

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00224/2019

Date of Order: This, the 17th day of July 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Sri Utpal Datta
S/o Late Goluk Ch. Datta
Resident of 5 (C) Kanika Apartment
Last Gate, Noonmati, Guwahati – 20
District – Kamrup (M), Assam.

...Applicant

By Advocates: S.K. Gogoi, KK. Phukan & B. Saikia

-Versus-

1. Union of India
Represented by the Secretary
To the Government of India
Ministry of Information and Broadcasting
New Delhi – 110001.
2. The Director General
All India Radio (Broadcasting Corporation of India)
Akashvani Bhaban, Parliament Street
New Delhi – 110001.
3. The Deputy Director General (NER)-1
Prasar Bharati, All India Radio
Chandmari, Guwahati – 781003.
4. The Prasar Bharati
(Broadcasting Corporation of India)
Represented by its Chairman
Akashvani Bhavan, Parliament Street
New Delhi – 110001.

...Respondents

O R D E R (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

On being mentioned by Mr. S.K. Gogoi, learned counsel for the applicant, this O.A. has been taken up today as unlisted.

2. By this O.A., applicant makes a prayer to cancel/modify/set aside the transfer order dated 21.06.2019 (In respect of the applicant) whereby the applicant has sought to be transferred from AIR, Guwahati to AIR, Ranchi.

3. Mr. S.K. Gogoi, learned counsel appearing on behalf of the applicant submits that initially the applicant joined in the All India Radio, Dibrugarh in the year 1992 as a Programme Executive. In the year 1994, he was transferred to AIR Nagaon and till 2000, he served there at Nagaon as Programme Executive. Thereafter, he was transferred to Tura (Meghalaya) and he remained there till 2003. He was again transferred from Tura to Guwahati in the year 2003 and thereafter at AIR Haflong in the year 2008. He was again transferred to AIR, Guwahati in the year 2010. Subsequently, he was promoted from the post of Programme Executive to A.D. (P) ad-hoc in the year 2016 which was regularized in the year 2019.

4. Mr. Gogoi further submits that the applicant is going to retire on superannuation by 30.11.2020. The applicant left only 17 months for superannuation. He has also settled with his family members at Guwahati. His eighty years ailing mother is also living with him. However, the respondent authorities vide order dated 21.06.2019, sought to transfer the applicant from AIR, Guwahati to AIR, Ranchi and accordingly, vide order dated 28.06.2019, the applicant was released from his duty at AIR, Guwahati.

5. According to the learned counsel, at the fag end of his service, the applicant has been sought to be transferred. Learned counsel pointed out that the applicant was suffering from severe lower backache and on that ground, the attending doctor granted medical leave till 20th July 2019.

6. Learned counsel highlighted that as per Govt. transfer policy dated 13.07.1981, numbers of staff who are within 3 years and reaching the age of superannuation, if posted at their home town, should not be shifted there from. Being aggrieved with the impugned transfer order dated 21.06.2019, applicant submitted representation on 24.06.2019 before the respondent No. 2 i.e. the Director General, All India

Radio, Guwahati stating all his grievances. However, without considering his said representation dated 24.06.2019, the respondent authorities most illegally issued the impugned released order dated 28.06.2019.

7. I have heard the learned counsel for the applicant. Perused the pleadings and the documents relied upon. No doubt, the department is the best suited to judge as to the existence of exigencies of such transfer who should be transferred where. Same time, it should not be given by that the power of judicial review could very well be exercised by a court of law if such transfer indicated hardship factor in compliance with such a transfer order. Moreover, it is the policy of the Govt. of India that in case of an officer due to superannuation, posting to station of choice shall be given due weightage. There is an objective based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted service to make arrangements for settling down thereafter with her family, acquire a house if not already done and to make necessary arrangement for her superannuated life. In **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12**, Hon'ble Gauhati High Court has held that – "Fairness requires that if a

policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of a laid down policy may be held to be arbitrary."

8. In the present case, I have noted that, applicant will retire in November 2020. Only about 17 months left of his service. In **Narayan Choudhury Vs. State of Tripura & Ors. WP(C) No. 239/1999** rendered in **(2000) 1 GLR 519** where the Hon'ble Gauhati High Court of Agartala Bench has held that – "The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months".

I find that the present case is squarely covered with the above case of **Narayan Choudhury Vs. State of Tripura** (supra).

9. I have also perused the Transfer Policy No. 310/78/75-B(D)(Vol.II) dated 14.07.1981 of Government of India, Ministry of Information & Broadcasting where at para (xxi), it is stated that – "*Members of staff who are within three years of reaching the*

age of superannuation will, if posted at their home town, not be shifted there from."

10. By taking into consideration the entire conspectus of the case as well as ratio laid down by the Hon'ble Gauhati High Court mentioned above and the transfer policy of the Govt., I direct the respondent authority to allow the applicant to continue in his present place at AIR, Guwahati till his date of retirement. Consequently, the impugned transfer order No. 02/01/2016-S-1(A)/Pt dated 21.06.2019 as well as relieve order No. 08/126/2016-S-1(A) dated 28.06.2019 are hereby quashed and set aside.

11. With the above observations and directions, O.A. stands disposed of accordingly, at the admission stage. No order as to costs.

(MANJULA DAS)
MEMBER (J)