
(2000) 09 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1726 of 2000

Maresh Chander Chopra

APPELLANT

Vs

Chief Executive Officer, Prasar Bharti, New Delhi

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Constitution of Jammu and Kashmir, 1956 — Section 124

Prasar Bharati (Broadcasting Corporation of India) Act, 1990 — Section 11(1)

Citation : (2001) 3 SCT 948

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S. Bhat, B.S. Manhas, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—The petitioner joined the Indian Broadcasting Service in Doordarshan Kendra, Srinagar. He has a long tenure of service to

his credit. As per the petitioner he has rendered service for 26 years. He has given his service profile in the petition. He submitted that on

26.4.1994 he was asked to perform the duties of Assistant Station Director at Jammu. For this reliance is being placed on AnnexureA. It is

submitted that the respondent employer has been making effort to deprive him of this higher post. He had approached this Court earlier also. Writ

Petition No. 1250/95 was filed. This is said to be pending disposal in this Court and interim order is said to have been passed in the said petition.

Copy of the same has been placed on the record as Annexure 'B'. It is the case of the petitioner that on account of the litigation referred to above,

the respondents felt annoyed with him. They wanted to shift him from Doordarshan Kendra, Jammu to a far off place. In this connection

AnnexureC is said to have been passed. This is dated 15.3.2000. This is subject matter of challenge in this Court. Writ Petition SWP 406/2000

was preferred. This petition was disposed of with an observation that the point of view put across by the petitioner be considered and such relief

as may be deemed proper be given to him. The respondents have now passed a fresh order. This is AnnexureE (No. C17011/3/2000/SIII dated

18.8.2000) to this petition. This order is being challenged inter alia on several grounds. It is submitted that the petitioner has not been legally placed

under the administrative control of Prasar Bharti. He is to be treated as on deputation. It is in these circumstances stated that the authority with

whom he is on deputation cannot transfer him from Jammu to Ranchi. It is submitted that the petitioner for all intent and purposes continues to be

an employee of Doordarshan and he cannot, therefore, be transferred to Ranchi. What is sought to be urged is that he being not a person who is

under the administrative control of Prasar Bharti Corporation, therefore, this Corporation cannot transfer the petitioner.

2. The issue which has been raised in this petition is purely legal and is to be examined in the light of the provisions contained in Section 11 of the

Prasar Bharti (Broadcasting Corporation of India) Act, 1990. This aspect of the matter would be adverted to below. Before doing so the

assertions made in the Caveat petition preferred by the respondents be taken note of. In para 3 of the petition it is submitted that the Chief

Executive Officer of the Prasar Bharti, Broadcasting Corporation of India is competent to determine as to where the petitioner is to be sent. This

has been rightly done and, therefore, no interference is required in this petition.

3. The issues involved in this petition are

i) As to whether the petitioner continues to be an employee serving in the Akashwani or Doordarshan and continues to be engaged in the

performance of those functions or he has become an employee of the Prasar Bharti Broadcasting Corporation constituted under the Prasar Bharti

(Broadcasting Corporation of India) Act, 1990 (hereinafter referred to as 'the Act of 1990').

ii) Whether on the interpretation of Section 11 of the Act of 1990, the petitioner could be sent to the Prasar Bharti Broadcasting Corporation of

India, without his consent;

iii) As to what is the scope of the provisions contained in sub section (5) of Section 11 of the Act of 1990.

4. Before doing so it would be apt to notice Section 11 of the Act of 1990. This reads as under :

11. Transfer of Service of Existing Employees to Corporation

(1) Where the Central Government has ceased to perform any functions which under Section 12 are the functions of the Corporation, it shall be

lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order to the Corporation

any of the officers or other employees serving in the Akashwani or Doordarshan and engaged in the performance of those functions :

Provided that no order under this subsection shall be made in relation to any officer or other employee in the Akashani or Doordarshan who has, in

respect of the proposal of the Local Government to transfer such officer or other employee to the Corporation intimated within such time as may

be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation.

(2) The provisions of subsection (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Services or any

other service or to persons borne on cadres outside Akashwani and Doordarshan who have been working in Akashwani or Doordarshan

immediately before the appointed date :

Provided that where any such member intimates within the time specified in subsection (1) his intention of not becoming an employee of the

Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be

prescribed.

