

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL 29-3-2001
MUMBAI BENCH

Original Application No: 794 of 2000.

Date of Decision:

Chandrakant Sadashiv Barve,

Applicant.

Shri K. Sivaramakrishnan,

Advocate for
Applicant.

Versus

Union of India & Others,

Respondent(s)

Shri S. S. Karkera for
Shri P.M. Pradhan,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N. Bahadur, Member (A).

Hon'ble Shri. S. L. Jain, Member (J).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

(3) Library Yes

B. Bahadur

(B. N. BAHADUR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 794 of 2000.

Dated this Thursday the 29th day of March, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

Chandrakant Sadashiv Barve,
Executive Producer,
Doordarshan Kendra,
Worli,
Mumbai - 400 025.

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Applicant

(By Advocate Shri K. Sivaramakrishnan)

VERSUS

1. Union of India through
The Secretary,
Ministry of Information &
Broadcasting, Shastri Bhavan,
New Delhi - 110 001.

2. Chief Executive Officer,
Prasar Bharati,
(Broadcasting Corporation of
India), Doordarshan Bhavan,
Copernicus Marg,
New Delhi - 110 001.

3. Station Director,
Doordarshan Kendra,
Worli, Mumbai 400 025.

... Respondents.

(By Advocate Shri S.S.Karkera for
Shri P. M. Pradhan)

ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this O.A., Shri Chandrakant Sadashiv Barve, Executive Producer in Doordarshan Kendra, Mumbai and comes



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up to the Tribunal in grievance against the impugned order of Respondents No. 2 (Exhibit A-1) through which order he has been transferred to Rajkot. The core facts of the case are that the Applicant is an officer belonging to the India Broadcasting (Programme) Service, was recruited in 1977 in Class-II and was promoted as Assistant Director (Class-I) in 1991 by Respondent No. 1 and further promoted as Executive producer in 1999.

2. We will straightaway come to the main ground of the Applicant which is to seek the benefit in consonance with the judgement of the Madras Bench of this Tribunal, rendered by that Bench on 25.08.2000 in a batch of O.As. In fact, this judgement has been relied upon by the undersigned as Single Member in deciding a batch of O.As. (217, 249 and 250 all of the year 2000) on 05.10.2000. The decision made was that Prasar Bharati, could not issue such orders and that it was open only to Government to transfer employees similarly placed as the Applicant. The point was that such employees are still employees of Government and not of Prasar Bharati and thus the letter had no authority to transfer.

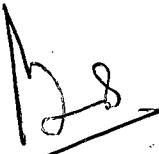
3. We have carefully seen the pleadings in the case and have heard the learned Counsel on both sides, namely - Shri K. Sivaramakrishnan for the Applicant and Shri S.S. Karkera for Shri P.M. Pradhan for the Respondents. While the stand taken by

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this Tribunal earlier was clear, the Learned Counsel, Shri Karkera, brought to our notice a judgement of the High Court of Judicature at Madras dated 17.01.2001 rendered in Writ Petitions No. 20051-20068-20084 and 21210 (all of the year 2000). The main contention was that the judgement of the Madras Bench of this Tribunal on which dependence was placed, is no longer good law because the High Court, after considering the matter in great detail, has set aside the aforesaid order of the Madras Bench of the Tribunal. Attention is specifically drawn to para 15 of the order.

4. Learned Counsel Shri Sivramakrishnan, arguing for the Applicant, had also sought to make the point that there was no specific provision in the Prasar Bharati Act of 1990 enabling transfers to be made by the Prasar Bharati (as against the Government of India) and that this was the clear intention of the law makers. Thus, the lack of a clear provision in the Act was ground enough to conclude that the powers of transfer lay only with the Ministry of the Union Government, it is argued. Section 11 of the aforesaid Act, an extract of which is available at Annexure R-3, page 40 of the Paper Book. According to the Counsel, this provision also showed that it was Government which was only competent to make the transfer.

5. In the first place, it must be stated that the law followed by us in such a case/s was the one that had been set out

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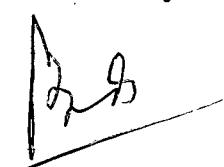
through the ratio of the judgement rendered by the Madras Bench of this Tribunal dated 25.08.2000 in the batch of O.As. (copy at Exhibit A-3). This Tribunal had also provided benefits based on this aforesaid judgement of the Madras Bench. Now the short point before us is that the said order is no longer a good law. The High Court of Judicature at Madras had considered the matter in very great detail, and has held, *inter alia*, as follows :

"15. We have no doubt that the Corporation is entitled to make use of the service of the employees presently working with it even though such employees are employees of the Government of India till they are all permanently absorbed with the Corporation, at the places where the interest of efficient work of the Corporation requires the presence of the employee.

16. The impugned order of the Tribunal is therefore set aside."

It must also be stated that they have taken a view that "Service Jurisprudence is not technicality without a purpose." Now, once the ratio of the Madras Bench that was being depended upon is no longer good law, we will have to decide this matter in terms of the position settled by the aforesaid judgement of the Madras High Court. All aspects have been duly considered by them and the arguments made with reference to Article 11 also does not carry weight in this regard. Also, the Tribunal having no jurisdiction over Prasar Bharati, admittedly, no relief can be granted against them.

6. In view of the above position, no further details are required to be discussed and the present O.A.



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is liable to be dismissed. The O.A. is accordingly dismissed. No order as to costs. The interim order made on 09.11.2000 and continued thereafter is hereby vacated.

S.L. Jain
(S.L. JAIN)

MEMBER (J).

B.N. Bahadur 29/3/01
(B.N. BAHADUR)
MEMBER (A).

OS*