

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

1/1

O.A. No. 357/1994
T.A. No.

199

DATE OF DECISION (0.12.1999)

Avdhesh Kumar Sharma Petitioner

Mr. P.P.Mathur, Proxy counsel to Advocate for the Petitioner (s)
Mr. R.N.Mathur
Versus

Union of India and Ors. Respondent

Mr. V.S.Gurjar Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

[Signature]
(N.P.NAWANI)
Adm. Member

[Signature]
(S.K.AGARWAL)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order : 10.12.1999

13

OA No.357/94

Avdhesh Kumar Sharma S/o Shri Mahavir Prasad Sharma presently posted as Assistant Director, All India Radio, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Government of India, Shastri Bhawan, New Delhi.
2. The Director General, All India Radio, Government of India, Akashwani Bhawan, Parliament Street, New Delhi.

.. Respondents

Mr. P.P.Mathur, proxy counsel to Mr. R.N.Mathur, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

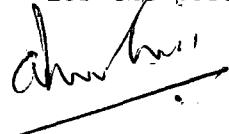
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for quashing of transfer order dated 22.7.1994 (Ann.A1) and further direct respondents not to transfer him from Jaipur and not to change his cadre from the post of Extension Officer (For short, EO).

2. The applicant's case is that he was initially appointed on 1.4.1972 as Field Reporter at All India Radio Station (for short AIR Station) Jaipur for which knowledge of Rajasthani Language was necessary as per Gazette Notification dated 5.8.1971 (Ann.A3 and 4) amending the AIR (Class-III Posts Recruitment Rules, 1964 (for short Rules of 1964). The applicant was promoted to the post of EO on ad hoc basis on 29.3.1979 and was thereafter reverted on 11.1.1991 on the ground that he has not been selected for the post of EO. It is contended that correct method of recruitment to the



post of EO was not adopted in that instead of deciding suitability for a particular State and Station, assessment belonging to Hindi zone was prepared. The applicant challenged the recruitment before Additional District Judge No.5 and the case was decided in his favour on 16.9.1984, directing respondents that fresh DPC should be convened accepting that for the post of EO (Family Welfare) at AIR, Jaipur, knowledge of Rajasthani was essential and he should be properly and fairly considered. As the direction has not been complied with, the applicant had to file an Execution Petition which came to be decided by this Bench of the Tribunal on 4.11.1987 in TA/1788/86 after which vide order dated 24.2.1988 the applicant was appointed as EO on a probation for two years (Ann.A5). It is further stated that Indian Broadcasting (Programme) Service (for short, IBPS) was created in 1990 and the applicant was given ad hoc promotion to that service and posted as Assistant Director at AIR, Jaipur. However, he was reverted on 18.7.1994 (Ann.A2) and it was mentioned that posting orders will be issued by respective Directorates. As a consequence, the DG, AIR (respondent No.2) issued the impugned order dated 22.7.1994 reverting the applicant to his post of EO and posted him to Sawai Madhopur from his present posting at Jaipur. The case of the applicant is that there is no post of EO at Sawai Madhopur and on enquiry, he was informed that he has been posted on the post of Programme Extension (for short PEX) which is equivalent to EO, which is illegal, unjustified, unreasonable and contrary to rules as he was appointed as EO which involves specific work on family planning (Ann.A7) whereas the duties of PEX are different (Ann.A8). He cannot, therefore, be transferred to the post of PEX, moreover, family welfare unit does not exist at Sawai Madhopur and exists only at Jaipur.

3. Respondents filed a reply. A preliminary objection has been taken that in view of the subsequent OA filed by the same applicant, registered as OA No.423/94, this application has become infructuous. It has been stated that this OA is not sustainable in view of the fact that the controversy raised is with regard to transfer from Jaipur to Sawai Madhopur as a result

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19

of reversion from the Junior Time Scale of IBPS and the challenge to the transfer through this OA is totally misconceived and devoid of any merit. Consequent upon framing of IBPS Rules, 1990 published in the Gazette dated 5.11.1990 (Ann.R1), the cadre of EO and Farm Radio Officers (for short, FRO) got merged with that of PEX. The Recruitment Rules of PEX clearly provide that PEX include EOs and such other allied categories of the posts. This fact is clear from the notification dated 31.12.1993 (Ann.R2) issued by the Ministry of Information and Broadcasting (for short MIB). Further, cadre of EOs and FROs have been declared as dying cadre and any vacancy arising as a result of promotion etc. of these will be filled up from the cadre of PEX. Since there is no separate cadre of EOs in existence in AIR, the applicant has been posted on reversion at AIR, Sawai Madhopur and the existence or non-existence of post of EO at that place does not make any difference. Moreover, the posts of PEX, FRO and EO in AIR carry transfer liability to any place in India and the MIB has vide circular No. 310/78/75-B(D) Vol.II dated 14.7.1981 has issued guidelines for the transfer policy (Ann.R3). There are more than 200 radio stations in the country, some of them located in remote areas and stations are categorised with tenures of 4 years at difficult stations and 2 years at others and Programme Officers of AIR including EOs are liable to be transferred to any station depending upon programme requirements in public interest and or administrative exigencies. The Apex Court of the land has also held that when a public servant is transferred, he must comply with it and if there be any genuine difficulty, represent for its reconsideration. It has also been stated that the applicant has filed another OA, registered as OA No.423/94 challenging his reversion from the post of JTS of IBPS and this Tribunal passed the order of maintaining status-quo thereupon and following this the Director General, AIR has issued suitable order staying the reversion. This OA has, therefore, become infructuous and the same deserved to be dismissed without going into the merits of the case.



