

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through Video Conferencing

O.A.61/13/2020
M.A.61/119/2020

Reserved on: 14.07.2020
Pronounced on: .07.2020



**Hon'ble Dr. Bhagwan Sahai, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)**

1. Mohd. Hanif Kohli, age 44 years
s/o Shri Hashim Din Kohli,
R/o Trithloo, Tehsil Gandoh (Bhalessa)
District Doda
Presently posted as I/c Warden
Gujjar & Bakerwal Boys Hostel, Doda
2. Shaqir Hussain, age 37 years
s/o Shri Aftab Ahmed Naik
R/o Chatroo, Tehsil Chatroo
District Kishtwar
Presently posted as Warden
Gujjar & Bakerwal Boys Hostel, Chatroo
3. Shafiq Bano, age 42 years
D/o Shri Mohd. Akbar,
R/o Chilly, Tehsil Gandoh (Bhalessa)
District Doda
Presently posted as Warden
Gujjar & Bakerwal Girls Hostel, Doda
4. Showkat Ali Bumla, age 44 years
s/o Shri Jamal Din Bumla,
R/o Singhpura, Tehsil Chatroo
District Kishtwar
Presently posted as Assistant Warden
Gujjar & Bakerwal Boys Hostel, Chatroo
5. Naseem Ahmed, age 45 years
s/o Shri Mohd. Qasim,
R/o Sarich Choudhary Bagh
Tehsil & District Ganderbal,

Presently posted as Warden
Gujjar & Bakerwal Boys Hostel, Srinagar



6. Rifaqat Ali, age 49 years
s/o Shri Mohd. Yousaf,
R/o Mundah, Tehsil Doru, District Anantnag
Presently posted as Warden
Gujjar & Bakerwal Boys Hostel, Anantnag
7. Nisar Ahmed Kooli, age 46 years
s/o Shri Bashir Ahmed Kooli,
R/o Sangarwani, Pulwama
Presently posted as Warden
Gujjar & Bakerwal Boys Hostel, Budgam
8. Ghulam Rasool Gorski, age 54 years
s/o Ch. Mohf. Shafi,
R/o Prorri Gujjaran, Tehsil Budhal (Koteranka) District
Rajouri Presently posted as Warden
Gujjar & Bakerwal Boys Hostel, Pulwama
9. Altaf Hussain, age 42 years
s/o Shri Mohd. Qasim,
R/o Sarich Choudhary Bagh
Tehsil & District Ganderbal
Presently posted as Assistant Warden
Gujjar & Bakerwal Boys Hostel, Srinagar
10. Irshada Bano, age 46 years
s/o Shri Altaf Hussain,
R/o Sarich Chodri Bagh
Ganderbal (Kashmir),
Presently posted as Assistant Warden
Gujjar & Bakerwal Girls Hostel, Srinagar
11. Latief Ahmed Jehra, age 42 years
s/o Shri Noor Mohd. Jehra
R/o Boenwar, Tehsil Chadoora District Budgam
Presently posted as Assistant Warden
Gujjar & Bakerwal Boys Hostel, Budgam ...Applicants

(Through Shri Sheikh Shakeel Ahmed, Advocate)

Versus

1. The Union Territory of Jammu & Kashmir
through its Commissioner/Secretary
General Administration Department,
Civil Secretariat, Jammu

2. The Commissioner/ Secretary to Govt. of J&K
Tribal Affairs Department,
Civil Secretariat, Jammu
3. The Principal Secretary to Govt. of J&K
School Education Department
Civil Secretariat, Jammu
4. The Additional Secretary to Govt. of J&K
School Education Department
Civil Secretariat, Jammu
3. The Principal Secretary to Govt. of J&K
School Education Department
Civil Secretariat, Jammu
4. The Additional Secretary to Govt. of J&K
School Education Department
Civil Secretariat, Jammu
5. The Director
School Education, Jammu
6. The Director
School Education, Kashmir (Srinagar)
7. The Secretary,
Advisory Board for the Development of Gujjar
and Bakerwal, Civil Secretariat, Jammu ...Respondents

(Through Shri Amit Gupta, Additional Advocate General)

ORDER

Per Dr. Bhagwan Sahai, Member (A)

Mohd. Hanif Kohli, son of Shri Hashim Din Kohli, resident of Trithloo, Tehsil Gandoh, District Doda, presently posted as Incharge Warden, Gujjar and Bakerwal Boys Hostel, Doda and 10 others have filed this OA on 09.06.2020. They seek setting aside of communication dated 27.05.2020 issued by Additional Secretary to Government of J&K, School Education Department, Civil Secretariat, Jammu (respondent



no.4) whereby respondent no.5 i.e. the Director, School Education, Jammu has been requested to furnish panel of suitable/ eligible persons for posting as Warden/ Assistant Warden in Gujjar and Bakerwal Hostels of J&K and direction to respondents to strictly adhere to Govt. order No.356-GAD, dated 13.03.2015, while posting Wardens/Assistant Wardens in Gujjar and Bakerwal Hostels of J&K Union Territory.



