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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.175 of 1986.

Jagannath Prasad Petitioner
Vs.

1. Union of India
2. Engineer in chief,
Army Headquarters,
New Delhi
3. Chief Engineer, Central
Command, Lucknow.
4. Chief Engineer, Military
Engineering Services,
Jabalpur.
5. Commander, Works Engineer,
MES, Jhansi.
6. Garrison Engineer, MES
Jhansi.

Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this petition under Section 19 of the Administrative Tribunals Act XIII of 1985, the petitioner challenges his order of transfer dated 7.1.1985 from Jhansi to Maharajpur and ^{Prays,} for a direction that he be adjusted in Jhansi itself on the promotional post as Uppder Division Clerk (in short UDC) in the office of the Garrison Engineer, Military Engineering Services, Jhansi.

2. The petitioner had joined as Lower Division Clerk (in short LDC) in the office of the respondent no.6. ^{It is alleged that,} On his promotion as UDC, the petitioner was to be transferred to the office of the Garrison

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Engineer (A.F.), Maharajpur against which, the petitioner made a representation on 14.9.1984 but the same was turned down by the respondent no.3 on 14.9.1984 and the transfer and promotion order was ordered to be implemented forthwith.

It was also ordered that in case the petitioner was not willing to move to Maharajpur, an unconditional undertaking should be obtained from him foregoing his promotion. The petitioner made a representation on 28.11.1984 stating that he was not due to transfer to hard/tenure stations under the rules and there was one vacancy of the Office Superintendent in the office of the respondent no.6 at Jhansi itself and one vacancy of LDC in the office of the respondent no.5 and one UDC R.L.Tomer was willing for his transfer to Agra at his own expenses from Jhansi and requested for adjusting him locally. The said representation was countersigned by the respondent no. 6 and was forwarded and recommended for sympathetic consideration to the respondent no. 5. Paragraph 14 of appendix 'A' to E-in-C's Branch letter dated 30-12-1983 provides that the volunteers in the matter of transfer should be given preference. However, in utter disregard of paragraph 25 of the Appendix 'A' aforesaid and without giving any decision on the representation of the petitioner

} he was served with movement order dated 3.1.1985 by the respondent no.6. The petitioner was also served with letter dated 7.1.1985 requiring him to

submit an unconditional undertaking to forego his promotion in clear terms latest by 9.1.1985 stating that no appeal will be entertained. It was a clear indication of vindictiveness of the authorities who wanted to snatch from the petitioner his basic right of representation and appeal. The petitioner, by his undertaking dated 9.1.1985, requested the authorities to adjust him by transferring ~~afersaid~~ Mahendra Singh UDC but the transfer of Mahendra Singh was kept pending by the authorities till June 5, 1985. The petitioner thereafter, submitted an unconditional undertaking to forego his promotion on 9.1.1985, so that he could be adjusted in place of Mahendra Singh UDC or on arising any vacancy in the near future pending his appeal. The said undertaking of the petitioner was not considered and was returned by the Assistant Garrison Engineer with the remarks that it was returned by the respondent no.5 without considering the same. The petitioner, thereafter again preferred an appeal on 15.3.1985 to the respondent no.2 for not accepting his unconditional undertaking by the respondent no.5 on the ground of serious illness of his wife. The petitioner, however, did not receive any decision in respect thereof ^{though} and the movement order to proceed to Maharajpur was served on him on 3.1.1985 on the direction of the respondent no.5. The respondent no.6 vide his D.O. dated 24.1.1986 agreed with the petitioner that he

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was erroneously relieved of his duties and his presence at Jhansi appeared to be necessary for the treatment of his wife. The petitioner had also submitted a representation to the Defence Minister on 22.11.1985 but when he did not get any redress, the present petition was filed by him.

3. The respondents have contested the case and in the reply filed on their behalf, it has been stated that due to the non-availability of ~~the any~~ vacancy of UDC at Jhansi, the application of the petitioner to stay at Jhansi was turned down by the respondent no.3 and he was given an offer for giving an unconditional undertaking for foregoing his promotion but the petitioner failed to give ~~entitled~~ the same and as such, he is not ~~liable~~ to be adjusted at Jhansi. The petitioner is also due for hard/tenure station. The representation of the petitioner regarding the illness of his wife was not supported by the certificate of the authorised Medical Officer according to rules and while rejecting the same, the petitioner was again given an opportunity to forego his promotion to the post of UDC in case, he was not interested to move to Mharajpur on promotion but since he did not give such undertaking, he was relieved from Jhansi to accept the appointment at Maharajpur. The petitioner was relieved on January 1985 while Mahendra Singh was relieved on June 1985 and as such, the petitioner could not be adjusted in his vacancy. The petitioner has no prima-facie case and his petition is liable to be dismissed.

