

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 894/2003

New Delhi, this the 6th day of February, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Mrs. Susham Kohli,
W/o Shri Ashok Kumar Kohli,
Working as Programme Executive,
All India Radio, New Delhi
R/ 68, Kailash Apartments,
45, I.P. Extension, Delhi-110092

(By Advocate : Shri Umesh Mishra, proxy for Applicant
Ms. Harvinder Oberi)

V e r s u s

1. Union of India,
Through the Secretary,
Ministry of Information & Broadcasting,
Govt. of India, Shastri Bhawan
New Delhi - 110 001
2. Chief Executive Officer,
Prasar Bharti, (Broadcasting Corporation of India),
Akashwani Bhawan,
Parliament Street, New Delhi-110001
3. Director General,
All India Radio, Akashwani Bhawan,
Parliament Street,
New Delhi - 110001
4. Dy. Director General (P),
All India Radio,
Akashwani Bhawan,
Parliament Street, New Delhi-110 001
5. Dy. Director General,
A.I.R. Delhi Station,
Akashwani Bhawan,
Parliament Street, New Delhi-110 001

(By Advocate : Shri A.K. Bhardwaj) Respondents

O R D E R

The applicant has preferred this Original Application against the order of the respondents dated the 10th March, 2003 (Annexure A-1) whereby it has been ordered that the applicant, on her transfer vide Directorate General of All India Radio Order No.12/2002-SI(B) dated 30.1.2002, will stand relieved of her duties w.e.f. 4.4.2003 with



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instructions to report for duty to Station Director, All India Radio, Kota.

2. The facts of the matter, briefly, are that the applicant, who was earlier working as Transmission Executive with All India Radio and who was promoted as Programme Executive in 1991 and posted out of Delhi and who, after having served outside Delhi, was posted in the External Services Division, New Delhi, was officially deputed for attending a special "Workshop on Women" conducted by Radio Deutsche Welle of Germany at Cologne from 26.6.1997 to 20.7.1997. She has given reference to the said deputation in order to convey that she acquired valuable experience in the field of broadcasting through the said Workshop. In the above back-ground, when she was transferred from AIR, Delhi to AIR, Kota vide respondents' order dated the 30th January, 2002, as referred to above, she submitted a representation to the Director General, All India Radio, seeking cancellation of the said transfer order. In her representation she has also made a mention of the fact that she was receiving regular treatment from Mool Chand Hospital since June, 1993 on account of some gynaecological problem. The facts that her mother-in-law was a patient of Diabetes and Hypertension and was getting regular treatment and therefore, there was nobody to look after her and further that she has two school going children and that her husband was working as a senior officer in a Public Sector Undertaking and further that it was the policy of the Government that both husband and wife should be posted at the same station to enable them to lead a normal life, had also been mentioned by her in her representation dated the

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2nd February, 2002 (Annexure A-3). However, the respondents did not stay the transfer order and invited three options for posting to places other than Delhi from the applicant. The applicant responded to the same by submitting another representation on the 26th April, 2002 requesting the authorities to reconsider their decision to transfer the applicant out of Delhi (Annexure A-5). It is observed that in the said representation she brought out the fact that a number of other Programme Executives, who had been working in Delhi from earlier dates, have not been transferred out of Delhi even once while she had already been transferred to AIR, Mathura in 1991. She has also given a list of the Programme Executives who have never been transferred out at Annexure A-6. She has alleged that the respondents have not followed the policy of the Government regarding posting of the spouses at the same station and also the medical grounds in respect of self as well as the family of the applicant while ordering that she will stand relieved w.e.f. 4.4.2003 for reporting for duty to Station Director, All India Radio, Kota. Her last representation dated the 20th March, 2003 submitted to the Director General, All India Radio (Annexure A-2) has, however, not been replied to by the respondents. She has alleged that the action of the respondents in issuing the order dated the 10th March, 2003 is thus arbitrary and discriminatory. She has accordingly prayed that the said order may be quashed and set aside.

3. It is observed that the applicant has also approached the Hon'ble High Court with CW 2778/2003 and also CM 4694/2003. While, among other things, the Hon'ble High Court has directed that the petitioner shall apply for

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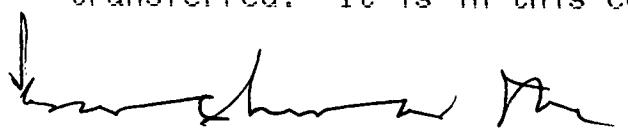
further leave till the Tribunal disposes of her Original Application, it has also been observed by the Hon'ble High Court that pendency of this Writ Petition will not come in the way of the Tribunal in disposing of the OA on merits.

4. The relevant policy regarding transfer, envisaging, among other things, that a person with longest continuous stay at the station, irrespective of the rank(s) held by him earlier, should ordinarily be transferred first. A copy of the Office Memorandum of the Department of Public Enterprises regarding posting of husband and wife at the same station with which a copy of the Office Memorandum issued by the DOP&T on 3.4.1986 is enclosed has also been annexed to support the contention of the applicant that she should not have been transferred out of Delhi where her husband is also posted.

