

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.389/13

Tuesday this the 4th day of June 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

P.K.Subash,
Additional Director General (I/C),
Doordarshan Kendra, Kudappanakunnu P.O.,
Thiruvananthapuram – 695 043.
Residing at Lekshmi Priya,
T.C.37/1509(1), Punnakkal Road,
Fort P.O., Thiruvananthapuram.Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. The Chief Executive Officer,
Prasar Bharati, 2nd Floor, PTI Building,
Parliament Street, New Delhi – 110 001.
2. The Director General, Doordarshan,
Doordarshan Bhavan, Copernicus Marg,
Mandi House, New Delhi – 110 001.
3. Union of India represented by the Secretary,
Ministry of Information and Broadcasting,
New Delhi – 110 001.Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC [R1&3])

This application having been heard on 4th June 2013 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant in this case has filed this O.A challenging Annexure A-1, Annexure A-6 and Annexure A-8 orders passed by the respondents with reference to his transfer from DDK, Thiruvananthapuram. Vide order

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dated 25.4.2013 of this Tribunal, Annexure A-1 order has been kept in abeyance. By this Annexure A-1 order the applicant was posted to DDK, Delhi in the capacity of Additional Director General (Programme). He had made a representation vide Annexure A-3 dated 17.4.2013 echoing therein the compassionate grounds for retention at Thiruvananthapuram and also adding that his full tenure of four years at Thiruvananthapuram was not over.

2. Vide Annexure A-6 order dated 22.5.2013 the respondents posted him to All India Radio, Thiruvananthapuram and the applicant has also been asked to hold the additional charge of Prasar Bharathi Marketing Division, Thiruvananthapuram. In the close heels of the above said order vide Annexure A-8 order dated 23.5.2013 his application was disposed of retaining his earlier transfer to Delhi.

3. The applicant by challenging the aforesaid orders has sought for the following reliefs :-

(i) Call for the records leading to the issue of Annexure A-1 and set aside Annexure A-1.

(ii) Direct the respondents to consider retaining the applicant at the present station for a period of one more year.

(iii) Direct the respondents to consider giving effect to Annexure A-1, after a period of one year.

(iv) Direct the 2nd respondent to consider and pass orders on Annexure A-3 representation and to retain the applicant at Doordarshan Kendra, Thiruvananthapuram, till such consideration.

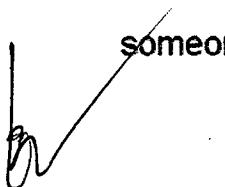
(v) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

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- (vi) Award the cost of these proceedings.
- (vii) Call for the records leading to the issue of Annexure A-6 and set aside Annexure A-6.
- (viii) Call for the records leading to the issue of Annexure A-8 and set aside Annexure A-8.

4. The respondents have contested the O.A. They have succinctly brought out the legal position that Courts would not normally interdict a transfer until unless it is accentuated by mala fide or violative of any professed norms. They have highlighted that the applicant is liable for all India transfer and it is by now almost three years he stood posted to Thiruvananthapuram. There is no specific tenure period of four years. Some of the persons whose names have been referred to in the O.A whose stay in their respective place of posting is beyond four years, the respondents have stated that mere length of tenure at various places cannot give rise a plea to discrimination.

5. Counsel for the applicant argued that the applicant's elder daughter is in 12th Standard and this being a crucial year to plan her future education, and he being the only person available in the family to look after the children, it would be appropriate that he is allowed to continue at Thiruvananthapuram at least for a year. The fact of his mother's ill-health has also been highlighted by the counsel for the applicant. Counsel further submitted that in all expectation the reason for shifting him from DDK, Thiruvananthapuram is to accommodate someone else.



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6. Counsel for the respondents reiterated the contentions as raised in the counter. He has also stated that DDK, Delhi needs a competent officer to handle that unit and it is on this ground that the applicant, who has rich experience, has been sought to be posted.

7. Arguments were heard and documents perused. Law is settled in regard to judicial interference in the matter of transfer. Transfer is an incidence of service and does not qualify to be a condition of service. The applicant has no doubt all India transfer liability and if, after a reasonable period, he is shifted out of any particular working place, normally he should not agitate against the same. But here the situation is slightly different that children education has been projected as a main reason for challenging the order of the administrative authority. There is substance in such contention. Taking into account the importance of children education the DoPT has issued orders that rotational transfer should be made only at the end of the academic session and if any such transfer is made during the currency of an academic session, that has to be reconsidered to avoid such intermediate posting. Taking into account the same, the Tribunal is of the considered view that till the end of the current academic session, the applicant can be retained at Thiruvananthapuram.

8. It has been brought to the notice of the Tribunal during the course of the arguments that there are three equivalent posts at Thiruvananthapuram, namely, (a) DDK, Thiruvananthapuram (b) Director of All India Radio, Thiruvananthapuram and (c) Director of Training Centre, Thiruvananthapuram.



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9. As a matter of fact vide Annexure A-6 order the applicant has been transferred as Director, All India Radio, Thiruvananthapuram and has been asked to hold the additional charge of the Marketing Division of the Prasar Bharati. It is not exactly known as to how the said order which has the approval of the competent authority was rescinded and yet another order which is more comprehensive vide Annexure A-8 came to be issued. If for any plausible and justifiable reason the respondents are reluctant to retain the applicant at Doordarshan Kendra, Thiruvananthapuram, they could have very easily accommodated him in any other equivalent post at Thiruvananthapuram itself in view of the children education ground. At present, it is given to understand that two vacancies are available, namely, one at the Training Centre and the other at All India Radio. If so, it should not be impossible for the respondents to accommodate the applicant in any one of the places.

10. A slight reservation was shown by the counsel for the applicant at the time of hearing that the post of Director, DDK is superior to the other post. There is no substance in such a reservation. Vide judgment of the Apex Court in the case of E.P.Royappa Vs. State of Tamil Nadu (1974) 4 SCC 3 as long as the pay scale of the individual does not undergo any variation to the detriment of the person, posting from one place to another should not be criticized.

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11. Keeping in view the same and also observation of the Apex Court in the case of **B.Varadha Rao Vs. State of Karnataka (1986) 4 SCC 131** wherein importance relating to children education has been highlighted, the Tribunal is of the considered view that the applicant should be accommodated against anyone of the vacancies available at Thiruvananthapuram either in Training Centre or All India Radio as aforesaid and an undertaking may be taken from the applicant to the effect that he would not insist on continuing at Thiruvananthapuram beyond the current academic session of his child.

12. Thus, the O.A is disposed of on the above terms. Annexure A-1 and Annexure A-8 orders are quashed and set aside. Annexure A-6 order remains intact and the respondents shall permit the applicant to get himself relieved as DDK, Thiruvananthapuram and take over charge as Director of All India Radio, Thiruvananthapuram and shall also shoulder the higher responsibility indicated in the Annexure A-6 order. This order shall be complied with, within a period of two weeks from the date of communication of this order. No costs.

(Dated this the 4th day of June 2013)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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