

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.221/04

Thursday this the 15th day of July 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

P.Sivakumar,
Film/Video Editor,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram.

Applicant

(By Advocate M/s.Santhosh & Rajan)

Versus

1. Union of India represented
by the Secretary,
Ministry of Information & Broadcasting,
New Delhi.
2. Prasara Bharathi
(Broadcasting Corporation of India)
New Delhi represented by the
Chief Executive Officer.
3. The Director General,
Prasara Bharathi
(Broadcasting Corporation of India)
Doordarshan Kendra,
New Delhi.
4. The Director,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram.
5. Sri.Peer Muhammed,
Director,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram.

Respondents

(By Advocate Mr.C.Rajendran, SCGSC)

This application having been heard on 15th July 2004 the
Tribunal on the same day delivered the following :

O R D E R


HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant Film/Video Editor, Doordarshan Kendra,
Thiruvananthapuram was by Annexure A-2 order dated 17.3.2004 of
the 3rd respondent transferred to Doordarshan Kendra, Raipur

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along with the post and by order dated 19.3.2004 (Annexure A-3) relieved of his duties from Thiruvananthapuram Kendra with effect from 22.3.2004. Aggrieved by the order of transfer and the order of relief served on the applicant while he was on leave at his residence the applicant has filed this application seeking to set aside the impugned orders, for a declaration that the applicant is not liable to be transferred from Thiruvananthapuram to Raipur as he belongs to a Group C category and for any other reliefs the Tribunal deemed fit and necessary to be granted. It is alleged in the application that neither in All India Seniority nor in Station Seniority the applicant being the seniormost or the juniormost and the post of Film/Video Editor being a Group C post which is not generally transferable the action on the part of the respondents in picking and choosing the applicant to transfer to Raipur is unjust, illegal and vitiated by illegal and personal malafides, because the 5th respondent was displeased with the applicant, for, he as the Convener of Doordarshan Employees Coordination Council had made a representation pointing out certain mal-administrative activities and that therefore the impugned orders are liable to be set aside.

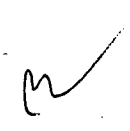
2. In the reply statement filed by the 4th respondent on behalf of all the respondents it has been contended that the order of transfer has nothing to do with the malafides alleged, that the representation alleged to have been made by the applicant has not been received, that the applicant is not a Convener of any recognised association, that to meet the requirement of the newly created Doordarshan Kendra at Raipur a post of Film/Video Editor from Thiruvananthapuram had been shifted, for, requirement at Thiruvananthapuram being only four



one had to be shifted, that the policy was shifting the person who has got the longest stay in the station, that when Shri.K.Parameswara Prasad who is the seniormost in the station was transferred it was stayed by the Hon'ble Tribunal by its order in O.A.444/03, that therefore the applicant being the next seniormost person was shifted. The contention that the post of Film/Video Editor is a non-transferable post is not correct, that in the exigencies of service Film/Video Editor can be transferred and that there is no basis for the allegation of malafides and that since the action has been taken only to meet the exigencies of service the Tribunal may not interfere.

3. The applicant has filed a detailed rejoinder. It has been contended that the two Film Projectionists who had been rendered surplus were given training for adjustment as Film/Video Editor, that even when five Film/Video Editors were in position the respondents had engaged a casual Film/Video Editor as is seen from Annexure A-9 series and that the Film Projectionists rendered surplus and redeployed have been asked to give undertaking that they are willing to be posted anywhere in the country and that while such persons are available for redeployment to Raipur in the exigencies of service the action on the part of the respondents to transfer the applicant is arbitrary and irrational. It is also contended that persons in other stations who were initially transferred to Raipur have got the orders of transfer cancelled and there are many persons in Delhi Doordarshan Kendra who had been there for many long years.

4. In the additional reply statement the respondents have reiterated their stand that in the exigencies of service Group C




including the Film/Video Editor can be transferred and that in the face of a ban of creation of fresh posts, existing posts have to be adjusted to meet the requirement of service in different Doordarshan Kendras and the newly started Kendras.

5. The applicant has produced Annexure A-16 and Annexure A-17 to show that Film Projectionists, who have been rendered surplus were given training as Film/Video Editor, have requested for posting and adjustment.

