

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00386/2019

DATED THIS THE 06TH DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

B.V. Hariprasad,

S/o T.S. Venkatesh

Aged 49 years,

Residing at No. 33/1,

Vaderahalli,

Vidyaranyapura Post,

Bangalore – 560 097

(By Advocate Shri N. Obalappa)

..... Applicant

Vs.

1. The Union of India,

Represented by its Secretary,

Ministry of Information

and Broadcasting,

'A' Wing, Shastry Bhavan,

New Delhi – 110 001.

2. The Chief Executive Officer,

Prasar Bharathi, "C" Tower,

Doordarshan Bhavan,

Copernicus Marg, Mandi House,

New Delhi – 110 001.

3. The Director General,

Doordarshan,

Doordarshan Bhavan,

Copernicus Marg,

New Delhi – 110 001.

4. The Head of Office,

CRD Marketing Division,

Rajbhavan Road,

Bangalore – 560 001

....Respondents

(By Shri V.N. Holla, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. ***Transfer is an essential requirement in any government servant's official life, whether he wants it or not, for the simple reason that no government servant can be allowed to take roots in a particular geographical locale.*** But

that does not mean that on whims and fancies employees can be shunted out like in a musical chair one day to Mumbai next day to bring him back and next to post him again.

2. We had taken up this matter in another instance in OA No. 461/2018 which was disposed vide order dated 30.08.2018 which we quote:

“O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. MA No. 170/00383/2018 for modification of interim order is dismissed.

2. The matter relates to transfer. Normally no government servant should be retained at a place for long. If he is retained there, then he develops unnecessary roots in the local society which will be against greater public interest.

3. Now the case put up by the respondents is that they made a mistake and that too an inadvertent mistake in the Annexure-R3 order indicating that there is a retention of the applicant. It cannot be a mistake for the very simple reason that it is a positive order made after consideration of all the representations received within 15th March, 2018. That being so, it is a result of consideration.

4. No doubt, persons higher in the hierarchy can intervene and pass an order against the administrative order passed by the competent authority as we find from Annexure-R2 also a similar authority had passed a transfer order to Mumbai. If an authority similar in stature and nature can pass Annexure-R2 order, the same authority can pass Annexure-R3 order also. Therefore after having heard both the counsels we will hold that the applicant rightly or wrongly became eligible to a posting at CRD, Marketing because of Annexure-R3 order.

5. *He will continue there and draw salary in that post only.*

6. *But that is not to say that the applicant cannot be transferred out. For verifiable and significant and illuminative reasons, applicant can be transferred once again to any other place as dictated by public interest but the reason for the transfer and the exigency must be writ large on the face of it. This liberty we will grant to the respondents but the transfer of the applicant vide Annexure-R3 to CRD, Marketing is hereby confirmed. The applicant will continue to be there. To this extent but with the above rider the OA is disposed off.*

7. *At this point of time, the learned counsel for the respondents submits something more. He says that any order can be rectified. It is correct but once an order is given a legitimate expectation arises in favour of the party in whose favour the order was passed. Therefore the rectification, if at all, has to be after issuing him a showcause notice and after hearing him also as without grant of opportunity no order in favour of a person, who had germinated a legitimate expectation in his favour, can be set aside.*

8. *The OA is therefore disposed off on the above grounds. No order as to costs."*

3. By the above order we had made it clear that while we uphold the respondents bringing him back to Bangalore it does not necessarily mean that he cannot be transferred out again but only by giving sufficient and significant reason. At this point of time it is pointed out that applicant has not been brought back but only retained here by the order. We have checked it and found that it is correct. Therefore, what is the scope and ambit of Annexure-A4 order is the question. Annexure-A4 order in column No. 30

indicate that applicant Shri B.V. Hariprasad, Cameraman Grade II, CRD Bengaluru is transferred to DDK, Mumbai along with the post of DDK Mumbai under functional exigencies.

4. If the applicant had to be transferred out along with the post from here then it is crystal clear that there was no post available in Mumbai for him to be transferred out.

5. Shri V.N. Holla, learned counsel for the respondents, tries to explain it by adverting to Annexure-R5 which is the speaking order passed vide F. No. 2/6/2018-S.I.A/473 dated 16.05.2018, which we quote:

**“PRASAR BHARTI
(INDIA’S PUBLIC SERVICE BROADCASTER)
DIRECTORATE GENERAL: DOORDARSHAN
COPERNICUS MARG: NEW DELHI**

F. No. 2/6/2018-S.I.A./473

Date: 16.05.2018

Subject: OA No. 170/461/2018 filed by Sh. B.V. Hariprasad, Cameraman Grade-II Vs UoI & 05 Ors regarding stay of his transfer to DDK, Mumbai.

Please refer to CRD-Marketing Division, Bengaluru letter No. Ban.1(10)/2018-S/Court dated 11.05.2018 enclosing Order dated 09.05.2018 of Hon’ble CAT, Bangalore Bench in OA No. 170/461/2018 filed by Sh. B.V. Hariprasad, Cameraman Grade-II.

