through a proper enquiry but in the meanwhile he was served with the impugned order of transfer without divulging any reason of public interest or otherwise. According to the applicant, the authorities have failed to consider relevant materials including the service record of the applicant that he has contributed substantially for the expansion of the AIR, Calicut increasing its commercial revenue from Rs. 3 lakhs to Rs. 90 Lakhs within a short period of two years, that he was nominated for Akashwani award for quality of the programmes for the year 2004, that the applicant has made substantive contributions in the social and literary fields for which he has been awarded by different

agencies with commendations, like the Kerala Sahitya Academy Award, Kerala Sahitya Nataka Academy Award, etc. It is also alleged that they have also not taken into account the fact that the applicant has only 18 months for retirement and a transfer would cause unnecessary dislocation to the applicant, that he has served in different parts of India including North East Stations and he was holding additional duty of Deputy Director of DDK, Calicut and that five other Stations of AIR in Kerala are also functioning without Directors. He has submitted a representation (Annexure A-7) dated 22.3.2006 against the transfer requesting that alternatively he may be afforded a regular posting at DDK Calicut or at AIR, Kochi or Kannur.

3 The grounds urged by the applicant are:

- (i)that the order of transfer is not supported by any public interest and it is on extraneous and irrelevant consideration and on the mistaken notion regarding the expression of views by the applicant in a non-political stage
- (ii)it is an out of turn transfer as he has not completed the period of three years as per the guidelines.
- (iii)the order is without application of mind regarding time and its impact as the State Assembly Elections were to take place shortly and effective coverage of news was necessary at that point of time.
- (iv)The applicant had been discharging the additional work of DDK, Calicut and the applicant was discharging his additional duties without any additional remuneration which had generated substantial income for the AIR and his transfer to another State where he would not be able to make such contributions in a different language is not in the interest of public service.

4. The respondents in the reply statement have submitted that Annexure A-1 order is based on administrative exigencies which arose due to the following instances. While speaking in a function organised by PURA, a non-political outfit of

Government employees, the applicant allegedly made a comment that Shri V.S. Achuthanandan, the then Leader of the Opposition Party, should not stoop to the level of mimicry artists. These remarks instigated the DYFI activists and they poured black oil on the applicant and it was reported that after the incident, the applicant returned to the function and gave another speech and stood by his comment. The whole incident was given wide publicity by the Print and Electronic media and it was taken notice of by the DDG(SR-1), DG (AIR), CEO (Prasar Bharati) and the Minister for Information and Broadcasting. On the advice of the DG, the applicant was directed to proceed on leave until further orders by Annexure A-1 order. The applicant cited various reasons defending his stand, took only two days Casual Leave instead of long leave as advised (Annexure A-2). Copy of the Press Report dated 14.2.2006 which appeared in the Deshabhimani Daily, carrying the heading "Statement of the AIR Director deplorable" was taken note of and the whole matter was examined in the office of the Director General, AIR and it was decided with the approval of the CEO of Prasarbharati and DG, AIR to transfer the applicant to prevent the situation from aggravating further and for saving the property of AIR and DDK, Calicut from any possible damage from the DYFI activists. It was also decided to issue a show cause notice for his irresponsibile act and the applicant has given his explanation which has been examined and not

found satisfactory. The respondents have further submitted that it is settled law that transfer is a normal incidence of service and an employer has every right to transfer an employee on account of public interest and administrative exigency. All the achievements narrated by the applicant may be true but it is not expected of a government servant to indulge into political activities and make irresponsible utterances against political adversaries. As per CCS (Conduct) Rules, a Government servant should show utmost courtesy and consideration to Members of Parliament and State Legislatures and if any complaint is received against any Government Servant that he has acted in a discourteous manner or adopted dilatory tactics in his dealings with the public and if it is established, deterrent and prompt disciplinary action should be taken against him. The rules further state that when allegations are made in Press against a Government servant in respect of his conduct in discharge of his public functions, a preliminary enquiry should be ordered and they have acted only within the framework of Rules.. They have further submitted that the transfer guidelines are only executive instructions, the transfer policy itself states that the principles laid down are subject to exigencies of public service. It is not necessary to indicate the reasons for transfer in the transfer order. The transfer issued is only to maintain decorum of the office.

