



Government of Jammu & Kashmir
Public Works (R&B) Department

Civil Secretariat, J&K

(pwdrbdepartment@gmail.com)

Subject:- OA No. 661/ 2023 and OA No. 799/2023 titled Mohd. Khalid V/s UT of J&K and others.

Government Order No. 305 - PW(R&B) of 2024

Dated: 14 -10-2024

Whereas, the petitioner has filed OA No. 661/ 2023 and OA No. 799/ 2023 titled Mohd. Khalid V/s UT of J&K and others wherein the applicant has prayed before the Hon'ble Tribunal as under:-

- i) *Seeking quashing of the Government Order No. 269-PW(R&B) of 2023 dated 23.06.2023 qua the applicant passed by respondent no. 1 vide which the applicant has been transferred and posted at the disposal of H&UDD and the same is grossly arbitrary, passed with non-application of mind and in the given facts and circumstances of the case.*
- ii) *Prayer seeking direction for the respondents to allow the applicant to work at his present place of posting i.e. I/c Assistant Engineer, R&B Sub-Division Mendhar to complete his tenure, in the given facts and circumstances of the case.*

Whereas, the Hon'ble CAT disposed Original application No. 661/ 2023 vide order dated 10.07.2023 with the following direction:-

"...Keeping in view the aforestated limited prayer made by learned counsel for the applicant, I deem it appropriate to dispose of the present Original Application at the admission stage itself without entering into the merits of the case.

*Accordingly, the Original Application is **disposed of** with a direction to the Principal Secretary to Government, Public Works (R&B) Department, Jammu (Respondent No. 1 herein) to decide the applicant's pending representation and revisit the order of his transfer. Before taking any decision into the matter, the applicant shall also be afforded an opportunity of hearing. The whole exercise shall be undertaken within a period of two weeks from the date of receipt of a certified copy of this order.*

So long as the applicant's representation remains pending with the Principal Secretary to Government, Public Works (R&B) Department, Jammu, he shall be permitted to work as Assistant Engineer at Public Works (R&B) Department, Sub Division Mendhar.

Ordered accordingly."

Whereas, in compliance to the direction of the Hon'ble Central Administrative Tribunal, the case of the applicant has been examined in the Department and it has been found that the applicant was appointed as Junior Engineer in 2012 which is a UT Cadre Post and the applicant is supposed to serve in any part of the UT. From the records, it has been found that during his service career, the applicant has mostly served in different sub-divisions of District Poonch only which also happens to be his hometown;

Whereas, it has also been found that the applicant in compliance to the impugned transfer order has already joined his new place of posting and as such the order impugned has been complied with which has rendered the claim of petitioner raised in OA No. 799/ 2023 as infructuous;

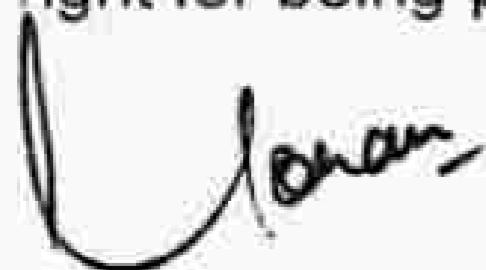
Whereas, as per from the above and in terms with the J&K Civil Services (Classification, Control and Appeal) Rules, 1956, Rule 27 of the Rules of 1956 deals with transfer of government employees. Rule 27 reads thus:-

Postings and transfer (1) A matter of a service or class of a service may be required to serve in any part of the Jammu and Kashmir State in any post borne on the cadre of such service or class.

(a) All transfer and postings shall be made by the authority prescribed by Government in this behalf."

Therefore in terms of Rule 27 of the Rules of 1956, a member of service or class of service may be required to serve in any part of the Jammu and Kashmir State in any post borne on the cadre of such service or class. The employer, the government, has unfettered discretion in the matter of transfer and posting of its employees from one post in the cadre to another post of the cadre of service, on which employee sought to be transferred is borne on.