2. The applicants claim that the communication issued by respondent no. 4 on 27.05.2020 is without jurisdiction. As an interim relief, the applicants seek stay of operation of the communication dated 27.05.2020 with direction to respondents not to disturb the present applicants from performing duties as Wardens/ Assistant Wardens in their respective G&B hostels.

3. We have heard the applicants' counsel as well as respondents' counsel on 14.07.2020 both on interim relief as well as on OA. We have also gone through the reply/ counter affidavit filed by AAG on behalf of respondents.

4. The applicants state that they are employees of School Education Department and are presently discharging duties as Wardens/Assistant Wardens in G&B hostels as per order dated 10.04.2017 (Annexure A-2). Government order no.356-GAD dated 13.03.2015 issued policy of posting of Wardens/ Assistant Wardens in various State Advisory Boards including



Gujjar and Bakerwal hostels. By that order, a Committee was constituted to recommend such appointments consisting of Administrative Secretary GAD (Convener), Administrative Secretary (Social Welfare Department), Administrative Secretary (School Education Department) and Secretary of the concerned Board. That policy order specifically provided that General Administration Department (GAD) shall obtain a panel of eligible Lecturers/ Headmasters/ Masters from School Education Department for their postings as Wardens/ Assistants Wardens and orders of deputation shall be issued by GAD with the approval of Chairman of the Advisory Board i.e. the Hon'ble Chief Minister and the tenure of deputation of Wardens/ Assistant Wardens shall be two years and in no case, it shall be allowed beyond three years. Therefore, the process for posting of Wardens/ Assistant Wardens has to be initiated by GAD.

5. On 19.09.2019, during a review meeting on functioning of Tribal Affairs Department, chaired by the Advisor (F) to Hon'ble Governor J&K, directions were issued that the Department of Tribal Affairs shall issue the requisite notification about engagement of Wardens/ Assistant Wardens and staff in G&B hostels on outsourcing basis. Copy of minutes of that meeting is annexed at Annexure A-4. However, all of a sudden, without any indent from GAD,

respondent no.4 has issued a communication dated 27.05.2020 requesting respondent no.5 to furnish a panel of suitable/ eligible persons for posting as Wardens/ Assistant Wardens. This communication is challenged by the applicants stating it to be illegal and without jurisdiction as that did not mention about indent from GAD and it is not as per stipulations of the policy dated 13.03.2015.



6. As per decision in the meeting under the Chairmanship of Advisor (F) to the Hon'ble Governor, J&K on 19.09.2019, the Department of Tribal Affairs has decided to issue notification for engagement/ employment of Wardens and staff in G&B hostels on outsourcing basis and when the borrowing department i.e. the Tribal Affairs Department is not interested in deputation of Wardens from School Education Department and desires to go ahead with the process of outsourcing, communication dated 27.05.2020 is stated to be illegal.

7. During the prevailing Covid-19 pandemic, the Gujjar and Bakerwal Hostels have been converted into Quarantine Centres and the present applicants have been appointed as Nodal Officers for their respective Quarantine Centres/ Hostels. The process initiated by the respondents through communication dated 27.05.2020 will expose the applicants to grave threat and inconvenience.

8. During arguments of the applicants' counsel, the above averments of the applicants were reiterated.



9. In the counter reply filed on behalf of respondents by learned AAG Shri Amit Gupta, it has been submitted that transfer of an employee is part and parcel of his/her employment and the Courts/Tribunal should not interfere in the transfer unless it is vitiated by malafide or issued in violation of statutory provisions as emphasized by the Tribunal in its order in a similar case of **Shagufta Anjum Vs. Union of India**, relying upon Apex Court decision in **Union of India Vs. S.L. Abbas**, AIR 1993 SC 2444 and **State of U.P. Vs. Goverdhan Lal**, (2004) 11 SCC 402.

