

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Order reserved on interim relief on 07.09.2020

Order pronounced on interim relief on

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

HON'BLE MR. PRADEEP KUMAR, MEMBER – A

O.A. No. 62/678/2020

Mohd. Saleem Khan, S/o Ghulam Mohd. Khan, R/o Pathanpora, Khore, Teshil Pattan, district Baramulla

..... Applicants

(By Advocate: Mr. Gulzar Ahmad Bhat)

Versus

1. Union Territory of J&K through its Commissioner/Secretary to Govt. Department of Social Welfare at Civil Sectt. Srinagar/Jammu.

.....Respondents

(By Advocate: Mr. Rajesh Thapa)

ORDER

Per - Rakesh Sagar Jain, Member (J)

Applicant Mohd. Saleem Khan seeks the relief of directing the respondents to promote the applicant to the posts of Foreman retrospectively

and submits that his case is covered by the judgment dated 14.06.2012 of the Hon'ble High Court of J&K at Srinagar in SWP No. 1217/2008 titled Rehmat-Ullah Khan v/s Commissioner. He also seeks the interim relief of a direction to respondents to consider his claim for promotion as Foreman retrospectively.

2. However, it is settled law a case should not be decided on basis of earlier decision but should be disposed after filing of counter affidavit (Read with advantage [State of HP v/s Ganesh Dutt, \(2019\) 1 SCC \(L&S\) 436](#)).

“Regarding the interim relief sought by the applicant, it is a settled law that interim relief should not be given wherein it tantamount to giving the final relief. Looking to the facts of the case as well as the nature of final relief and the interim relief sought by the applicant, it is apparent that grant of interim relief would practically give the main relief sought in the O.A. In this regard, we may refer to Assistant Collector Vs. Dunlop India Ltd., AIR 1985 S.C. 330 wherein the Hon'ble Apex Court observed that:-

“5.We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations”.

And in P.R. Sinha Vs. Inder Krishan Raina & others, 1996 SCC (1) 681, it was held by the Hon'ble Apex Court that:-

“This court has pointed out repeatedly that while entertaining the writ petition the High Court should not pass interim order, the nature of which is to grant a relief which can be granted only at the final disposal of such writ petition”.

3. In view of the law laid down by the Hon'ble Apex Court, we are of the opinion that the grant of interim relief in the present case would practically give the principal relief sought in the O.A which is impermissible under law.

4. Looking to the facts of the case, we are of the view that no prima facie case is made out by the applicant for issuance of interim direction. Therefore, the prayer of applicant seeking interim relief is rejected. It be mentioned that nothing observed herein before be construed as a comment on merit of the case which shall be decided on its own merits.

5. Learned AAG to file counter affidavit within 4 weeks. Thereafter, counsel for the applicant, may file rejoinder-affidavit, if any, within 2 weeks. Put up file for further orders on 27.10.2020.

(Pradeep Kumar)
Member (A)

(Rakesh Sagar Jain)
Member (J)

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