

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.406/2007

Thursday the 1st day of November, 2007

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

K.T.Sivanandan
Programme Executive,
Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram.

... Applicant

By Advocate Mr.P.Santhoshkumar

V/s

- 1 Union of India represented by Secretary,
Ministry of Information & Broadcasting,
New Delhi.
- 2 Prasar Bharathy (Boardcasting Corporation of India),
New Delhi represented by
Chief Executive Officer
- 3 The Director General, Prasar Bharathy
(Broadcasting Corporation of India)
Doordarshan Kendra, New Delhi
- 4 The Director, Doordarshan Kendra,
Kudappanakunnu,
Thiruvananthapuram-43

... Respondents

By Advocate Mr.N.N.Sugunapalan Sr
Mr.S.Sujin

The application having been heard on 11.10.2007 the Tribunal
delivered the following on 1/11/2007.

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The applicant in this OA is presently working as



Programme Executive under the 4th respondent, namely, the Director, Doordarshan Kendra, Kudappanakunnu, Thiruvananthapuram. He was appointed to this post on his selection made by the UPSC as Programme Executive for regional language "Malayalam for spoken words and features." His grievance is about his transfer to Doordarshan Kendra, Mumbai issued by the second respondent, namely, The Prasar Bharathy (Broadcasting Corporation of India), New Delhi vide Annexure A-4 Office Order No.25/2007/S-III dated 3/5/2007. He challenged the transfer order mainly on the ground that the same was issued in violation of the judgment of the Apex Court in Writ Petition No.(S) 285/89 dated 25/8/89 which reads as under:-

"After hearing the petitioner who appeared before us in person and the learned counsel appearing on behalf of the respondents we direct that the petitioner shall not be transferred to a place where there is no Hindi programme and that the petitioner should also be placed in Hindi Section. The respondent will also consider in case of the petitioner that he should be given co-ordination work according to the Seniority."

He has also cited that the orders of Principal Bench of this Tribunal in OA No.2102/2003 - Programme Staff Welfare Association of All India Radio & Doordarshan v/s. Union of India & Ors in support of his contention against the transfer order which reads as under:-

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"The Programme Executives recruited by the UPSC are in the several programmes in language fields and disciplines. The requirement of job of programme executives is with a specialized Language of their particular field. Accordingly, as per Sastri's case (supra), they are to be deputed on transfer and posting to their respective fields as by not allocating them to their particular field would deprive them as they are specialized in their particular fields."

While disposing of the aforesaid OA, the tribunal directed the respondents as under:-

"while transferring the Programme Executives and other staff of the Association, they should be posted and transferred and allocated the work of their particular field of section."

2 The applicant has also given the grounds that (i) his wife is working in the State Government Department and she is not in a position to get transfer outside Kerala; (ii) two of his daughters are studying in 8th and 6th standards in school at Trivandrum and as per Annexure A-9 memorandum issued by Government of India, Department of Personnel and Training dated 12/6/1997, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age, (iii) applicant's wife is a cancer patient frequently getting treatment in Regional Cancer Centre, Thiruvananthapuram; (iv) his aged mother is residing with him and he has to look after her in her old age; (v) the 3rd respondent himself has recommended to the head of the Programme Wing for his retention at the present place of posting

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and lastly (vi) no substitute has been posted in his place.

3 The respondents in their reply has submitted that though the applicant was selected for a particular discipline, the appointment letter contains the clause that the post of Programme Executive in Doordarshan carries all India Transfer liability and, therefore, he could be posted or transferred anywhere in India. In the appointment letter also it was also made clear that he was liable to be "entrusted with any work expected of a Programme Executive in the organisation of Doordarshan at the direction of the Head of Office/Organisations" and therefore he cannot claim that his transfer was illegal and malafide. They have also contented that the transfer was made in public interest and in the exigency of service as the applicant had been serving in the same station for more than 12 years w.e.f. 13/11/1995. They have also submitted that the Annexure A-2 judgment of the Apex Court in S.D.Sastri's (supra) case, and the Annexure A3 order of the Principal Bench in Programme Staff Welfare Association of All India Radio & Doordarshan(supra) are not applicable in the present case.

4 On the direction of this Tribunal, the respondents had filed a copy of the appointment letter dated 6/11/1991 issued to the applicant. Condition no (vi) of the said appointment letter reads as under:-

(vi)The post of Programme Executive in Doordarshan carries all India transfer liability and therefore you are likely to be posted or transferred anywhere in India. Even though

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selected by the U.P.S.C. against a particular discipline or disciplines, you are liable to be entrusted with any work expected of a Programme Executive in the Organisation of All India Radio/Doordarshan at the discretion of the Head of Office/organisation.

Further, it has been stated in the said appointment letter that if the Applicant accepts the offer of appointment on the terms and conditions prescribed therein, he should report to the Director, Doordarshan Kendra, Bangalore within a fortnight from the date of receipt of this order. In the endorsement made to the Director, Doordarshan Kendra, Bangalore, the appointing authority has also stated as under:-

"The above mentioned candidate has been selected by the U.P.S.C for the post of Programme Executive in the following disciplines and thus his/her service could be utilised for these discipline(s) and also for such other duties, as mentioned in AIR manual/Doordarshan Manual."

