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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 185 of 1987.

Hargovind Singh Applicant

Vs.

Union of India and
two others Respondents.

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

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

In this application under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant seeks a direction to the respondents to adjust him at Kanpur locally in the existing vacancies and not to transfer him to Madras.

2. In short, the case of the applicant is that he was appointed as Lower Division Clerk (in short LDC) on 12.12.1983 in the office of the Controllarate of Inspection and General Stores at Kanpur on compassionate ground on the death of his father and he satisfactorily completed the period of his probation on 30.12.1985. The Government of India proposed 5% reduction in non-plan expenditure of all the Ministries/departments under its control and a letter of policy in this connection was issued by the Director General of Inspection, Ministry of Defence, New Delhi- respondent no.2 in the beginning of 1986. 5 per cent reduction in the non-plan expenditure is to be effected by curtailment in the strength of group 'C' and 'D' employees which according to the applicant

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is discriminatory and violative of the provisions of the Articles 14 and 16 of the Constitution of India. According to this scheme, 27 posts of LDCs were held to be surplus in the office of the applicant and the applicant being one of the incumbents of the said posts, was asked to give his option for transfer to other place for adjustment. The applicant had given his option for Kanpur itself as there were five vacancies at Kanpur but instead of adjusting the applicant, some other persons were adjusted at Kanpur and the applicant vide order dated 2.3.1987 has been ordered to be posted to Madras. He has challenged this order on the ground that the salary of the Government servants is charged under the 'Plan' Heads of the Defence Service estimates and not under the 'Non-Plan' expenditures. The applicant having been appointed on compassionate grounds to save his family from starvation, he cannot be transferred out of Kanpur in view of the fact that he has his old ailing mother and a widow sister to maintain. It is also alleged that he having not given any option for Madras, he should not be transferred out of Kanpur and he should be adjusted locally.

3. As the applicant also wanted interim relief a notice was issued to the respondents to show cause as to why the petition be not admitted and the interim relief prayed for be not granted. In reply to the said notice, a reply has been filed on behalf of the respondents wherein it has been stated that as a

result of the review of non-plan expenditure, the Government directed the respondent no.2 to surrender 1107 group 'C' and 'D' posts with a view to effect economy in administration and under that scheme 27 posts of LDC were declared surplus in the Controllerate of Inspection General Stores, Kanpur. The applicant is one of the individuals affected by the said scheme. No doubt, he was appointed on compassionate ground but he is liable to all India transfer and, there are, no separate set of rules for officials appointed on compassionate grounds. The options were invited from the affected officials to adjust them to the places of their choice as far as possible but no guarantee was given to adjust them at the place of their choice. According to the established principles, the senior persons have been adjusted first at the place of their choice and the 3 persons named by the applicant in his application, who have been adjusted locally at Kanpur, are all senior to him and he should have no grievance against their adjustment. There being no other post for applicant at Kanpur, he is bound to be transferred out of Kanpur. The applicant filed a rejoinder in reply to the counter affidavit filed on behalf of the respondents and it was stated therein that non-plan expenditure would never mean the salaries of the employees as the salaries of the Government servants are disbursed from civil estimates or

defence estimates, as the case may be, which are the plan heads of expenditure. The respondents have not stated the correct facts in their reply. The letter of the respondent no.2 envisages the rule of adjustment of surplus according to which, the officials upto serial number 56 may be adjusted at Kanpur and as the name of the applicant is at serial number 53 of the seniority list, his transfer to Madras is illegal, arbitrary and punitive. It is also alleged that as the applicant had tried for his local adjustment through a Union leader, a warning was issued to him and on account of that fact, his transfer to Madras has been made by way of punishment and the same is liable to be cancelled.

4. As the pleadings of the parties were complete, we heard this case finally, so far as the applicant was concerned, on the last date of hearing but as none appeared on behalf of the respondents, we were deprived of the arguments to be advanced on behalf of the respondents. Regarding the policy of reduction of number of posts of grade 'C' and 'D' employees in the office of the respondent nos. 2 and 3, we do not agree with the contention of the applicant that the pay of the officials of the department of the applicant does not come under the non-plan expenditure and the policy of 5 per cent reduction for such expenditure is not applicable to the department. We also do not agree with his contention that there is a discrimination against group 'C' and 'D' employees by reducing



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only their post, and not applying the same principle for group 'A' and 'B' employees. It is for the employer to manage his affairs and it^{is}/the employer alone who after the proper application of mind can decide regarding the surplus and the deficiencies of the vacancies in various departments and offices. The policy of 5 per cent reduction in non-plan expenditure, therefore, cannot be challenged by the applicant on this ground.

5. Regarding his right to continue at Kanpur and the discrimination alleged by him, we feel that there is no force even in this contention. The offer of appointment made by the respondents to the applicant on 8.12.1983, copy annexure 'A'-1, shows that his present posting was to be at Kanpur but he was liable for all India transfer. Having accepted this offer, the applicant joined the service and he was issued the appointment order dated 26.12.1983, copy annexure A-2, clearly stating that the applicant is liable to service in any part of India. It is, therefore, incorrect to say that he having been appointed on compassionate ground, he cannot be transferred to any place out of Kanpur.

6. The three employees, namely Sri S.N. Tirka, Smt. Chandra Matti Anna and Sri B.Yohaman, who have been adjusted at Kanpur, are all senior to him and the applicant being a junior official, could not get the precedence over them and as such, his claim for adjustment at Kanpur has been rightly ignored by the respondents.

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7. Regarding the nature of the punitive action alleged by the applicant in his rejoinder, it appears from annexure R.A.-2 that one labour and political leader had recommended the case of the applicant for his local adjustment and in that connection, the applicant was informed vide annexure RA-3 that it was in violation of rule 20 of CCS (Conduct) Rules 1964, and he was advised to desist from approaching members of Parliament/ members of State Legislatures to further his interest in respect of matters pertaining to service conditions. This annexure does not contain any warning to the applicant and the attention of the applicant was rightly drawn to the relevant rule 20 of the CCS (Conduct) Rules and we are of the view that his transfer to Madras is not by way of punishment.

8. We have carefully considered all the points raised by the applicant in his application for adjusting him at Kanpur and not to transfer him to Madras or out of Kanpur, but we do not find any force in any of them.

9. The application is accordingly dismissed without any order as to costs.

Home
30.3.1987
MEMBER (A)

Indarima
30.3.1987
MEMBER (J)

Dated 30.3.1987
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