

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH:JAIPUR. (3)

O.A.No.47/1998

Date of order: 17.2.98

Mumtaz Ahmed Khan S/o Shri Noor Mohd. Khan, aged about 50 years, P/o Hasanpura, C-26, Jaipur, at present worked as Transmission Executive, All India Radio (C.E.S.), Jaipur.

: Applicant
Versus

1. Union of India through the Secretary to the Govt., Ministry of Information and Broadcasting, Parliament Street, New Delhi.
2. Prasar Bharti (Broadcasting Corp. of India), through Director General, All India Radio, Akashwani Bhawan, Parliament Street, New Delhi.
3. The Station Director, All India Radio, M.I.Road, Jaipur.
4. Mr. Mohan Mahirchandani, Station Director (C.E.S.), All India Radio, Jaipur.

: Respondents

Mr. P.V.Calla, counsel for the applicant
Mr. V.S.Gurjar, counsel for the respondents

CORAM:

HON'BLE SHRI FATAU PRAKASH, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI FATAU PRAKASH, MEMBER (JUDICIAL)

The applicant Shri Mumtaz Ahmad Khan in this OA has challenged his order of transfer dated 11.1.1998 (Annex.A/1) by which he has been transferred from Jaipur to Barmer in his capacity as Transmission Executive with the respondent All India Radio.

2. Before stating the facts of this OA it is to be mentioned that the applicant has also filed a separate OA No.61/98 Mumtaz Ahmed Khan Vs. Union of India and others in this Tribunal in which he has challenged the impugned order dated 20.1.1998 relieving him from Jaipur and to report him for duty to the Station Director/Engineer, All India Radio, Jaisalmer

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upon his promotion to the post of Programme Executive at All India Radio vide Directorate order dated 31.12.1997.

3. In the present OA the facts are that he was appointed as a Studio Executive in the respondent department and joined at Jaipur on 19.11.1970 under the control of Station Director, All India Radio, Jaipur. He was promoted as Transmission Executive on 14.5.1981. The grievance of the applicant is that in the past he was transferred from Jaipur to Udaipur on 9.2.1976 and was again transferred back to Jaipur on 17.3.1978. After promotion as Transmission Executive he was transferred to Suratgarh which was challenged by him in S.B.Civil Writ Petition No.1852/81 before High Court at Jaipur. According to the applicant, he was entangled in the case of theft of a Wall Clock in the office of Station Director, Jaipur and an FIR to this effect was also lodged by the Station Director. He was put under suspension with an intention to punish him after an enquiry which was challenged in the Civil Suit filed by him which suit was ultimately transferred to this Tribunal as TA No.1525/86. The applicant thereafter was reinstated on 31.3.1986 and the process of enquiry was withdrawn and accordingly the applicant was advised to withdraw the TA No.1525/86 which was withdrawn by him on 19.4.1987. The applicant avers that he remained under suspension for about 5 years; and after withdrawal of the case all benefits were given to him and he was reinstated. The applicant was again transferred from Jaipur to Suratgarh vide order dated 1.7.1987 which was also challenged by the applicant at Jodhpur Bench of the Tribunal. After his order of transfer and relieving was stayed by order dated 4.8.1987 of Jodhpur Tribunal but having been not complied with, the applicant filed a contempt petition No.104/87 in OA No.310/87.

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It is thus averred by the applicant that respondent No.4 who was the controlling authority at that time was impleaded as party by name and after tendering unconditional apology by respondent No.4 the contempt petition was dismissed on 23.1.1993 and notices issued against respondent No.4 were discharged. Thereafter OA No.310/87 was also decided and the impugned order of his transfer dated 1.7.1987 and order of relieving dated 9.7.1987 were quashed by order dated 29.7.93 of this Tribunal. It has, therefore, been averred by the applicant that respondent No.4 Shri Mohan Mahirchandani who later in the year 1989 was promoted as Station Director (CBS) AIR became annoyed with the applicant and by all means tried to get rid of him from Jaipur office. The applicant has also given version of writing a letter to the Minister of Information and Broadcasting about the financial irregularities committed by respondent No.4 and also the treatment meted out to him in his service including a delayed sanction of loan from GPF account besides being served by memos asking for explanations for his conduct. He has also given out in his pleading about the forgoing of his promotion to the post of Programme Executive on two occasions; one in the year 1984 and another in the year 1996 because of his being not accommodated at Jaipur while another official similarly promoted was accommodated at Jaipur in the year 1994. His representations were also rejected. The grievance of the applicant is that he has not been meted out the same treatment by the respondent department and now the respondents vide order dated 12.1.1998 have transferred him from Jaipur to All India Radio, Barmer in the same capacity i.e. of the Transmission Executive. He has, therefore, challenged this order dated 12.1.1998 as being contrary to the scheme of the Policy of Transfer as according to him the post of

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Transmission Executive is not a transferable post. He has also sought its setting aside on the basis of malafide on part of respondent No.4 besides being made in the mid session of the education of his children.