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4. In the rejoinder filed by the petitioner, he reiterated the allegations made by him in his petition and denied the allegations made by the respondents in their replies.

5. This petition was argued at length on behalf of the petitioner and our attention was drawn to the guidelines regarding the transfer of civilian subordinates of the MES, appended to the reply of the respondents and laying stress on rule 14, which provides that in all the above cases, the volunteers will be given preference, it was contended that the respondents should have transferred some willing persons from the office of the Garrison Engineer, Jhansi to accommodate the petitioner. It has been further contended that the authorities deliberately delayed the finalization of the transfer of Mahendra Singh and the petitioner could be easily adjusted in his vacancy. It has also been contended that the family circumstances of the petitioner are such that it was practically impossible for him to leave Jhansi on promotion or otherwise and the authorities should have allowed him to continue at Jhansi on his foregoing the promotion and his transfer to Maharajpur is, therefore, contrary to the principles of natural justice and the rules of MES and caused great hardship to the petitioner.

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6. The petitioner purposely did not disclose the date of his promotion and transfer in his petition and it was simply stated that when he knew that he was to be transferred to Maharajpur on promotion, he made a representation on 14.9.1984 against his posting at Maharajpur. A copy of this representation is enclosure 1 to the petition. In this representation, the petitioner stated about his family difficulties but did not suggest the name of any person who was willing for transfer to accommodate him at Jhansi. He also did not state about his foregoing the promotion for ^{the} ~~time~~ being. In reply to his said representation, the petitioner was informed by the Assistant Engineer on 27.11.1984, copy enclosure 2, that the respondent no.3 had considered his representation and as the petitioner had not done any tenure and there was no vacancy of UDC at Jhansi, his move to Mahrajpur has to be implemented forthwith. It was also ordered that in case the petitioner was not willing to move on promotion, an unconditional undertaking to forego the promotion be taken and forwarded to the headquarters.

7. After this order, the petitioner made another representation, copy enclosure 3, to the respondent no.3 for reconsidering his decision and adjust him at Jhansi on promotion as UDC. In this application, it was also stated that one R.L.Tomer UDC was willing for permanent transfer to Agra at his own expenses. Mere willingness of R.L.Tomer was not sufficient to transfer him to Agra. It involved

the existence of a vacancy at Agra and other exigencies of service and the interest of administration. For the first time with this representation, the petitioner had given his own certificate to the effect that his wife was still unable even to stand and walk independently due to disability. He did not furnish any medical certificate or other proof, with his representation, of the illness or disability of his wife. His representation was of course recommended by the Garrison Engineer. After considering all this, the respondent no. 3 directed the Garrison Engineer to implement the transfer and promotion order dated 18.8.1984 and the Garrison Engineer accordingly issued movement order on 3.1.1985, copy enclosure 5 asking the petitioner to move to Maharajpur stating that he shall be relieved from his office on 10.1.1985. The Garrison Engineer further informed the petitioner vide his letter dated 7.1.1985, copy enclosure 6, that in case he did not want to move on promotion, he should render an unconditional undertaking foregoing his promotion in clear terms latest by 9.1.1985. The petitioner, however, neither proceeded to Maharajpur nor gave an unconditional undertaking and made another representation on 9.1.1985 to the Garrison Engineer, copy enclosure 8, stating that his date of SOS may be amended as 10.2.1985 instead of 10.1.1985 and he be adjusted in place of Mahendra Singh, UDC. It was further stated that in case,

decision of his appeal was not given in his favour this be treated as the foregoing of his promotion. In our opinion, this was not an unconditional undertaking to forego the promotion as demanded from the petitioner. The petitioner himself has filed the copy of transfer order dated 5.6.1985, ^{, which shows that the transfer} enclosure 7, of Mahendra Singh, though made in December, 1984, the transfer order was actually issued on 5.6.1985 and he was required to be relieved on 12.6.1985. It is thus, further apparent that on 9.1.1985, there was no vacancy of any UDC at Jhansi and the petitioner having failed to give an unconditional undertaking, had to move to Mharajpur.

