

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Dated: This 18th day of September 2020

Present:

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

HON'BLE MR. ANAND MATHUR, MEMBER – A

O.A. No. 61/788/2020

**Pawan Kumar Gupta S/o Om Parkash Gupta, R/o H. No. 81/2A, Trikuta Nagar,
Jammu. Applicant**

By Advocate: Mr. Pranav Kohli

Versus

- 1. Union Territory of Jammu & Kashmir,
Through Principal Secretary to Government
Public Works (R&B) Department,
Civil Secretariat, J&K, Srinagar.**
- 2. Mr. Shailender Kumar,
Principal Secretary to Government
Public Works (R&B) Department,
Civil Secretariat, J&K, Srinagar.**
- 3. Additional Secretary to Government
Public Works (R&B) Department,
Civil Secretariat, J&K, Srinagar**

4. Chief Engineer,Public Works (R&B) Department, Jammu.

.....Respondents

By Advocate: Shri Amit Gupta, AAG

O R D E R

Per Rakesh Sagar Jain, Member (J)

- 1) Admit. Mr. Amit Gupta, AAG, waives notice on behalf of respondents.**
- 2) This OA has been filed by applicant Pawan Kumar Gupta seeking judicial intervention in the matter of transfer of the applicant. Applicant seeks the following reliefs:**
 - i. Certiorari Quashing the Government Order bearing No. 252-PW(R&B) of 2020 dated 07.09.2020 by virtue of which the applicant is transferred and posted as Incharge Executive Engineer, R&B Division Chhatroo, District Kishtwar to the extent it pertains to the petitioner.**
 - ii. Certiorari quashing the Order bearing No. CEJ/ADM 92 of 2020 dated 11.09.2020 by virtue of which the applicant has been relieved of his duties from the Office of Chief Engineer PW(R&B) Department, Jammu from 12.09.2020.**
 - iii. Prohibition restraining the respondents to give effect to the order impugned dated 07.09.2020 and order dated 11.09.2020;**
 - iv. Mandamus commanding upon the respondents to permit the petitioner to continue to work as Executive Engineer (R&B) Division, Udhampur.**
 - v. Such other appropriate relief which this Hon'ble Court may deem fit and proper in the given facts and circumstances of the case be filed in favour of the applicant as against the respondents.**

- 3) Applicant seeks quashing of the impugned Order No. 252 –PW (R&B) of 2020 dated 07.09. 2020 (Annexure A1) whereby applicant has been transferred and posted as Incharge Executive Engineer, R&B Division, Chhatroo, District Kishtwar. Applicant also seeks the interim relief of staying the operation of impugned transfer order dated 07.09.2020 qua the applicant and order dated 11.09.2020 relieving him of his duties from the Office of Chief Engineer PW(R&B) Department, Jammu from 12.09.2020 till disposal of the O.A.

- 4) It has been argued by learned counsel for applicant that action of the respondents in issuing the order dated 07.09.2020 is an outcome of haste, illegality and malafides. It is submitted that in order to maintain judicial propriety, respondents should have awaited the decision on interim application in the previous O.A filed by him and any action in pursuance to the order of attachment or Inquiry was to be followed based upon the Interim directions which have been reserved by this Tribunal. The action of transferring the applicant while the OA No. 62/665/2020 previously filed by him is pending amounts to overreaching the judicial proceedings and make the OA No. 62/665/2020 infructuous. Such an action is impermissible and non-est in the eyes of law.

- 5) It was also argued by learned counsel for applicant that in pursuance of order of transfer, respondents by way of order dated 11.09.2020 relieved the applicant of his duties from the Office of Chief Engineer PW(R&B) Department, Jammu from 12.09.2020 F.N. and which relieving order is illegal since applicant is on leave and against Rule 39 of Jammu & Kashmir Civil Services Regulations as no handing-taking over has taken place. Rule 39 reads as under:

“39. Unless for special recorded reasons (which must be of a public nature), the authority under whose orders the transfer takes place, permits or requires it to be made in any particular case, elsewhere, or otherwise, the charge of an office

must be made over at its headquarters both the relieving and relieved officers being present”.

- 6) It has been argued by learned counsel for applicant that the applicant who is currently 59 years of age is due to superannuate in October, 2021, as per, Government policy ought to have been transferred near his home town i.e. Jammu but the respondents in perverse manner and out of pique because applicant had previously filed an O.A. seeking quashing of illegal DE initiated against him have transferred him to Chatroo, District Kishtwar which is almost 300 Kms from Jammu. The action of the respondents suffers from the vice of malafides on the part of the respondent no.1, thus rendering the impugned order also as illegal, arbitrary.

- 7) During the course of arguments, learned counsel for applicant further argued that the perusal of the order clearly demonstrates that the order has not been passed in the interests of administration. The applicant came to be transferred as I/C Executive Engineer, R&B Division Udhampur on 16.12.2019 i.e. less than a year ago. In terms of the impugned order, the applicant is being dislodged from his present place of posting without completing the tenure of 02 years which is violative of Transfer Policy notified vide Government Order No. 861-GAD of 2010 dated 28.07.2010. Particularly clause 'C'- Tenure Postings.

- 8) During the course of argument, learned counsel for applicant relied upon
 - I. T.S.R. Subramanian VS Union of India, (2013) 15 SCC 732
 - II. Dr. (Mrs.) Pushpa Mehta Vs Rajasthan Civil Services Appellate Tribunal and ors., 2000 (5) SLR 598
 - III. Narayan Chowdhary Vs State of Tripura, 2000 (1) SCT 707
 - IV. Ram Achal Misra Vs State of U.P., 1986 (12) ALR 598
 - V. Dilip Kumar Bhandary Versus The North Bengal State Transport Corporation and Ors.

9) On the other hand, learned AAG submitted that the impugned orders are in accordance with law and no good ground has been made out by the applicant for grant of interim relief, as such, the Tribunal ought not interfere with the impugned orders.

10) AAG shall file the counter affidavit within 2 weeks. Meanwhile, subject to filing of the counter affidavit, the operation of impugned transfer order dated 07.09.2020 qua the applicant and Order dated 11.09.2020 relieving the applicant of his duties from the Office of Chief Engineer PW(R&B) Department, Jammu from 12.09.2020 is stayed till the next date of hearing before the Bench.

11) Put up file for consideration of interim relief on 08.10.2020

(ANAND MATHUR)
MEMBER – A

(RAKESH SAGAR JAIN)
MEMBER – J

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