

Recd. on
18/7/08

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6535 OF 2002

Union of India and others ... Petitioners
Vs
Smt. S.S. Kulkarni and others .. Respondents

ALONGWITH

WRIT PETITION NO.6113 OF 2001

Union of India and others ... Petitioners
Vs
Smt. Sulabha Navghare .. Respondent

Mr. P.M. Pradhan for the petitioners.

Mr. Saikumar Ramamurthy for the respondents.

Mr. A.I. Bhatkar for the respondent in writ petition No.6113 of 2002.

CORAM: SWATANTER KUMAR, C.J. &
A.P. DESHPANDE, J.
DATE : 8TH JULY, 2008

P.C.:

The learned counsel appearing for the parties commonly state that the question of law arising in the present writ petition as to

whether the Union of India/ Prasar Bharati had a right to transfer its employees or not is no more res integra and stands squarely answered by the Supreme Court in the case of Prasar Bharati and others v. Amarjeet Singh and others, (2007) 2 SCC (L&S) 566.

2. In view of the stand taken, nothing survives in this writ petition and the same is disposed of reiterating the principle of law enunciated by the Supreme Court in the case of Amarjeet Singh (supra) and the interim orders passed by the court are vacated. However, we make it further clear that as this writ petition has been pending before this court for considerably time, it would be appropriate that the petitioner may re-issue the orders of transfer wherever it is necessary and they consider it appropriate.

3. With the aforesaid observation, both the writ petitions are disposed of with no order as to costs. Consequently, the order passed by the Central Administrative Tribunal dated 5th October, 2000 is quashed and set aside.

TRUE COPY

W. H. Mehta
6/10/2008
Assistant Registrar
High Court, A.翼, 1st Floor
Bombay

24/10/08

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. ²⁴⁹ OF 2000

Smt.A.Jyoti Navada

: Applicant

Versus

Union of India & Ors

: Respondents

INDEX

S.NO.	DESCRIPTION	EXH.NO	PAGE NO
1.	Original Application		01-20
2.	Copy of Order dt.21.3.2000	1	21, 22
3.	Copy of Order dt.31.3.2000	2	23
4.	Copy of Memorandum dt.28.1.75	3	24-25
5.	Copy of Order dt. 21.2.1975	4	26
6.	Copy of Agreement dt.13.2.1975	5	27-32
7.	Copy of Memorandum 29.6.82	6	33-35
8.	Copies of orders dt.10.12.84 & 5.2.86	7	36-40
9.	Copy of Recruitment Rules	8	41
10.	Copy of Extract of Clause 11	9	42-43
11.	Copy of OM dt.5.7.89	10	44-46
12.	Copy of OM dt.31.12.92	11	47-51

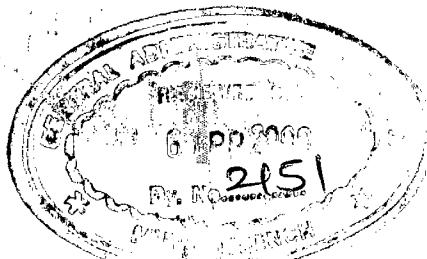
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dt. 21/2/2000

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A. Jyoti Navada



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. *249* OF 2000

Smt.A.Jyoti Navade, Graphic Artist,

Door Darshan Kendra, Mumbai,

Residing at B-17/1/2, Shiva Palm

Beach CHS Ltd, Palm Beach Marg,

Sector 4, Nerul, Navi Mumbai - 400 706

: Applicant

VERSUS

1. Union of India, Through

The Secretary, Govt of India

Ministry of Information & Broad-

Casting, New Delhi.

2. The Director(Admin)

Prasar Bharati(Broadcasting

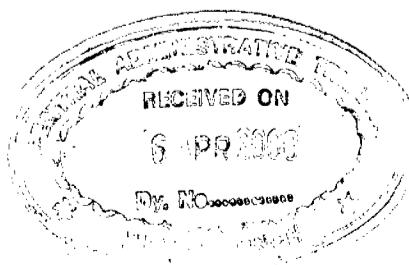
Corporation of India),

Directorate General, Door Darshan,

Door Darshan Bhavan,

Coper Nicus Marg, New Delhi.

