OA443/2000

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, AT MUMBAI.

O.A.NO.425/2000
O.A. NO.434/2000 and O.A.NO.455/2000

Dated this Wednesday, the 28th day of March, 2007.

CORAM: HON'BLE SHRI A.K. AGARWAL, VICE CHAIRMAN
HON'BLE SHRI JOG SINGH, MEMBER (J)

1. Shri B.H. Parwadi
2. Smt. Meera Majumdar
3. Smt. B.S. Nathan
4. Smt. S.B. Rane
5. G.B. Kumbhare
6. G.B. Moundekar
7. Gururaj Canchi
8. Smt. S.C. Ghube. ..... Applicants in O.A.425/2000

All working as LDCs and UDCs, Central Sales Unit, All India Radio, Mumbai.

1. H.M. Padewal
2. K.A. Pramanik
3. C.B. Shetye ..... Applicants in O.A. 434/2000

Working as UDC and LDC
Chief Engineering (WZ)
All India Radio and Doordarshan,
Mumbai.

1. Smt. Maria L. Souza
2. M. Palani. ..... Applicants in OA443/2000

Working as UDC and LDC
All India Radio Panaji, Goa.

1. Smt. Sheetal Ramrakhyani
L.D.C. Vividh Bharati Service
All India Radio, Gorai Road,
Borivli (West), Mumbai. ..... Applicant in Oa 455/2000

(By Shri A.R. Pitale, Advocate in all the four O.A.s)

vs.

1. Union of India through
   The Secretary,
   Government of India,
   Ministry of Information
   & Broadcasting, New Delhi.

2. The Director General
   All India Radio,
   Akashvani Bhavan,
   New Delhi.

3. The Deputy Director (Administrator)
   Prasar Bharati
   Broadcasting Corporation of India
   Office of the Director General,
   All India Radio, Akashvani Bhavan
   New Delhi.

4. The Deputy Director General (WR)
   All India Radio, Mumbai.

5. The Station Director,
   All India Radio, Mumbai. ... Respondents

(Respondents by Shri V.S.Masurkar, Advocate)

O R D E R

Per: Jog Singh, Member (J):

All these four O.A.s. have been filed by a group of employees, all belonging to Group "C" posts of the respondents against their respective transfer orders from one station to another. All the applicants were initially appointed in the office of All India Radio/Doordharshan which was working under the Ministry of Information and Broadcasting as a Department. All the applicants were Govt. Servants. However, on the formation of the Prasar Bharati Broadcasting Corpopration (hereinafter referred as

"Corporation"), all the employees were placed at the disposal of the said Corporation but without formally transferring them to the said Corporation by the Govt. of India.

2. The main ground for challenging the impugned transfer order is that Applicants are not the employees of Prasar Bharati (Broadcasting Corporation of India). As such the Respondents have no power to transfer the Applicants. Applicants submit that they are the employees of Govt. of India working with All India Radio. Applicants further submit that impugned order issued by Respondent No.3 in the capacity of Dy. Director (Administration, Prasar Bharati, Broadcasting Corporation of India is therefore, not maintainable because it is issued by Prasar Bharati, Broadcasting Corporation of India who is not the employer of Applicants. The Applicants further submit that at the first instance the Govt. of India should have issued an order transferring the Applicants and other employees working in the offices of All India Radio to the Broadcasting Corporation and then only the Broadcasting Corporation could have issued the orders in respect of Applicants and therefore, the order dated 29.05.2000 is without jurisdiction and required to be quashed and set aside. The applicants have on the basis of above submissions prayed that the cumulative effect of all these

factors clearly shows that the impugned transfer orders are against the principle laid down in the transfer policy issued by Respondent No.2 and hence the impugned transfer orders are required to be quashed and set aside.

3. The respondents have, *inter alia*, submitted that the applicants are employees working in Gr. 'C' cadre in the All India Radio and their condition of service is that, they are liable to be transferred anywhere within Maharashtra and Goa Zone. The Respondents have submitted that the transfer of the applicants is strictly in the public interest. There is neither *malafide* nor violation of any of the statutory rules. By the present transfer order the applicants' seniority, promotion, status etc. are not affected and therefore also the applicants' challenge to transfer order is not sustainable in law. The applicants are working since the date of appointment in Mumbai/Pune itself i.e. several years. The respondents have further relied upon the following judgements of the Hon'ble Supreme Court, in support of their contention:

1. ***E.P. Royappa vs. State of Tamilnadu & Anr.*** ***1974 SCC (L&S) 165***, Held: Transfer for loss of confidence not arbitrary.
2. ***B. Vardharao vs. State of Karnataka & Ors*** ***AIR 1986 Supreme Court 1955*** Held: Transfer incidence of service.
3. ***Kamlesh Trivedi vs. ICAR & Anr. Principal Bench, CAT, Full Bench Judgements page 80,*** Held :Transfer Policy, guidelines by Tribunal.

