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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No.1135 of 1986

Vijai Singh ..... Plaintiff-Applicant.

Versus

Union of India & another ... Defendant-Respondents.

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Hon'ble S. Zaheer Hasan, V.C.  
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

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In this suit received on transfer under Section 29 of the Administrative Tribunals Act, 1985, the plaintiff, Vijai Singh, has prayed for issue of a direction that the defendants can only take the work of a Chowkidar from the plaintiff. On release from the army the plaintiff was appointed as a Chowkidar on 20.6.1977 in the Post & Telegraphs department. His category is a non-test category. On 20.10.1984 he was transferred from Agra to Kanpur and posted as Store Chowkidar. But on 26.12.1984 he was ordered to be posted as a Beldar (Mazdoor). The plaintiff has challenged these orders for their legality on the ground that he was appointed as a Chowkidar and the work of Chowkidar only should be taken from him. In the non-test categories interchangeability between different posts is not possible. He is not fit to work as a labourer and that the transfer is a penal transfer and should have been done after giving him due notice. The post of Chowkidar is still vacant.

2. According to the defendants the plaintiff does not enjoy good reputation and is in the habit of



A2  
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putting false and baseless allegations against his seniors. The jobs in non-test category being interchangeable, the orders posting the plaintiff are within the rules. Inability to work as mazdoor is no ground for not putting him on that job. For such a transfer the officers subordinate to the Executive Engineers are fully competent to take action against Class IV employees. The order of transfer is not penal.

3. At the bar, the learned counsel for the plaintiff made a submission that the 1974 circular on reorganisation would not change the recruitment rules and the orders issued by the Superintending Engineer on 25.6.1986 to restore the persons to their own cadre have not been carried out yet in the case of the plaintiff. While the learned counsel for the defendants has referred to the notification of 11.1.1974 making the posts in non-test category interchangeable and affirmed that this transfer will not affect the seniority of the plaintiff.

4. From the seniority list of Store Chowkidars placed at Annexure 'I' of the affidavit by the plaintiff it becomes evident that even in non-test categories which have been indicated as interchangeable, the seniority of various groups is not common and is kept separately for each category. Once the seniority groups are different, interchangeability, if any as envisaged in the 11.1.1974 orders, has very little meaning and as rightly advised by the Superintending Engineer in his orders of 25.6.1986 he did not consider it desirable to continue the officials away from their cadre for indefinite period.



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5. The defendants have said that the changes were made in the exigencies of service and if these again demand the plaintiff will be brought back to his cadre. This is a poor way of dealing with the utilisation aspect of the staff. It would be a different matter to use a person in an interchangeable category if there were surpluses or the work content had reduced. In this case there is no such situation. On the other hand the defendants have themselves averred that they were not happy with plaintiff's work as he was complaining against his senior officials. The plaintiff has also stated in his petition that because he used to expose the illegal activities he is being penalised by way of this transfer. While the employer must have play in joints to be able to manoeuvre his workforce but if an alien purpose is sought to be achieved by such freedom it will be misuse of power and authority. If an employee is found to be inefficient and commits misconduct he should be taken up under the relevant rules and not subjected to such actions in the garb that the instructions permit it. There should be nexus between action and object to be achieved.

6. The learned counsel for the plaintiff has relied on the case of Dr. Prem Behari Lal Saxena v. State of U.P. and another (A.I.R. 1965 Allahabad 406) which has referred to the case of P.L. Dhingra v. Union of India (A.I.R. 1958 S.C. 36). In <sup>Dhingra's</sup> this case the Hon'ble Supreme Court had observed that a substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to post and he becomes entitled to hold a lien on the post. There is no dispute on this aspect, but the fact remains that



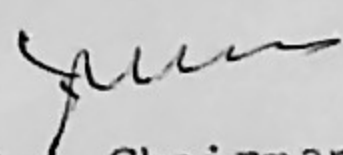
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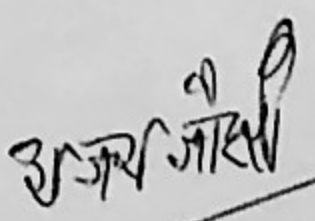
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the plaintiff was appointed to a non-test category where interchangeability is possible in terms of the 11.1.1974 orders. This is done to provide flexibility. This case does not materially help the plaintiff, <sup>9</sup>in ~~his~~ <sup>9</sup>case.

7. We, ~~therefore~~, feel that under the circumstances of the case while there could have been justification for short term utilisation of staff in interchangeable non-test categories to cope up with sudden imbalanced increase in workload there would be no justification to put a person in a different seniority group permanently. The defendants should, therefore, act on the Superintending Engineer's directions on the subject of transfer of Chowkidars and Labour, and the plaintiff be brought back to his post of Chowkidar if not already done. We reject the prayer that the defendants can only take work of Chowkidar from the plaintiff and cannot utilise the plaintiff in other non-test categories if exigencies demand.

8. The application (Suit No. 139 of 1985) is disposed of accordingly. Parties are left to bear their own costs.

  
Vice-Chairman.

  
Member (A).

Dated: November 30, 1987.

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