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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Registration O.A.No.1135 of 1987

O.N.Tiwari Applicant

Versus

Union of India & Others Respondents.

Hon.D.S.Misra. A.M.

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 praying for cancellation of the order dated 9.10.87 passed by Commander Works Engineer, Kanpur Cantt. under authority from HQrs. Central Command, Lucknow letters dated 25.3.87 and 1.7.88 by which the applicant has been permanently transferred to Gopalpur as Storekeeper Grade II.

2. The case of the applicant is that he was appointed to the post of Storekeeper grade II vide letter dated 15.4.64 at Dehradun where he stayed for a period of only 4 months; that he was transferred in the office of Garrison Engineer Singharsi which is a tenure station and served there upto 14.6.88; that by a letter dated 13.3.87 Commander Works Engineer, Kanpur Cantt, respondent No.3 had transferred the applicant in the office of Garrison Engineer, Gopalpur which is a hard tenure station; that the representation of the applicant dated 7.5.87 to the Chief Engineer, Central Command, Lucknow against his transfer order has been rejected vide letter dated 16.7.87 issued

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by Assistant Garrison Engineer, Kanpur (copy Annexure-4); that the applicant made a second representation against his transfer but instead ^{of} giving a decision on his representation a movement order dated 9.10.87 (copy Annexure-A.7) has been issued. The contention of the applicant is that his transfer and posting to the hard/tenure station is in clear violation of the guidelines contained in the circular letter dated 30.12.83 issued by the Engineer in Chief (copy Annexure.*). The applicant has also challenged the order of transfer on the ground that there are 17 persons, contained in the list at Annexure-11, who have never served at any tenure station and have completed three years stay in the station, who should have been posted to the tenure station instead of the applicant.

3. In the reply filed on behalf of the respondents it is stated that the contention of the applicant that he was posted to a tenure station earlier is not correct; that the applicant's first posting at Singharsi vide movement order dated 8.9.64 was to a non tenure station as Singharsi was declared a tenure station only with effect from 27.4.65; that the fact of the applicant having served at Singharsi from 27.4.65 to 14.6.68 was taken into account while considering and nominating his candidature for his second tenure posting to a tenure station on his turn; that the applicant was informed vide letter dated 20.10.86 that he was due for a tenure posting; that by a letter dated 30.10.86 he he was advised to keep ready to move at short notice

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on receipt of posting orders and representation if any should reach the office of the Garrison Engineer by 5.11.86; that the applicant did not submit any representation within the stipulated period and the authority rightly came to the conclusion that the applicant has nothing to say against the proposed tenure posting and as such his posting order was issued vide letter dated 28.3.87 (Copy Annexure-CA.3); that the applicant submitted his representation after a period of one month and 10 days which was rejected by the appropriate authority vide Signal dated 1.7.87 (copy Annexure-4); that the applicant's posting to tenure station is in conformity with the policy laid down by the Govt. of India and which has been mentioned in Engineer-in-Chief Branch, Army HQrs. letter dated 30.12.83; that the applicant has been relieved of his duties on arrival of his relief with effect from 30.11.87; that the persons mentioned from Sl.No.1 to 7 in Annexure-11 of the petition are not similarly situated persons as ^{the} applicant as they were simply Storemen and their candidature cannot be compared with the applicant who is a Storekeeper grade II; that these persons were promoted to the post of Storekeeper grade II on 30.5.87 after the transfer of the applicant. The respondents have given detailed reasons for not posting out persons listed at Sl.Nos. 8 to 17 in Annexure-11 to the petition ~~denying any discrimination in the case of the applicant.~~ denying any discrimination in the case of the applicant. The applicant filed two rejoinder affidavits

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in which the allegations made in the claim petition have been reiterated. A Supplementary Counter Affidavit has also been filed on behalf of the respondents clarifying certain points raised by the applicant in the rejoinder affidavit and denying the allegation made by the applicant that there was any violation of the guidelines issued by the Engineer-in-Chief in the matter of transfer and posting. It is also stated that the alleged sickness of wife of the applicant and other acute domestic problems do not protect him from tenure posting and all such problems were taken into consideration while issuing the order of posting of the applicant.

4. I have heard the arguments of the learned counsel for the parties and carefully considered the documents on record. The main contention of the applicant is that Sub clause (e) of Clause 3 of the circular letter dated 30.12.83 issued by the Engineer-in-Chief Branch, Army HQrs. lays down the criteria for selection of subordinates while nominating the tenure duty station. Sub Clause (e) reads as follows :-

" Nomination to persons who have already done a tenure will be done strictly on the basis of their last date of return from tenure stations."

The learned counsel for the applicant contended that the applicant had already done a tenure station and he could not be sent out for another tenure posting. I have considered this contention of the applicant and I am unable to agree with this contention of the

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applicant that he cannot be sent out on a second tenure posting. The applicant had done a tenure posting from 27.4.65 to 14.6.68 and his second tenure posting in the year 1987 is after a gap of almost 20 years. The applicant is serving in the Military Engineering service in which there is liability for transfer anywhere in India. Sub Clause (a) of the criteria for selection for nominating subordinates to tenure duty station states as follows :-

" Volunteers preferably those who have completed 3 years in a station will be given preference."

The applicant has done a long spell of service at a non tenure station and his posting to a tenure station by the impugned order is in accordance with the guidelines contained in the letter dated 30.12.83 issued by Engineer-in-Chief Branch, Army HQrs. I have also considered the allegation of the applicant that some other persons should be posted instead of the applicant but the applicant has not made them a party. The respondents have denied the allegation of the applicant and it would not be proper for me to give any direction to the respondents to post any other person in place of the applicant without giving such persons an opportunity of having their say. I am of the opinion that there is no merit in this contention of the applicant.

5. For the reasons mentioned above there is no merit in the claim petition and the same is dismissed without any order as to cost.

[Signature]
11/1/89
Member (A)

Dated the 11th Jan., 1989.
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