

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/01001/2015

Indore, this Wednesday, the 14th day of March, 2018

HON'BLE MR. UDAY KUMAR VARMA, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Praveen Nagdive, S/o D.B. Nagdive, aged about 45 years,
Investigator Grade – I in, Audience Research Unit, All India Radio
(AIR) Indore (M.P.) **-Applicant**

(By Advocate – **Shri H.Y. Mehta**)

V e r s u s

1. Union of India through its Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi – 110001.
2. Prasar Bharti through C.E.O., P.T.I. Building, Sansad Marg, New Delhi – 110001.
3. The Director General, All India Radio, Parliament Street, New Delhi – 110001.
4. Station Director, All India Radio (AIR), Malwa House, Indore – 452001 **-Respondents**

(By Advocate –**Shri Surendra Pratap Singh**)

(Date of reserving order : 12.03.2018)

O R D E R

By Ramesh Singh Thakur, JM.-

This Original Application has been filed against the order dated 17.06.2015 (Annexure A-1), whereby the applicant has been

transferred to Audience Research Unit, All India Radio, Mumbai in the same capacity with immediate effect.

2. The applicant has sought for the following reliefs:

- “(i) To quash the impugned transfer order dated 17.06.2015 (Annex. A-1).*
- (ii) To direct the respondents to allow the applicant to join duties at Indore and to pay him regular salary.*
- (iii) Any other relief as the Hon’ble Tribunal deem fit in the circumstances of the case be granted.*
- (iv) Award cost of the litigation to the applicant.”*

3. Precisely, the case of the applicant is that he was holding the post of Investigator Grade – I in Audience Research Unit, All India Radio, Indore. However, in the impugned order he has been shown as Investigator, whereas his substantive post is Investigator Grade-I. The main ground of challenge is that the applicant is holding the post of Investigator Grade – I, which is a promotional post and carries higher pay scale than the post of Investigator. Therefore, it has been submitted that the order of transfer amounts to reversion.

4. The applicant has also submitted that earlier he had preferred Original Application No.499/2015 before this Tribunal, which was disposed of vide order dated 06.10.2015 (Annexure A-

6) granting liberty to the applicant to file a better application.

Hence, he has filed the present O.A.

5. The respondents have filed the reply. It has been submitted that the transfer order is not illegal, arbitrary or malafide. It has been further submitted that the present designation of the applicant is 'Investigator'. It is stated that prior to implementation of 6th Central Pay Commission, there were two grades of Investigator, i.e. (i) Investigator Grade-I in the pay scale of Rs.5500-9000, and (ii) Investigator Grade-II in the pay scale of Rs. 5500-'8000 and after implementation of recommendations of 6th CPC, both the grades have been merged as 'Investigator' in Pay Band:2 (Rs.9300-34800/-) with grade pay of Rs.4200/- w.e.f. 11.06.2014 [Annexure R-2 (filed as Annexure A-4 of OA)]. Therefore, the applicant was working on the post of 'Investigator' when the transfer order was issued.

6. The respondents have further submitted that the applicant was appointed as LDC at Indore and had completed 24 years of service at Indore and he has been transferred in the administrative interest and exigencies of the service. It has also been submitted by the respondents that against the sanctioned strength of 220 posts of

Audience Research cadre, only 85 posts are filled up. Therefore, the transfer has been done according to the need of administrative exigency at Mumbai.

7. It is pertinent to mention that the respondents have moved an MA No.201/00578/2017 for amendment to the counter reply filed by them on the ground that due to typographical error, the year of transfer policy had been mentioned in para 4.8, 5.3 & 5.4 as 2014, whereas the transfer policy issued by the Ministry of Information and Broadcasting is of 1981. The proposed amendment was allowed on 11.12.2017 and necessary amendment was carried out in para 12 of the reply to para 4.8 of O.A.

8. We have heard the learned counsel for the parties and also gone through the documents annexed with the pleadings.

9. It is an admitted fact that as per Annexure A-1 dated 17.06.2015, the applicant has been mentioned as Investigator, working in Audience Research Unit, AIR, Indore and he has been transferred to Audience Research Unit, All India Radio, Mumbai in the same capacity. With reference to this Annexure A-1, the specific reply of the respondents is that after implementation of

recommendations of the 6th CPC, the posts of Investigator-I and Investigator-II have been merged as Investigator with a grade pay of Rs.4200/- . Moreover, in the impugned Annexure A-1, the only reference regarding the transfer of the applicant is in the same capacity from AIR, Indore to AIR, Mumbai.