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A. Jyoti Navade

3. The Director, Prasar Bharati,
 (Broadcasting Corp of India)
 Door Darshan Kendra,
 Mumbai-4000 25.

4. The Director
 Govt of India,
 Door Darshan Kendra,
 Mumbai - 4000 25.

DETAILS OF APPLICATION

1. Particulars of Orders against which this Application is made:

This Application is made against the mass transfer order issued by Respondent No.2 transferring the Applicant without any authority, jurisdiction and power vide Order No. 31(6)/2000-SI(A) dated

Ex-1 21.3.2000. Annexed herewith and marked as Exhibit '1' is a copy of the order dated 21.3.2000. This Application is also against the relieving Order No.2(62)2000-A1/DKM/13537 dated 31.3.2000, issued by Respondent No.3 also without any authority, jurisdiction

Ex 2 and power. Annexed herewith and marked as Exhibit '2' is the copy of the said order dated 31.3.2000.

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A. Jayathi Navada

2. Jurisdiction of the Tribunal: The Applicant declares that the said matter against which she want redressal is within the jurisdiction of the Tribunal.

3. Limitation: The Applicant further declares that the Application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

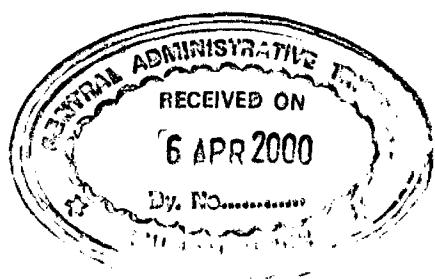
4. Facts of the Case.

4.1. The Applicant submits that she was appointed in the Door Darshan Kendra Mumbai, as a Graphic Artist on casual basis in the year 1972. She continued to work on casual basis from time to time and thereafter she was properly selected and she was issued with a offer of appointment vide Memorandum dated

Ex 3 28.1.1975. Annexed herewith and marked as Exhibit '3' is a copy of the Memorandum dated 28.1.1975. The Applicant submits that after accepting the offer of appointment she was appointed as a Graphic Artist on regular basis by Order dated 21.2.1975 with effect from 13.2.1975. Annexed herewith and

Ex 4 marked as Exhibit '4' is a copy of the order dated 21.2.1975.

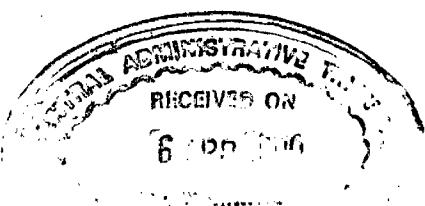
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The Applicant also entered into an agreement on 13.2.1975 as was required by the authorities concerned. Annexed herewith and marked as Exhibit '5' is a copy of the said agreement dated 13.2.1975.

4.2. The Applicant submits that the staff artist employed by the Government of India, like the Applicant, were not treated as a Government servant. The Applicant submit that thereafter the government took a decision to treat these staff artists as Government Servants and accordingly option was called for from the Applicant vide Memorandum dated 29.6.1982. Annexed herewith and marked as Exhibit '6' copy of the said Memorandum dated 29.6.1982. The Applicant submits that she opted to become a Government Servant and on the basis of the same an Order dated 10 Dec 1984 was issued declaring the Applicant as Government Servant with effect from 24.11.1984. The said order of 24.11.1984 was amended to read as 6 Mar 1982 vide order dated 5.2.1986. Annexed herewith and marked Exhibit '7' are the copies of the order dated 10.12.1984 and 5.2.1986, respectively.

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A. Jyoti Navade

4.3. The applicant submits that it is therefore abundantly clear from the aforementioned facts that the Applicant was appointed by the Government of India by issuing various orders and she was declared as a Government Servant from 1982 and all the terms and conditions as also the rules and regulations applicable to the Government servant were made applicable to the Applicant after taking a specific option from the Applicant. The Applicant submits that she is all along the employee of the Government of India and her service conditions are also fixed under the Government Orders issued from time to time.

