



**Central Administrative Tribunal
Jammu Bench, Jammu**

O.A. No.61/940/2020

This the **02** day of **November**, 2020

(Through Video Conferencing)

**Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Anand Mathur, Member (A)**

Gulam Mohammad Bhat, Age 55 years, S/o Ab. Salam Bhat, R/o Nishat, Srinagar.

...Applicant

(By Advocate : M/S Asimi)

Versus

1. Union Territory of J&K, through Commissioner / Secretary to Government, Forest Department, Civil Secretariat Srinagar.
2. Director, Department of Social Forestry Jammu and Kashmir.
3. Regional Director, Department of Social Forestry, Kashmir.
4. Divisional Forest Officer (DFO), Department of Social Forestry, Division Srinagar.
5. Divisional Forest Officer (DFO), Department of Social Forestry, Gnaderbal.
6. Divisional Forest Officer (DFO), Department of Social Forestry, Budgam.

...Respondents

(By Advocate : Mr. Amit Gupta, AAG)

O R D E R (on interim relief)

Hon'ble Mr. Rakesh Sagar Jain, Member (J):

In the present OA, the applicant Gulam Mohammad Bhat has challenged the impugned order dated 29.09.2019, whereby he has



been transferred from Gamderbal Block to Chadoora Block. Alongside the OA, the applicant seeks interim relief to stay the operation of the impugned order qua the applicant, till disposal of the OA.

2. It was argued by the learned counsel for the applicant that the applicant is suffering from major medical ailment, as detailed in the OA and therefore, travelling from his place of residence to Chadoora Block would adversely affect his health and more so when the applicant has only three or four years to retire.

3. On the other hand, learned counsel for respondents submitted that the applicant was transferred in accordance with rules and policy of the respondent-department. It was argued by learned counsel that the applicant has neither vested right to remain posted at one place of choice nor can he insist to be posted at a particular place. The service benefits, status, seniority, pay scale of the petitioner has been protected and it is the employer who is best judge as in what manner the capability of an employee has to be utilized. It was submitted that the transfer of the applicant was made purely in the exigencies of work, as per, the transfer policy of the respondent-department and was purely on the basis of requirement of experienced official at Srinagar office. Therefore, the impugned order does not violate any right of the applicant, as such, the OA is not maintainable and be dismissed. It



was also argued by learned counsel that the impugned order is not vitiated with malafides, or issued in violation of any statutory provision or passed by an authority not competent to pass such order.

4. In State of U.P. and another vs. Siya Ram and another, (2004) 7 SCC 405, the Hon'ble Apex Court has observed that:-

"transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. The courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were Appellate Authorities substituting their own decision for that of the employer."

In Shilpi Bose v/s. State of Bihar, 1991 Supp (2) SCC 659, the Hon'ble Apex Court while setting aside the order passed by the Hon'ble High Court, has observed that:-

"Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order; instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer Orders."

5. The law on transfer has been clearly and unambiguously laid down by the Hon'ble Supreme Court. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. The employee



does not have any vested right to be posted at a particular place. It is equally well settled that the transfer policy does not create any legal right in favour of the employee. There must be a judicially enforceable legal right for the enforcement of which legal proceedings can be resorted to which is not so, in the present case.

6. We may refer to S.C. Saxena Vs. Union of India and others reported in (2006) 9 Supreme Court Cases 583 wherein the Hon'ble Apex Court has held that tendency of not reporting at the new place and instead indulging in litigation to ventilate grievances needs to be curbed. The Hon'ble Apex Court has further held that it is the duty of the Government servant to first report for work where he is transferred and thereafter, make a representation as to what may be his personal problems. The said principle of law applies on all four to the facts to the present case.

7. Considering the facts and circumstances of the case as well as the law laid down by the Hon'ble Apex Court, we are of the opinion that no *prima facie* case is made out by the applicant for issuance of the interim relief as prayed for by the applicant. Hence the prayer for interim relief is rejected. Learned counsel for respondents to file counter affidavit within four weeks. Thereafter, learned counsel for

applicant shall file the rejoinder affidavit, if any, within two weeks.

Needless to say, that nothing observed hereinbefore effect the merits of the main case. List this case for orders on 21.01.2021.



(Anand Mathur)
Member (A)

(Rakesh Sagar Jain)
Member (J)

Piyush