5 The applicant has sought to refute the contentions of the respondents by filing a rejoinder and has produced copies of the various press reports and the copies of the letters received from members of public and leaders in high places appreciating his work. He has denied that he has made any reference in his speech on 9.2.2006 held at Vadakara against Shri V. S. Achudanandan or any political leader and he was invited to attend the function in view of his social and literary background and not in his official capacity. It was only subsequently sought to be justified by some vested interest that the attempted assault was in protest against an alleged statement attributed to the applicant to have been made on 4.2.2006 at Calicut where he had addressed a gathering organised by a non-political body known as 'Janasadas'. The incident of assault on the applicant was deplored by the print and electronic media as assault on the right to expression of an objective social activist and the Directorate was not furnished with these newspaper reports but only report of a news paper dated 14.2.2006 which is the mouth piece of the concerned political party. As a result, the decision to transfer him was taken without knowing all the true facts and not even a preliminary enquiry was made and direction issued to the applicant to go on leave. It is also alleged that the explanations were sought behind the back of the applicant resulting in only one report of a political newspaper being

forwarded to the Directorate whereas the spontaneous reactions from the responsible and respected public persons in favour of the applicant went unnoticed. The complaint at Annexure R-4 does not contain the signature of the complainant nor the official address of the concerned organisation. First there was no need to involve public interest in the transfer and it was made only to victimise the applicant. He has not shown any discredit to any member of the Legislature and in this context he has annexed a letter addressed by the same Political party appreciating his creative contribution in their welfare activities (Annexure A-15) and it is also significant that the incident has been regretted and taken exception to by the then Chief Minister of Kerala and a Minister of the Central Government also requesting the authorities to defer the decision. It is further mentioned that the Station Director of Kadappa in Andhra Pradesh Shri Selvaraj has been desperately seeking a transfer to Tuticorin or other stations in Tamil Nadu on personal and other humanitarian reasons which has been denied to him and the applicant has been posted to the same non-Language station where he cannot be expected to discharge his duties efficiently.

6 I have heard the learned SCGSC for the respondents. The Counsel for the applicant was not present on the last two dates of hearing. The SCGSC strongly opposed the continuation

of the interim order given by this Tribunal on 21.3.2006 keeping the transfer order in abeyance. He pleaded that the interim order should be vacated immediately. The applicant a public servant made a derogatory remark against a Senior Political leader of the State who was formerly the leader of the Opposition which was a blatant violation of the conduct rules and it was not expected of a Government employee like the applicant holding a high position and a very sensitive post. The Government have taken notice of this trespass on the part of the government servant and taken a serious view of the incident which has tarnished the image of the AIR and Doordarshan in Kerala. He added that the incident had appeared in all news papers and electronic media and got wide publicity which speak for themselves and does not require any further justification.

7 After the case was reserved, the learned counsel for the applicant sought a rehearing which was allowed and the learned counsel put forth the following arguments. To start with, it was submitted that the applicant was an acknowledged writer and social activist and that he had contributed immensely to the functioning of the AIR Station, Calicut by his administrative skills and programme competence. Secondly, it was denied that any damage was caused to the reputation of the organisation by the alleged incident and that the transfer was the result of an impulsive reaction as evidenced by the R-4

document and it was unjust and unwarranted and exposed the malafide intentions of the respondents. On the legal side, he relied on two judgments of the Hon'ble Supreme Court in N.K. Singh Vs. Union of India (1994) 6 SCC 98) and Rajendra Roy Vs. Union of India (1993) 1 SCC 148) which have dealt with the principles of public interest and malafides in the transfer matters. It was also argued that the respondents have not applied their mind to the factual circumstances in which the incidents took place and were carried away by newspaper reports, many of which had also showed the applicant in a favourable light.

8 The short question that arises for consideration is whether the transfer as directed at Annexure A-1 is illegal and unjustified. It is admitted that the transfer was a consequence of the reported incident which took place at a function organised by the 'PURA' on 9.2.2006. The incident was given wide publicity by press and the electronic media. The respondents took cognizance of the incident at the senior levels of the Government and the applicant was advised to proceed on leave. He did not comply with the direction. The respondents obtained copies of the press reports and after assessing the issue on the basis of different inputs decided to ask the applicant to go on leave, and to seek his explanation. The applicant has submitted his explanation which was not



found satisfactory. Therefore the Administration was of the view that the conduct of the applicant would adversely affect the image of the Government and that of the office which has to maintain daily public contact and therefore decided to post him out of Calicut.

