



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

Subject: O.A No. 61/98/2023 titled Pawan Kumar Sharma Vs UT of J&K & Ors.

Government Order No. 141 -JK (Edu) of 2024
Dated: 28 -02.2024

Whereas, the applicant namely Pawan Kumar Sharma, Lecturer EVS, has been transferred from Government Girls Higher Secondary School Mubarak Mandi Jammu to Higher Secondary School Laroka Rajouri vide order No. 759-DSEJ of 2023 dated 25.01.2023 issued by the Director School Education Jammu, being in the surplus category;

Whereas, the applicant, pursuant to his transfer, filed OA No. 98/2023 titled Pawan Kumar Sharma VS UT of JK and others before the Hon'ble Central Administrative Tribunal , Jammu praying for following reliefs:-

- i. Order No. 759-DSEJ of 2023 dated 25.01.2023 issued by the respondents No. 2 to the extent it transferred the applicant from Government Girls Higher Secondary School Mubarak Mandi Jammu to Higher Secondary School Laroka Rajouri may be set aside.

AND

- ii. The respondents be directed to adjust/post the applicant at a suitable place in Jammu keeping in view the medical condition of the applicant.

OR in the alternative;

The respondents be directed to retain the applicant at Government Girls Higher Secondary School Mubarak Mandi Jammu, untill completion of minimum period of two years prescribed under the Transfer Policy of 2015.

Whereas, the Hon'ble CAT after hearing the applicant disposed of the OA by passing order dated 01.02.2023, the operative part of which is reproduced as under:

".....Accordingly, the Original Application is disposed of with a direction to Principal Secretary to Government, Department of School Education, Jammu

to decide the applicant's representation dated 27.01.2023 and pass a reasoned and speaking order while keeping in view his medical record and the policy guidelines on the subject. 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 three 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, Department of School Education, Jammu, he shall not be displaced from his present place of posting."

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, the applicant was requested to appear in the Administrative Department for hearing and the applicant appeared on the scheduled date and time. 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 is working as lect. EVS in Govt. Hr. Sec. School Mubarak Mandi Jammu and was transferred to HSS Laroka Rajouri vide order No. 759-DSEJ of 2023 dated 25.01.2023. He has further stated that he is suffering from Cervical Spondylosis disease and doctor has advised him to avoid long distance traveling, strenuous activities and heavy weight lifting and therefore requested for transferring him within Jammu city between 10-15 Kms on medical grounds.;

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."

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"...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 SC555**, 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-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:-

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"... 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."

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 case of the applicant was thoroughly examined in light of the written submission 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 that as per clause 21 of the Transfer Policy-2023 issued vide Government Order No. 103-JK(Edu) of 2023 Dated: 24.04.2023, the medical Diseases covered under the policy is Life consuming diseases/Physical disability not less than 40%, however the applicant is suffering from **Cervical Spondylosis disease** which is not a Life consuming disease as per the medical certificate. The case of the petitioner merits non consideration and needs to be rejected as not covered under tenets of Transfer policy 2023(CLAUSE 21);

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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 01.02.2023 passed in O.A No. 61/98/2023 titled Pawan Kumar Sharma 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 Higher Secondary School Laroka, Rajouri 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/-
(Dr. Piyush Singla), IAS,
Administrative Secretary.

No: Edu-LGL0Jmu(CAT)/51/2023-01

Dated: 28.02.2024

Copy to the:-

1. Joint Secretary, J&K, Ministry of Home Affairs, Government of India.
2. Director, School Education, Jammu.
3. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K UT.
4. Chief Education Officer Jammu/Rajouri.
5. Principal Concerned for necessary compliance in the matter.
6. Concerned.
7. Private Secretary to Administrative Secretary, School Education Department.
8. I/c website.
9. Government Order file (w.2.s.c).

Neha Bakshi
28.2.24
(Neha Bakshi) JKAS
Under Secretary to the Government
School Education Department