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OA/291/00759/2015
with MA/291/00027/2016

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

OA/291/00759/2015
with MA/291/00027/2016

Order Reserved on : 15.03.2016

Date of Order: 06.04.2016

Coram

Hon'ble Ms. Meenakshi Hooja, Member (A)

Bal Krishan Sharma son of Shri Ghisalal Sharma aged about 46 years, resident of 173-A, Surya Nagar, Taron Ki Koot, Tonk Road, Jaipur, presently working as Announcer Gr. III, All India Radio, jaipur.

.....Applicant

(By Advocate Mr. Anupam Agarwal)

VERSUS

1. Union of India through the Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi 110001
2. The Director General, All India Radio, Directorate, Sansad Marg, New Delhi 110001
3. The Additional Director General (West Region I & II) All India Radio, New Broadcasting House, Backway Reclamation, Mimbal- 400020
4. The Station Director, All India Radio, 5, Park House, M.I. Road, Jaipur
5. Shri Sudhir Rakheja, Station Director, All India Radio, 5, Park House, MI Road, Jaipur.

.....Respondents

(By Advocate Mr. N.C. Goyal)

ORDER

This OA has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 challenging the orders of transfer and

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relieving dated 06.10.2015 and transfer order as modified by order dated 27.11.2015 (all filed as Annexure A/1), seeking the following reliefs:

- (i) It is therefore prayed that the impugned orders of transfer and relieving dated 06.10.2015 as modified by order dated 27.11.2015 may kindly be quashed and set aside. Respondents should be directed to allow the applicant to join his duties and thus work at Jaipur as before. They should further be directed to pay salary and other benefits since then till date as per rules. Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

2. When the case came up for hearing and consideration, Ld. Counsel for the applicant, with reference to points raised in the Original Application, submitted that the applicant is working on the post of Announcer which is in the category of Artist in AIR/Doordarshan. He was initially appointed as Announcer (Artist Category) in 1991 at Jhalawar and later on was transferred to Jaipur and Nagaur and lastly posted at Jaipur from 20.03.2002. Counsel for applicant submitted that the applicant was transferred from Jaipur to Mount Abu but even a copy of transfer order was not communicated to him and he was directly given the relieving order dated 06.10.2015 and the applicant himself obtained a copy of the order under RTI. He further submitted that even the respondents have admitted in the reply that the copy of transfer order was not given to the applicant, but it was only uploaded on the website of AIR. The applicant was relieved vide order dated 06.10.2015 (Annexure A/1). Thereafter the applicant made a representation dated 07.10.2015 (Annexure A/2) against the relieving order dated 06.10.2015 (Annexure A/1) but no decision has been taken

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on his representation, as evident from the reply dated 23.10.2015 to his RTI application dated 07.10.2015 (Annexure A/2). Counsel for applicant then referred to Annexure A/3 which is the list of difficult stations where both Jhalawar and Nagaur are listed at Serial No. 49 and 50 respectively and Mount Abu (Rajasthan) is also listed at Serial No. 69. In this context, it was contended that even after doing two tenures at difficult station, the applicant was again sent to a difficult station.

3. Counsel for applicant further contended that the transfer order and relieving order dated 06.10.2015 (Annexure A/1) are both against the statutory provisions and also based on malafide. With regard to violation of statutory provisions, counsel for applicant submitted that Announcer (Artist) category are recruited at local level and their services are not transferable as per the instructions regarding filling up of vacancies contained in letter dated 10.05.1989 (Annexure A/4). At this juncture Counsel for respondent objected that Annexure A/4 as mentioned in the Original Application was not enclosed with the copies of OAs supplied to the respondents and therefore, counsel for respondent cannot argue with reference to the same. In this context, counsel for applicant submitted that all 05 respondents had been given the copies along with Annexure A/4 but if any Annexure was missing, the same could have been asked for, instead of making it a serious objection, and in any case these are the instructions of the respondents themselves.

