

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.223/04

Thursday this the 27th day of October 2005

C O R A M :

**HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

Santhosh Kumar N.V.,
S/o.S.R.Venkiteswara Bhatt,
Lower Division Clerk, All India Radio,
Beach Road, Kozhikode – 32.
Residing at Neendamadathil House,
P.O.Mala – 680 732.

...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr.)

Versus

1. Union of India represented by its Secretary,
Ministry of Information & Broadcasting,
Sashtri Bhavan, New Delhi.
2. Prasar Bharati Broadcasting Corporation
represented by its Chief Executive Officer,
PTI Building, New Delhi.
3. Director General,
All India Radio, Akashvani Bhavan,
Parliament Street, New Delhi – 110 001.
4. Station Engineer,
All India Radio,
Beach Road, Kozhikode – 32.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 27th October 2005 the Tribunal on the same day delivered the following :-

ORDER (O R A L)


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

The applicant was initially recruited by the Staff Selection Committee for appointment as Clerk and was appointed provisionally as Clerk Grade II with effect from 19.3.1993. He made several representation seeking

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transfer to Kerala but it was not acceded to. Finally the applicant approached the Guwahati Bench of the C.A.T by filing O.A.77/02. The O.A. was disposed of directing the respondents to consider his case sympathetically as per rules and also observed that it is a fit case to be reconsidered by the respondents for transferring him to the choice station in the light of the policy decision. Consequent upon that order the applicant was transferred to AIR, Calicut in the same capacity at his own request and on compassionate grounds by an order dated 31.10.2002. The applicant made a representation dated 15.11.2002 to the 3rd respondent claiming transfer incidents as per rules and orders and pointing out that denial of TA/DA etc. is not justified as his transfer was made long after the completion of his tenure in the North Eastern Region. He was relieved of his duties on 26.12.2002 from the office of All India Radio, Guwahati Circle. He made further representations seeking TA/DA and also submitted a TA Bill and other allowance admissible on transfer on completion of the fixed tenure along with the representation to which he was served with an O.M dated 10.6.2003 informing him that his transfer was ordered on compassionate grounds and hence his claim was not covered under the rules. Thereupon he submitted a detailed representation substantiating his entitlement for TA/DA and other transfer incidents which was rejected by O.M dated 20.11.2003. Therefore, the applicant has filed this application seeking the following reliefs :-

1. To call for the records leading to Annexure A-11 and to set aside the condition stipulated therein that the applicant will not be entitled to TA/DA etc. on his transfer to All India Radio, Calicut and also to set aside Annexure A-19 and Annexure A-21 rejecting his claim for TA/DA etc. made as per Annexure A-18.
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2. To issue appropriate direction or order directing the respondents 3 and 4 to sanction and disburse TA/DA etc. to the applicant on his transfer to All India Radio, Calicut ordered as per Annexure A-11 within a time frame that may be fixed by this Hon'ble Tribunal.

2. The respondents have filed a detailed reply statement contending that the request of the applicant for a transfer to Kerala zone was made by him vide application dated 6.6.1994 which was not agreed as he did not have stipulated three years minimum service in the North Eastern Region. Thereafter when he completed the service, his application was considered as per the order of the Tribunal. It is also averred that as his transfer was at his own request and not for any administrative reasons he was not allowed TA/DA and joining time, as the same is not permissible as per rules. This was made clear in the impugned orders. It was also reiterated in Annexure A-21 OM which has been issued with due application of mind.

3. The applicant has filed a rejoinder contending that one Smt.KV Sudha who is identically placed has already been granted this benefit therefore he is also entitled to have this benefit.


4. The respondents have filed additional reply statement reiterating his contention in the reply statement and further contended that even though the transfer of Smt.KV Sudha was made in her own request the aspect of getting a malayalam knowing programme person in a malayalam programme originating station was of much advantageous to the Department and thereby the transfer was made in public interest. The applicant can in no way compare the transfer of Smt.Sudha with that of his, because he has been transferred purely on compassionate grounds on his own request and there is no element of public interest involved in it.



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5. When the matter came up for hearing today, Shri.O.V.Radhakrishnan,Sr. appeared for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC appeared for the respondents. Learned counsel for the applicant submitted that as per Annexure A-12 and Annexure A-13, which has been produced along with the O.A, if a person has completed the tenure period he is entitled for TA/DA. These circulars and orders have been passed by the Department in tune with the rules under SR 114, therefore, the applicant cannot be denied the benefit. Learned counsel for the respondents, on the other hand, persuasively argued that since the transfer of the applicant was not on public interest but was on his own request this rule is not strictly applicable as far as the applicant is concerned.

