

LIBRARY

1

CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. MA 350/00243/2016
OA 350/00682/2016
OA 350/00588/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

GOUTAM CHAKRABORTY
DIPAK SAR

VS

UNION OF INDIA & ORS. (AIR)

For the applicant : Mr.A.Chakraborty, counsel
Ms.P.Mondal, counsel

For the respondents : Mr.S.K.Ghosh, counsel

Order on : 27.6.16.

O R D E R

These matters are taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Since identical issues have been pleaded the matters are taken up analogously and will be governed by this common order.

An order dated 5.2.16 issued by Dy. Director (Administration) for Director General, All India Radio (AIR in short), New Delhi is under challenge in the present OA whereby and whereunder Dipak Sar (applicant in OA 558/16), UDC who was earlier transferred to Chinsurah vide order dated 22.3.16 was directed to be transferred to AIR, Kursheong and similarly Gautam Chakraborty (applicant in OA 682/16), UDC who was earlier directed to be transferred to Murshidabad vide order dated 22.3.16 by the Head of Office, AIR, Kolkata was directed to be posted to AIR, Gangtok in partial modification of the earlier transfer order/Director's letter dated 22.3.16.

3. The letter dated 11.5.16 issued by Dy. Director Administration for Director General reads as under :

B

"No. C-18013/19/2016-S.II/1111

Dated 11.5.2016

Subject : OA No. 350/00588/2016 filed by Shri Dipak Sar & Goutam Chakraborty at CAT, Calcutta Bench, Kolkata

This is with reference to AIR, Kolkata letter No. Kol-1(24)/2016-S(Court Case)/86 dated 25.4.2016 and Hon'ble CAT, Kolkata order dated 26.4.2016 which made certain queries on the subject cited above.

2. The Prasar Bharati Secretariat has issued office order dated 24.8.2015 regulating the transfer/posting of different categories of officers. The office order is apparently for normal transfer/posting after completion of terms and in routine manner so that there is transparency in transfer/posting and without bias. Nevertheless, in certain circumstance where transfer is only way out and is immediately required to be effected, the superior authority vested in Director General, All India Radio, (DG, AIR) who is the highest controlling authority for administrative cadre, in its wisdom, has always the right to transfer an employee without going into the process as detailed in office order dated 24.8.2015. As such Director General, All Indi Radio, has the overriding power to issue transfer order or overrule the order issued by the zonal head.

3. In the instant case, DG, AIR having received several oral complaints against said officials and being aware of the underlying turmoil and unrest among its employees at the stations and keeping the administrative exigencies of ensuring smooth day-to-day functioning of the stations took the decision to transfer the said officials. In any case these officials had already completed their prescribed tenure at the station,. It is reiterated that there is no basis of the charge that the transfer has been affected to harass the officials, It is reiterated that DG, AIR reserves the right to transfer its employees as per its established transfer policy."

4. On 1.4.16 Dipak Sar preferred a representation to the director General, AIR, Akashbani Bhawan and requested for an enquiry in regard to the order dated 22.3.16 as to why his name was nominated for out of turn transfer ignoring the Prasar Bharati order dated 24.8.15: The applicant further said that he was posted on compassionate ground to be able to look after his aged ailing mother who is 75 years old and as it was not possible for him to maintain two separate establishments simultaneously. He also submitted that he had committed no misconduct in his entire service period and apprehended that some conspiracy was hatched by someone having any vested interest. This was followed by representations dated 29.3.16 to the Dy. Director General (P). Similarly Gautam Chakraborty had preferred representations to the said authority.

5. It was argued by the ld. Counsel for the applicant during the course of hearing that the transfer order under challenge was not issued by Director

General, AIR. The fact was that the transfer order dated 5.4.16 is bad due to the following reasons :

- i) It was not issued by Director General, AIR. Rather it was issued by Dy. Director for Director General.
- ii) It was not routed through Placement Committee despite a mandate of the Hon'ble Apex Court.
- iii) The earlier transfer order by which the applicant Dipak Sar was posted to Chinsurah and Gautam Chakraborty was posted to Murshidabad, was issued by the Director General.
- iv) Seniors with longer sty have been retained at the same place.
- v) The transfers were punitive in nature as the office order dated 11.5.16 manifests.

6. Per contra Id. Counsel for the respondents submitted that the transfer order was issued by competent authority. It could not be served as the applicant was not available in the office and it was not mandatory to get the order recommended by a Placement Committee.

7. I have heard the Id. Counsel for the parties and perused the materials on record.

8. It was argued that in the wake of the judgment rendered by the Hon'ble Apex Court dated 31.10.2013 in Writ Petition (C) 82/2011, it became mandatory for the Central Govt. departments to issue transfer orders through appropriate Placement Committee at least in regard to transfers of Civil Servants.

9. It is noticed that on 24.8.15 probably keeping the direction of the Hon'ble Apex Court in mind, the Prasar Bharati, in supersession of its earlier order dated 16.7.15, had constituted a committee of the following members for transfer of its Group 'C' and erstwhile Group 'D' employees, extracts whereof would be as under :

Types of Transfers and Staff Level(s)	Cadres	Competent Authority	Recommending Committee
Group C and erstwhile Group	Administration	Zonal Head (Head of	Joint Establishment Committee - Head of

D		Capital Station)	Capital AIR/DDK E.E.(CCW)	Station and
---	--	------------------	---------------------------	-------------

Such constitution was issued with the approval of the Chief Executive Officer, Prasar Bharati. The order did not indicate that in case of emergencies or due to exigencies of service or on completion of term, the authorities were at liberty to deviate from the manner in which the transfers had to be affected.

Therefore inarguably and indubitably all transfers in Prasar Bharati had to be routed through a Placement Committee, whereas in the present case the orders were issued at the behest of the Director General. Here I would seek to be guided by the maxim

- (i) *UNIUS EST EXCLUSION ALTERIUS* - meaning whatever has not been included has by implication been excluded.
- (ii) *EXPRESSUM FACIT CESSARE TACITUM* - meaning when there is express mention of certain things, then anything not mentioned is excluded.

9. Therefore in my considered opinion the transfer of the present applicants at the behest of the Director General ignoring the office order of the Chief Executive Officer, Prasar Bharati as issued on 24.8.15, was issued without jurisdiction and competence. The justification given by the Dy. Director (Administration) for the Director General, as contended in the letter dated 11.5.16, is without the approval of the Chief Executive Officer, Prasar Bharati and therefore lacking legality and propriety.

10. Accordingly the transfer orders are quashed with liberty to the respondents to act in accordance with the office order dated 24.8.15 issued by the Chief Executive Officer, Prasar Bharati. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)