4.4. The Applicant submits that as could be seen from the appointment order that the Applicant has been appointed by the Director, Door Darshan Kendra ,Television Centre, All India Radio (now known as Door Darshan), Government of India and therefore the Director, Door Darshan Kendra, Mumbai, under Government of India, is the appointing authority of the Applicant as also the said authority is the recruiting authority as far as the Applicant is concerned. Annexed herewith and marked as Ex. 8 . Exhibit '8' is a copy of the recruitment rules for the posts of

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A. Jayathi Navade

Graphic Artists. The Applicant submits that therefore the Director, Door Darshan Kendra, under Government of India is the competent recruiting as well as transferring authority of the Applicant. The Applicant submit that she ^{is} all along the employee of the Government of India and is under the control of Officers of the Government of India.

4.5. The Applicant submits that however all of a sudden an impugned Order dated 21.3.2000 has been issued by Respondent No.2 without any authority, jurisdiction and power transferring the Applicant from Mumbai to Rajkot that is out of Maharashtra State. The Applicant submits that on the basis of this illegal order again the Respondent No.3 has issued a relieving order dated 31.3.2000. The Applicant submits that both these orders have been issued by the Officers of the Prasar Bharati (Broadcasting Corporation of India) as is evident from the said order. The applicant submits that she is not the employee of the said Prasar Bharati (Broadcasting Corporation of India) and therefore these orders are without any authority, jurisdiction and power. The Applicant submits that her service

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A. Jayathi Navade

conditions cannot be changed without her consent as also her service cannot be transferred to the said corporation without her consent.

4.6. The Applicant submits that the Government of India has enacted the Prasar Bharati (Broadcasting Corporation of India) act. The Applicant submits that this act deals with various aspects concerning the establishment and composition of the corporation, appointment of Chairman and ~~Bo~~^{Bo and} ~~rought~~^{rought} of Governors, their functions, recruitment boards etc. The Applicant submits that the act also provides for the transfer of service of existing employees to corporation under Clause 11 of the said act which is reproduced herein below:

"Transfer of Service of existing employees to corporation".

11.(1) Where the Central Government has ceased to perform any functions which under Section 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order with effect from such date or dates as may be specified in the order, to

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A. Jayathi Navada

the corporation any of the Officers or other employees serving in the Akashvani or Door Darshan and engaged in the performance of those functions:

Provided that no order under this Sub-Section shall be made in relation to any Officer or other employee in the Akashvani or Door Darshan who has, in respect of the proposal of the Central Government to transfer said Officer or other employee to the Corporation, intimated within such time as may be specified in this behalf by the Central Government, has intention of not becoming an employee of the Corporation." Annexed herewith and

Ex. 9. marked as Exhibit '9' is a copy of the ~~same~~ relevant Extract of Clause 11 of Prasar Bharati (Broadcasting Corporation of India) Act.

4.7. The Applicant therefore respectfully submits that as per the statutory provision the Central Government has to make a proposal to each employee and take an option from the employee whether or not the said employee wish to become an

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A. Jayathi Navada

employee of the Corporation. The Applicant submits that in case any employee do not want to become an employee of the Corporation then the Central Government cannot issue an order to transfer the services of that particular employee to the Corporation. The Applicant further submits that as per the statutory requirement it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the Officers or employees serving in the Akashvani or Door Darshan who exercised the option or accept the proposal of the Government to become an employee of the Corporation. The Applicant respectfully submits that nothing of this sort has been done and therefore the Applicant remains a Central Government employee till such action is taken by the Central Government as provided under Clause 11 of the Prasar Bharati (Broadcasting Corporation) Act. The Applicant therefore submits that the Corporation has no authority, power and jurisdiction to transfer the Applicant from Mumbai to Rajkot vide the impugned order.