5. The respondents, however, have raised objections to the Original Application, while submitting their reply to the para-wise points raised by the applicant in her OA. While so doing, they have referred to decisions of the Hon'ble Supreme Court in the matter of posting of husband and wife at the same station not being an enforceable right in UOI and Another Vs. M.P. Thomas : 1992 SCSLJ 342 : AIR 1993 : SC 1605 : 1993 Suppl (1) SSC 704 : 1992 Suppl : JT 220 : 1992 (5) SLR 600 : 1993 (1) ATJ and also in the case of Union of India & Ors vs S.L. Abbas : 1993(1) SCSLJ 371 : AIR 1993 SC 2444 : 1993(4) SCC 357 : 199 (2) SLR 585 and 1997(2) ATJ : 147. Accordingly, they have contended that the ground raised by the applicant regarding posting of husband and wife at the same place is contrary to

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law laid down by the Hon'ble Supreme Court. In their opinion, the applicant who has been working in Delhi 'since 1977 except for a short from 11.10.1991 to 29.2.1992 and who has thus been in Delhi for about 24 years, has no basis to allege that the guide-lines regarding transfer are not being followed by the respondents. Even as PEX she has completed 12 years, which is far in excess of the normal tenure of 4 years. In this connection, the respondents have cited the decisions of the Hon'ble Supreme Court in Chief General Manager (Telecom) NE Circle & Anr vs Shri Rajendra Ch. Bhattacharjee & Ors. : 1995 (1) SCSLJ 303 etc. in which it has been held that a Government employee or any servant of a public undertaking has no legal right to insist on posting at any one place. The fact that transfers made on administrative ground or in public interest should not be interfered with has also been emphasised by the Hon'ble Supreme Court in their orders in the case of State of Madhya Pradesh & Anr vs S.S. Kourav & Ors : 1995 (1) SCSLJ 350 etc. unless the same is vitiated either by malafide or by extraneous considerations. The decisions of the Tribunal in the case of Charanji Lal vs UOI & Anr 1987 (2) ATJ page 36 on the question of the longest stay of an employee in all the Units located at a given station has been taken into account by the respondents while arguing against the prayer of the applicant seeking cancellation of the transfer order. Similarly, the respondents appear to have taken into account the decision of the Tribunal as given in A.K. Handa vs Secretary, Ministry of Defence & Ors. 1989 (2) ATJ 403 wherein it has been held that any employee who has rendered adequate period at a particular place would be liable to be transferred. It is in this context that the question of All



India transfer liability in the case of Group 'B' Gazetted Officers has been referred to. The respondents have admitted that the applicant could have submitted a representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry the order of transfer, as the applicant had been in Delhi since 21.4.1977. She was posted to AIR, Najibabad soon after her promotion as PEX in October, 1991; and thereafter she was transferred to AIR, Mathura on her request. However, after a very short period, she was transferred back to AIR, Delhi in February, 1992. In the process, the applicant has continued to be in Delhi for more than 24 years and as PEX for more than 12 years. In the end, the respondents have claimed that the transfer of the applicant is within the transfer policy guide-lines.

6. The applicant has disputed the claim of the respondents and have contended that she has a right to be considered for being continued in Delhi in the light of the Office Memorandum dated 3.4.1986. She has also referred to the fact that Delhi is her home State and she, having joined AIR as a Transmission Executive, which is the lowest post, does not have any transfer liability. She has reiterated her allegation that her transfer order has been passed with a malafide and in violation of the transfer policy.

7. The respondents, in their additional affidavit, have submitted that reference to certain individual employees having stayed in Delhi far longer than the applicant as alleged in her representation enclosed with the OA and also

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in paragraph 6 of her rejoinder is factually incorrect and inappropriate inasmuch as these individuals are not Programme Executives like the applicant, and also some of them do not belong to All India Radio; they are with the Doordarshan Kendra. They have given details in respect of these individuals in their additional affidavit. Referring to the decision of this Tribunal in OA No. 793/2003, the respondents have also claimed that orders of transfer were not interfered with by the Tribunal keeping in view the decisions of the Hon'ble Apex Court in State Bank of India vs Anjan Sanyal, AIR 2001 SC 1748.

8. I have considered the contentions of both the parties and find that the pleas of the applicant that she has been transferred out of Delhi with a malafide is not corroborated by the facts of the matter. In her long stay of over 24 years in Delhi since 1977, she had been transferred only once and that too for a very short period of about 4 months, i.e., from 11.10.1991 to 29.2.1992. The contention of the applicant that the respondents by transferring her out of Delhi has violated the transfer policy guide-lines laid down by the respondents is also not brought out convincingly. It is highly doubtful whether any transfer policy would allow a person to remain at one station for such a long period. Moreover, the places to which she had been transferred in the past are in the periphery of Delhi and even the present place of posting, i.e., Kota is also not quite far off from Delhi. I also do not find any reason in the present case to dispute the fact that an employee of the Central Government carries an All India transfer liability and which cannot normally be found

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fault with. It is not appreciated that the applicant has referred to cases of individuals who do not belong to her category or situations. As regards the claim of the applicant regarding posting of the spouses at the same station, it is a settled issue that it is not an enforceable right and all that can be expected in this regard is that the respondents shall, as far as possible, endeavour to see that this aspect is kept in view while transferring employees from one place to another following the transfer policy guide-lines and subject to public interest and exigencies of service. It is, however, noted that it is not always possible to follow application of this normative policy.

9. Having regard to the facts and circumstances of the case and also the decisions of the Hon'ble Apex Court in State Bank of India vs. Anjan Sanyal (supra), as cited in the decisions of this Tribunal in OA No.793/2003, I do not find any reasons or grounds to interfere with the order passed by the respondents on the 10th March, 2003 (Annexure A-1 to the OA). Accordingly, the OA stands dismissed. No costs.



(SARWESHWAR JHA)
MEMBER (A)

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