8. The petitioner, thereafter again made a representation on 15.3.1985 to the respondent no.2 by way of an appeal for cancelling his transfer to Maharajpur. He had prayed that atleast for a period of one year, he be adjusted in Jhansi failing which he had to start agitational action at appropriate time. Yet another representation/appeal was made by the petitioner on 22.11.1985 to the Defence Minister, copy enclosure 11 for adjusting him at Jhansi as UDC. In the parawise comments submitted in this connection by the Garrison Engineer, Jhansi, copy enclosure 12, he had recommended the adjustment of the petitioner at Jhansi on humanitarian ground and on 24.1.1986, the Garrison Engineer, Jhansi

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in his D.O.letter to Accounts Officer, Jabalpur, copy enclosure 12, had stated that the petitioner was erroneously relieved whereas he was on leave on 10.1.1985 and he was facing financial hardship. This recommendation was made while forwarding the application of the petitioner for payment of his pay etc. from January 1985. In our opinion, this recommendation does not improve the case of the petitioner on merit.

9. According to the documents discussed above, Mahendra Singh should have moved to Maharajpur in June 1985 and it has not been brought to our notice that there is now no place of UDC at Maharajpur for the petitioner. The question of adjusting the petitioner in his vacancy at Jhansi could not arise atleast when the petitioner was relieved on transfer to Maharajpur in January, 1985. The petitioner has filed photostat copies of some prescriptions and slips in this case with his rejoinder to support his contention regarding the illness of his wife. We are of the view that the satisfaction had to be made by the competent departmental authorities who had ordered his transfer and he having been failed to produce the necessary materials before them, should blame himself.

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10. The petitioner filed some more documents before us to show that Maharajpur is a tenure station and the posting at tenure station has to be made in accordance with certain instructions of the department. According to him, the petitioner was not due for posting to tenure station and ^{as such} he was also not due for transfer to Maharajpur. The contention of the respondents is that the transfer of the petitioner to Maharajpur was not made in the routine manner but was made on promotion and the directions issued regarding posting to tenure stations do not apply in the case of promotion. The contention appears to be correct.

11. The petitioner also filed the instructions issued by the Government of India to prevent harassment and discrimination against the Scheduled Caste and Scheduled Tribes employees of the Central Government. The petitioner alleges himself to be a member of Scheduled Caste. We are, however, not satisfied that he is being harassed or discriminated against on the ground of his being a member of Scheduled Caste.

12. It was also alleged that some other employees of MES Jhansi were adjusted locally on their transfer to other places and there was a discrimination against the petitioner. This contention also does not appear to be correct as

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annexure SCA 1 shows that one R.N.Gupta under orders of promotion and transfer to Secunderabad was adjusted at Jhansi on 18. 3.1986 on his foregoing the promotion after giving an unconditional undertaking. ^{& adjusting anybody} No other specific example, ~~adjusted~~ on promotion locally at Jhansi without foregoing promotion, was brought to our notice.

13. Having thus carefully considered all the facts and circumstances of this case in the light of the materials placed before us, we are of the view that there has been no discrimination in any manner against the petitioner and his transfer to Maharajpur was made in due course on his promotion as UDC from the post of LDC and as despite the repeated directions of the authorities, he failed to give an unconditional undertaking to forego his promotion, he could not be adjusted locally. The guidelines of transfer of the civilians pointed out above, do not help the petitioner at all. The Garrison Engineer, Jhansi who is the immediate officer of the petitioner had been recommending the case of the petitioner from the very beginning and there is, therefore, no question of any malafide so as to attract the jurisdiction of the Tribunal to make any interference in the matter of transfer. In Shanti Kumari Vs. Regional Deputy Director (A.I.R. 1981 SC-1577), it

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was held that transfer of a Government servant may be due to exigencies of service or due to administrative reasons and the Courts cannot interfere in such matters. In any case, two years have already elapsed in the meantime and things would have improved during this long period and there may now be no difficulty for the petitioner to proceed to Maharajpur. In any case, he has to convince his departmental authorities about the genuineness of his difficulties, if they still persist or should unconditionally forego his promotion as UDC, if it is still permissible under the rules. We would, however, not like to interfere in this matter.

14. The petition is accordingly dismissed without any order as to costs.

Khm
29.1.87
1987

MEMBER (A)

Subbarao
29.1.1987
MEMBER (J)

Dated 29.1.1987
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