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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION O.A. no. 1107 of 1988

Shyam Singh Applicant

Versus

The Union of India & others..... Respondents.

Hon'ble Ajay Johri- AM

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This is an application under section 19 of the Administrative Tribunals Act no. XIII of 1985. By this application, a prayer has been made for setting aside the impugned order dated 3rd May, 1988 and the transfer of the applicant from Division-I at Agra to Division-4 at Bhubneshwar as per the impugned order dated 3.5.88. The applicant in this petition has been working as Deputy Superintending Horticulturist, as Incharge of Division-I at Agra. On the receipt of this transfer order, the applicant went on leave from 5.5.88 and according to him, he has not handed over the charge. After the receipt of the impugned order, the applicant represented to the department on 25.5.88. The period of six months has not expired yet. It was contended that no statutory remedy is available to the applicant and so this should not be a bar. He also sought a personal interview with the Director General of Archaeological Survey of India, New Delhi in which he was supposed to have expressed his all personal difficulties which he has ^{stated} ~~now~~ ~~expressed~~ in his representation and according to him, he was given a patient hearing. By this representation, he has requested that his transfer order may be withdrawn or may be kept in abeyance for a period of one year. In

this application, emphasis was laid by the learned counsel for the applicant, whom I have heard at length, that the impugned order is bad because not only there is no provision for office ^{accommodation} and ^{of} finance at the newly created branch at Bhubneshwar, but also there is no staff as only vacant posts have been transferred there. It was also contended that there is no record of the Garden and the Horticulture staff in the state of Bihar, West Bengal, Orissa and North Eastern States which ^{we have} ~~has been~~ been transferred from the existing Agra Division no.1 to the newly created Division which is supposed to control ^{the} ~~of~~ ^{one} area. Therefore, from these facts, it will be clear that both the new divisions have been allotted ten states and Division-I will have only one State, i.e. Uttar Pradesh. Division no.4 cannot function without records, Chowkidars and other staff, therefore, the impugned order dated 3rd May, 1988 is not capable of implementation. The learned counsel for the applicant also challenged the impugned order on the ground that it was not issued by a competent authority. The learned counsel for the applicant brought out the facts that organisation order issued by the Director General, Archaeological Survey of India, New Delhi dated 21.9.85 was subject-matter of a Writ Petition no.16153 of 1985 by which the High Court of Judicature at Allahabad had stayed the operation of the impugned order dated 21.9.85. According to the learned counsel for the applicant that order was for constituting Division no.4 with Head Quarter at Calcutta when the new division was to cover, Calcutta, Bhubneshwar, Gauhati and Patna Circle. It was contended by the learned counsel for the applicant that after the stay order was granted, the orders for formation of Division at Calcutta were not implemented by the respondents and therefore, creation of new division now at Gauhati will be in violation of the stay order which was granted

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against the order dated 21.9.85.

2. It is a well known principle of a good administration that the responsibility for the same is taken by the authority which is competent to administer, the courts will not be able to judge the propriety or sufficiency of the transferring of work load or transferring the staff from one place to another unless, such action is subjective in nature and is vitiated by malafides. Transfer is also an implied conditions of service and the authority which controls the employee is the best judge to decide how it will utilise its man power. There may be factors that govern such action. There can be exigency of service. What has to be seen is that the power has been exercised honestly, bonafidely and reasonably. A mention has been made in para-35 of the application that the applicant is convinced that all these facts which he has brought out in the application, have been ignored only to satisfy the whims and fancy of respondent no.4 who is determined to throw him out of Agra. A background has been given that respondent no.4 was at one time asked to handover the charge at Agra to the applicant and therefore, he got annoyed and he entertained grudge. This order has not been issued by the respondent no.4. It is difficult to presume that it has been issued to satisfy respondent no.4 or that it has been issued at his instance. Merely a statement made in this regard cannot give it the colour that is supposed to be given by such a statement. *So at this stage no interference is necessary or called for. 31*

3. The learned counsel for the applicant has been heard at length. I am of the opinion that this application can be

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disposed of finally by issuing a direction to the respondents to decide the representation submitted by the applicant on 25.5.1988. It may be that no statutory provision exists for making representation^{or} but once the applicant has chosen the remedy he must wait for the outcome instead of coming to this Tribunal without waiting for the same for the necessary period. While disposing of this representation, the respondents would also consider the other aspects that the^{or applicant} has brought out in this application and they should issue a suitable order regarding the request for cancellation of his transfer order made by the applicant on 25.5.88. The respondents are directed to dispose of the representation within a period of fifteen days from the receipt of this order. A copy of paper book may be sent to the respondents alongwith this order.

The petition is disposed of accordingly.

अध्यक्ष

MEMBER(A)

Dt/23.9.88/
Shahid.