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4. Counsel for applicant further referred to Annexure A/5 which is response dated 28.02.2015 in which information has been denied to a query made under RTI regarding the transferability of Announcers, only on the ground that the information sought for is not specific. He further referred to Para (iii) to (x) of letter dated 14.07.1981 (Annexure A/6) which is transfer policy and submitted that as per Para (iii) the transfer of Announcer who are locally recruited cannot normally be made as per the policy. Counsel for applicant also referred to the order dated 27th August, 2003 (Annexure A/7) by which transfer of Shri Ashok Kumar Parashar, Announcer has been cancelled, wherein it has been stipulated that transfer of an Announcer shall be either on his willingness or on the basis of longest stayee in any AIR Station in Rajasthan. The applicant is not the longest stayee at Jaipur as evident from the details given in Annexure A/13 and even Para (ix) of the policy has been violated. Thus the transfer has been made against policy guidelines and statutory provisions.

5. Regarding malafide, counsel for applicant contended that respondent No. 5 presently posted as Station Director was earlier also posted at Jaipur as Assistant Station Director in charge of the post of Station Director and was always annoyed with the applicant who is a whistle blower and an RTI activist. The applicant had made certain complaints (in the year 2013- reference Annexure A/8) which were being inquired into as may be seen from letter of

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Vigilance Wing dated 22.11.2013 (Annexure A/8), and the respondent No. 5 is prejudiced because the inquiry was initiated on that basis and is still pending. Counsel for applicant further submitted that the respondent No. 5 had also made a number of complaints and reports against the applicant which were rejected by the authorities as evident from note sheet dated 05.04.2011 (Annexure A/9). Later when the applicant made a complaint dated 09.01.2015, respondent No. 5 only reluctantly forwarded it to higher authorities. The applicant again submitted a complaint dated 29.06.2015 in which it was clearly mentioned that he apprehended his transfer at the behest of the Station Director but the same was not even forwarded as clear from letter dated 07.07.2015. And soon thereafter just after a few days, he was transferred to Mount Abu on 06.10.2015 even though there was no post of Announcer at Mount Abu on the that day, as the post was shifted from AIR Jaipur to AIR Mount Abu only later vide letter dated 07.10.2015 (Annexure A/11). Respondent No. 5 also sent a list of persons in the Announcer Category to the DG - AIR along with letter dated 05.10.2015, even though no such list was called for which shows his malice.

6. On these grounds, counsel for applicant, alleged that transfer has been made clearly out of annoyance and malice and against statutory provisions and prayed for the cancellation of all orders as at Annexure A/1.

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7. Per contra, ld.counsel for respondents contended that there is no violation of any statutory provisions in the transfer of the applicant and the transfer and relieving orders at Annexure A/1 cannot be said to be out of mala fide. He further submitted that the transfer order of the applicant from AIR, Jaipur to AIR Mount Abu was issued by the competent authority (who is much higher than Respondent No. 5) keeping in view the urgent requirement of exigencies of work as evident from letter dated 5th October, 2015 of the Director General, AIR (enclosed with Annexure A/12). The transfer order was duly uploaded on the website of AIR and the Respondent No. 5 relieved the applicant to enable him to join his duties at Mount Abu. Later, on the representation made by the applicant, the order of transfer was modified to Kota. Counsel for applicant further contended that though Annexure A/4 was not enclosed with the copies of the OA supplied to the Respondents, but it is clear that the post of Announcer is a Group- C post and not a Group- D post. The applicant was initially appointed at Jhalawar and later when he was transferred to Barmer, he did not join at Barmer and was accommodated at Nagaur. Further it was emphasized by the counsel for respondents that the applicant has been at Jaipur from 1993 to 1998 and thereafter continuously from 2002 onwards. With regard to guidelines referred to by counsel for applicant at Annexure A/6 letter dated 14.07.1981, counsel for respondents submitted that these are guidelines but subject to exigencies of public service. The applicant was transferred to Mount Abu in view of the urgent requirement of certain

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programmes of AIR Jaipur required to be relayed in Mount Abu. He further submitted that the representation of the applicant was duly considered by the authorities and vide order dated 27.11.2015, the transfer order dated 06.10.2015 (Annexure A/1) was partially modified and the applicant was transferred to AIR Kota instead of AIR Mount Abu.

