
(2003) 06 OHC CK 0049

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6999 of 2001

Biswambhar Adhikari

APPELLANT

Vs

Prasar Bharati and Others

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Prasar Bharati (Broadcasting Corporation of India) Act, 1990 — Section 11, 30, 32

Citation : (2003) 96 CLT 70 : (2003) 2 OLR 134

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : B.R. Sarangi, for the Appellant; B. Das, For O.P. Nos. 1 and 2 and D.K. Mishra, S.C. Mohanty, G.K. Nayak, R. Mahalik For O.P. No. 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Petitioner while serving as Executive Producer, Doordarshan Kendra, Bhubaneswar was transferred by Deputy Director (Admn.), Prasar Bharati, Broadcasting Corporation of India (opposite party No. 2) as per transfer order Annexure-2. He was transferred to Sambalpur as Station Director of Doordarshan Kendra. Opposite party No. 3 while functioning as Station Director, Doordarshan Kendra, Raipur was transferred to Doordarshan Kendra, Bhubaneswar to function as head of office. That order of transfer was passed on 23.5.2001.

2. Petitioner has ventilated his grievance against that order of transfer mainly on two grounds, viz., (i) that he is five years senior in service to opposite party No. 3 and therefore petitioner should not have been transferred to a category "B" Centre like Sambalpur and opposite party No. 3 should not have been transferred to a category "A" Centre like Bhubaneswar in view of the seniority of the petitioner and when petitioner has already served in the Eastern regional centres for required period ; and (ii) in view of Section 11 of the Prasar Bharati

(Broadcasting Corporation of India) Act, 1999 (in short the Act) which has come into force in April, 1999 no regulation or guideline has yet been framed to regulate the service conditions and therefore the guidelines and service conditions applicable to the employees of the Ministry of Information and Broadcasting is still applicable and in view of that petitioner could not have been transferred from "A" category Kendra to "B" category Kendra within a period of four years from his date of posting at Bhubaneswar. In course of hearing the question also came up for consideration relating to maintainability of the O.J.C. i.e., as to whether the petitioner should have approached the Central Administrative Tribunal or this Court and in that context petitioner's contention is that he being an officer working under the Prasar Bharati, therefore CAT has no jurisdiction.

3. In an additional affidavit petitioner has further stated that the Indian Broadcasting Programme Service (in short "IBPS") cadre which is adoptable in the cases of the parties is classified into four categories and that reads as hereunder :

_____				Jr. Time Scale	Sr. Time Scale	Jr. Administrative	Sr. Administrative		
Grade	Grade			1. Asst. Station Director	1. Executive Director	1. Director Producer	Deputy Director	Deputy	3.
Controller of	Officer	Director	Programmes	3. Station Director					

Petitioner stated that though he and opposite party No. 3 both belonged to Sr. Time Scale but in view of five years seniority of the petitioner, opposite party No. 3 cannot be a substitute for him in the post at Bhubaneswar and apart from that with a mala fide intention the authorities have not mentioned the designation of opposite party No. 3 on his posting at Bhubaneswar. He also alleged a mala fide action by the authority in making the order of transfer as against him which goes to favour opposite party No. 3.

4. In the preliminary counter affidavit filed on behalf of the opposite parties, opposite party No. 3 stated that in view of the letter from the Ministry of Law, Justice & Company Affairs, Department of Legal Affairs in Dy. No. 32193/98 file No. 15/13/97-PBC (P.t.)Annexure-II it has been indicated that all employees are to be treated as employees of the Central Government and they would be called the employees of the Corporation only when a formal order of transfer is issued in Section 11(1) of the Act. As such they will be entitled to all benefits of the Central Government employees till they ceased to be so. It is further stated that after receipt of order of transfer petitioner opted to abide by the order of transfer and drew advance T. A. and thereafter filed the writ application without having any genuine grievance. Opposite parties also stated that when the petitioner made representation before the authority he should not have preferred the writ application without waiting for the decision of the authority. Petitioner also relied on an unreported decision of the Madras High Court in Writ Petition No. 20051/2000 (Annexure-I) on the question of maintainability of the-writ

application.

5. This Court is given to understand that the age of superannuation of officers in the IBPS/ Prasar Bharati Corporation is 60 years. If that be so by now petitioner must have completed or about to complete the age of 60 years. If that be so, then the writ application has become infructuous because the order of transfer may not further be implemented.

