

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 08th day of March, 2011

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

1. **ORIGINAL APPLICATION NO. 514/2010**

Mamta Gupta wife of Shri S.N. Gupta, aged about 45 years, resident of 10/99, Mansarovar, Jaipur. Presently working as UDC, Akashwani Kendra, Jaipur (Rajasthan).

.....Applicant

(By Advocate: Mr. Amit Mathur)

VERSUS

1. Union of India through its Secretary, Information & Broadcasting, Akashwani Bhawan, Copernicus Marg, New Delhi.
2. Director General, Prasar Bharti, Broadcasting Corporation of India, AIR, Akashwani Bhawan, Sansad Marg, New Delhi.
3. D.D.G. (WR-i&ii), Prasar Bharti, Broadcasting Corporation of India AIR, Backway Reclamation, Mumbai.
4. Station Director, Broadcasting Corporation of India, M.I. Road, Jaipur.

.....Respondents

(By Advocate: Mr. V.S. Gurjar)

2. **ORIGINAL APPLICATION NO. 519/2010**

Santosh Mourya son of Late Shri G.L. Morya, aged about 50 years, resident of 17, Amrit Nagar, Sirsi Road, Jaipur. Presently working as UDC, Akashwani Kendra, Jaipur (Rajasthan).

.....Applicant

(By Advocate: Mr. Amit Mathur)

VERSUS

1. Union of India through its Secretary, Information & Broadcasting, Akashwani Bhawan, Copernicus Marg, New Delhi.
2. Director General, Prasar Bharti, Broadcasting Corporation of India, AIR, Akashwani Bhawan, Sansad Marg, New Delhi.
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4. Station Director, Broadcasting Corporation of India, M.I. Road, Jaipur.

.....Respondents

(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

By this common order, I propose to decide both these OAs as common question of facts & law is involved. For the purpose of deciding the matter ⁱⁿ issue, the facts stated in OA No. 514/2010 and order passed by Tribunal are noticed.

2. The applicants have filed these OAs against the order dated 18.06.2010 whereby they alongwith 13 other persons were transferred from Jaipur. When the matter was listed on 30.11.2010, this Tribunal in OA No. 514/2010 passed the following order:-

"The grievance of the applicant in this case is regarding the transfer order dated 18.06.2010 (Annexure A/1) whereby she was transferred from Jaipur to Chittorgarh and another order dated 22.11.2010 (Annexure A/4) whereby Station Engineer had requested the Director General to issue specific order in furtherance of the letter dated 11.08.2010 (Annexure A/3) whereby it was conveyed that the representation of the applicant had been considered sympathetically and competent authority had recommended that the applicant may not be transferred from Jaipur.

Learned counsel for the applicant has also brought to my notice a letter dated 26.11.2010, issued by the office of Director General, thereby recommending that the case of the applicant and one Shri R.K. Devnani may be considered sympathetically in view of the fact that such transfer order has been passed in middle academic session. The apprehension of the applicant is that pursuant to the impugned order dated 22.11.2010, the Station Engineer may relieve the applicant despite the fact that higher authority had directed the Station Engineer, who is competent to cancel the transfer, to consider the case of the applicant sympathetically.

I have given due consideration to the submission made by the learned counsel for the applicant. To me it appears that the apprehension of the applicant is misconceived as I see no reasons why the Subordinate authority should not honour the direction given by the

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higher authority. Be that as it may, before the matter is finally decided, Let notices be issued to the respondents returnable within a period of two weeks. The service of notice on the respondents shall be effected by the applicant through Hum Dust/Speed Post within a period of three days from today and submit proof thereof in the Registry within seven days. The respondents are directed to file reply within a period of ten days. In the meanwhile, the operation of the impugned order dated 18.06.2010 (Annexure A/1) is stayed till the next date of hearing.

Let the matter be listed on 14.12.2010."

3. Interim stay granted by this Tribunal was continued from time to time. It may be relevant to mention here that operation of the impugned order dated 18.06.2010 was also stayed by this Tribunal in OA No. 519/2010 on 07.12.2010 and the respondents were directed to maintain status quo qua the applicant in case he has not been relieved so far.