8. With regard to malafide, learned counsel for respondents submitted that no case for malafide especially against Respondent No. 5 has been made out by the applicant. When the information regarding the persons available at Jaipur to be posted to Mount Abu was asked for, the Respondent No. 5 vide his letter dated 5th October., 2015 did not recommend or suggest the name of the applicant and the list of Announcer at Jaipur was enclosed for reference of the authorities and not for any malafide purpose. He further submitted that as far as the complaints submitted by the applicant in the year 2013 are concerned (filed as part of Annexure A/8), it is apparent from letters dated 13.12.2013 and 23.09.2013 that the complaints do not pertain to Respondent No. 5 at all rather they concern certain other former Directors and officials and therefore, the question of mala fide and malice does not arise and merely not forwarding one of the complaints dated 29.06.2015 is no basis to conclude that the respondent No. 5 is biased and the transfer has been made out on mala fide at his behest. Counsel for respondents reiterated that the transfer of the applicant has been made in public exigencies and after considering his representation

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has been partially modified from Mount Abu to Kota and contended that there are no grounds to cancel the orders as prayed for in the OA.

9. Considered the contentions and perused the record. The two main issues that require consideration is whether the transfer order of the applicant dated 06.10.2015 (Annexure A/1) is violative of statutory provisions and further whether the transfer order and the relieving order dated 06.10.2015 are out of prejudice and made on malafide basis.

10. In this context, it is noted that the transfer order, (dated 06.10.2015) transferring the applicant from Jaipur to Mount Abu was on the basis of requirement of broadcasting programmes of AIR Jaipur from Mount Abu, as brought out in the reply and evident from letter dated 5th October 2015 (filed with Annexure A/12) and 7th October, 2015 of the office of the Director General, AIR (Annexure A/11). Further not only the applicant, but other officials were also transferred vide order dated 06.10.2015 as it clear from Annexure A/1, also filed as Annexure R/1 by the respondents. (Though it is noted that the transfer of some of the officials transferred in the same list have been cancelled and that of the applicant has also been partially modified). It has been the contention of counsel for applicant that as per guidelines and instructions dated 10.05.1989 (Annexure A/4) persons in Artists category, including Announcers, being locally recruited are not transferable and further as per letter dated 14.07.1981 (Annexure

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A/6) especially Para (iii) they, being local recruits should normally not be transferred except on promotion and request and as per Para (ix), normally longest stayee should be transferred first. It was contended that this has also been reiterated vide letter dated 27th August, 2003 (Annexure A/7) while cancelling transfer of one Announcer. Per contra, counsel for respondents had contended that Annexure A/4 was not furnished with the OA and Annexure A/6 dated 14.07.1981 is a guideline and moreover, the post of Announcer is a Group -C post, not Group- D and the applicant had a very long stay continuously from 2002 at Jaipur and was earlier also from 1993 to 1998 at Jaipur, and as the official was transferred in public interest and administrative exigencies, due to urgent requirement of work at Mount Abu, it cannot be said that there was any violation of statutory provisions, and guidelines are there, but they are subject to overall public exigencies as mentioned in the guidelines themselves and moreover the order has been issued by the competent authority. In this regard, there is force in the contention of the counsel for respondents that the transfer was made in the exigencies of work at Mount Abu as evident from letter dated 5th October, 2015 (filed with Annexure A/12) issued by Director General AIR, and made by the competent authority and even guidelines at Annexure A/6 provides that guidelines are subject to exigencies of public service. Thus it cannot be held that there was any gross violation of guidelines, let alone of any statutory provisions.

