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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No.1407/91

Date of Decision: 30-8-91

Shri M.P. Singh

Applicant

Shri U.S. Bisht

Counsel for the applicant:

Union of India & Ors.

Respondents

Mrs. Raj Km. Chopra

Counsel for the respondents

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The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Member (A)

(JUDGEMENT of the Bench delivered by
Hon'ble Mr. B.N. Dhoundiyal, Member)

The applicant in this case is working as Superintendent B/R Grade-I, a Group 'C' post at Garrison Engineer (Fy) Raipur Dehradun under Chief Engineer Central Command. He has challenged the impugned warning list for Tenure posting issued by Chief Engineer, Central Command Lucknow dated 12.11.1990 and rejection of his appeal against the transfer from the Garrison Engineers (Fy), Dehradun vide letter dated 03.06.1991.

En 2. An Interim order directing the respondents not to relieve the applicant from his present posting at Raipur was issued on 18.06.1991. This was extended thereafter.


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3. The facts of the case are that the applicant entered into Government service in MES, Dehradun on 24.06.1963 as Superintendent B/R Grade-II. He presently holds the post of Superintendent B/R Grade-I, a Group 'C' post in the scale of Rs.1640-2900/- at Garrison Engineers (Fy) Raipur, Dehradun, under Chief Engineer, Central Command. Normally, Group 'C' and Group 'D' personnel are not posted out of their respective commands. However, they are subject to tenure postings to the less popular stations for a fixed tenure of 2-3 years in their own turn under guide-lines issued under C-in-C's letter No.79040/EIC(1) dated 30.12.1983 (A.3). The applicant has done a tenure posting at SINGARSI from September, 1964 to July, 1968 (3 years and 10 months). According to him, the respondents have not taken into account his service in Southern Command (CME Pune) from 27th July 1979 to 26th March 1986). He would not have been due for tenure posting had this been done.

4. The respondents have contended that decision as to what is a tenure station is within the competence of the administration and cannot be subjected to judicial review. Guidelines in this regard have been issued under E-in-C's Branch Area, New Delhi vide letter No.79040/EIC(1) on 30th December, 1983. Prior to this date, the individual posted to other commands on promotion were junior most stayee in the parent command and as such they are not to be treated on tenure service.

5. We have gone through the facts of the case and heard the contentions of the learned counsel for both the parties. Under the guidelines issued on 30.12.1983 (para.10/App.'A'), in case of there being more promotees in a command than the vacancies 'the longest stayees amongst the promotees in non-tenure stations in a command will move to other command as allocated xxxxxx'. In case there is no vacancy in tenure station, the promotees will be posted in a non-tenure station, which will be treated as tenure station for all purposes. The guidelines are silent about those who were working outside their command in 1983 i.e. when the new guidelines became effective. We leave it to the respondents to consider this point and pass appropriate orders.

6. The respondents have stated that there were no such provisions in 1979 that the individuals posted on promotion to other command will be treated as on tenure service. The E-in-C Branch's policy to this effect came in December 1983 only. The provision of this letter cannot be applied with retrospective effect.

 7. The legal position regarding transfer of a Government servant has been laid down by the Supreme Court in its recent decisions in Gujarat Electricity Board Vs. Atma Ram Saugomal Poshnai, 1989 (3) JT.20 and U.O.I. & Ors. Vs. H.N. Kirtania, 1989(3) SCC(455).

(10)

In the former case, the following observations made by the Supreme Court are pertinent:

'Whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make 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 out the order of transfer.....'

There is no dispute that the respondent was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place within the State, of Gujarat. The respondent had no legal or statutory right to insist for being posted at one particular place.'

7. A similar view was expressed in the Kirtania's case and it was reiterated that a Government servant in a transferable post has no legal right to insist for his posting in a particular place.

8. The applicant has not alleged any malafide on the part of the respondents. In the circumstances the applicant will not be entitled to any relief as sought in the present application and the interim order passed on 18.06.1991 and continued thereafter is hereby vacated.

9. There shall be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL)
MEMBER

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN