

(2024) 04 CAT CK 0025
In the Central Administrative Tribunal
Case No : Original Application No. 195 Of 2024

Khurshid Ahmad Khan

APPELLANT

Vs

Union Territory Of Jammu And Kashmir Through
Commissioner Secretary GAD, Government Of J&K, Civil
Secretariat Srinagar/Jammu. PIN: 190001 & Others

RESPONDENT

Date of Decision : 12-04-2024

Acts Referred:

Citation : (2024) 04 CAT CK 0025

Hon'ble Judges : M.S. Latif, Member (J)

Bench : Single Bench

Advocate : Sehreen Zehra, Bikram Deep Singh, Waseem Gul

Final Decision : Disposed Of

Judgement

M. S. Latif, Member [J]

1. Through the medium of the instant O.A., the petitioner has challenged an order bearing no. 623-JK (GAD) of 2024 dated 15-02-2024 by virtue of which the petitioner Khurshid Ahmad Khan, Senior Prosecuting Officer (APP JMIC Court, Kupwara) is hereby deputed to Union Territory of Ladakh for a period of two years or till he is recalled whichever is earlier.

2. The petitioner has primarily challenged the order on the grounds that the said order of deputation is in violation to Govt. order no. 1458-JK (GAD) of 2022 dated 01-12-2022 appended as Page 26 of the O.A., wherein general principals have been laid down regarding deputation of employees. It has also been averred in the O.A. that the mother of the petitioner is suffering from medical exigencies and the petitioner being the only male member in the family has to look after his ailing mother.

3. Learned counsel for the petitioner has referred to a judgment passed by the Hon'ble Apex Court titled as Sarita Singh versus Shree Infosoft Private Limited arising out of Civil Appeal no. 346 of 2022 wherein their lordships have held that

there can be no deputation without the consent of the person so deputed and their lordships have relied upon the judgment passed in the State of Punjab versus Inder Singh reported in 1997 Volume 8 SCC 372, further reliance has been laid down on the judgment titled as Umapati Choudhary versus State of Bihar 1999 Volume 4 SCC 659. Learned counsel for the petitioner submits that in the instant case, no consent has been sought from the petitioner, as such the order impugned is bad in law as also against the dictum of the Hon'ble Apex Court.

The law is no more res-integra that the scope of the Courts as far as the order of transfer is concerned is very limited. A Court can only interfere, if an order of transfer is malafide passed by an incompetent authority. The law is also settled that the transfer is an exigency of service and no employee has a vested right to be posted at a place of his choice. Once an employee accepts the employment, he has to serve wherever the employer so chooses, however, the same has to be in the interest of public and in the administrative interest.

4. To this effect, I am fortified by various judgments passed by the Hon'ble Apex Court and various High Courts from time to time in

State of UP and Anr. versus Siya Ram 2004 Volume 7 SCC 405

Rajendra Singh versus State of UP 2009 Volume 15 SCC 178

Kanshi Ram Verma versus Municipal Committee, Mansa 1981 Volume 2 SCC 72

Jagjit Singh versus State of Jammu & Kashmir 2014 Volume 1 JKJ 626

5. Courts are not powerless to interfere where an order of transfer has been passed not for the professed purpose but for oblique and ulterior motives, and not in public or administrative interest.

6. Learned counsel for the petitioner submits that the petitioner has moved a detailed representation before the competent authority for seeking consideration for modification of his order of deputation, in view of the grounds as urged in the representation.

7. Mr. Bikram Deep Singh, DAG along with Mr. Waseem Gul, GA, representing the respondents submits that the petitioner does not have a right to be posted at a place of his choice. Learned counsel for the respondents were confronted as to whether the respondents have sought for any consent from the petitioner before issuing the order impugned, as the order impugned is not an order of transfer but only an order of deputation, and when confronted with the law laid down by the Hon'ble Apex Court in Sarita Singh versus Shree Infotech Private Limited as also the State of Punjab versus Inder Singh and others wherein their lordships have held that there can be no deputation without the consent of the person so deputed. Learned counsel submits that it is always for the competent authority to take a decision in the matter in the exigency of service.

8. I am also fortified by a latest judgment of the Hon'ble Supreme Court titled as

SK Nausad Rahman and ors. versus Union of India and ors. 2022 Live Law SC 266 wherein their lordships have held that preservation of family life is an incident of Article 21 and the State while formulating a policy for its employees has to give consideration to the importance of protecting family life as an element of the dignity of the person and a postulate of privacy.

9. The submissions made at Bar by the learned counsel for the petitioner appears to be weighty, as in terms of the law laid down by the Hon'ble Apex Court, there can be no deputation without the consent of the employee. Perusal of the order impugned reveals that the respondents have not sought for any consent from the petitioner for his deputation. As a deputation involves a tripartite consensual agreement between the lending employer, borrowing employer and the employee.

10. I am also fortified by the judgment of the Hon'ble Supreme Court titled as Akshay N. Patel versus Reserve Bank of India 2021 SCC Online SC 1180 wherein their lordships have held that the framing of the policy must meet the integrated proportionality analysis which answers whether a) the measure is in furtherance of a legitimate aim? b) Is the measure suitable for achieving such an aim? c) Is the measure necessary for achieving the aim? and d) Is the measure adequately balanced with the right of the individual?

11. Heard learned counsel for the parties.

12. At the request of the learned counsel for the petitioner, the petition is disposed of by providing as under:

The respondents will consider the representation filed by the petitioner before the respondents having due regard to the averments made therein, coupled with the law laid down by the Hon'ble Supreme Court in the cases above referred.

The decision on the representation be taken positively within a period of 15 days from the date a copy of this order is served upon them and till then the order impugned as it relates to the petitioner shall be kept in abeyance.

However, it is made clear that it shall be the sole responsibility of the respondents to decide the representation within a period of 15 days positively and any delay in the disposal shall be attributable to the respondents only.

It is expected that the respondents will make every endeavour to pass a speaking order on the representation of the petitioner within the aforesaid period positively.

The Registry of this Court be kept aware of the disposal of the representation.

13. With this O.A./195/2024 is disposed of accordingly.