6. Be that as it may, the fact remains that Section 11(1) of the Act provides that where the Central Government has ceased to perform any function which u/s 12 are the functions of the Corporation, then it shall be lawful for the Central Government to transfer by order to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan to the Corporation subject to exception that if any such officer or employee within the specified time will opt not to go to the Corporation then he shall not be deemed to be an employee of the Corporation. In respect of such transfer as provided in Sub-section (1) the date from which such order of transfer shall be effective be specified. Sub-section (2) applies in the same manner with respect to members of Indian Information Service, the Central Secretariat Service or any other service or to persons born on cadre outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the above noted appointed date. Sub-section (4) provides that officers and employees transferred in accordance with Sub-section (1) shall cease to be the employees of the Central Government and shall become employees of the Corporation with such designation as the Corporation may determine subject to the provision in Sub-sections (5) & (6). So far as Sub-section (5) is concerned, that provides option to opt for the scale provided by the Corporation or to the scale in which he was serving by the date of the transfer and also relating to availability of the benefits of leave, provident fund etc. Sub-section (6) provides that officers and employees transferred under Sub-sections (1) & (2) shall not be dismissed or removed by an authority who is subordinate to the authority who can issue an order of appointment and no disciplinary action shall be taken without conducting an inquiry and affording an opportunity of hearing. Section 30 provides that the Corporation by a general or special order delegate to the Chairman or any other member or to any officer of the Corporation, such of its power and duties under the Act as it may deem fit. Section 32 empowers the Central Government to make rules for carrying on the provisions of the Act and to notify the same. Sub-section 2(a) of Section 32, inter alia, provides for framing of rules relating to salaries, allowances and conditions of service in respect of leave, pension and other matters. Section 33 empowers the Corporation to make regulation in consonance with the provisions of the Act and the Rules for enabling it to perform its function under the Act and to notify such regulation. Sub-section 2(c) provides that the regulation may be relating to method of recruitment and conditions of service of officers and other employees of the Corporation under Sub-section (2) of Section 9.

7. It, therefore, appears from the aforesaid relevant provisions in the Act that until rules and regulations are framed the employees serving are to be controlled by the existing rule relating to their salaries, leave, transfer and posting etc. A rule has to be understood and followed harmoniously and not to be made applicable selectively. In other words, in the absence of the rules and regulations as provided in Sections 30 and 32 and when officers and employees working under the Corporation are to draw salaries and increments in accordance with the service conditions and to obtain leave and to regulate the same in accordance with such service conditions and as per the order of the concerned authorities, they cannot take protection of absence of framing of rules and regulations when it comes to a matter of their transfer and posting. Under such circumstance, this Court finds that opposite party No. 2 having the competency has passed the order of transfer which of course has not been challenged in so many words by challenging his authority to transfer. Nonetheless, the above finding is recorded because petitioner has touched the point of jurisdiction and competency of opposite party No. 2 to pass the impugned order of transfer.

8. An order of transfer passed by an authority is not subject to judicial scrutiny unless such order is passed illegally or without jurisdiction or if such order of transfer is visited with mala fide and ill motive of the authority. Though in this case petitioner has used the word mala fide while challenging to the order of transfer, that allegation is attributed against opposite party No. 2 only on the ground that he being senior to opposite party No. 3, petitioner could not have been transferred to Sambalpur and opposite party No. 3 should not have been posted at Bhubaneswar. The cadre classification made by the petitioner in his additional affidavit has already been quoted in a preceding paragraph. It appears from that cadre classification that petitioner and opposite party No. 3 both belong to the same cadre i.e. Senior Time Scale cadre. Apart from that, the transfer order Annexure-2 does not indicate that opposite party, No. 3 has been transferred as the Executive Producer of Doordarshan Kendra, Bhubaneswar. Therefore, it is not the case of transfer of the opposite party No. 3 as against the post in which petitioner was working at the time of impugned order of transfer. Under such circumstance, the allegation of mala fide does not appear to be backed by fact or circumstance. Mere use of the term mala fide does not make the transfer order vulnerable unless allegation of mala fide is clearly stated and proved. At the risk of the petitioner it is noted that a case of mala fide is not proved by the petitioner. Therefore, the order of transfer which has been passed by opposite party No. 2 is not to be interfered with by this Court while exercising the writ jurisdiction in the absence of any justifiable reason in support of that prayer.

9. For the reasons indicated above, this Court finds no merit in the writ application and therefore it is not necessary to decide the jurisdictional issue raised by the parties. Accordingly, the OJC is dismissed. Interim order of stay stands vacated from today.