(3) In making an order under subsection (1) Central Government shall, as far as may be, take into consideration the functions which the Akashwani

or, as the case may be, Doordarshan has ceased or ceases to perform and the area in which such functions have been or are performed;

(4) An officer or other employee transferred by an order under sub section (1) shall, on and from the date of transfer, cease to be an employee of

the Central Government and become an employee of the Corporation with such designation as the Corporation may determine and shall, subject

to the provisions of subsections (5) and (6) be governed by such regulation as may be made as respects remuneration and other conditions of

service including pension, leave and provident fund and shall continue to be an officer or other employee of the Corp. unless and until his

employment is terminated by the Corporation.

(5) Every officer or other employee transferred by an order made under sub section (1) shall, within six months from the date of transfer, exercise

his option, in writing to be governed

(a) by the scale of pay applicable to the post held by him in the Akashwani or Doordarshan immediately before the date of transfer or by the scale

applicable to the post under the Corporation to which he is transferred.

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the

rules or orders of the Central Government as amended from time to time, or the leave provident fund or other terminal benefits admissible to the

employees of the Corporation under the regulations, and such option once exercised under this Act shall be final :

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the

Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible

only for the scale of pay applicable to such higher post.

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the

Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period

of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have

reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt :

Provided also, that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or

subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other

officer or employee, senior to him in that Ministry or office before such transfer,

the officer or other employee who is promoted to officiate in such higher post shall on transfer to the Corporation is entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.

(6) No officer or other employee transferred by an order made under sub section (1) or subsection (2)

a) shall be dismissed or removed by an authority subordinate to that competent to make a similar or equivalent appointment under the Corporation

as may be specified in the regulations;

b) shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a

reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of evidence

adduced during such inquiry and it shall not be necessary to give such person an opportunity of making representation on the proposed penalty :

Provided further that clause (b) shall not apply where an officer or other employee is dismissed or removed or reduced in rank on the ground of

conduct which has led to his conviction on a criminal charge.

5. Before advertent to notice the impact of the statutory provisions quoted above, it would be apt to notice a decision given by the Central

Administrative Tribunal, Madras Bench in the case D. Dev Raj v. Union of India in original application No. 293 of 2000 decided on 25.8.2000.

The learned counsel appearing for the petitioner has placed explicit reliance on this decision. It is submitted that the Central Administrative Tribunal

has interpreted Section 11(1) of the Act of 1990 and expressed an opinion to the effect that this provision gives the procedure for transfer of an

employee serving with the Akashwani or Doordarshan to the Corporation created under the Act of 1990. It has further been observed that these

provisions contemplate an option to be given on the part of that employee for being absorbed in the Corporation and till an option is given the

concerned employee shall not be deemed to be an employee of the Corporation and shall continue to be borne on the cadre of Akashwani or

Doordarshan as the case may be. It was in these circumstances observed that

the Prasar Bharti Corporation would not have any right to transfer

the applicants before the Tribunal. What has been held by the Central Administrative Tribunal is that an employee regarding whom the order is

passed under Section 11(1) shall remain on deputation with the Prasar Bharti Corporation and till he gives his option to absorb him in the

Corporation. It is this argument which prevailed with the Tribunal, which is being projected to in this petition.

6. Now the provisions of Section 11(1) be taken note of at first place.

Section 11(1) makes a provision to the effect that where the Central Government has ceased to perform any functions which under Section 12 are

the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may

be specified in the order, to the Corporation any of the officers or other employees serving in the Akashwani or Doordarshan and engaged in the

performance of those functions. The proviso to this section provides that no order under subsection (1) would be made in relation to any officer or

other employee in the Akashwani or Doordarshan, who has, in respect of the proposal of the Central Government to transfer such officer or other

employee to the Corporation intimated within such time as may be specified in this behalf by the Central Government his intention of not becoming

an employee of the Corporation.

7. As to what would be the motivating factor in this decision taking process as mentioned in subsection (3). Subsection (4) provides that an officer

or other employee transferred by an order under subsection (1) shall, on and from the date of transfer, cease to be an employee of the Central

Government and become an employee of the Corporation. Subsection (5) provides that every officer or employee transferred by an order made

under subsection (1) shall, within six months from the date of transfer, exercise his option, in writing, to be governed by the scale of pay applicable

to the post held by him in the Akashwani or Doordarshan immediately before the date of transfer or by the scale applicable to the post under the

Corporation to which he transferred. The other service conditions regarding which he is to give his option are indicated in subclause (b) of

subsection (5). Some other beneficial provisions are incorporated in subsection (6).

