

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 709/2000
DATED THE 80th DAY OF OCT. 2000

CORAM: HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Chandramohan S/o Laxman Nandanpawar,
Assistant Station Director,
Door Darshan Kendra, Nagpur. Applicant.

By Advocate Shri S.S.Marathe

V/5.

1. Union of India,
through its Secretary,
Ministry of Information and
Broadcasting, New Delhi.
2. Prasar Bharti (Broadcasting
Corporation of India), through its
Chairman, Door Darshan Bhavan,
New Delhi.
3. Director (Administration),
'Prasar-Bharti' (Broadcasting
Corporation of India,
Door Darshan Bhavan,
New Delhi.
4. The Station Director,
'Door Darshan' Kendra,
Nagpur.
5. Mr.A.D.Dharmadhikari,
Assistant Station Director,
Door Darshan Kendra, Mumbai.

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

(O R D E R)

Per Smt. Shanta Shastri, Member (A)

The impugned order dated 15/9/2000 transferring the applicant from Nagpur to Mumbai has been assailed in this OA. The Applicant has prayed to quash and set aside the transfer order and to allow him to continue at Door Darshan Kendra, Nagpur till

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the end of the academic session. The applicant also has prayed for staying the portion of the impugned transfer order as interim relief. At the time of initial hearing orders to maintain statusquo for a fortnight i.e. upto 17/10/2000 were passed and notice issued to the respondents to file their reply on the interim relief.

2. The applicant is presently working as Assistant Station Director, Door Darshan Kendra, Nagpur. He belongs to class-I cadre. The Transfer order has been passed by Respondent No.2 i.e. Director (Administration) of Prasar Bharti Corporation of India. The order was served on the applicant on 26/9/2000. The applicant has taken the following grounds for setting aside the impugned order. According to the applicant, he has been working as Assistant Station Director at Nagpur since last year and has not completed the tenure of three years at Nagpur. His wife is also working in the All India Radio, Nagpur. He has small children studying in the 1st and VIIth standard in Hadas High School. Transfer in the mid session will have adverse effect on his family and the future of his children. Also the applicant's elder brother has suffered serious brain injury and is admitted at the CIMS Hospital in Nagpur. He has therefore given a representation on 27/9/2000 to the respondents to keep his transfer order in abeyance till the end of the academic session. The representation is still pending.

3. The learned counsel for the applicant submits that the Prasar Bharti Bill was enacted by Government of India and the Prasar Bharti (Broadcasting Corporation of India) Act 1990 has come into force from 15/9/97. According to section-11 of this

Act, the employees presently working for the All India Radio and Door Darshan Kendra are required to be transferred to the Prasar Bharti Corporation in writing after getting the options from the employees concerned. Further, unless a specific direction from the Government transferring the Officers to Prasar Bharti, it will be deemed that the concerned officers are on deputation with Prasar Bharti and they will continue to be Central Government employees. It is the contention of the learned counsel that no option has been called from the applicant so far nor has he been transferred to Prasar Bharti by any official notification. He further argues that the salary and allowances of the applicant are still being paid from the funds of the Information and Broadcasting Ministry. Unless the applicant is absorbed in the Prasar Bharti Corporation, the Prasar Bharti Corporation has no jurisdiction to transfer the applicant. The Learned Counsel also has drawn my attention to the judgement of the Madras Bench of this Tribunal dated 25/8/2000 wherein similar transfer orders of the Prasar Bharti Corporation have been quashed and set aside. The Learned Counsel for the applicant maintains that he has not been relieved from duty till he filed the OA. On merits, the learned counsel is relying upon the judgement in the case of Director of School Education, Madras and Ors. V/s. O.Karuppa Thevan and Anr reported in 1994 Supp SCC 666 wherein the Apex Court directed that while effecting transfers, the effect on children of the employee studying should be given due weightage. The Learned Counsel has therefore prayed to quash and set aside the impugned transfer order.