4. *Srichand & Ors. Vs. Union of India & Ors. (1992) 20 ATC 474* Held: Seniority principle need not be followed.

5. *Rajendra Roy vs Union of India & Ors. (1993) 1 SCC 148, 1993 SCC (L&S) 138* Held: malice in fact - Interference to be basedon foundation of facts pleased and established and not merely on insulation and vague allegations.

6. *Union of India & Ors. Vs. S.L. Abbas (1993) 25 ATC 844,* Held: Malafide or made in violation of operative guidelines.

7. *N.K. Singh vs. Union of India & Ors. (1994) 6 SCC 98* Held: Transfer from a significant post.

8. *S/o M.P. & Anr. Vs. S.S. Kourav & Ors. (2001) 2 Service Law Judgements 396* Held: Government has no right to be posted forever at one particular post

9. *National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan & Shiv Prakash: (2001) 2 Service Law Judgements 396* Held: Government has no right to be posted forever at one particular post.

10. *State of Punjab vs. V.K. Khanna & Ors. (2001) 2 SCC 330,* :Held: Malafide must be proved by definite evidence.

11. *Chairman and MD BPL Ltd. Vs. S.P. Gururaja (2003) 8 SCC 567,* Held: Head Note (E), Undue haste in taking decision not by itself a ground unless held to be malafide. Manner in which the decision is taken to be seen.

12. *State of U.P. vs. Siya Ram & Anr. Supreme Court Rulings 2004 page 616.* Held: The question of public interest involves factual adjudication High Court committed error.

13. *State of U.P. vs. Gobardhan Lal (2004) 11 SCC 402,* Held: Allegation of malafide must be based on concert material and must inspire confidence of the court.

4. Thus, the thrust of the submission of the respondents is that all the transfer orders are in public interest and there is no *malafide* against the employees and they have been transferred keeping in view the exigencies of service and the requirement of individual offices. All the incumbents carry on all India liability to serve through out the country and they have no vested right to stay at a place or station of their own choice throughout their service career.

5. We have heard the learned counsel for the parties, considered the respective submissions. The main issue raised in this O.A. is that whether the applicants are the employees of the Corporation or still they continues to be Govt. servants. It is a matter of record that the Union of India had not transferred the employees of Doordarshan and Akashwani to the Corporation, so far, therefore, the employees have not been in a position to exercise their option as envisaged under Sub section (5) of Sec. 11 of the Act in question. As such, the employee/officers have been working under a great uncertainty as to their future. The Hon'ble Supreme Court has dealt with this issue recently in the case of ***Prasar Bharati vs. Amarjeet Singh & Ors. 2007 (2) SCALE 486*** . The Hon'ble Supreme Court after detailed analysis of the whole

issue has been pleased to hold in paragraphs 17, 21 and 26 as under:

17. It has not been disputed that the functions of the Central Government has been taken over by the Corporation in terms of Section 12 of the Act, when the Corporation has started functioning on and from the appointed day. It requires man-power for managing its affairs. It has been doing so with the existing staff. They are being paid their salaries or other remunerations by the Corporation. They are subjected to effective control by its officers. The respondents, for all intent and purposes, are therefore, under the control of the Corporation.

21. The Corporation has not framed its own rules. In absence of any rules, however, an employer, it is well known, would have an inherent power to deal with its employees, in a situation of this nature, we have no doubt that the same would include a power of transfer. It is one thing to say that an employer does not possess of any power to transfer in terms of the extant rules or conditions of service or the nature thereof; but the same does not mean that the employer must have the power to transfer its employees only in terms of a statute.

26. Respondents, therefore, in our opinion by reason of their conduct as also that of other players in the field, namely, the Union of India and Corporation must be held to have been deputed in the services of the Corporation. They would, therefore, be governed by the general principles of deputation. For the said purpose they are under the functional control of the Corporation which in the peculiar facts and circumstances of this case, in our opinion, would also imply that the Corporation had a power of transfer

6. In view of the above judgement of the Hon'ble Supreme Court it is apparent that the Prasar Bharati

Broadcasting Corporation has the power/authority to transfer the applicants. We, therefore, dismiss the present Four O.A.s. No order as to costs.

7. The Interim Relief already granted and continued from time to time, stands vacated.

(Jog Singh)
Member (J)

(A.K. Agarwal)
Vice Chairman

Sj*