2. *Sh. B.V. Hariprasad, Cameraman Gr-II was transferred from DDK Bengaluru to DDK Mumbai vide this Dte’s Order No. 72/2017-SI (A) dated 29.12.2017 on completion of his tenure at DDK Bengaluru. Afterwards, Sh. Hariprasad (UOT DDK Mumbai) vide representation dated 12.02.2018 (received through O/o ADG (SZ) letter dated 01.03.2018) had represented for retention at Bengaluru in CRD (Marketing Division). His request along with other representations was placed before the transfer/posting Committee for consideration. But, his request could not be acceded to due to administrative exigencies and in public interest, subsequently, he stood relieved to report at DDK Mumbai.*

*In furtherance Order No. 04/2018-SI(A) dated 01.05.2018 was issued. However, in the said Order, “**Transferred to**” column was inadvertently shown as “Retention at CRD Bengaluru” instead of “DDK Mumbai” due to typographical error. But the order is to be read with “Remarks” column which specifically says that individual Sh. Hariprasad stood relieved to join DDK Mumbai. Moreover, to rectify the said typing error, a Corrigendum dated 02.05.2018 has also been issued by this Directorate which clearly stated that Sh. Hariprasad stands relieved to report at DDK Mumbai.*

Moreover, CRD, Bengaluru vide email dated 04.05.2018 has also informed that there is no role of Cameraman in CRD and also no post is sanctioned there. Thus, Sh. Hariprasad could not be posted at CRD-Marketing Division, Bengaluru.

3. *It is also pertinent to mention that personal and family matters cannot over ride the administrative necessity and exigency. There are a large number of cases in which the Hon’ble Supreme Court has observed and held that transfer is an exigency of service and court should avoid to interfere unless it is malafide. In the present case there is no malafide intention in transferring the petitioner, and the same has been done in the public interest and keeping in view exigency of service, particularly when he is liable to transfer all over India. Here, Sh. B.V. Hariprasad has directly approached the Hon’ble Tribunal without approaching this Directorate.*

4. *It is hence requested to prepare a reply for filing before the Hon’ble Tribunal, Bengaluru Bench, (through the Counsel) on the basis of above facts (before Next date of hearing i.e. 25.06.2018) and pray for vacation of the order dated 09.05.2018 passed by the Hon’ble Tribunal keeping in view administrative exigency and public interest involved & pray for dismiss as of the said OA with the costs. In the eventuality the stay order is not vacated the Department will suffer irreparable loss and the work of the Kendra will be adversely affected. Before filing the reply, the same may also be sent to this Dte. on urgent basis for vetting and approval of the Competent Authority. The copy of all relevant orders along with copy of approved noting/minutes & representation of Sh. B.V. Hariprasad for retention is enclosed herewith for your ready reference.*

5. *O/o ADG (SZ) is further requested to get the name of Secretary, Ministry of Information and Broadcasting representing UOI (Respondent No. 1) deleted from the list of respondents, since he has no role to play in the matter of transfer.*

6. *This issues with the approval of the Competent Authority.*

Sd/-

Rajiv Sinha
DDG (Admin)”

6. Other than a bald and vague statement of functional and administrative exigencies no viable reason is given or indicated or even discussed. Other than stating that there is no role of Cameraman in CRD, Bengaluru nothing else is stated. But then when the applicant is retained at CRD, Bengaluru this position would have been considered by the concerned Director General as he had passed the order. We cannot readily assume that a senior officer had passed an order without looking into the facts of the case.

7. That being so, the question of tenure being completed or not will not arise as it appears that there are many other people whose tenure had been completed but they are not yet transferred. There cannot be any pick and choose policy in implementation of a policy. The executive polity is enjoined to act fairly, equitably and under the aegis of Article 14 of the Constitution of India. They have not functional rights above than that. Anyway, even though on administrative exigency an employee can be transferred at any time even though tenure has not been completed, if a person along with the post had to be transferred out then there is no administrative exigency. Had it been administrative exigency, a post would have been waiting in Mumbai to receive him. Therefore, this transfer order is highly irregular and illegal. We hereby quash it. Applicant will therefore continue to be at Bangalore. But this does not mean that he cannot be transferred out within the confines of the city of Bangalore. That right we will reserve for the respondents.

8. The OA is allowed as above. No order as to costs.

(C.V. SANKAR)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00386/2019

Annexure A1: Copy of the order dated 01.05.2018

Annexure A2: Copy of the order of the Tribunal in OA No. 461/2018 dated
26.09.2018

Annexure A3: Copy of the joining order dated 03.10.2018

Annexure A4: Copy of the transfer order dated 20.03.2019

Annexure A5: Copy of the transfer policy of 2014

Annexures referred in reply statement

Annexure R1: Copy of the office order dated 29.12.2017

Annexure R2: Copy of the order dated 17.04.2018

Annexure R3: Copy of the office order dated 01.05.2018

Annexure R4: Copy of the corrigendum dated 02.05.2018

Annexure R5: Copy of the letter dated 16.05.2018

Annexure R6: Copy of the order dated 07.05.2018

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