4. The Learned Counsel for the Respondents has filed a reply and has vehemently opposed the grant of interim relief and has pressed to vacate the status quo granted to the applicant. The Learned Counsel submits that the applicant has been working in Nagpur since 2/1/84 in different capacities for 17 years. He was transferred twice in the capacity of Producer Grade-II, but he managed to get the transfer orders cancelled and he was retained at Nagpur. The same Prasar Bharti Corporation has granted promotion to the applicant as Assistant Station Director, and has changed the applicant's earlier posting on transfer cum promotion from Door Darshan Kendra, Itanagar to Door Darshan Kendra, Nagpur vide their orders dated 22/4/99 and the applicant accepted the promotion and the transfer to Nagpur. He did not raise the issue of jurisdiction of respondent no.2 or 4 at that time as it suited him. Now therefore when the same authority has transferred him to Mumbai, he cannot make a grievance of that. Having served for 17 years in one place, he has no right to stay at the same station. Being a Class-I Officer he is liable to be transferred anywhere in India. However, the grounds that the applicant's wife is also working in Nagpur and that his children are studying in school, therefore the transfer order is bad in law cannot be accepted. While there are instructions that husband and wife should be as far as possible be posted at the same place, it is not mandatory that they should be retained at the same place. It has been so held in the case of Union of India v/s. S.L.Abbas reported in at AIR 1993 SC 2444. It has been stated clearly in this judgement that Tribunals are not expected to go into transfer matters unless malafides are established or the transfer is made in violation of statutory provisions. In the present

case, there is no malafide or violation of statutory rules. It is in the interest of administration that the applicant has been transferred. It has been well settled by Apex Court that personal problems and family hardships cannot be a ground to challenge the transfer order issued in public interest.

5. The Learned counsel counters the argument of the applicant that the Prasar Bharti has no jurisdiction to transfer the applicant. He states that the applicant has exercised his option and has accepted the promotion granted by the respondents. He has given a clear undertaking that as and when he opts to stay on with the Ministry of Information and Broadcasting, his parent department, he would refund the amount received by him on account of his promotion. Hence, the applicant cannot make this a ground for cancellation of his transfer order.

6. I have heard the Learned Counsel for the applicant as well as the respondents. I would first like to deal with the point regarding the jurisdiction of Prasar Bharti Corporation to transfer the applicant. Under section-11 of the Prasar Bharti Corporation Act, the employees presently working under the Government are required to be transferred to the Corporation after getting options from the employees concerned. Only after getting their option the appointments of the officers and employees of the Corporation can be made under Section-9. Till such regular arrangement of appointments in the Corporation under the law are done, the existing employees are treated to be being on deputation with the Corporation. Though in practice, the applicants are working with the Prasar Bharti, they still continue to be employees of the Doordarshan Kendra

and All India Radio and have not been absorbed in the Corporation because the power under section-II of the Act has not been exercised by the respondents nor has any option been asked for from any of the applicants.

7. The respondents' plea that the applicants have given an undertaking which amounts to an option is not acceptable. The undertaking is given subject to the option to be exercised by the applicants. It cannot be treated as an option. Their lien also continues to be with the Government. It has also been argued that this applicant is getting the salary from Prasar Bharti funds and therefore Prasar Bharti is fully competent to transfer any official working against its posts. I am unable to agree with the stand of the official respondents. Infact, the applicant has even shown that he has been paid from the budget of Ministry of Information and Broadcasting for the Month of August,2000. Even though the applicant has got upgraded scales because he is in Prasar Bharti, that does not make him the employee of the Prasar Bharti until and unless he is absorbed as employee of the Prasar Bharti after exercising the power under section-II of the Prasar Bharti Act by the Government and that is why the undertaking has been obtained from these employees. Had the employees exercised their option, such an undertaking would not have been necessary at all. This is the view held by the Madras Bench of this Tribunal also in a bunch of DAs led by DA-293/2000 decided on 25/8/2000. I am in full agreement and do not find any reason to differ.

8. I therefore hold that these applicants cannot be transferred by Prasar Bharti Corporation at present without their being transferred to the Corporation under section-11 of the Act. Accordingly, the impugned order dated 15/9/2000 transferring the applicant is set aside in so far as the applicant is concerned.

9. In view of the decision as above I do not consider it necessary to go into the merits of the actual transfer as such. In the result the OA is allowed. No costs.

Shanta Shastri
(SHANTA SHAstry)
MEMBER(A)

abp.