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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 61/98 199  
T.A. No.

DATE OF DECISION 17.7.1998

Mumtaz Ahmed Khan Petitioner

Mr. P.V. Calla Advocate for the Petitioner (s)

Versus

U.O.I. & Ors. Respondent

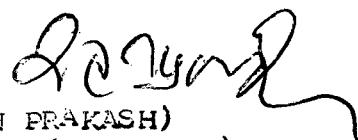
Mr. V.S. Gurjar Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. RATAN PRAKASH MEMBER (JUDICIAL)

The Hon'ble Mr.

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

  
(RATAN PRAKASH)  
MEMBER (JUDICIAL)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:JAIPUR BENCH:JAIFUR.

O.A.No.61/1998

Date of order: 17.2.98.

Mumtaz Ahmed Khan S/o Shri Noor Mohamad, aged about 50 years, working as Transmission Executive, All India Radio (CBS), Jaipur, R/o House No.26, Hasarpura, Jaipur.

: Applicant

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, New Delhi.
2. The Director General, All India Radio, Akashwani Bhawan, Sansad Marg, New Delhi.
3. The Director, All India Radio (Commercial Broadcasting Services), Jaipur.
4. The Director, All India Radio, M.I. Road, Jaipur.

: Respondents

Mr. P.V.Calla, counsel for the applicant

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

CORAM:

HON'BLE SHRI FATAU FRAKASH, MEMBER (JUDICIAL)

O R D E R

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

This application is an illustrative case of an employee who is claiming to stay at the same station even after serving at the same place for about 27 years and has forgone his two chances of promotion ordered earlier on the plea that a substantial proportion of similarly situated officials have been kept at the same station even after such a promotion.

2. The applicant herein Shri Mumtaz Ahmed Khan has accordingly sought to quash the impugned order dated 20.1.1998 (Annex.A/1) directing him to be relieved of his duties w.e.f. 17.2.1998 (A/N) consequent upon his order of promotion as Programme Executive at All India Radio,

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Jaisalmer dated 31.12.1997. He has also asked to direct the respondents to allow him to work on the post of Programme Executive at AIR (CBS) Jaipur. Alternatively, he has sought a direction against the respondents to adjust him at a place of his choice given by him in his representation dated 12.1.1998 (Annx.A/27).

3. Facts leading to this application in brief are that the applicant joined the respondent department of All India Radio in the Ministry of Information and Broadcasting on 19.11.1970 on the post of Studio Executive. On 14.5.1981 he was promoted to the post of Transmission Executive. It is the case of the applicant that when he became eligible for promotion to the post of Programme Executive he was for the first time promoted to the post of Programme Executive vide order dated 14.2.1994 (Annx.A/4) which he forgave by his letter dated 14.9.1994 (Annx.A/8) due to the illness of his wife. When the applicant was promoted to the post of Programme Executive for the second time vide order dated 30.9.1996 (Annx.A/15), he made request to the Station Director, Jaipur to adjust him against the vacant post of Programme Executive at Jaipur or to treat his letter dated 2.1.1997 (Annx.A/21) as his request to forgo the promotion. Accordingly, at both the occasions his promotion orders were cancelled by the respondent department.

4. It is the grievance of the applicant that the respondents have not only deprived the applicant of his earlier two chances of promotion to the post of Programme Executive' but by the impugned order dated 20.1.1998 (Annx.A/1) he has now been ordered to be relieved w.e.f. 17.2.1998 upon his promotion and posting as Programme



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Executive, Jaisalmer by Director General's order dated 31.12.1997. He having failed to get himself adjusted against vacant post at Jaipur has now been constrained to file this application to claim the aforesaid reliefs mainly on the ground of malafide on part of respondent No.4 Station Director, Jaipur who has earlier transferred him to Barmer on the post of Transmission Executive which has also been separately challenged by him in OA No.47/98 in this Tribunal.

5. The respondents have opposed this application by filing a written counter to which no rejoinder has been filed. The stand of the respondents has been that this OA is premature and not maintainable since an earlier OA No.47/98 filed by the applicant is pending consideration before this bench and that the applicant having remained posted at Jaipur for more than 27 years cannot now question his order of promotion and posting to Jaisalmer. It has also been averred that the representations made by the applicant were duly considered and replied to and that in few cases the affected individual officials have been kept at the same place of posting even after promotion. It is denied that respondent No.4 the Station Director is biased against the applicant or that the impugned order as at Anxx.A/1 is arbitrary or malafide. It has, therefore, been urged that the application deserves rejection.

