

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No.217/2007
This, the 17th day of October 2007

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Bajrangi Tiwari, aged about 55 years S/o Late Shri Ram Tiwari, Programme Executive, Prasar Bharti Broadcasting Corporation of India, Akashvani, Lucknow.

Applicant.

By Advocate:- Shri S.N. Pandey.

Versus

1. Union of India through Director General, Prasar Bharti Akashvani Bhawan, Sansad Marg, New Delhi.
2. Dy. Director of Administration (P), Prasar Bharti Akashvani Bhawan, Sansad Marg, New Delhi.
3. Director, Prasar Bharti Akashvani, 18, Vidhan Sabha Marg, Lucknow.

... Respondents.

By Advocate:- Shri K.K. Shukla.

ORDER

BY MR. M. KANTHAIAH, MEMBER (J)

The applicant, has filed Original application to quash the impugned transfer order dated 17.5.2007, (Annexure-1) passed by Respondent No.2, transferring the applicant from AIR, Lucknow to AIR, Faizabad on the ground that the same has been passed without authority and also against transfer policy and with malafide intention.

2. The respondents have filed Counter Affidavit denying the claim of the applicant, stating that the transfer of the applicant is affected in accordance with transfer policy and he has been relieved on dated 25.05.2007 and his representation is pending for consideration.



3. The applicant has filed Rejoinder Affidavit, denying the pleas taken by the respondents and also reiterated the pleas taken in the OA. Both sides advocates argued main OA, treating their pleadings in main OA itself.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted fact of the case is that the applicant, who is aged about 58 years, is working as Program Executive, Prasar Bharti Broadcasting Corporation of India, Akashvani, Lucknow. The applicant is going to retire in July 2009, is not in dispute. Annexure-1 dated 17.05.2007 is impugned transfer order under, which the applicant has been transferred from Lucknow to Faizabad. Though, the applicant has not filed transfer policy, the respondents have filed the transfer policy, which is annexed as Annexure CR-1. It is also not in dispute that the applicant filed Writ Petition against the respondents in the year 2005, aggrieved by allotment of duties assigned by the respondents vide order dated 11.11.2005 under which, the Hon'ble High Court directed the respondents to consider and disposed of the said representation in accordance with law within stipulated time. But, when the respondents did not coupled the direction of the Hon'ble High Court, the applicant also moved Contempt Petition (Annexure-6) and (Annexure-7) reveals the same.

7. The applicant challenged the transfer order on the ground that such impugned order has been issued by the authority, who is not competent and also on the ground of malafide intention on the part of the respondents. But after filing transfer policy Annexure-CR-1, along

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with Counter Affidavit, the applicant has taken a plea that his transfer is against the transfer policy of the department. It is also one of the grounds of the applicant that he has been suffering with ill health and taking treatment at Lucknow and he has been transferred to Faizabad where there are no such medical facilities. The respondents filed their Short Counter Affidavit denying the allegations of the applicant and stated that the transfer of the applicant is in accordance with transfer policy.

8. Though, the applicant has taken a plea that the impugned transfer order Annexure-1 has been issued by Respondent No.2, who is not the competent authority the recitals of it shows that Respondent No.2 issued with the approval of competent authority and in such circumstances there are no justification in the claim of the applicant that his transfer has been either affected by the authority, who is not competent.

9. The applicant also contents that he has been suffering with ill health and he also got admitted in a Private Hospital on 17.11.2005 because of serious illness and thereafter he has been taking treatment in the Hospital at Lucknow and such facilities are not available at Faizabad. He also filed documents in respect of the treatment taken from time to time with different Doctors, which are annexed at Annexuer-8 to Annexure-10 respectively.

10. It is not the case of the applicant that there is any provision in the transfer policy for retention of its employee on the ground of ill health and without any such guidelines, it is not open to the applicant to question the impugned transfer order on the ground of ill health. If, he is suffering with any such ill health, he has to make such



representation to the respondent authority and convince them for his regular treatment at Lucknow as such, the claim of the applicant for cancellation of transfer on the ground of his ill health or taking treatment at Lucknow is not at all a ground for interference of this Tribunal.

11. The applicant has taken a ground that the respondents are bent upon against him as he filed Writ Petition on the file of Hon'ble High Court, questioning of allotting of working to him and when there was non-compliance of the orders, he was forced to file contempt petition, in which the then Director, Prasar Bharti, who is now posted as Deputy Director General, AIR, Lucknow has been summoned and due to which they hold grudge against him and thus affected his transfer. The respondents have not denied such stand taken by the applicant in respect of Writ Petition and after disposal of the same filed contempt petition for non-compliance of the order of Hon'ble High Court and also summoning of the respondent/ officer by issuing show cause notice in the contempt petition. It clearly shows that there is some reason to believe the version of the applicant in attributing notices for his transfer.

12. Though, the applicant has not taken a plea in respect of transfer against transfer guidelines, after fling transfer policy along with Counter Affidavit, the applicant filed Short Rejoinder Affidavit, stating that he has been transferred against transfer policy covered under Annexure-CR-1.

Clause XXI of the transfer policy covered under Annexure CR-1 shows that member of staff, who are within three years of reaching the age of superannuation, will, if posted at their home town, not be shifted there from, if, it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible.

13. It is not in dispute that the applicant, who is native of Lucknow, is going to be retire in the month of July 2009 i.e. within 22 months after attaining the age of superannuation. The respondents are not in a position to show any of the complaints against the applicant for his transfer. Further, as per Annexure-1, no other employee has been posted in the place of applicant. Without any reasoned, shifting him on the ground that he has been accommodated near his home town is not at all justified. As per transfer policy, when there is such ban not to transfer the staff, who are within three years of reaching the age of superannuation, clearly shows that the respondents have effected the transfer of the applicant against the said transfer policy. In the absence of any transfer policy, the respondents are at liberty to take their own decision but when they framed a policy, it is their bounded duty to respect and honour such guidelines. In the instant case, the respondents have violated their own transfer policy in transferring the applicant at this stage coupled with this, the allegation of the applicant that the respondents also bore grudge against him for initiating contempt proceedings on the file of Hon'ble High Court, further justifying the applicant in questioning the action of the respondents.

14. It is also the case of the applicant that the applicant has been relieved on 25.5.2007 (Annexure-CA-2) and new incumbent joined in his place. The applicant denied the same stating that such relieving orders are passed behind his back and no employee has been posted in his place as per impugned transfer orders and further his representation (Annexure-11) is still pending. Admittedly, the relieving order are passed in the absence of applicant and in impugned transfer order, no employee has been posted in the place of applicant. Further

no orders are passed on representation of the applicant. Whether developments are those in respect of posting of other employee or his joining etc. are admittedly during the pendency of this OA without considering the representation of the applicant. It clearly shows that the respondents have taken such steps, when the matter is his pendency and without disposal of his representation and in such circumstances, finding fault with the applicant is not at all sustainable and thus it is the lookout of the respondents to correct such of their actions.

15. In view of the above circumstances, the applicant proved his claim that his transfer covered under Annexure-1 is against transfer policy coupled with some ulterior motive and as such the impugned transfer order is liable to be quashed.

In the result, OA is allowed ~~questioning~~^{Quashing} the impugned transfer order (Annexure-1), transferring the applicant from All India Radio, Lucknow to All India Radio, Faizabad. No costs.


(M. KANTHAIAH)
MEMBER (J)

17-10-2002

/Amit/