



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

Subject: OA No.1216/2023 titled Raj Kumar Vs UT of J&K & ors.

Government Order No. **37** -JK (Edu) of 2024
Dated: **05** -01-2024

Whereas, vide Notification No. 01-JK (Edu) of 2023 dated 26.04.2023, online representations 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 Raj Kumar was received by the Department through Online Transfer Portal;

Whereas, the representation of Raj Kumar was considered under the provisions of the Transfer Policy issued by the Department vide Government Order No. 103-JK(Edu) of 2023 dated 24.04.2023 and subsequently, the applicant, Raj Kumar, Lecturer, Physics working at HSS Hatli, Kathua was transferred and posted at HSS Girls, Macheedi, Kathua vide G.O No. 276-JK(Edu) of 2023 dated 31.08.2023;

Whereas, Raj Kumar, pursuant to his transfer, has filed OA No.1216/2023 titled Raj Kumar Vs UT of J&K & ors before the Hon'ble Central Administrative Tribunal at Jammu praying for following reliefs:

- i. Quashing the Government Order No.276 of JK(Edu) of 2023 dated 31.08.2023, transferring the applicant from Govt. Hr. Sec. School, Hatli, District Kathus to Higher Secondary School (Girls), Machchadi, District Kathua, in violation of Transfer Policy, in violation of Order dated 02.02.2023 passed by this Hon'ble Tribunal in O.A 61/100/2023 & without taking into consideration the medical condition of the Applicant.
- ii. Quashing the relieving order No. HSS/H/2023-24/218 dated 01.09.2023 issued by Respondent no.4 by virtue of which the Applicant was relieved from the Govt.Hr.Sec.School, Hatli, District Kathua.
- iii. Commanding and directing the Respondents to transfer the Applicant to an appropriate place keeping view of the medical condition of the Applicant;

Whereas, the Hon'ble CAT after hearing the applicant disposed of the OA by passing order dated 13.09.2023, the operative part of which is reproduced as under:

".....Accordingly, the Original Application is disposed of at the admissions stage itself, without entering into the merits of the case, with a direction to Principal Secretary to Government, Department of School Education, Union Territory of Jammu and Kashmir to treat a copy of this Original Application as representation of the applicant and pass a reasoned and speaking order while keeping in view the provision of Clauses-A(7) & B(V) of the Transfer Policy dated 24.04.2023 and notification dated 26.04.2023 respectively. 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 ten days from the date of receipt of a certified copy of this order.

So long as the applicant's representation remains pending with Principal Secretary to Government, Department of School, Union Territory of Jammu & Kashmir, he shall be permitted to work at Government Higher Secondary School, Hatli, Lakhanpur, District Kathua. Ordered accordingly. However, there shall be no orders as to costs."

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, vide letter dated 05.10.2023, the applicant was requested to appear in the Administrative Department for hearing on 09.10.2023. 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 joined the HSS Machhedi (Zone 5) in compliance to the Government order dated 31.08.2023 and but unfortunate to say that his previous place of posting as well as his standing medical board has not been taken into consideration. Further, stated that he has already served in Zone-V of Kathua and GHSS Malhar as I/c lecturer in Physics and vide DSEJ order No. 759-DSEJ of 2023 dated 25.01.2023 he has been transferred to HSS Dessa, and he file the case before Hon'ble CAT for suitable adjustment on medical grounds and Director School Education, Jammu adjusted him in HSS Hatli, Kathua on medical grounds till ATD 2023 and instructed him to apply in ATD-2023. The applicant has requested to post him at Zone 1 or 2 of District Kathua, if suitable vacancies are available or allow him at GHSS Machhedi till next ATD-2024 and may be considered in next ATD-2024;

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-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 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 the Department on the directions of the Hon'ble Central Administrative Tribunal and it has been found that there are no vacancies of subject physics available in Zone 1 and 2 of district Kathua. The applicant in his representation has also stated that his case may be considered in the next transfer drive-2024, till then he may be allowed to continue at GHSS Machhedi, Kathua;

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 13.09.2023 passed in OA No.1216/2023 titled Raj Kumar Vs UT of J&K & ors and the same has been found not tenable under rules and is hereby rejected. However, his case may be considered in the next year (Online Transfer Portal). The applicant is further directed to immediately join at HSS Girls, Macheedi, Kathua (Zone V) 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

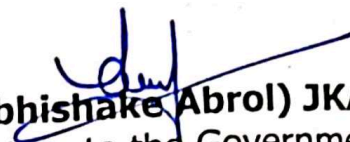
Dated:- 05.01.2024

No: Edu-LGL0Jmu(CAT)/318/2023-04

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 Kathua.
8. Principal Concerned for necessary compliance in the matter

9. Concerned.
10. Private Secretary to Principal Secretary to Government, School Education Department.
11. I/c website.
12. Government Order file (w.2.s.c).


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