6. I heard Shri P.V.Calla for the applicant and Shri V.S. Gurjar for the respondents at length and have examined the record in great detail.

7. In this OA the point for determination is:-



"Whether order dated 20.1.98 (Annex.A/1) relieving the applicant of his duties as Transmission Executive from 17.2.98 (A/H); consequent upon his promotion to the post of Programme Executive at All India Radio, Jaisalmer vide Directorate's order dated 31.12.1997; and to report for duty to the Station Director/ Engineer, All India Radio, Jaisalmer is arbitrary or malafide and liable to be quashed?"

8. Before taking up this issue, it is necessary to mention at the outset that the applicant filed the OA on 27.1.1998. On the first date of hearing i.e. 4.3.1998 a copy of this OA alongwith the documents was made available to the departmental representative who was present in Court in the related OA No.47/98. The respondents filed a preliminary objections on 5.3.1998 and in the presence of the learned counsel for the respondents on 9.3.1998 an order to the following effect was passed:-

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

The learned Counsel for the respondents states that he has filed reply to the OA in the Registry today and a copy of it has been delivered to the learned counsel for the applicant.

In view of the contentions raised by the learned counsel for the parties on the last date and keeping in view that the academic session of the children of the applicant is coming to an end by the month ending June, 1998, it would be in the interest of justice that the applicant is allowed to continue to be posted at Jaipur till the month ending June, 1998.

The OA stands admitted and the pleadings being complete, it may be listed for hearing on 3.7.1998."

9. Consequently on the date of hearing i.e. 3.7.1998 the learned counsel for the applicant argued that when the

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applicant was promoted to the post of Programme Executive for the first time vide order dated 14.1.1994 and posted to Barmer he made a representation on 21.3.1994 (Annex.A/5) to stay at Jaipur and communicated his difficulties. This representation was rejected by the respondents vide Annex.A/7 dated 1.9.1994 and he was simultaneously asked to give willingness to go on promotion or to forgo. The applicant finding no alternative had to intimate to forgo his promotion though according to the learned counsel for the applicant two officers viz., Smt. Neelam Mehta and Smt. Manimala Bhatnagar were also promoted and posted to All India Radio, Sawai Madhopur were accommodated and posted at Jaipur vide respondents' modified order dated 9.5.1994 (Annex.A/10). The applicant made a representation to the Minister concerned on 20.3.1995 (Annex.A/11), but the Station Director instead forwarded it to the Director General, All India Radio, New Delhi and informed the applicant vide memo dated 4.12.1995 that his request has been rejected by the Director General. Consequently, vide order dated 28.3.1996 (Annex.A/13) the promotion accorded to the applicant vide order dated 14.2.94 was cancelled. It is further argued by the learned counsel that thereafter vide order dated 30.9.1996 (Annex.A/15) the applicant was again promoted to the post of Programme Executive on regular basis as recommended by the DPC held on 6.9.1996 and vide order dated 11.10.1996 (Annex.A/16) was directed to hand over the charge of the post and ordered to be relieved w.e.f. 18.10.1996 to join at Alwar. He again made a representation through proper channel to the Director General, All India Radio on 15.10.1996 narrating that looking to his health and family circumstances, he may be retained at Jaipur. His representation was again turned down by the respondents vide



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Memo dated 29.11.1996 (Annex.A/18) and simultaneously he was directed that if he is not interested to go to Alwar on promotion he should give in writing to this effect. He accordingly submitted a representation on 5.12.1996 (Annex.A/19), but the Station Director asked the applicant as to whether he is willing to accept promotion and if he is not then he should give in writing within two days of the receipt of this Memo dated 18.12.1996 (Annex.A/20) to this effect. The applicant thereafter vide letter dated 2.1.1997 (Annex.A/21) gave in writing to the Station Director that as at present the post of Programme Executives are lying vacant at Jaipur and if he can be adjusted against any vacant post here, he is ready to accept the promotion, otherwise it should be treated as his request to forgo the promotion. Consequently the respondents cancelled his promotion vide order dated 27.2.1997 (Annex.A/23) and vide memo dated 25.3.1997 (Annex.A/22) the applicant was debarred also from consideration for promotion to the post of Programme Executive for one year w.e.f. 5.12.1996. The applicant thereafter again made a detailed representation to the Minister concerned on 5.5.1997 (Annex.A/24) through proper channel which the learned counsel for the applicant believes that it has not been forwarded and instead kept by the Station Director CBS, All India Radio, Jaipur.

