

R
⑤

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.1172 of 1988

Luxmi Shanker Dixit 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 quashing the order dated 28.3.88 and the movement order dated 19.9.88 passed by the respondents transferring the applicant from Allahabad to Pithoragarh.

2. The admitted facts of the case are that the applicant is working as Store Keeper grade I in the office of the Garrison Engineer, Engineer Park, Allahabad since November, 1984. Prior to that he was working under Garrison Engineer (West) Allahabad with effect from 16.1.84. The Garrison Engineer (West) Allahabad lodged a F.I.R. under Section 408 Indian Penal Code on 2.5.85 in which the applicant was arrested and enlarged on bail on 14.5.85. The applicant was suspended but suspension order was revoked after a few months. main ground urged by the applicant against his transfer order is that the case under Section 408, Indian Penal Code is still going on in the Court and if the transfer

R

order is not cancelled the applicant will have to incur expenditure and spend lot of time in defending himself in the Court of law. The applicant admits that the transfer order was passed by Chief Engineer, Central Command, Lucknow on 28.3.88 but he disputes the contention of the respondents that he is due for a tenure posting on the ground that he had already done a tenure posting and he could not be sent on transfer again to serve another tenure posting while several other staff were allowed to stay on without doing a tenure posting. Regarding his tenure posting the applicant has stated that he had served E.S.D. Panagar which is a hard/tenure station during the year 1964-65 and he is not liable for a posting to a tenure station again.

3. The respondents have disputed this claim of the applicant and have stated that the Chief Engineer Central Command, Lucknow vide his warning letter dated 20.10.87 had earmarked the applicant for tenure station and the applicant was informed to keep himself ready for transfer to a hard station and he could submit a representation if any by 15.12.87. The applicant made a representation and after due consideration, the applicant's representation was rejected by HQrs. Chief Engineer, Central Command, Lucknow vide his letter dated 16.12.87. The transfer order dated 28.3.88 was followed by issue of a movement order dated 29.6.88 passed by the Garrison Engineer, Allahabad. The

bl

Handwritten initials and a circled number '7' in the top right corner.

applicant made a fresh representation on 9.7.88 and the movement order dated 29.6.88 was cancelled by ~~another~~ an order dated 18.8.88 passed by the Garrison Engineer, Allahabad. However the second representation of the applicant was rejected by the competent authority vide letter dated 8.9.88. The applicant was called by the Garrison Engineer and informed about the rejection of the representation and a fresh movement order dated 19.9.88 was issued to the applicant striking ~~off~~ off his name from the strength of the office of the Garrison Engineer, Engineer Park, Allahabad with effect from 24.9.1988. The applicant has not complied with the order of transfer. The learned counsel for the applicant Shri A.S. Diwakar laid great emphasis on the fact that after the cancellation of the movement order dated 29.6.88 on 18.8.88, a fresh movement order dated 19.9.88 could not have been passed. I have considered the matter and I find that the movement order dated 29.6.88 was passed by Garrison Engineer, Allahabad in compliance with the transfer order dated 28.3.1988 passed by the Chief Engineer, Central Command, Lucknow. The order dated 18.8.88 cancelling the movement order dated 29.6.88 was again passed by the Garrison Engineer, Allahabad in view of the second representation dated 9.7.88 made by the applicant. As the second representation of the applicant was rejected by the Chief Engineer, HQrs. Central Command, Lucknow a fresh movement order was passed by the Garrison Engineer on 19.9.88. All

Handwritten initials at the bottom of the page.

AR
4
9

these orders were in the nature of executive orders and the Garrison Engineer being a subordinate authority, was bound by the orders of the Chief Engineer, HQrs. Central Command, Lucknow who is a superior authority. I am of the opinion that there is no illegality in the order passed by the Garrison Engineer, Allahabad. We have also considered the contention of the applicant that he was not liable for posting ^{to be} a second tenure station. In our opinion the Chief Engineer, Central Command, Lucknow being the competent authority did consider the representation of the applicant on this score also and rejected the contention of the applicant. It is not necessary for me to go into this aspect of the matter as the applicant belongs to an All India service and he is liable for posting anywhere in India by the competent authority. I also find that transfer is an incident of service of an employee and there is no justification for the cancellation of the order of transfer on the plea taken by the applicant that he will have to come to Allahabad from Pithoragarh to defend himself in the criminal case under Section 408, Indian Penal Code pending in the Court of Munsif Magistrate, Allahabad. This case has been going on since 1985 and there is no certainty that it will come to an end within a foreseeable time in future. I do not consider that this is an adequate ground for the cancellation or stay of the order of transfer.

4. For the reasons mentioned above, I find no merit in the application and the same is dismissed without any order as to cost.

DT: ^{7/1} 11 Jan., 1989

Member(A)

11/1/89