

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.374/06

Thursday this the 1st day of June 2006

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER**

P.Sunil,
Assistant Engineer (Civil),
Civil Construction Wing,
All India Radio, Kakkanad P.O.

...Applicant

(By Advocate Mr.Vinod Chandran K)

Versus

1. Union of India represented by its Secretary,
Ministry of Information & Broadcasting,
New Delhi.
2. Prasar Bharathi (Broadcasting Corporation of India)
All India Radio, Parliament Street,
New Delhi – 110 001.
3. The Executive Engineer (Civil),
Office of the Executive Engineer (Civil),
All India Radio, Kakkanad P.O., Kochi – 30.
4. The Chief Engineer – 1,
Civil Construction Wing, All India Radio,
6th Floor, CGO Complex, Lodhi Road,
New Delhi – 3.

...Respondents

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

This application having been heard on 1st June 2006 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicant is an Assistant Engineer (Civil) working in the Broad Casting Corporation of India, All India Radio at its Civil Construction Wing, Kakkanad, Kochi. The applicant in his service in accordance with the rules

has worked in a difficult station for two and a half years. The applicant was asked option for transfer and exercised the same by Annexure A-4 and had chosen Kozhikode, Trivandrum and Chennai in that order. However the applicant ^{is} now being transferred to New Delhi and others who have not even worked in difficult stations accommodated in convenient places. The applicant ^{is} further prejudiced by the fact that his daughter is sick and undergoing treatment for "Febryl Fits" and hence is unable to displace his family. The applicant challenges his transfer as arbitrary and illegal since the option exercised by him has not been considered and he has been singled out ^{for transfer} to a far off station ^{as} ~~since~~ he had complained against his superior.

2. Reply statement has been filed by the respondents stating that the applicant was relieved on 29.5.2006 by Annexure R-4 order and under these circumstances he has to join at New Delhi, the place of posting. They also submitted that as per the transfer policy at Annexure R-6, employees in the organisation are liable to transfer after the normal tenure of 3-4 years and unless there are malafides the interference of the Court is not warranted. They also submitted that some of the employees who have been transferred along with the applicant had joined and therefore the interim order may be vacated.

3. Counsel for the applicant stated that the interim order was passed by this Tribunal in the afternoon of 29.5.2006 on which date the applicant was on leave but he had joined duty on 30.5.2006 and also worked on 31.5.2006, that the submission of the respondents that he has already

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relieved on 29.5.2006 is factually not correct. This action of the respondents amounts to contempt of the order of this Tribunal which was in the knowledge of the counsel on 29.5.2006. It is also submitted that in place of transfer policy of 1981, a new transfer policy was put in place by the Prasar Bharathi, an unauthenticated copy of which was produced before us, according to which transfers are to be effected only in the circumstances when there are serious complaints or in the interest of the organisation or as a result of promotion and submitted that none of these conditions are applicable in the case of the applicant. It is also pointed out that the respondents have called for options from the employees as part of the annual exercise as early as in June 2006 and he had given an option at Annexure A-4 dated 16.1.2006. In the option he had named three stations in the order of preference to which transfer is to be considered i.e. Calicut, Thiruvananthapuram and Chennai circle. It is the contention of the applicant that unfortunately none of the options given by him is considered and he has been moved to a far away place. He immediately gave a representation (Annexure A-7) pointing out that his daughter is under treatment in the Indira Gandhi Co-operative Hospital, Kochi and that she cannot be moved for another one and a half year. The respondents have neither considered his option nor the representation.

4. We have heard both the sides. We are very much conscious of the judgment of the Apex Court with regard to ^{that they} the transfers are not to be interfered with by Courts and Tribunals unless there is a proven violation of Rules etc. In this case there is a transfer policy in place, which, as seen from the document placed before us, does not generally encourage

transfers except in the interest of the organisation or when there are serious complaints against the employee. The Department had invited options from the employees and they had given certain places of their choice. In that event certainly it was obligatory ^{on} the Department to consider the options given by the employee and if it was not possible to give them their choice stations, they could have been considered for posting to nearby stations. The applicant's side also submitted that Serial No.13 Smt. Rosy George has been transferred from Chennai to Kochi and she has already assumed charge as per Annexure R-2 which has resulted in a vacancy at Chennai. The applicant also having given one of the options as Chennai could have been considered against this post or in any other near station. We do not find any satisfactory reasons for the transfers ^{effectively} ~~stated~~ in the reply statement filed by the respondents. Regarding the respondents' submission that the applicant had given a representation in which he had cited his daughter's illness as a ground for retention at Kochi, the respondents in the reply statement submitted that the children had better opportunities in New Delhi's ^{which shows} school ~~was~~ a complete non application of mind. Moreover the applicant has submitted a representation detailing the above facts and the Department could have considered this rather than insisting on his relief even on the face of an interim order of this Tribunal. Since our order dated 29.5.2006 is very clear that the transfer order regarding the applicant is stayed till 1.6.2006 ~~and it is deemed that the~~ applicant has been continuing since 29.5.2006, ^{therefore} we are of the view that interest of justice will be met if a direction is given to the respondents to consider and dispose of the applicant's representation.

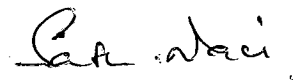
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5. We, accordingly, direct the respondents to consider and dispose of the representation of the applicant at Annexure A-7 and pass orders within a period of three weeks from the date of receipt of a copy of this order. The interim order in respect of the applicant shall continue till the disposal of the representation. It is also clarified that the interim order dated 29.5.2006 is applicable to the applicants in these O.As only.

(Dated the 1st date of June, 2006)



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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