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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

23.08.2012

OA No. 197/2012 with MA 193/2012 & 256/2012

Mr. Raghunandan Sharma, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

MA 256/2012

Heard on this MA filed by the applicant for taking certain documents on record. The MA is allowed. The documents annexed with this MA be taken on record.

The MA stands disposed of accordingly.

OA No. 197/2012 with MA 193/2012

Heard learned counsel for the parties. The OA as well as MA are disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 23rd day of August, 2012

ORIGINAL APPLICATION No. 197/2012
With
MISC. APPLICATION No. 193/2012

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Ganpat Lal Balai son of Shri Ramchandra aged about 47 years, resident of Paladi Meena, Opp. Rajesh Coach Builders, Near Temple of Bada Ram Dev, Agra Road, Jaipur. Office of All India Radio (CBS), M.I. Road, Jaipur.

... Applicant

(By Advocate : Mr. Raghunandan Sharma)

Versus

1. Union of India through Secretary, Ministry of Broad Casting, New Delhi.
2. Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi.
3. Additional Director General (West Region: I &II), Akashwani, Prasaran Bhawan, Backway Riklemeshan, Mumbai- 20.
4. Station Director, All India Radio, M.I. Road, Jaipur.
5. Assistant Director (Programme), Commercial Broadcasting Service, All India Radio, M.I. Road, Jaipur.

... Respondents

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

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) Quashed and set aside the impugned order dated 15.03.2012 passed by respondent no. 4 whereby applicant was transferred from Commercial Broadcasting Service, Akashvani, Jaipur to DD HPT Bundi.
- (ii) Further directed to the respondents to follow the policy of transfer before transferring the employees.

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(iii) Any other appropriate order or direction which the Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case, may also kindly be passed."

2. Learned counsel for the applicant submitted that as per the transfer policy of the employees of Prasar Bharti dated 18.06.2007 (Annexure A/2), the longest stay employees at station should be transferred first but vide impugned order dated 15.03.2012 (Annexure A/1), the applicant was transferred without following the policy and Mr. Moti Lal Sharma and Mr. D.C. Mandia having the longer stay at Jaipur than the applicant, as per the policy decision these two persons should have been transferred first and then only the applicant should have been transferred but the respondents in the contravention of the policy illegally transferred the applicant, which is not sustainable in the eyes of law. He further argued that if there is any deviation in the transfer policy then it should be got approved at the highest level at Directorate but in the case of the applicant the approval at the highest level at Directorate has not been obtained. He further submitted that the daughter of the applicant is handicapped and she is not able to discharge his duties without the help of other person. Therefore, looking to the hardship of the applicant, the respondents should not have issued the transfer order in the first instance but if they have issued the transfer order, they should cancel it. Therefore, he

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requested that the transfer order of the applicant dated 15.03.2012 (Annexure A/1) should be quashed and set aside.

3. On the contrary, learned counsel for the respondents argued that transfer has been made by the competent authority without any ill-will or malafide. As per the transfer policy (Annexure A/2), the normal tenure at station/offices categorized as 'A' & 'B' will be four years and at stations/offices categorized as 'C' will be two years. The applicant admittedly has been working at Jaipur since 2006 and thus completed his tenure at Jaipur. He also submitted that the applicant had been at Jaipur earlier since 1993 till April 2004. Thus from 1993 till his transfer in 2012, he has been at Jaipur except a break from 2004 to 2006 when he was transfer to Barker ^{mv} on promotion to the post of UDC.

4. Learned counsel for the respondents further argued that it is a settled law that Courts/ Tribunals should not normally interfere in the transfer order unless it is based on malafide exercise of power or violate of any statutory provision (an Act or rule) or passed by an authority not competent to do so. To support his averment he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Gobardhan Lal**, 2004 (11) SCC 402 at page 407.

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5. Learned counsel for the respondents further argued that transfer guidelines/policy are for regulating transfer but it does not give any legal right to the applicant. The transfer policy at best may afford an opportunity to an officer or servant concerned to approach their higher authorities for redress but cannot have consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest. He further submitted that transfer is an incidence of service. The employer has a right to transfer an employee from one place to other place in the interest of work.

6. He submitted that Mr. Deep Chand Mandia and the applicant have the same date of joining at Jaipur i.e. 01.05.2006. Therefore, it cannot be said that Mr. Deep Chand Mandia has longer stay than the applicant. The matter of transfer has been decided by the Joint Establishment Committee in the light of the transfer policy, keeping in view the longest stay as well as administrative requirement of the station.

7. The learned counsel for the respondents also referred to the judgment of the Hon'ble Supreme Court in the case of **Union of India & Others vs. S.L. Abbas**, JT 1993 (3) SC 678. Para 7 of the judgment reads as follows:-

"7. Who should be transferred where, is matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it....."

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Thus he submitted that the present OA has no merit and it should be dismissed with costs.

8. Heard learned counsel for the parties and perused the documents on record and the case law referred to by the learned counsel for the respondents. The applicant has been transferred from Jaipur to Bundi vide order dated 15.03.2012 (Annexure A/1). It is an admitted fact that the applicant has been working at Jaipur since 2006 and as per the policy issued by the respondent department dated 14.07.1981, the normal tenure at Stations/offices categorized as 'A' and 'B' will be four years and at stations/offices categorized as 'C' will be two years. The applicant has completed his tenure at Jaipur and on completion of his tenure, he has been transferred out of Jaipur. The transfer order has been issued by the competent authority and there is no malafide on the part of the authority who has issued the transfer order of the applicant nor it is against any statutory provision (an Act or rule). I have also carefully perused the case laws referred to by the learned counsel for the respondents i.e.

(i) **State of U.P. vs. Gobardhan Lal**, 2004 (11) SCC 402 and
(ii) **Union of India & Others vs. S.L. Abbas**, JT 1993 (3) SC 678. The ratio decided by the Hon'ble Supreme Court in these two cases is squarely applicable in the present case. Accordingly in view of the facts & circumstances of the present OA and in view of the legal position laid down by the Hon'ble Supreme

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Court, I do not find any reason to interfere with the transfer order of the applicant dated 15.03.2012 (Annexure A/1).

9. Consequently, the OA has no merit and, therefore, it is dismissed with no order as to costs.

10. In view of the order passed in the OA, the MA No. 193/2012 is also dismissed.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