4. The respondents have opposed this application by filing a reply to which no rejoinder has been filed. It is the stand of the respondents that this application filed by the applicant is not maintainable as no cause of action has occurred in favour of the applicant to invoke the jurisdiction of this Tribunal for the reason that the order under challenge dated 12.1.1998 passed by the competent authority was never given effect to. It has been averred that the applicant having been promoted and posted at Jaisalmer vide order dated 20.1.1998 by the competent authority in consequence of his promotion order to the post of Programme Executive; this OA is misconceived and misleading and should be rejected on this ground alone. Respondents have also denied all the allegations made against respondent No.4 by the applicant and have urged that since the order under challenge dated 12.1.1998 (Annex.A/1) has not been given effect to and he has been promoted and transferred to Jaisalmer in compliance of order dated 31.12.1997 of the Director General, All India Radio, New Delhi, this OA deserves rejection.

5. I heard the learned counsel for the applicant and the respondents at great length and have examined the record in great detail.

6. As stated earlier, the other application No.61/98 filed by the applicant has been heard and is being disposed of by a separate order. In the present OA the respondents have filed

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the order of promotion of the applicant dated 31.12.1997 as at Annexure F/1 and has also filed the Memo dated 28.1.1998 (Annex.F/12) denying the applicant's right to receive the order of promotion to the post of Programme Executive.

7. It has been argued by the learned counsel for the respondents that since the applicant has been promoted and posted at Jaisalmer by the competent authority in consequence of the order dated 31.12.1997; this OA challenging the order dated 12.1.1998 (Annex.A/1) is misconceived and misleading and should be rejected. This argument of the learned counsel for the respondents does not tally with the stand taken by the respondents in the preliminary objections filed on 26.2.1998. In these preliminary objections it has been specifically stated by the respondents in para 4 that "It is also pertinent to mention here that in the instant case at hand, the applicant has been promoted and posted at a station different from the earlier on account of promotion. Therefore, the challenge to the transfer order ANNEXURE A/1 dated 12th Jan 1998 is misconceived and misleading. Moreover, the respondents have not acted upon in consequence of the order dated 12 Jan. 1998 as the same was superseded by the order dated 20th Jan.1998 whereby the applicant was promoted as "Programme Executive" and posted at All India Radio, Jaisalmer. Therefore, the original application merits rejection at the very threshold." Not only this, this stand has further been reiterated by the respondents in para 6 of the preliminary objections wherein the respondents have stated that "the applicant has intentionally and deliberately withheld the order dated 20 Jan. 1998 as the same has superseded the order dated 12 Jan.1998. Thus, the applicant is guilty of playing "fraud on court". From the perusal of this stand taken by the

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respondents it appears that the respondents are considering the order dated 20.1.1998 (Annex.E/14) as an order which supersedes the order of transfer dated 12.1.1998 under challenge in this OA. To comprehend the impact of this order dated 20.1.1998 it is necessary to reproduce the whole text of it which reads as under:-

"Consequent upon his promotion to the post of Programme Executive at All India Radio, Jaisalmer vide Directorate's Order No.4(10)/97-SI(E) (Order No.225/97-SI(E) dated 31.12.1997, Shri M.A. Khan, Transmission Executive in this office stands relieved of his duties from 17.02.1998 (A.N.) with the instructions to report himself for duty to the Station Director/Engineer, All India Radio, Jaisalmer.

He should return all official articles like Tapes, Books, Identity Card, C.G.H.S. Card etc. issued to him and ensure that nothing remains outstanding against him before leaving this station.

Sd/-
(MOhan Mahirchandani)
Station Director."

From the perusal of this order, it is made out that there is no reference whatsoever to the impugned order dated 12.1.1998 in the body of it or endorsements made to the Director General, All India Radio or to the Station Director/Engineer of Jaipur and Jaisalmer which exhibits that the respondents themselves are not sure of the stand which they should adhere to.

8. Further since by a separate order today; in OA No.61/98 filed by the applicant, the order dated 20.1.1998 (Annex.A/1) challenged in that OA having been quashed and the relief having been granted to the applicant in it, this OA filed by the applicant to challenge the order dated 12.1.1998 has become redundant. For this reason, there is no need to delienate upon any other allegations made by the applicant in



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the OA and denied by the respondents.

9. For all the aforesaid reasons and in view of the order passed by this Tribunal today in OA No.61/98 M.A. Khan Vs. Union of India and others; this OA having become redundant is hereby rejected with no order as to costs.


(RATAN PRAKASH)

JUDICIAL MEMBER