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11. As far as the question of malafide is concerned, the main contention of the counsel for applicant has been that the applicant is an RTI Activist and whistle blower and that certain complaints made by him in the year 2013 had become the basis of an enquiry and are still pending (reference Annexure A/8) and had prejudiced the authorities especially respondent No. 5 who was also ASD earlier, before becoming Station Director AIR, Jaipur. It was further contended that Respondent No. 5 did not take any action when certain officials misbehaved with the applicant in his presence and only reluctantly forwarded his complaint dated 09.01.2015 to the authorities and did not even forward his complaint dated 29.06.2015 (filed with Annexure A/10) in which the applicant was clearly indicating that Respondent No. 5 was annoyed and was trying his best for the transfer of the applicant and subsequently the applicant was transferred by Annexure A/1 dated 06.10.2015 even though he was not the longest stayee as apparent from Annexure A/13. It has also been contended that Respondent No. 5 had unnecessarily forwarded a list of Announcers with letter dated 05.10.2015 (enclosed with Annexure A/12) even though it was not required. On the other hand counsel for respondent had argued that the complaints of the year 2013 were against former Directors regarding claiming HRA etc and Respondent No. 5 was not at all involved in those matters. Further, the Respondent No. 5, being Station Director had only sent information as required vide letter dated 05.10.2015 (Annexure A/12) and it is the competent authority, who transferred the applicant to Mount Abu in public

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exigencies as per requirement of the work. In this context, it is clear that complaints made by the applicant in 2013 relates to other Directors Shri Pratap Singh and Shri Atul Gupta and are mainly regarding claiming of HRA and cannot be logically accepted as prejudicing the Respondent No. 5 against the applicant. Moreover, one complaint of the applicant dated 09.01.2015 was forwarded by Respondent No. 5, but it has not been shown by the applicant as to what was the outcome. Further though complaint dated 29.06.2015 was not forwarded, being considered a personal matter, that alone cannot be said to be the basis of prejudice or malice. Had that so obviously been the case, probably the applicant would not have had a continuous stay at Jaipur from 2002 to end of 2015 (i.e. 13 years) and earlier from 1993-1998 with just a two years stay at Nagaur, that too on his own choice, after he did not join at Barmer. Moreover, the transfer order has been issued by the competent authority, who is much higher than the Respondent No. 5 and no malafide are therefore proven or established. Further, on the basis of the representation of the applicant, he has been accommodated at Kota vide order dated 27.11.2015 by partially modifying order dated 06.10.2015 and Kota is also not a difficult station, as per list at Annexure A/3.

12. Thus in view of the above analysis there are no grounds to set aside transfer order of the applicant dated 06.10.2015, modified transfer order dated 27.11.2015 and earlier relieving order dated 06.10.2015 (all filed as Annexure A/1)

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13. With reference to MA No. 291/00027/2016 it was argued by Id.counsel for applicant that vide order dated 08.12.2015 in which interim directions were given by the Tribunal not to relieve the applicant with regard to order dated 27.11.2015, it he had not been relieved till date, but the respondents failed to take note of the directions and he was not allowed to join duties at Jaipur, which was the logical course to take, and then not relieve him for Kota in view of the interim directions. The counsel for respondents replied that the applicant already stood relieved from Jaipur to Mount Abu vide relieving order dated 06.10.2015 and thus there was no question of taking him back on duty at Jaipur. The applicant never joined at Mount Abu and the interim direction would have been enforceable had he joined at Mount Abu, because his relieving order from Jaipur to Mount Abu vide order dated 06.10.2015 was never stayed. He therefore prayed for the dismissal of the MA.

14. In this context, it is noted that the Interim directions were given at admission stage itself on 08.12.2015 even before issue of notices to the Respondents. The respondents have now clarified that though the applicant was relieved from Jaipur to Mount Abu on 06.10.2015 but he never joined at Mount Abu, so there was no question of taking him back on duty at Jaipur. He could only have been relieved from Mount Abu, but it was not possible as he never joined at Mount Abu. In view of the above position, that the applicant never joined at Mount Abu the question of applicant being

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entitled to resume duties at Jaipur does not arise and therefore, the MA has no force and is hereby dismissed. However, this would not bar the applicant from approaching the respondents and/or making a fresh representation regarding the treatment to be accorded for the period from 06.10.2015 to 08.12.2015 and thence onwards, and in case, such a representation is received by the Respondents within 15 days from the date of this order, it may be decided as per law.

Accordingly, OA is dismissed and MA No 291/00027/2016 is also dismissed with the liberty to the applicant as above. No order as to costs.


(Ms. Meenakshi Hooja)
Administrative Member

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