6. We have given due consideration to the arguments advanced by the learned counsel. The short question for consideration is whether TA/DA that has been denied to the applicant on his transfer to Kerala from Guwahati despite the fact that it was on request is justified or not. The reason given in the impugned orders is that since the transfer of the applicant is at his own request no TA/DA and joining time was admissible to him on account of this transfer. It is further emphasised that the instructions of this Directorate quoted by him are applicable in those cases where an employee bears all India Transfer Liability or he/she is transferred within his/her zone/region as per his/her transfer liability. Hence his claim is not covered under the rules. Annexure A-4 document that has been produced by the applicant which deals with the liability of an employee for seeking transfer is reproduced as under :-



GOVERNMENT OF INDIA
Office of the Superintending Engineer C
Civil Construction Wing : All India Radio
Guwahati Circle Office.

No.CCW/AIR/SE-CH/6(E)/94/7629 Guwahati,dated 7.11.94

With reference to your letter dated 2.11.94, a copy of the DG, AIR, New Delhi, the Memorandum No.5/1/94-S.II, New Delhi, dated 3.8.94 is enclosed herewith for your information. As per the Service Rules and in the light of above said Memorandum (PARA - 3), you have to complete 3 (three) years of services in the North-East Region to get transfer to the choice place of posting as you are liable for transfer anywhere in India. Therefore, your case of transfer to Kerala will be taken up with the competent authority and considered in due and appropriate time when you complete the fixed tenure of period of three years in this Region. Until, you are advised not to make further correspondence in this regard.

This issues with the approval of the competent authority.

7. Annexure A-12 order dated 18.12.95 is also reproduced as under :-

(Dept. of Posts, Lr.No.17-3/94-PAP,
dated the 18th December, 1995)

(4) Officials transferred after completion of full tenure entitled to TA and Transit even if posted to the place of their choice. A proposal to grant TA and Transit to officials who are transferred on completion of tenure to the place of their choice was under consideration in this Directorate for some time past.

SR 114 which governs TA on Transfer distinguishes between transfer for public convenience and transfer on own request. Although transfer on completion of tenure in one office has not been specifically referred to this Rule, yet the transfer on completion of tenure per se is a transfer for public convenience. On completion of tenure, the official has to be transferred out for operational reasons. Therefore, such transfer is mandatory, while posting to a place of choice is secondary and subject to public convenience. In view of this, posting to place of choice after completion of full tenure may not be normally termed as a "transfer on own request" under SR 114.

It has, therefore, been decided that henceforth officials transferred after completion of full tenure as prescribed from time to time to the place of their choice will be entitled for TA and transit.

These orders are effective from the date of issue.



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8. This is also emphasised in Annexure A-13 Memorandum issued by the Directorate General which is reproduced as under :-


GOVERNMENT OF INDIA
DIRECTORATE GENERAL : ALL INDIA RADIO

F.No.A-11019/28/96-Scor/45 New Delhi, dated 20.1.1997

Subject :- Grant of TA/DA etc. to staff transferred before/after completion of tenure.

This Directorate has been in receipt of references from various offices of All India Radio enquiring whether TA/DA and other transfer incidentals including transit time may be allowed to officials who seek transfer after/before completion of prescribed tenure at specified place/station of posting. Attention in this connection is invited to SR 114 which clearly stipulates that TA may not be drawn by a Government servant on transfer from one station to another unless he is transferred for the public convenience and is entitled to pay during the period occupied by the journey. A transfer on his/her own request should not be treated as his/her transfer for the public convenience unless the authority sanctioning transfer, for special reason which should be recorded, otherwise directs. It is also clarified that transfer on completion of tenure period is a transfer for public convenience and is, therefore, mandatory while posting to a place of choice is secondary and subject to public convenience. As such, posting to place of choice after completion of full tenure may not be normally termed as transfer on own request under SR 114. Accordingly, TA/DA etc. should invariably be given to the staff who are transferred to any station after the completion of their tenure even though the particular place of posting may be of their choice.

Sd/-
(N.C.Gaur)
Dy. Director of Admn. (WD)

9. One of the arguments that has been advanced by the counsel for the applicant is that one Smt.KV Sudha who was also transferred on request to Kerala was granted the same benefit. The explanation that has been given in the reply by the respondents is that even though the transfer of Smt.Sudha was made in her own request the aspect of getting a Malayalam knowing programme person in a Malayalam programme originating station was of much advantageous to the Department and
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thereby the transfer was made in public interest. We have asked a specific question to the counsel for the respondents as to whether any such distinction can be made when the rule position is otherwise. Admittedly, Smt.KV Sudha is transferred on request after 18 years of service, the applicant has also completed 9 years of service at Guwahati. So both have completed the tenure period. Then the question left out is only the application of rules. On going through the Annexure A-12 and Annexure A-13 we are of the considered view that the applicant is entitled to the benefits that has been claimed, therefore, a direction has to be given to the respondents to disburse his TA/DA claim within a time frame.

10. In the conspectus of facts and circumstances, we set aside Annexure A-11, Annexure A-19 and Annexure A-21 impugned orders to the extent it denies TA/DA to the applicant. We also direct the 4th respondent to disburse the TA/DA claim of the applicant with reference to the above observations made by this Court within a period of three months from the date of receipt of a copy of this order. The OA is, accordingly, allowed. In the circumstances, no order as to costs.

(Dated the 27th day of October 2005)



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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