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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 522 of 1987

S.U. Khan Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.

In this application an order dated 28.9.1985, mentioned in the promotion order dated 14.10.1985, which transfers the applicant from Gorakhpur to Jabalpur and a movement order dated 30.5.1987 asking the applicant to move to Jabalpur by 30.6.1987 is under challenge.

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2. The applicant, S.U. Khan, was absorbed as B & R Gr.I at Gorakhpur by PTO No. 41 of 14.10.1985 into regular establishment as Superintendent B & R Gr.I with effect from 4.10.1985. According to him the movement order posting him to Jabalpur is against the policy laid down for transfer of civilian subordinates in MES so the movement order is against policy regarding transfers. The applicant was posted to Gorakhpur in July, 1982 as Supdt. B & R Gr.II. He was promoted ad hoc to Supdt. B & R Gr.I on 6.4.1983 and regularised with effect from 4.10.1985. Subsequently he came to know that he has been transferred by order dated 28.9.1985 to Jabalpur. He represented as according to him he was not the senior most person but no reply was received by him. He has relied on the policy laid down on para 9 of the Chief Engineer, Central Commands letter of 18.9.1985. Also on receipt of the

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movement order the Garrison Engineer had referred to the representation made by the applicant and requested for its disposal before affecting the movement order. The representation filed by the applicant has still remained undisposed of and a movement order dated 30.5.1987 has been issued asking him to move by 30.6.1987 to Jabalpur. A post of Supdt. B & R Gr. I was ^{available} ~~increased~~ at Gorakhpur but instead of adjusting the applicant and inspite of his representation one S.K. Garg, Supdt. B & R Gr. I of Chilka has been brought to Gorakhpur. The applicant has thus felt discriminated and has prayed for declaring the movement order dated 30.5.1987 as null and void and the authority of 28.9.1985 posting him to Jabalpur be set aside.

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3. In their reply, while opposing the application, the respondents have said that after his ad hoc promotion in 1983, the applicant was regularly promoted as Supdt. B & R Gr. I and posted to Jabalpur. In his case clause 9 of the policy on transfer is not attracted, what applies is clause 3. It is open to the applicant to go on promotion to Jabalpur or to refuse promotion and remain at Gorakhpur. The letter of 14.10.1985 promoting him at Gorakhpur itself was issued by mistake and was later rectified. Accordingly he has been served movement order dated 30.5.1987. The order dated 14.10.1985 issued by the Garrison Engineer, Gorakhpur should have been issued on assumption of duties at Jabalpur. It was an erroneous order and hence was cancelled on 10.6.1986. The representation made by the applicant on 4.7.1986 has since been rejected. He was also asked to give a refusal if he did not want to go to Jabalpur. Thus there was no arbitrariness in the orders. S.K. Garg has been posted from a Hard

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Tenure post to a post of his choice.

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4. At the Bar the contentions raised by Sri B.P. Srivastava, learned counsel for the applicant, were that under the policy on transfer the person with longest stay should have been transferred and there were two persons who had longer stay than the applicant. Also since the applicant has been already absorbed at Gorakhpur in terms of the order dated 28.9.1985 there was no question of his transfer now. He has also drawn his regular increment since his regular promotion. No order cancelling his promotion has been received by the applicant. Sri N.B. Singh, learned counsel for respondents, submitted that the order of 14.10.1985 was wrongly issued. It had been clearly stated in the promotion orders issued on 28.9.85 that he was promoted and posted to Jabalpur. Therefore, the order issued by the Garrison Engineer, Gorakhpur was wrong and it was cancelled and in the case of the applicant para 10 of the transfer policy letter applies and not para 9. The applicant in his rejoinder stated that by virtue of the order of 10.6.1986 cancelling his posting at Gorakhpur valuable rights have been taken away from him arbitrarily. And once he has been promoted at Gorakhpur, he cannot be transferred except within the policy of such transfers. His promotion can no more be connected with his transfer now. I have also seen the case file and considered the matter carefully.