6. I have very carefully gone through the application and the pleadings available on record and have heard Shri.Santhosh Kumar learned counsel for the applicant and Shri.C.Rajendran,SCGSC learned counsel for the respondents. Shri.Santhosh Kumar learned counsel for the applicant argued that the transfer of Film/Video Editor belonging to Group C is not generally permitted and unless it is shown that there is an extreme administrative exigency the transfer of the applicant from Doordarshan Kendra cannot be sustained. In this connection he referred to Annexure A-4 and Annexure A-5. In Annexure A-4 letter dated 22.10.2001 issued from the Directorate General Doordarshan it was stated that Group C posts like Film/Video Editor are not normally transferred from one Kendra to another Kendra. Annexure A-5 is a letter from the Directorate General Doordarshan addressed to the Director, Doordarshan Kendra, Delhi which reads as follows :

Office Memorandum


Sub : O.A.No.1581/01 filed by Shri.Om Prakash,
Film/Video Editor.
Ref : DDK Delhi's letter No.15/32/2001-1.C. dated
31.10.2001 on the above stated subject.



DDK Delhi may explain why the short reply and the MA were filed without the approval of this Directorate. In the short reply and the MA DDK, Delhi has made a wrong statement that the post of Film/Video Editor has all India transfer liability. This may be corrected in the reply application filed before the Hon'ble C.A.T.

7. It is evident from Annexure A-4 and Annexure A-5 that the post of Film/Video Editor according to the Directorate General of Doordarshan have no all India transfer liability. The argument of the learned counsel that the transfer of Film/Video Editor from one Kendra to another, therefore, can be sustained only in the case of extreme administrative exigency, is well taken.

8. It is the case of the applicant that there is no administrative exigency which calls for shifting of the applicant with the post because according to him in Thiruvananthapuram Doordarshan Kendra even with five Film/Video Editors in position work is got done by engaging casual Film/Video Editor. To sustain this argument the counsel of the applicant invited my attention to Annexure A-9 series. The contention of the respondents that the requirement of Film/Video Editor in Thiruvananthapuram Doordarshan Kendra is only four does not reflect the real situation argued the learned counsel. I find considerable force in this argument. From Annexure A-9 it is seen that even with five Film/Video Editors in position the Kendra had to engage an additional person which shows that the contention that the requirement is only of four is not true to fact. The learned counsel further argued that even if it be presumed that there is exigencies inasmuch as Film/Video Editor is required to be posted in Doordarshan Kendra, Raipur choosing the applicant who is neither the seniormost nor the juniormost either in the station seniority or in the all India seniority is nothing but arbitrary and a policy of pick and choose. This



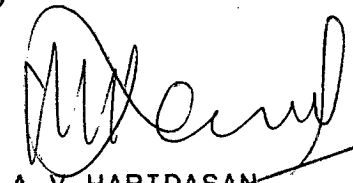
argument is attempted to be met by the respondents' counsel by stating that the policy in regard to transfer is that the person with longest stay in the station is to be shifted that when Shri.K. Parameswara Prasad who is seniormost in the station was transferred the Tribunal stayed the order by interim order in O.A.444/03 and therefore the transfer of the applicant who is next in the line of longest stay had to be ordered. I do not find substance in this argument because if the requirement of Film/Video Editor in Thiruvananthapuram Doordarshan Kendra is only four and therefore one post can conveniently be shifted to any other Kendras then the principle of surplus age should be adopted and the incumbent who should be shifted should be the juniormost. Why this was not adopted has not been explained nor is the counsel able to explain. Further in Annexure A-11 Office Memorandum dated 29.6.2000 it has been stipulated that the Film Projectionists redeployed as Film/Video Editor should be asked to execute an undertaking that they would be prepared to work in any Kendras in India. In Thiruvananthapuram Doordarshan Kendra two Film Projectionists rendered surplus have been given training and that they are awaiting posting/adjustment. The applicant produced Annexure A-16 and Annexure A-17 requests of these two former Film Projectionists for adjustment as Film/Video Editors. Why the Film Projectionists rendered surplus and have an obligation to serve in any Kendra in India have not been posted to Raipur and why the applicant has been chosen for such posting is also not clear from any of the pleadings. It is also in evidence that many Film/Video Editors who were transferred to Raipur have got their transfers cancelled and from Annexure A-9 it is evident that Sl.No.11 and 13 have been posted to Raipur. It is stated by the learned counsel for the applicant that these

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two persons also have not joined there. On an overall consideration of these facts, I am not convinced that action on the part of the respondents in choosing the applicant who is neither the seniormost nor the juniormost for a posting to Doordarshan Kendra, Raipur is arbitrary and vitiated by legal malafides although personal malafides has not been established.

9. In the light of what is stated above, I allow this application and set aside the impugned orders Annexure A-2 and Annexure A-3. There is no order as to costs.

(Dated the 15th day of July 2004)



A.V. HARIDASAN
VICE CHAIRMAN

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