4.8. The Applicant further submits that the Government has

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A. Jayathi Navada

already issued orders from time to time on the subject of conversion of Central Government departments into autonomous body or the Corporation under which certain terms and conditions are required to be prescribed for absorbing the employees. Annexed herewith and marked as Exhibit '10' is a copy of OM dated 05 Jul 1989. The Applicant submits that this is well settled position in law that the service conditions of the employees as also the employer of the employees cannot be changed without consent of that particular employee. The Applicant submits that no consent whatsoever has been taken from the Applicant to change her employer as also to change her service conditions. The Applicant submits that she is a Central Government employee and governed by the service conditions applicable to Central Government employees and when she is transferred to the Corporation the service conditions will certainly change as also the employer is changed. The Applicant submits that as per the Prasar Bharati (Broadcasting Corporation of India) Act, the Corporation is required to frame the regulations with regard to the terms and conditions of employees which has not so far been done by the

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A. Jayathi Navada

Corporation and therefore the Applicant is not aware of what are her terms and conditions when she becomes an employee of the Corporation. The Applicant submits that therefore in the acts itself it has been made mandatory for the Government to give an option to the employees before transferring their services to the Corporation.

4.9. The Applicant submits that she is serving in Mumbai for the last 28 years and she is permanently settled in Mumbai and is due to retire from service very shortly. The Applicant submits that she is a lady employee having their family problems which she has to attend. The Applicant submits that when she has been transferred from Mumbai to Rajkot one has to think about how she is going to live in the new place alone. The Applicant submits that it is extremely difficult for her to leave Mumbai and join the new station which will entirely disrupt and ruin her family life. The Applicant submits that this transfer will compel the Applicant to leave the job as it is highly impossible for her to join the new station.

4.10. The Applicant submits that she has been working in

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A. Jayothi Navada

Mumbai for the last 28 years and carrying out her job sincerely effectively and without any complaint from anyone. The Applicant submits that she is a Graphic Artist and is required to prepare boards which are displayed on the screen and these boards she has been preparing either in English or Hindi and sometime in Marathi also which is required in the state of Maharashtra. The Applicant submits that she has been transferred to Rajkot where she has to undertake the job in Gujarati and she does not know this language. The Applicant submits that therefore she will not be able to carry out her duties as a Graphic Artist in Rajkot and therefore no useful purpose will be served by transferring her from Mumbai to Rajkot. The Applicant submits that therefore there is no public interest at all in transferring the Applicant from Mumbai to Rajkot but the said transfer is in fact against the public interest.

4.11. The Applicant submits that the transfer is also against the transfer policy issued by Respondents vide Memorandum dated 31.12.1992. Annexed herewith and marked as Exhibit '11 is a copy of OM dated 31.12.1992. The Applicant submits that

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A. Jyoti Navada

under the said policy locally recruited and low paid employees would normally not been transferred except on promotion or on receipt of written request from the employee in question. The Applicant is locally recruited and low paid employee and her transfer is neither on promotion nor on her written request. The Applicant submit that therefore also the transfer is bad.

4.12. The Applicant submits that the transfer order issued and she has been relieved without giving any breathing time or to make a representation against the said order. The Applicant submits that having left with no other alternative she is approaching this Hon'ble Tribunal for justice.

5. Grounds for Relief with Legal Provisions. The Applicant is challenging the action of the Respondents on the following amongst other grounds which are without prejudice to one another.

5.1. The Applicant submits that the impugned orders are bad in law in as much as the same having been issued by the competent authority. The Applicant submits that the Director,

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A. Jayashri Navade

Door Darshan, Mumbai, under the Government of India, is the competent recruiting authority, appointing authority and also the transferring authority. The Applicant submits that however, the transfer order is issued by Respondent No.2 and the relieving order is issued by Respondent No.3 who have no powers, authority and jurisdiction to issue these orders and therefore the impugned orders are required to be quash and set aside.

5.2. The Applicant submits that she is an employee of Central Government and not the employee of Prasar Bharati (Broadcasting Corporation of India) and therefore only the Competent officers of the Central Government can issue any order transferring the Applicant from one place to another place. The Applicant submits that however, her transfer order and relieving order have been issued by the Corporation who is not the employer of the Applicant and therefore the impugned orders issued by the Prasar Bharati (Broadcasting Corporation of India) are bad in law and is required to be quash and set aside.