5. The order dated 14.10.1985 issued by the Garrison Engineer, Gorakhpur indicating absorption of the applicant into regular establishment as Supdt. B & R Gr.I is not under dispute. The authority quoted in this letter is Engineers Branch, Lucknow letter No.901707/85/1/74 FID (I), dated 28.9.1985. The respondents have averred

that this order was arroneous because the authority letter of 28.9.1985 clearly indicated that the applicant is promoted and posted to Jabalpur. The applicant has not attached the copy of this order. It was submitted by the learned counsel for the respondents at the time of final hearing of the application. This order has the applicant's name at Sl.No.5 and it is clearly indicated against the applicant's name that he is posted from Gorakhpur to Jabalpur. The order says "The following Supdt. B & R Gr.II have been approved for promotion as Supdt. B & R Gr.I and are posted as under.....". There is no ambiguity in this order. The order being so clear how the order dated 14.10.1985 got issued is not understood. It could not have been issued under the authority of this letter. Hence it could have been issued only by mistake. It is not applicant's case that there was another letter of 28.9.1985 or that before issue of letter of 14.10.1985 a modification to this letter was received. There is no indication in the order of anything like that having happened. If the order of 14.10.1985 was issued by mistake, the cancellation done on 10.6.1986 took a good 8 months for the respondents to realise the mistake.

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6. According to the respondents, of the three persons promoted at Gorakhpur, the applicant had the longest stay and therefore, he was adjusted at Jabalpur and not at Gorakhpur. The movement order has been issued only on 30.5.1987 implementing the postings ordered on 28.9.1985 though the regularisation order was cancelled on 10.6.1986. The applicant had represented on 4.7.1986 which according to the respondents has since been disposed of.

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7. From the Guidelines regarding Transfer of Civilian Subordinates issued on 13.9.1985, under paras 9 & 10 is the policy regarding normal transfer and posting on promotion. The main idea is that the person with longer stay moves if adjustment is required to be made. The applicant's plea that since he had been regularised by the order of 14.10.1985 he should be covered by para 9 cannot be accepted. There is no doubt that the order dated 14.10.1985 which was based on the order of 28.9.1985 was erroneously issued. Thus his case has to be dealt with under para 10.

8. There were three persons promoted by the order of 28.9.1985. Two were retained at Gorakhpur and the third one, i.e. the applicant was adjusted at Jabalpur. Instead one S.K. Garg has been brought to Gorakhpur from a tenure station.

9. In regard to transfers from tenure stations the guidelines have been given in the letter No.901250/1/97/Etc (I) of 18.7.1985. For repatriation every effort has to be made to accommodate a person in one of the choice stations. In case of nonavailability of vacancy a volunteer may be moved out. If there is no volunteer the individual may opt for another station or continue to stay in the tenure station till vacancy becomes available.

10. There is nothing to show that an effort will be made to create a vacancy for accommodating a person from a tenure station or such a person will have preference over a promotee in the matter of posting. In the absence of any such guideline or policy the averment made by the respondents that S.K. Garg was brought to Gorakhpur because it was his choice station after

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completing tenure will not be in line with the policy and is to be rejected.

11. There were evidently three vacancies available at Gorakhpur. Therefore, adjusting the applicant at Jabalpur on regularising him as Supdt. Gt. I was not called for. These vacancies include the one in which S.K. Garg was to be accommodated. The decision for accommodating the promotees within the command being guided with a view to balance the deficiencies in all the commands, the posting of S.K. Garg at Gorakhpur creates ~~ad~~ a doubt that it was an attempt at creating a vacancy to accommodate him rather than balance the deficiencies. Thus the respondents' action is not supported by the guidelines on postings on completion of tenure nor on posting on promotion. It is immaterial that the applicant was the person with the longest stay as indicated by the respondents by the dates of postings of the three promotees. *What is to be seen is the intention behind the order.*

12. On the above considerations, *I feel that* the applicant could have been accommodated at Gorakhpur itself. He was already working there since 1983 and is still continuing on account of the stay having been granted to him and though the Tribunal will in normal circumstances refrain from interfering in a transfer matter, but in this case the circumstances are not so. There is, therefore, grounds for such an interference.

13. On the above considerations I allow the petition. The order dated 30.5.1987 is quashed. Parties will bear their own costs.

3/12/87
Member (A).

Dated: December 8th, 1987.
PG.