As regards the reversion of the applicant, it has been stated by

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the respondents that the DPC did not recommend the applicant for regular promotion to JTC and, therefore, he was reverted from the post he was holding on ad hoc basis. On reversion, he was posted at AIR, Sawai Madhopur. As already mentioned, the post of PEX by its very definition includes EO (Ann.R1) and, therefore, the existence or non-existence of the post of EO at Sawai Madhopur does not have any bearing on the controversy raised by the applicant and he could be transferred at any AIR station in administrative exigencies and/or public interest. That the applicant was appointed as EO at Jaipur does not confer any right in favour of the applicant to be retained at Jaipur for all time to come.

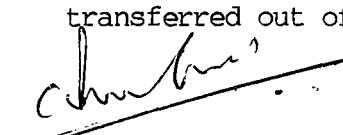
4. We have heard the learned counsel for the parties and have carefully gone through the records.

5. It has been brought to our notice by the respondents (and it has not been controverted by the applicant by filing any rejoinder) that the applicant has filed another Original Application No.423/94 in this Tribunal in which he has challenged his reversion from the junior time scale of IBPS effected through MIB order dated 18.7.1994 (Ann.A2) and it has also been stated that has been able to get an interim relief whereby such reversion seems to have been stayed. In view of this, we are going to concentrate only on his prayer for quashing the order dated 22.7.1994 (Ann.A1) under which he has been posted on reversion to AIR Sawai Madhopur from AIR, Jaipur.

6. It has been contended on behalf of the applicant that since he was appointed and posted at Jaipur as EO, he can neither be transferred to any other place nor his cadre can be changed from that of EO. On the other hand, it has been stated on behalf of the respondents that consequent upon framing of IBPS Rules, 1990 published in Gezette of India dated 5.11.1990 (Ann.R1) the cadre of EO and FRO stand merged with that of PEX. Moreover, the recruitment rules of PEX clearly provide that PEX include EOs and such other allied category of posts which fact is clear from the notification dated

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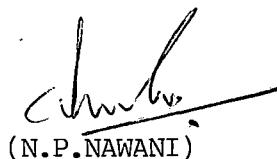
31.12.1993 (Ann.R2) issued by MIB. It has also been stated that the cadres of EO and FRO have been declared as dying cadres and any vacancy arising out of these these will be filled from the cadre of PEX. In view of this, there exist no separate cadre of EO and the applicant could very well be posted at AIR, Sawai Madhopur on reversion and the question whether any post of EO exist or does not exist at AIR, Sawai Madhopur is of no consequence. We have perused the Gazette of India dated 5.11.1990 relating to Information and Broadcasting (Programme) Service Rules, 1990 (for short IBPS) and find that under Rule 2(c)(i) Departmental Candidates have been defined as "officers appointed on regular basis in consultation with the Commission or on the recommendations of the Departmental Promotion Committee, and who hold posts on regular basis or hold, lien in Group 'A' Programme cadre of All India Radio and Doordarshan." Further, under Rule 2(k) it has been stated that "Programme Executive means those officers regularly appointed to a grade so designated in the pay scale of Rs. 2000-3500 in the media, including Programme Executive as well as those similarly appointed but designated as Farm Radio Officers and Extension Officers". We are, therefore, of the opinion that the respondents were within their rights to post the applicant to AIR, Sawai Madhopur. Even otherwise, we do not feel much weight in the assertion of the applicant that once he was appointed as EO at AIR, Jaipur, he just could not be transferred out. For that to happen it must mean that EO at AIR, Jaipur was an isolated post and not part of the cadre of EO which has its members spread all over the AIR Station throughout the length and breadth of the country. It would have further meant that the applicant could not have been promoted even on ad hoc basis, to the JTS of IBPS as he would not have become part of the cadre of PEX subsequent to the Notification of 5.11.1990. It is also not that the applicant was initially recruited for the post of EO, AIR itself; he was appointed on promotion to the said post and was earlier Field Reporter, AIR as can be seen from order dated 24.2.1988 (Ann.A5) and this also does not support his contention that he could not at all be transferred out of AIR, Jaipur.



20

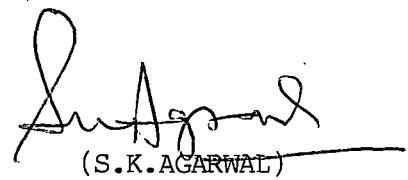
7. In view of above discussion, we find no reasons to interfere with the impugned order dated 22.7.1994 issued by the D.G., AIR (Ann. Al) and we accordingly dismiss the Original Application. Respondents are free to implement the said order qua the applicant subject to conditionalities, if any, imposed by the alleged stay order in Original Application No.423 of 1994, said to have been registered in this Bench of this Tribunal.

8. No order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member