10. It has further been argued that not only the applicant has been deprived of his promotion on earlier two occasions, but by the impugned order dated 20.1.1998 he has been ordered to be relieved w.e.f. 17.2.1998 without supplying him his order of promotion dated 31.12.1997 issued by the Director General's office in spite of his request made to the Station Director to obtain its copy. It has,

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therefore, been strenuously argued by the learned counsel that though the respondents have accommodated a number of officers by promoting and giving them posting at the same station; yet the applicant has not been treated similarly and it is because of the malafide on part of respondent No.4 that he has been ordered to be relieved w.e.f. 17.2.1998.

11. As against this, it has been vehemently argued by the learned counsel for the respondents that transfer is an incidence of service and the applicant who has remained at Jaipur for over 27 years cannot insist that on promotion he should be posted at Jaipur only. It has also been argued that law in this regard is also settled by Hon'ble the Supreme Court and the transfer order could be challenged only on the ground that either it is in violation of statutory rules and guidelines or is actuated by malice. It has been argued that the applicant has failed to substantiate his claim that respondent No.4 has malafide intentions and that only because of this reason he is being posted at Jaisalmer.

12. I have given due thought and consideration to the arguments advanced on behalf of both the parties.

13. It has been settled by Hon'ble the Supreme Court in the case of N.K.Singh Vs. Union of India and others, (1994) 28 ATC 246 (SC) that interference by Courts/Tribunals is justified only in cases of malafides or infraction of any professed norm or principle. It has, therefore, to be seen whether in this case any of the two conditions are satisfied. So far as the position of statutory rule or provision is concerned, the learned counsel for the

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applicant has drawn attention to the Policy dated 4.8.1991 (Annex.A/9) followed by the respondents department in the matter of transfers and postings. This policy is at Annexure I on page 316 of the All India Radio Manual Vol.II, Part-II. Clause (ii) of the Principles of Transfer Policy lays down that the normal tenure at stations/offices categorised as 'A' and 'B' will be four years and at stations/offices categorised as 'C' will be two years. Similarly, clause (ix) of this policy lays down that "when the question of transfer is considered, as a normal rule, a person with the longest continuous stay at the station, irrespective of the rank(s) held by him earlier, should ordinarily be transferred first. For this purpose, the services rendered at a Station as a Local recruit will not be taken into consideration for determining the length of continuous stay at that station. Also, the actual period of continuous service at the site(s) of installation(s) will be excluded for computation of continuous stay provided the period of stay at the installation is more than ninety days in a calendar year." Clause (x) of this policy lays down that "as far as possible, every employees will be posted to a category 'C' station at least once during his service" and clause (xi) of this policy lays down that "persons who already had a spell of posting as a 'C' station would not be posted to such a station a second time if there are candidates in the same grade who are still to be posted such a station. They may, however, be posted again on promotion." Accordingly, it is argued by the learned counsel that the applicant after being promoted to the post of Programme Executive has to remain at the same station i.e. Jaipur for four years.

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14. As against this, the argument of the learned counsel for the respondents has been that the Jaisalmer is not a 'C' category station and though some other officers have been retained at the same place of posting even after promotion to the post of Programme Executive; yet the applicant having completed more than 27 years at one place, he has been rightly posted on promotion to Jaisalmer.