4. The respondents have filed reply. In the reply, the stand taken by the respondents is that the transfer of the applicants were made at the behest of the Joint Establishment Committee in its meeting held in the month of June, 2010, which recommended the transfer of the applicants who have the longest stay at Jaipur Station as well as there being no vacant post of UDC at the Station. It is further stated that such transfer was issued by the Head of Zonal Station for the 15 UDCs including the applicants. Thus there is no element of any illegality in the action of the respondents. The respondents have further stated that out of 15 UDCs, 11 UDCs have already joined at their respective stations and only 4 UDCs were due to join so far and two of them are applicants. The respondents have stated that it is not possible to retain the applicants at All India Radio Jaipur Station for want of vacancies of

UDC. Such direction given by respondent no.2 to cancel the transfer order and to accommodate the applicants could not be considered for want of vacancies of UDCs. It is further stated that the matter was referred to Respondent no. 2 followed by reminder to grant approval for retaining the applicant and other UDCs against the vacant post of Headclerk/Assistant, which is higher post than the UDCs but no such approval has been conveyed by Respondent no. 2. Thus according to the Station Engineer and Head of Department, it is not permissible and within his competency to retain the applicants at Jaipur for want of vacancies and to adjust them against the higher posts.

5. I have heard learned counsel for the parties and have gone through the material placed on record. From the material placed on record, it is evident that 15 UDCs including the applicants were transferred vide impugned order dated 18.06.2010 (Annexure A/1) and it only the applicants and other two persons who have not joined whereas 11 persons have already joined at their respective places. It is also not in dispute that such transfer was made on the recommendation of the Joint Establishment Committee and since the applicants have the longest stay, as such they were transferred. Therefore, action of the respondents cannot be faulted. It may be stated here that such transfer order was affected in the month of June, 2010. Thus it cannot be said that the applicants were transferred in mid session. Direction given by respondent no. 2 to retain the applicant at Jaipur was contrary to law as they applicants were surplus as there was no post of UDC at Jaipur. Thus they could not have been retained at Jaipur.



6. That apart in compliance of direction given by respondent no. 2, Station Engineer had recommended the case of the applicants for their retention at Jaipur on higher post of Head Clerk/ Assistant. Still respondent no. 2 had not granted any approval. Thus from the facts, stated above, it is evident that it is respondent no. 2 who is to be blamed for creating this peculiar situation whereby applicants were retained at Jaipur even though there was no vacant post of UDC against the public interest. Be that as it may, learned counsel for the applicants has argued that the situation has materially changed now and there are two posts of UDCs lying vacant at Jaipur, as such the applicant can be continued at Jaipur. Learned counsel for the applicant has argued that one Shri R.K. Meena has expired on 14.01.2010 whereas one Shri Ishwar Ram has retired on 30.11.2010. Thus the applicants can be adjusted now against the two available vacancies of UDCs. Learned counsel for the applicant submits that the applicant in OA No. 519/2010 is physically handicapped and as such his retention at Jaipur is justified.

7. I have given due consideration to the submission made by the learned counsel for the applicants. In view of the fact that two posts have become available and the cases of the applicants for their retention at Jaipur has been recommended to Respondent no. 2 pursuant to the direction given by him vide letter dated 26.11.2010 and respondent no. 2 has not taken any action in the matter, I am of the view that ends of justice will be met if the applicants are allowed to continue at Jaipur Station till the matter is not decided by respondent no. 2 in the light of the directions given by him vide letter dated 26.11.2010 and reference made by Station Engineer vide his

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letter dated 22.11.2010 (Annexure R/5) and subsequent letter dated 26.11.2010 (Annexure R/6). Ex-parte interim stay granted by this Tribunal while issuing the notices and continued from time to time shall remain operative till the decision is not taken by the respondent no. 2.

8. With these observations, both these OAs shall stand disposed of with no order as to costs.



(M.L. CHAUHAN)
MEMBER (J)

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