9 On the other hand, the applicant's contention is that the respondents have not taken into account the real facts which have been brought out in a number of news papers and by individual letters received from persons of public life supporting his stand. It has been argued that the incident of assault on the applicant took place on 9.2.2006 and it was condemned by all public figures and non-political newspapers of Kerala had vehemently criticised the assault on the applicant. The remarks as alleged were made at a gathering on 4.2.2006 at Calicut organised by a public spirited body and was not meant to offend anybody by name and that the authorities had resorted to hasty action with a coloured motive. I do not find any merit in such a contention by the applicant. In a situation like this the respondents were not obliged to conduct any enquiry under the CCS CCA Rules or to make a public assessment of the impact of the action of the applicant. All that they were concerned with at that stage was to ascertain whether such an incident had taken place and whether the applicant had crossed the limits laid down in the Conduct Rules and whether he was guilty

of conduct unbecoming of a Government servant. The applicant himself has not denied the occurrence of the incident. It is an admitted fact that the applicant was assaulted at the meeting by a group of political workers and the incident was also attributed to the remarks he had made earlier against a political leader viz. the then Leader of the opposition in the Kerala Assembly. Whether such remarks had been made on 9.2.2006 or on 4.2.2006 is irrelevant.

10 The applicant himself in para 4 of his rejoinder has stated thus:

“On the other hand, it was generally pointed out by him that public figures like Ministers, Legislators and Opposition Leaders should be role model to the public and should conduct with a sense of responsibility. It was further added that on failure of public figures like a Minister or Opposition leader who enjoys the status of a minister to conform to responsible standards it was natural that they would be characterized as comedian figures by the mimicry artists on the public stages, which could be only viewed as downfall....”

From the above it is very clear that he had made certain observations on what should be the model code of conduct for public figures like Opposition Leaders, Legistators, etc. The applicant seeks to justify such statements on the ground that he was a literary person with a high social sense and he only meant to emphasise the need for probity and responsibility on the part of public leaders. However laudable his intentions may be, as a Government servant and a responsible officer in charge of a sensitive office like the AIR and DDK he should have known that a Government servant is bound by the code of conduct



which does not permit him to make public announcements regarding the conduct of public functionaries and he should have not only desisted from such observations but also from attending such functions. It is ironical that he should have made defamatory observation at a function which was itself organised for the purpose of expressing concern over the increasing tendency to defame public figures by driving them into controversies. It was no doubt an irresponsible act which cannot be justified on any ground.

11 The Hon'ble Supreme Court in the judgment in the case of Union of India and Others Vs. Janardhanan and another (AISLJ 2004 (2) 446) have dealt with such situations and the need if any for a detailed enquiry before effecting such transfers:

" For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated".

12 The basis of the dictum laid down by the Hon'ble Apex Court in the above judgment would apply in this case with much greater force. The incident had rightly or wrongly acquired wide publicity and was likely to damage the image of the Central Government organisation in the politically sensitive context of impending Assembly Elections in the State.

The respondents were faced with the administrative exigency of curtailing the damage. The respondents had issued a show cause notice and they had taken the applicant's explanation into account. Therefore, the order of transfer was very much in the public interest and it cannot be said that it has been issued without proper application of mind. They cannot be faulted on that count. There is merit in the contention of the respondents that whatever the achievements of the applicant might have been in other spheres, as a Government servant, he has to maintain discipline at all times and he cannot be shown any leniency by virtue of his meritorious work in other fields. On the allegation of malafides, I do not find from the pleadings or the narration of facts and circumstances, that the applicant could establish that the transfer orders were motivated by ill will or extraneous factors. The judgments relied upon by the applicant cannot come to his rescue as the Apex Court in the same judgment of Rajendra Roy Vs. Union of India has reiterated that for "drawing any such inference, there must be firm foundation of facts pleaded and established." I reject the plea of malafides.

13 Once the transfer is held to be justified, the other grounds urged by the applicant are irrelevant. It is the prerogative of the administrative authorities to decide whom to post at a particular place. The challenge on the ground of violation of

✓

guidelines is also not tenable as the departure from the guidelines can be resorted to in such kind of transfers.

14 In the light of the above facts and circumstances, I do not see any merit in the prayer of the applicant to set aside the impugned order of transfer. The prayers are rejected and the O.A. is dismissed. However, as his representation at Annexure A-8, for alternative postings in view of his impending retirement in 2007 is pending consideration, it is made clear, that this order shall not stand in the way of such a consideration of his requests by the respondents if they deem fit. No costs.

Dated 13th September, 2006.

Sathianair
SATHI NAIR
VICE CHAIRMAN

kmn