"Malayalam spoken words"

The respondents have also filed Annexure R2 (a) letter dated 27/11/1991 from the Doordarshan Kendra, Bangalore stating that the applicant had assumed the charge of Programme Executive on the Forenoon of 26/11/1991.

5 The applicant had filed rejoinder to the reply filed by the respondents. In the rejoinder, it has been submitted that the post of programme executive in a particular discipline is appointed for a particular language and there is no all India Transfer Liability for them to work outside the discipline. He has also produced the

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UPSCs advertisement for the post of Programme Executive published in Employment News dated 3/9/1988. The said advertisement was for recruitment of 461 programme executives in various languages. In the same language also programme executives were to be recruited for Drama, Spoken words/features, Women and Children, Education Broadcast, Science, Sports, etc. In Malayalam language there were nine vacancies, 5 in the discipline of Drama and spoken words/features, three in Women and Children and one for Education Broadcast. Alongwith the rejoinder, a copy of the order of this Tribunal in OA 453/2007 dated 13/7/2007 in Meera Rani V/s. Union of India & Ors was also filed. The applicant therein was a programme executive in Doordarshan Trivandrum and he was was transferred from Trivandrum to Goa. The said OA was disposed of by this Tribunal with the direction to the respondents to consider her application for retention in an existing vacancy at Trivandrum itself in terms of the judgment of the Apex Court in the case of S.D.Shastri (supra) and in the case of Programme Staff Welfare Association of All India Radio and Doordarshan(supra) decided by the Principal Bench. The respondents have challenged the aforesaid order before the Hon'ble High Court of Kerala in WP(C) No.25940 of 2007 and vide judgment dated 24/8/2007, the High Court has not agreed with the order of this Tribunal to post the applicant in Trivandrum itself as she has been there for the last 17 years. However, on the basis of

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the submissions made by the petitioner's counsel, the Hon'ble High Court permitted the respondents to transfer the petitioner therein anywhere in Kerala other than in Trivandrum.

6 I have heard Mr.P.Santhoshkumar for the applicant and Mr.M.C.Gopi for Mr.N.N.Sugunapalan Sr for the respondents. In my considered opinion, what has been ordered by the Hon'ble Apex Court in S.D.Shastri's case(supra) is only that the petitioner therein was not be transferred to a place where there was no Hindi programme. The other direction to the respondent was that petitioner was to be placed in Hindi Section and to give co-ordination work, according to the Seniority. The aforesaid judgment does not lay down any law. The Apex Court has just disposed of the Writ Petition on the basis of the available facts and attending circumstances of the said case. The Principal Bench's order in Programme Staff Welfare Association of All India Radio and Doordarshan(supra) also does not impose any bar on the Respondents in transferring the Programme Executives from one Kendra to another. What has been stated therein was that following the judgment of S.D.Shastri's case, the respondents while transferring the programme executive and other staff of the Doordarshan Kendra, they should be posted and transferred and allocated the work of their particular field of section. As held by the Apex Court in Arnit Das v/s. State of Bihar (2000) 5 SCC 488 "A decision not expressed, not accompanied by reasons and not

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proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141." Moreover, facts in the present case are different. A perusal of the appointment letter of the applicant shows that though UPSC has selected him for appointment as Programme Executive in the discipline of Malayalam (spoken words & features), his first posting itself was at Bangalore Doordarshan Kendra where there was no the discipline of Malayalam. He worked there for four years from 26/11/1991 to 12/11/1995. The applicant never protested against his posting in a state where Malayalam is not the spoken language and performed his duties as s Programme Executive. This was in confirmity with the condition stipulated in the appointment order that even though the UPSC has appointed him against a particular discipline, he was liable to be entrusted with with any work expected as a Programme Executive in the Organisation of All India Radio/Doordarshan at the discretion of the Head of Office/Organisation. The Hon'ble High Court of Kerala also in its judgment dated 24/8/2007 (supra) has not favoured with the petitioner therein to be retained at Doordarshan Kendra, Trivandrum itself. Moreover, the High Court did not find anything wrong with the respondents posting at Goa, but it was only on the submission of the petitioners counsel that the High Court has directed the petitioner to consider the Respondent for a posting anywhere in Kerala other than Trivandrum. Admittedly, the

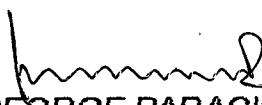
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applicant has been working at Doordarshan Kendra, Trivandrum for the last over 12 years and he carries an All India Transfer Liability and which he had accepted as a condition precedent for his appointment as programme executive after the selection by the UPSC.

7 In the above facts and circumstances of the case, in my considered opinion, the contention of the applicant that the impugned order transferring him to Mumbai is in violation of judgment of Apex court in S.D.Shastri's case cannot be accepted. The Applicant had worked as Programme Executive in Doordarshan Kendra, Bangalore for four years. Thereafter, he worked at Doordarshan Kendra, Trivandrum for 12 years. Now vide Annexure A4 order dated 3/5/2007, he has been transferred to Doordarshan Kendra, Mumbai. I do not find any infirmity in the said order.

8 In the result OA is dismissed. There shall be no orders as to costs.

Dated the 1st November, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

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