

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.1010/2001**

% **Date of Decision: 16.02.2010**

UOI Petitioners
Through The Secretary & Another
Through Mr. Rajeev Sharma, Advocate

Versus

All India Graphic Artists Association (Doordarshan) Respondents
& Ors.

Through Mr. Ram Singh, President, Respondent
No. 1
Ms. Manju Bisht, respondent No. 3
(Transferred after promotion)
Mr. G.S. Takulia, respondent No. 5
(Retired)

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | <i>Whether reporters of Local papers may be allowed to see the judgment?</i> | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | NO |

ANIL KUMAR, J.

CM Nos. 15736-37/2009

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These are the applications by the petitioners/applicants for setting aside the order dated 8th September, 2009 dismissing the writ petition for default in appearance on behalf of the petitioners and another application seeking condonation of delay in filing the application for setting aside the order of dismissal and restoration of the writ petition. The Notices of the applications were issued to the respondents/non-applicants.

Mr. Ram Singh appears on behalf of respondent No. 1, All India Graphic artists Association (Doordarshan). He also contends that he also appears on behalf of Mr. R.N. Das, respondent No. 4; Mr. G.S. Takulia, respondent No. 5 (retired) who is also present; Ms. Manju Bisht, respondent No. 3 and Mr. S.S. Chandel, respondent No. 2 (retired) who are also present.

It is contended on behalf of the respondents that Mr. R.N. Das has since retired. Ms. Manju Bisht contends that she has been promoted on transfer and in the circumstances they do not oppose the application for condonation of delay in filing the applications for setting aside the order dated 8th September, 2009 and for restoration of the writ petition and for condonation of delay in filing the application for restoration of the writ petition.

Since the pleas and averments made in the applications have not been refuted, therefore, in the circumstances for the reasons stated in the applications there is sufficient cause for condonation of delay in filing the application for setting aside the order dated 8th September, 2009 dismissing the writ petition in default of appearance of the petitioners and there is also sufficient cause for non appearance of the counsel for the petitioner.

Consequently, the applications are allowed. Delay in filing the application for restoration is condoned and Order dated 8th September, 2009 is set aside and the writ petition is restored to its original number.

WP(C) No. 1010/2001

Rule was issued in this matter on 10th January, 2005. With the consent of the parties, the writ petition is taken for final disposal.

The petitioners have impugned the order of the Tribunal dated 8th September, 2000 in OA No. 507/2000 titled All India Graphic Artists Association (Doordarshan) and Ors. Vs. UOI through Secretary, Ministry of Information & Broadcasting allowing the application of the petitioners who were on deemed deputation with Prasar Bharti holding that though the order of transfers are formal and there is no violation of

any rules in transferring them, however, since the respondents had not been transferred to Prasar Bharati Corporation on account of any formal order or notification issued under Section 11(1) of the Prasar Bharti Act therefore, Prasar Bharti would have no jurisdiction or competence to issue the transfer orders, even if they are deemed to be on deputation and thus allowed the application of the respondents.

The petitioners have impugned the order dated 8th September, 2000 primarily on the ground that even if the respondents were on deemed deputation, Prasar Bharti being an autonomous body and having various offices, the petitioners were entitled to transfer them for administrative exigencies and merely on account of deemed deputation with Prasar Bharti, the respondents are not entitled to contend that the transfer order within the Prasar Bharti are also to be passed by the Central Government and such orders could not be passed by the Prasar Bharati.

The learned counsel for the petitioners has also relied on (2007) 9 SCC 539, Prasar Bharti and Ors. Vs. Amarjeet Singh & Ors., where the Supreme Court has held in the similar circumstances that the employees who are under the functional control of the transferee organization though not absorbed in the transferee organization, however, in the peculiar facts and circumstances of the case or an

organization like Prasar Bharati, it would have the power to transfer such employees who are on deemed deputation within the organization.

In Prasar Bharti & Ors. (supra) relied on by the learned counsel for the petitioners, the short question involved was whether in the peculiar situation, the Prasar Bharti/ Corporation would have the power to transfer the employees although they are working in the establishment but continue to be the employees of the Central Government. The Supreme Court had formulated the short question involved in Prasar Bharati (supra) in para 7 on page 543 as under:

7. The short question which arises for consideration is as to whether in the peculiar situation obtaining in the matter, the Corporation can be said to ⁵⁴⁴ have any power of transfer of the employees who although are working in its establishment, but continue to be the employees of the Central Government.

While answering this question, the Supreme Court had held that the employees on deemed deputation were under the functional control of the Corporation and in the peculiar facts and circumstances of this Corporation, it would imply that the corporation had the power to transfer. The Supreme Court at page 547 in Prasar Bharati (supra) had held as under:

26. The respondents, therefore, in our opinion by reason of their conduct as also that of other players in the field, namely, the Union of India and the Corporation must be held to have been deputed in the services of the

Corporation. They would, therefore, be governed by the general principles of deputation. For the said purpose they are under the functional control of the Corporation which in the peculiar facts and circumstances of this case, in our opinion, would also imply that the Corporation had a power of transfer.

27. Functional test, as is well known, is also employed for the purpose of determining the relationship of the employer and employees. (See *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.*¹⁴ and *District Rehabilitation Officer v. Jay Kishore Maity*¹⁵.)

28. We do not find that the action taken by the appellants herein in transferring the respondents is in any way arbitrary or irrational. The orders of transfer have been passed in the interest of the administration and with a view to carry on its functions.

29. We, therefore, are of the opinion that the High Court was not correct in opining that the respondents could not be transferred by the Corporation.

Mr. Ram Singh, President of respondent No. 1 Organization on behalf of All India Graphic Artists Association (Doordarshan) and other respondents who are present does not dispute the proposition laid down by the Supreme Court in *Prasar Bharti & Ors. Vs. Amarjeet Singh & Ors.* (supra).

The order of the Tribunal that the transfer orders were for administrative exigencies and were in accordance with rules, has not been challenged by the respondents. The only dispute raised before the

Tribunal was that the Prasar Bharti being the transferee organization did not have the power to transfer the employees/respondents who are Central Government employees and are only on deemed deputation with the Prasar Bharti. The Apex Court has categorically held that in the peculiar facts and circumstances of Prasar Bharti Corporation where the respondents are working and are under the deemed control of the Prasar Bharti Corporation, such a corporation shall be entitled to pass the appropriate transfer order.

Thus the order of the Tribunal dated 8th September, 2000 in OA 507/2000 titled All India Graphic Artists Association (Doordarshan) Vs. UOI & Ors. holding to the contrary to the law laid down by the Supreme Court in Prasar Bharati (supra) cannot be sustained. The respondents who appear in person admit that their case is not distinguishable and they would also be bound by the decision of the Supreme Court

Consequently the order of the Central Administrative Tribunal impugned before us is contrary to the law laid down by the Supreme Court and is thus not sustainable and is, therefore, set aside. It is held that the Prasar Bharti Corporation, was entitled to pass appropriate transfer orders in respect of those employees who were under deemed deputation from the Government of India and other departments to Prasar Bharati.

Thus the writ petition is allowed and the impugned order dated 8th September, 2000 in OA No. 507/2000 titled All India Graphic Artists Association (Doordarshan) and Ors. Vs. UOI through Secretary, Ministry of Information & Broadcasting passed by the Central Administrative Tribunal is set aside. Considering the facts and circumstances, parties are, however, left to bear their own costs.

ANIL KUMAR, J.

February 16, 2010
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MOOL CHAND GARG, J.