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A. Jayashri Navade

5.3. The Applicant submits that as per the provisions of the Prasar Bharati (Broadcasting Corporation of India) Act the Central Government must make a proposal and must give an option to the employees to become an employee of the Corporation. As per the provisions of the act if employee given an option to become an employee of the corporation then the government must issue an order to that effect then that employee will become an employee of the Corporation. The Applicant submits that however, if an employee do not want to become an employee of the Corporation then the government cannot pass an order transferring their services to that particular employee to the Corporation. The Applicant submits that she has not yet given any option to become an employee of the corporation and therefore she is not an employee of the Corporation. The Applicant submits therefore the impugned orders issued by the Corporation are bad in law and are required to be quash and set aside.

5.4. The Applicant submits that as per the transfer policy

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A. Jyoti Navada

locally recruited staff and low paid employees should not be transferred except on promotion or on written request from the employee. The Applicant submits that neither she has been promoted nor given a written request for such a transfer. The Applicant submits that therefore, the impugned orders are bad in law and required to be quash and set aside.

5.5. The Applicant submits that the transfer has been made without any norms or guidelines. The Applicant submits that the Respondents have resorted to pick and choose policy and the Applicant has been transferred arbitrarily, at the whims and fancies of the Respondents. The Applicant submits that the transfer is in a colourable exercise of the powers of the Respondents and therefore the same is bad in law and is required to be quash and set aside.

5.6. The Applicant submits that she is a lady employee and has been transferred to far off place disturbing her entire family life. The Applicant submit that the Respondent must consider the case of the Applicant on a different footing other than the

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A. Muthi Navada

one applicable to the male employees. The Applicant submit that therefore the transfer is totally non application of mind and therefore the same is required to be quash and set aside.

6. Details of remedies exhausted. The Applicant submit that there is no effective remedy against the impugned orders and therefore the Applicant is approaching this Hon'ble Tribunal.

7. Matters Previously filed or pending with any other Court. The Applicant further declares that she had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any application, Writ Petition or Suit is pending in any of them.

8. Relief Sought: In view of the facts mentioned hereinabove, the Applicant pray for the following reliefs:

(a) This Hon'ble Tribunal will be graciously pleased to call for

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A. Mythili Navada

the records pertaining to issuance of the impugned orders dated 21.3.2000 and 31.3.2000 and after going through the legality of the same quash and set aside the same in so far as it concern the Applicant.

(b) This Hon'ble Tribunal will be graciously pleased to pass such other and further orders as deemed fit in the facts and circumstances of the case.

(c) That the cost of this application be awarded to the Applicant.

9. Interim Order, if any, prayed for: Pending final decision of the application, the applicant seeks the following remedies:

(a) This Hon'ble Tribunal will be graciously pleased to stay the operation of the impugned orders dated 21.3.2000 and 31.3.2000 in so far as it concern the Applicant till the final disposal of this Original Application.

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A. Jyothi Navada

(b) This Hon'ble Tribunal will be graciously pleased to direct the Respondents to allow the Applicant to continue in Mumbai till the matter is finally heard and decided.

(c) This Hon'ble Tribunal will be graciously pleased to pass such other and further interim order as deemed fit in the facts and circumstances of the case .

10. In the event of Application being sent by Registered Post. The Application is filed through the Applicant's Advocate.

11. Particulars of Bank Draft/Postal Order filed in respect of Application Fee.

I.P.O No : 39 988062

Dated : 2, 2, 00

Amount : Rs 50/-

Post Office : c/o Mumbai

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A. Jayashri Navada

VERIFICATION

I, the Applicant, abovenamed, do hereby verify that the contents of paragraphs 1 to 7 are true to my personal knowledge and belief. The legal submissions are stated to be true as per the advice of the Counsel and that I have not suppressed any material facts.

A. Jyoti Navada

Applicant

Place: Mumbai

Date: 06 Apr 2000

Advocate for Applicant.