8. A reading of Section 11 as analysed above makes a provision for the transfer of an employee to the Corporation with a further right to that

employee to give an option. This section nowhere provides that during the intervening period the employee shall be on deputation and would not

be under the administrative control of the Corporation, constituted under the Act of 1990. The concept of deputation to which reference has been

made in the judgment of the Central Administrative Tribunal is not found in Section 11 of the Act of 1990, which has been reproduced above. To

this extent I respectfully disagree with the view expressed by the Bench of Central Administrative Tribunal at Madras.

9. Coming to the facts of this case. The petitioner's case is that he was transferred to the Corporation on 1.4.2000. He submits in para 9(b) of the

petition that he has not given his option to get him absorbed in the service constituted under the Act of 1990 and therefore, he should be deemed

to be on deputation. The theory of deputation for which basic reliance was placed on the decision of the Central Administrative Tribunal as held

above is a theory, which is not supported by the plain provisions of Section 11 of the Act of 1990. Section 11 referred to above does contemplate

that an option has to be given by an employee and such an option if given within the specified time indicating intention of not becoming a member of

the Corporation constituted under the Act of 1990, then this has to be given due regard. The petitioner has not given any option so far. At the time

of arguments it has been submitted by the petitioner that the averments made in para 9(b) & (e) should be deemed as an expression of option to

the effect that he does not want to become an employee of the Corporation.

10. After having heard the learned counsel for the parties, I am of the opinion that there is merit in this limited submission of the learned counsel

appearing for the petitioner. An employee transferred to the Corporation shall for all intents and purposes become an employee of the

Corporation. Such employee shall be subject to the administrative control of the Corporation. For a limited time till option is given such an

employee can seek repatriation to the parent organization. Even though the petitioner has not given an express option, but what is stated by him if

taken as an option, then this has to be considered by the Union of India and it has to take such decision, as may be deemed proper.

11. It be seen that a period of six months is indicated in subsection (5) of Section 11 for giving option with regard to matters dealt with in

subsection (5) and subclauses (a) and (b). However, the option as to whether an employee wants to continue with the Akashwani or Doordarshan

or wants to become an employee of the Corporation has to be given in terms of Section 11(1) proviso. No time limit has been fixed in this regard.

Nothing has been brought on the record as to whether any time limit has been fixed by the Central Government in this regard. It is accordingly

concluded :

i) that the concept of deputation which has been propounded by the Central Administrative Tribunal is not discernible from the bare reading of

Section 11 of the Act of 1990.

ii) that Section 11(1) does contemplate of an opinion which can be exercised by an employee of Akashwani or Doordarshan and if that option is

given then that has to be given due regard;

iii) that in terms of Section 11(1) of the Act some time limit was supposed to be fixed. This is not fixed so far. Therefore, the period of six months,

which is referred to in subsection (5) can be taken as reasonable period in this regard;

(iv) that the petitioner having preferred a petition within a period of six months and he having expressly said in the petition that he does not want to

become an employee of the Corporation, this is required to be taken note of.

In view of the above this petition is disposed of with a direction that the option given by the petitioner as contained in the petition be treated as an

option in terms of Section 11(1) proviso that the Central Government would take decision in this regard. Till a decision is taken the petitioner be

not transferred by treating him as an employee of the Corporation.

12. One arguemnt which has been addressed by the learned counsel for the petitioner is that the wife of the petitioner is also posted at Jammu. It

was submitted that this aspect of the matter be given due regard.

13. In this regard it be seen that merely because the wife of the petitioner is posted at Jammu that cannot be made a ground to not to transfer an

employee. The policy to keep the husband and wife together at one station is only a policy which is required to be given a favourable

consideration. Such is the view expressed by the Supreme Court of India in case of Bank of India v. Jagjit Singh Mehta, 1992(1) SCT 161 (SC) :

1992(1) SCC 306 . This policy is not enforceable in writ jurisdiction.

14. This argument, therefore, would not prevail.

15. In view of what has been stated above, this petition is disposed of with a direction to the Central Government to take notice to the

observations made above and the petitioner be not sent to Ranchi (Bihar) till a decision is taken by them.

16. Disposed of accordingly.