Whereas, the issue of transfer and postings has been considered time and again by the Hon'ble Supreme Court, and the entire law is settled by catena of decisions of the Apex Court. It is settled law that transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No Government servant, therefore, has any legal right for being posted at any particular place. Moreover transfer from one place to



another is necessary in public interest and exigency in public administration as held in "Gujrat Electricity Board Vs Atma Ram Sugomal Poshani", AIR 1989 SC 1433, which reads as under:-

"An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency."

Whereas, in E. P. Royappa v. State of Tamil Nadu AIR 1974 SC 555, it has been held that:-

"...Transfer of a Government servant appointed to a particular transferable post from one place to another place is an incidence of service and does not affect or alter his terms and conditions of service. The Government has power to transfer its employees from one post to another carrying equivalent pay scale and grade."

In Gujarat Electricity Board v. Atmaram Sunqomal Poshani, (1989) 1 SCC 602: AIR 1989 SC 1433, it has been held that:-

"...transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules'.

Udhar

In Rajendra Singh & Ors. v. State of U.P. & Ors., (2009) 15 SCC 7-8 it has been held that:-

“... It is well settled that transfer is an exigency of service. An employee does not have any indefeasible right to remain posted at a particular place ad-indefinitum or seek a posting of his choice. It is also no longer res integra that orders of transfer can only be interfered with by courts if the same are questioned on the ground of malafides or lack of jurisdiction or if the same is otherwise contrary to statutory rule governing such transfers. (*J&K Central Non-Gazetted Electrical Employees Union, Rajouri v. State of J&K & Ors 2017 (6) JKJ[HC] 431* See & *Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna & Ors. (1981) 2 SCC 72*)

In National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan , (2001) 8 SCC 574, it has been held that:-

“... No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned...”

In Syed Hilal Ahmad & Ors. v. State 2015 (3) JKJ[HC] 398; 2015 SLJ it has been held that:-

“...transfer is an incidence of service and a government servant is subject to orders of transfer on administrative exigencies and a government servant cannot insist that he is entitled to continue in a particular station/post for a definite period.”

In A. D. Manhas (Dr) v. State & ors 2005 JKJ (HC) (1), 314, it has been held that:-



“...Transfer is an exigency of service and it is the prerogative of the employer to see at what place the service of an employee can be utilized properly in the larger public interest. An employee holding transferable post has no right to insist that he should be allowed to serve at a particular place for a particular period. Simply because he has been transferred against the higher post, does not mean that he would have to perform the duties of that post. The only purpose of his transfer against the post appears to be that his pay etc shall be drawn against said post.

Whereas, the Hon'ble High Court of Jammu and Kashmir at Jammu vide its judgment dated 18.05.2018 passed in SWP No. 891/2018 titled Shivani Manhas Vs State of J&K and others has held that:-

“... The transfer of an employee is the mandate of the employer and an employee can be transferred at any place keeping in view the administrative exigency.”

Whereas, a Division Bench of the Hon'ble Supreme Court while dismissing a Special Leave Petition (SLP) vide its judgment dated 06.09.2021 has held as under:-

"It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement,"

Now, therefore, in light of the above stated facts and circumstances, the claim of the applicant has been considered in light of the directions passed by the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu on 10.07.2023 passed in OA No. 799/2023 titled Mohd. Khalid V/s UT of J&K and others and the same has been found devoid of merit, hence rejected.

By order of the Government of Jammu and Kashmir.

Sd/-
(Bhupinder Kumar) IAS,
Secretary to Government,
Public Works(R&B) Department.

No:-PWD-LIT/273/2023-05(7232573)

Dated: 14 -10-2024

Copy to the:-

1. Principal Secretary to Hon'ble Lieutenant Governor, J&K.

2. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
3. Director, Archives & Archeology & Museum Department J&K, Jammu.
4. Chief Engineer, PW(R&B) Department Kashmir/Jammu.
5. Private Secretary to Secretary to the Government Public Works(R&B) Department.
6. Concerned official/ Applicant for information.
7. In-Charge Website, PW(R&B) Department.
8. Government Order file/Monday return.


14.10.2024

Namrita Bhan (JKAS),
Under Secretary to the Government,
Public Works (R&B) Department


14/10/24