10. The counsel for the respondents have attracted our attention to Annexure R-2 (annexed as Annexure A-4 of OA) dated 11.06.2014, which is on the subject of merger of posts of Investigator Grade I and Grade II in Audience Research Cadres of the Prasar Bharati. The relevant portion of the order is as under:

“OFFICE ORDER

Subject: Merger of posts of Investigator Grade I and Grade II in Audience Research Cadres of the Prasar Bharati.

In connection with notification of Recruitment Regulations for the posts in Audience Research Cadres, it is noted that the posts of Investigator Grade I and Grade II have been placed in the same Pay Band : 2 (Rs.9300-34800/-) and Grade Pay Rs.4200/- as per the sixth Central Pay Commission. In addition, these two posts also have the similar nature of job assignments.

2. In view of the above, it has been decided to merge the posts of Investigator Grade I and Grade II in the Prasar Bharati Recruitment Regulations with the approval of Prasar Bharati Board in its 108th meeting held on 16th May, 2012. The merged posts is designated as “Investigator” with Pay Band: 2 (Rs.9300-34800/-) and Grade Pay Rs. 4200/- as per the sixth CPC. The number of posts in the new post of ‘Investigator’ shall be the sum total of the number of posts of Investigator Grade I and Grade II.

3. This issues with the approval of the competent authority.”

Thus, it is clear that the posts of Investigator Grade I and Grade II have been merged with the post designated as Investigator.

11. The counsel for the applicant has submitted that interim relief was not granted by this Tribunal in the earlier Original Application No.201/00499/2015 and vide order dated 06.10.2015 (Annexure A-6), the OA was disposed of with liberty to file a better application. The main contention of the applicant is that the respondents have filed short reply, wherein it has been indicated that the transfer has been done as per policy of 2014. Resultantly, this Tribunal had disposed of the earlier O.A taking into account the short reply filed by the respondents. However, on perusal of our order dated 06.10.2015 in OA No.201/00499/2015, as per the submission made by counsel for the applicant, the OA was disposed of as withdrawn with liberty to file a better application.

The relevant portion of the order is as under:

“2. We find that the Prasar Bharti is a necessary party in this case. Mr. Mehta, learned proxy counsel for the applicant, prayed for amendment of this Original Application for making Prasar Bharti as party-respondent and to make changes in the body of the Original Application as well as prayer portion.

3. In our considered view, he may file a fresh Original Application. Accordingly Original Application No.201/00499/2015 is allowed to be withdrawn and liberty

is granted to the applicant to file a better application within a period of one month from today.

4. *Mr. Mehta wants to challenge Annexure A/1, which has already been challenged in the instant case. Prayer is allowed.*

5. *Accordingly, the Original Application stands disposed of being withdrawn with liberty as aforesaid.”*

If this Annexure A-6 is seen minutely, the Tribunal has passed the order on the request of learned counsel for the applicant, although the counsel for the applicant had prayed for amendment in the OA for making Prasar Bharati as party-respondent and to make changes in the body of the Original Application as well as prayer portion. It is clear from the order dated 06.10.2015 that no reference has been given by this Tribunal regarding the short reply filed by the respondents. It is only on the prayer of counsel for the applicant, the OA No.201/00499/2015 was disposed of as withdrawn.

12. It is settled law that transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion

in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by malafides of infraction of any professed norms of principle governing the transfer which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personal management of all government departments. This must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated.

13. It is clear from the reply filed by the respondents that against the total sanctioned strength of 220 posts of Audience Research cadre, only 85 posts are filled up and as per the record available in the AIR (Admn.), only Mr. Rajneesh Arora was posted as Investigator Grade-II at AIR Mumbai. Therefore, the transfer of the applicant has been done according to the need of the administration and exigency of service at Mumbai. From the pleadings itself, we do not find any specific averments regarding the malafide on the part of the respondent department. Rather, it has come on the record that the applicant is working at Indore and has completed 24 years of service. Moreover, the services of the

applicant are required at AIR, Mumbai due to exigencies of the service.

14. The applicant has relied upon the judgment of Hon'ble Supreme Court in the case of **State of U.P. vs. Siyaram** (Civil Appeal No.5005 of 2004, decided on 05.08.2004) as well as the order of Hon'ble High Court of Madhya Pradesh in the case of **K.D. Gupta (Major) v. Union of India and others**, 1983 JLJ 458. However, in the instant case, there is no whisper of malafide in the pleadings and there is no violation of statutory provisions. The applicant has been working for the last more than 24 years at Indore and the respondents have transferred him in the administrative interest and on account of exigency of the service. Therefore, the above referred two cases relied upon by the applicant have no application to the case on hand.

15. In view of the above, we do not find any reason to interfere with the impugned transfer order dated 17.06.2015 (Annexure A-1). Resultantly, the O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
am

(Uday Kumar Varma)
Administrative Member