



GOVERNMENT OF JAMMU & KASHMIR
SCHOOL EDUCATION DEPARTMENT
CIVIL SECRETARIAT, J&K

Subject: OA No.1143/2023 titled Avit Kumar VS UT of J& & Ors.

Government Order No. 398-JK (Edu) of 2023
Dated: 05-12-2023

Whereas, vide Notification No. 01-JK (Edu) of 2023 dated 26.04.2023, online representation were invited from various teaching cadres of Education Department including the Lecturer Cadre for consideration of transfer during the year 2023 and in response, representation of Avit Kumar was received by the Department through Online Transfer Portal;

Whereas, the representation of Avit Kumar was considered under the provisions of the Transfer Policy issued by the Department vide Government Order No. 103-JK(Edu) of 2023 dated 24.0.2023 and subsequently, the applicant, Avit Kumar Lecturer Botany working at HSS Malothi, Doda (zone 3) was transferred and posted at HSS Behota, Doda (Zone 4) vide G.O No. 261-Jk(Edu) of 2023 dated 30.08.2023.;

Whereas, Avit Kumar pursuant to his transfer filed OA No.1144/2023 titled Vinod Kumar Vs UT of J&K & Ors before the Hon'ble Central Administrative Tribunal , Jammu praying for following reliefs:-

- i. Prayer seeking quashing of Government Order no.261-JK(Edu) of 2023 dated 30.08.2023 qua the applicant, passed by respondent no.1 vide which the applicant, figuring at S.No.74, has been transferred from Govt. HSS Malothi, Doda to Govt. HSS, Behota, Doda, and the same is grossly arbitrary, passed with non-application of mind, in violation of the Transfer Policy in vogue and in the given facts and circumstances of the case.
- ii. Prayer seeking direction for the respondents to post the applicant in District Jammu in pursuance to Para C (16) of the Transfer Policy issued vide Government Order No.103-JK(Edu) of 2023 dated 24.04.2023 and as per the preferences opted by the applicant, in the given facts and circumstances of the case.

Whereas, the Hon'ble CAT after hearing the applicant disposed the OA by passing order dated 06.09.2023, the operative part of which is reproduced as under:

"..... Accordingly, the Original Application is disposed of with a direction to the Principal Secretary to Government, of School Education, Union Territory of Jammu & Kashmir to decide the applicant's pending representation (Annexure A/6) and pass a reasoned and speaking order while keeping in view the provisions of the Clause A (c) of the Notification dated 26.04.2023. Before taking such a decision, the applicant shall also be afforded an opportunity of hearing. The whole exercise shall be undertaken within a period of ten days 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, he shall be allowed to work at Government Higher Secondary School, Malothi, Doda.

Ordered accordingly.

However, there shall be no orders so as to costs."

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, vide letter dated 22.09.2023, the applicant was requested to appear in the Administrative Department for hearing on 25.09.2023. The applicant appeared on the scheduled date and time and the applicant was heard in person and was also allowed to submit his written statement as well;

Whereas, in his written statements, the applicant has stated that he has been transferred from HSS Malothi, Doda (zone 3) to HSS Behota, Doda. Further the applicant has stated that he has a minor child of three years and has opted for Zone-1 and Zone -II of Jammu District. Moreover his wife is a Government employee serving in the H&ME as Junior Physiotherapist at Jammu and cannot be transferred inter-district. In this regard the applicant has requested that his transfer order may be modified to District Jammu on spouse posting.

Whereas, in terms of **Rule 27 of J&K Classification Control and Appeal Rules, 1956**, a member of a service or class of a service may be required to serve in any part of the Union Territory of Jammu and Kashmir on any post borne on the cadre of such service or class;

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."


"...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'.

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 *Rajendra Singh & Ors. v. State of U.P. & Ors., (2009) 15 SCC 778* 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-infinitum 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 Ahamd & 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."

Whereas, the case of the applicant has been thoroughly examined in light of the written submissions adduced by the applicant as well as the standing rule position and the directions of the Hon'ble Central Administrative Tribunal and it has been found that the request of the applicant for spouse posting cannot be considered in light of the administrative reasons as well as vacancy position. The request of the applicant for modification seems unjust as the applicant is posted in his home district.

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 on 04.09.2023 passed in OA No.1143/2023 titled Avit Kumar VS UT of J&K & Ors and the same has been found not tenable under rules and is hereby rejected. The applicant is

further directed to immediately join at HSS Behota, Doda (Zone 4) without any further delay, failing which strict disciplinary action shall be initiated against him under rules.

By order of the Government of Jammu and Kashmir.

Sd/-
(Alok Kumar), IRS
Principal Secretary to the Government

No: Edu-LGL0Jmu(CAT)/355/2023-04

Dated:- 05.12.2023

Copy to the:-

1. Joint Secretary, J&K, Ministry of Home Affairs, Government of India.
2. Director, SCERT, J&K.
3. Secretary, JKBOSE.
4. Director, School Education, Jammu/Kashmir.
5. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K UT.
6. Project Director, Samagra Shiksha J&K.
7. Chief Education Officer Doda.
8. Concerned.
9. Private Secretary to Principal Secretary to Government, School Education Department.
10. I/c website.
11. Government Order file (w.2.s.c).

(Abhishake Abrol) JKAS,
Deputy Secretary to the Government,
School Education Department