



GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT JAMMU/KASHMIR

Subject: C.P No. 168/2024 in MA No. 186/2024, OA No.1632/2023
titled Avit Kumar Vs UT of J&K & Ors.

Government Order No. 418 -JK (Edu) of 2024

Dated: 10-10-2024

Whereas, the applicant, Avit Kumar, Lecturer Botany was transferred from Govt. HSS Malothi, Doda to Govt. HSS, Behota, Doda Vide Government Order No. 261-JK(Edu) of 2023 dated 30.08.2023;and

Whereas, the applicant challenged the transfer order supra, before the Hon'ble Central Administrative Tribunal Bench Jammu, under Original Application No. 1143/2023. The Hon'ble Central Administrative after considering the matter passed an order dated 06.09.2023, directing the respondents to consider the pending representation of the applicant and pass reasoned and speaking order accordingly. The said order was examined in the Department and case of the applicant was considered and same was found not tenable under rules, accordingly, was rejected vide Government Order No. 398-JK(Edu) of 2024 dated: 05.12.2023, with the further direction to join at HSS, Behota, Doda (Zone-4) without any further delay; and

Whereas, the applicant again challenged the Government Order No. 398-JK (Edu) of 2023 dated: 05-12-2023 and filed OA No. 1632/2023 titled Avit Kumar V/s UT of JK and others before the Hon'ble Central Administrative Tribunal , Jammu praying for following reliefs:-

- I. Prayer seeking quashing of Government Order no.398-JK(Edu) of 2023 dated 05.12.2023 passed by respondent no.1 vide which it has been ordered that the claim/representation of the applicant has been found not tenable under rules and is hereby rejected. The applicant is further directed to immediately join as HSS Behota Doda (Zone 4) without any further delay failing which strict disciplinary action shall be initiated against him under rules and also the reliving order no. HSS/M/Estt/368-71 dated 08.12.2023 passed by respondent No. 3 with directions to report

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to Principal HSS Behota Doda for further duties, 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 06.02.2024, the operative part of which is reproduced is as under:

".....Accordingly, the Original Application is disposed of with a direction to respondents to treat this O.A. with all annexures as representation of the applicant and consider the same by passing reasoned and speaking.

Respondents are further directed to communicate the order so passed to the applicant. The whole exercise shall be completed within a period of three weeks from the date of receipt of a certified copy of this order.

With these directions, the O.A. No. 1632 of 2023 is disposed of. It is made clear that I have not entered into the merits of the case. However, there shall be no orders so as to costs. "

Whereas, the applicant has also filed MA No. 186/2024 in OA No. 1632/2023 and the Hon'ble Central Administrative Tribunal has passed the following order:-

".....Accordingly, the order is corrected to the extent that para 3 should be read as:

Accordingly, the Original Application is disposed of with a direction to respondents to treat this O.A. with all annexures as representation of the applicant and decide the same by passing reasoned and speaking order keeping in view the vacant position of Lecturer Botany viz HSS Sohal Jammu, HSS Bakshi Nagar Jammu, DIET Jammu, SCERT Jammu, JKBOSE 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

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;and

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;and

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Whereas, the case of the applicant was examined afresh and it has been found that the case of the applicant was earlier rejected after examining the issue in detail and no new grounds emerged which warrants re-consideration of the issue. Besides, the post of lecturer is a UT cadre post and applicant can be posted anywhere in the UT of J&K;and

Now therefore, keeping in view the above stated facts and circumstances of the case, the claim of the applicant has been considered in the light of directions passed by the Hon'ble Central Administrative Tribunal, Jammu on 06.02.2024 in O.A No. 61/1632/2023 titled Avit Kumar Vs UT of J&K & Ors and the same has been found not tenable under rules 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.

Sd/-

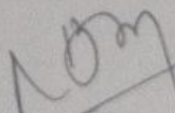
Alok Kumar, (IRS)
Principal Secretary to the Government,
School Education Department.

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

Dated:- 10.10.2024

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, Doda.
5. Principal Concerned for necessary compliance in the matter.
6. Concerned.
7. Private Secretary to Principal Secretary, School Education Department.
8. I/c website.
9. Government Order file (w.2.s.c).


10.10.24
(Neha Bakshi)JKAS,
Under Secretary to the Government,
School Education Department.