15. It is now to be seen whether the arguments of the learned counsel for the applicant has any substance.

16. The argument of the learned counsel for the applicant that a substantial number of officials of the rank of Programme Executive have been posted at the same place on promotion to the post of Programme Executive does carry great weight. This is apparent from the order of the Directorate General, All India Radio, New Delhi dated 14.2.1994 (Annex.A/4) and Annexure-I which exhibits the names of officers of the level of Transmission Executive who have been accommodated and posted on promotion to the post of Programme Executive. The officers at serial Nos.7, 30, 31, 34, 35, 38, 40, 58, 61, 66, 92, 93, 95, 96, 98, 100, 103, 104, 105, and 106 have been kept at the same place of posting. Not only this, in Schedule 'A' attached with the OA, the applicant has filed a list of 30 officers who have been posted after promotion at the same station even though some of them have been there for more than 20 years. The argument, therefore, of the learned counsel for the applicant is not devoid of force that the applicant has been treated differently in the matter of posting while giving him promotion. This has not happened once. As analysed

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above, he was first promoted in the year 1994 and posted to Barmer. Second time he was promoted and posted to Alwar and this is the third time that he has been promoted and posted to Jaisalmer. On the earlier two occasions the applicant had to forgo his promotion since his requests to stay at Jaipur were not acceded to by the respondents and his problems were not given due consideration.

17. It appears that the applicant has been singled out to be moved of out of Jaipur. This is made out from the perusal of order dated 12.1.1998 (Annex.A/13) issued by the Director General, All India Radio, New Delhi whereby the applicant while working as Transmission Executive (G&P), Commercial Broadcasting, All India Radio, Jaipur has been transferred in the same capacity to All India Radio, Barmer with immediate effect. If there has been any bonafide on part of the respondent department, this order of transfer of the applicant as Transmission Executive from Jaipur to Barmer would not have come into being because on the one hand their case is that the applicant has been promoted by the Director General, All India Radio to the post of Programme Executive vide order dated 31.12.1997, a copy of which has not been supplied to the applicant by respondent no.4 inspite of his written request. Copy of this order dated 31.12.1997 has now been filed by the respondents as Annexure E/1 with their reply to the OA. One fails to understand that when the applicant has been promoted to the post of Programme Executive from the post of Transmission Executive vide order dated 31.12.1997, then how it is possible that order dated 12.1.1998 transferring him in the capacity of Transmission Executive from Jaipur to Barmer; could have come into existence. This action on part of the respondents does

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exhibit malafide.

18. Not only this, other important factors which have come to notice are that consequent upon the interim direction given on 9.3.1998 in this OA, the respondents have issued a chain of orders - one is order No.23/98-SI(B) dated 10.3.1998 issued by the Directorate General, All India Radio, New Delhi and thereafter Order No.JAI-CBS/21 (M.A.K.)/98-S/1093 dated 12.3.1998; third order is No.JAI-CBS/1(4)/98-S/1086 dated 10.3.1998 and fourth is order No.JAI-CBS/1(4)/98-S/ dated 30.6.1998. To judge the implications of these orders, which have been produced during arguments; it is necessary to reproduce them which are as under:-

"No.4(19)/94-SI(B) New Delhi, dated 10.3.1998

Order No.23/98-SI(B)

Pursuant to the interim Order dated 9.3.98 delivered by CAT Jaipur in OA No.61/98, Shri M.A.Khan, Transmission Executive, CBS AIR Jaipur is posted at Programme Executive at CBS AIR Jaipur against the post of PEK AIR Jaisalmer till 30.6.98. He shall be relieved on 1.7.98 with the direction to report at AIR Jaisalmer in pursuance of this Dte's earlier order No.225/97-SI(B) dated 31.12.97.

Sd/-  
(T.S.Nagi)  
Dy. Director of Adminis-  
tration for Director  
General."

"No.JAI-CBS/21 (M.A.K.)/98-S/1093 Dated: 12.03.1998

O F F I C E R O R D E R

Pursuant to the interim order dated 09.03.1998 by Hon'ble CAT, Jaipur in OA No.61/98 and in compliance to Director General, AIR's Order No.23/98-S.I.(B) file No.4(79)/94-S-I(B) dated 10.03.1998, Shri M.A. Khan, Transmission Executive, CPS, AIR, Jaipur joined as Programme Executive in the Pay Scale of Rs.6500-10500 (pre-revised Rs.3000-3500) in the forenoon of 10.03.1998 at CBS, AIR, Jaipur against the post of Programme Executive, Jaisalmer till 30.06.1998.

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