10. The present applicants have completed the period of their deputation in terms of Govt. order dated 13.03.2015 and on 11.05.2020, the Tribal Affairs Department has requested GAD to repatriate the overstayed Wardens/ Assistant Wardens to their parent department by posting and deputing new eligible officers/officials from that department. Therefore, GAD on 13.05.2020 has sought a fresh panel of eligible Lecturers/ Headmasters/ Masters for placing it before the Committee constituted by order dated 13.03.2015 read with Govt. order dated 24.07.2015 by which the Administrative Secretary, Tribal Affairs Department has also been made a member of the Committee constituted vide Govt. order dated

13.03.2015 for posting of Wardens/ Assistant Wardens in various State Advisory Boards. Based on above communication from GAD dated 13.05.2020, School Education Department has issued communication dated 27.05.2020 to Director, School Education, Jammu/Kashmir to provide fresh panel of persons for appointment as Wardens/ Assistant Wardens in Gujjar and Bakerwal Hostels.



11. The above communication of School Education Department dated 27.05.2020 has been challenged by the applicants but it is not a final order for appointment of Wardens/ Assistant Wardens in G&B hostels and it is only a part of the process initiated for appointment of Wardens/Assistant Wardens as per policy decision dated 13.03.2015. The posting of Wardens/ Assistant Wardens is prerogative of the government and is being done strictly as per policy decision in government order dated 13.03.2015 regulating deputation for such posting and there is no malafide involved in seeking fresh panel.

12. As per government order on policy dated 13.03.2015, the Hon'ble Chief Minister was the Chairman of J&K Advisory Board for appointment of Wardens/ Assistant Wardens and the popular government was in face. However, with conversion of J&K State in Union Territory of J&K, the administrative head being the Hon'ble Lt. Governor, all policy

matters are decided by him. Thus, the process for obtaining fresh panel and posting/ appointment of Wardens/ Assistant Wardens for G&B hostels is being undertaken with due approval of the competent authority by the GAD. Therefore, there is no substance in the contention of the applicants that the process has been initiated without any jurisdiction and without any requisition from the GAD.



13. In a meeting chaired by Advisor (F) to Hon'ble Lt. Governor on 19.09.2019, it was decided to engage Wardens/ Assistant Wardens in G&B hostels on outsourcing basis but due to prevailing circumstances of Covid-19 and subsequent lockdown, the process of outsourcing could not be initiated so far. Under these circumstances, the policy as stated in government order dated 13.03.2015, is still in operation for posting of Wardens/ Assistant Wardens in G&B hostels. In view of these submissions, there being no merit in the OA, it should be dismissed. .

14. The main issue raised by the applicants in the OA is whether the communication issued by respondent no.4 to respondent no.5 on 27.05.2020 requesting for submitting a panel of eligible/suitable persons (two persons per post for Wardens/ Assistant Wardens in G&B hostels) is illegal and without jurisdiction. Based on our consideration of the submissions of the respondents, it is clear that the above



communication is only part of the process initiated by the respondent-authorities and it is neither without jurisdiction nor without competence of respondents 3 and 4. As explained by the respondents, after the policy decision in Govt. order dated 13.03.2015 was issued, a Committee of four officers was constituted to recommend appointment of Wardens/ Assistant Wardens in G&B hostels. By another order dated 24.07.2015 of GAD, Administrative Secretary, Tribal Affairs Department has also been added as a Member of that Committee. In view of this, the contention of the applicants that posting of Wardens/ Assistant Wardens for G&B hostels is exclusive domain of the Tribal Affairs Department, is irrelevant.

15. With respect to contention of the applicants that after the meeting of Advisor (F) to the Hon'ble Lt. Governor, J&K on 19.09.2019, the Department of Tribal Affairs has decided to issue notification for engagement/ employment of Wardens and staff in G&B hostels on outsourcing basis, the submission of the respondents is that because of extraordinary circumstances of Covid-19 pandemic, the process of outsourcing could not be initiated so far. In our opinion, this is reasonable and fully justified contention of the respondents. It is also correct that the present applicants have already completed the period of their deployment as Wardens/ Assistant Wardens of G&B hostels, as provided under the

policy decision dated 13.03.2015 that tenure of deputation of Wardens/ Assistant Wardens shall be two years and in no case, it shall be allowed beyond three years. Since the applicants were appointed as Wardens/ Assistant Wardens on deputation basis by order dated 10.04.2017, at this stage, they have already completed the maximum period of deputation allowed for their present posting. Hence, they have no case for continuation beyond three years i.e. April, 2020.



16. In view of the above discussion, we conclude that the present OA is totally devoid of any merit and deserves to be dismissed. It is accordingly dismissed. No costs.

(Rakesh Sagar Jain)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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