

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 61/11/2020

Pronounced on:- This the 15th day of April, 2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)

Arshad Bhat, Age 44 years, S/o Mohd Ashraf Bhat, R/o H. No. 43, Lane No. 5, Vidhata Nagar, Bathindi, Jammu.

.....Applicant
(Advocate: Mr. Abhinav Sharma, Sr Advocate assisted by Mr. Abhimanyu Sharma)

Versus

1. Union Territory of J&K through Financial Commissioner, Health and Medical Education Department, Civil Secretariat, Srinagar/Jammu.
2. Principal, Principal & Dean, GMC, Jammu.
3. Director Health Services, Jammu
4. Chief Medical Officer, Health and Family Welfare Department, Jammu.

.....Respondents

(Advocate: M/s Amit Gupta/Aseem Sawhney, AAG

(ORDER)

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J

1. Applicant Dr. Mohd Arshad Bhat seeks quashment of impugned order No. 91-JK (HME) of 2019 dated 30.12.2019 issued by Health & Medical Education Department whereby in interest of justice and patient care, applicant amongst other doctors was transferred from

Government Medical College, Jammu to GMC, Doda on deputation basis for a period of two years on the standard terms & conditions as envisaged in Schedule – XVIII of J&K CSRs Vol. II.



2. Case of applicant is that vide order No. 607 – HME of 2014 dated 20.10.2014 on completion of Registrarship in GMC, he was posted in SMGS Hospital, Jammu. The applicant underwent training courses in the field of Fetal Monitoring Department and Mammography in AIIMS, New Delhi. A Genetic Clinic for carrying out pre-natal Diagnostic procedures/Pre-natal Diagnosis tests/ultrasonography was established in SMGS Hospital and applicant's name was entered in registration certificate dated 12.10.2019 as Sonologist. The applicant is the only doctor in J&K to carry out the procedures to be undergone in the Genetic Clinic and in the absence of a qualified Doctor, the Clinic would face closure.

3. It is further averred in the petition that hardly after two months of the opening of the clinic, the respondents vide impugned order deputed the applicant to GMC Doda. It is the case of the applicant that he made a representation to the HoD, Radio Diagnosis against his



transfer on the ground that he is the only trained/qualified Radiologist in the field of Basic Diagnostic and Interventional procedures in Fetal Medicines and that his transfer would adversely affect the functioning of the genetic clinic. His representation was forwarded to Respondent No. 2 with the remarks that the transfer of applicant would adversely affect the functioning of genetic clinic and that services of the applicant are required, failing which the basic purpose of Genetic Clinic will be defeated and the representation was forwarded to the Financial Commissioner, Health and Medical Education Department.

4. Applicant has challenged the legality of the impugned transfer order on the following grounds:-
 - i. that the certificate of registration of the Genetic Clinic in SMGS Hospital mentions the name of the applicant for registration and therefore, the absence of applicant from the clinic invalidates the registration certificate of the Genetic Clinic and to keep the registration and running of the Genetic Clinic intact, it is essential that applicant continues in the Genetic Clinic;
 - ii. in view of the recommendation of HoD Radio diagnosis, SMGS Hospital, Respondent No. 2 was requested to take up the matter with administrative department and on this

ground the respondents are to be restrained from deputing the applicant to GMC, Doda;



- iii. the deputation of applicant would result in the qualification acquired by applicant from AIIMS going waste since there is no genetic clinic in GMC, Doda, the genetic clinic in SMGS Hospital shall stand closed since there is no other Doctor in Jammu possessing the qualification to run the clinic and the patients shall suffer financially since they would have to pay huge amount of money for undergoing same treatment outside Jammu & Kashmir which they are receiving free of cost in the genetic clinic in SMGS Hospital;
- iv. that the Pre-Natal Diagnostic (Regulation and Prevention of Misuse) Amendment Rules 2003, under Rule 18 it is inter alia provided that the owner, employee associated with the Genetic Clinic Shall “(ii) not employ or cause to employed any person not possessing qualification necessary for carrying out prenatal diagnostic techniques/procedures, techniques and tests including ultrasonography.” Applicant is the only person in possession of the requisite qualification to carry out the tests in the Genetic Clinic and the shifting of the applicant out of the Genetic clinic would close the clinic which would be detriment to the interest of public at large.



5. Respondents had filed objections which as per submission of Mr. Amit Gupta, learned A.A.G. during the course of arguments had submitted be treated as counter affidavit. In the counter affidavit, it has been averred that Article 22 of J&K Civil Service Regulations (hereinafter referred to as 'Regulations') empowers the Government to send a Government Servant on deputation basis outside his service/parent organization on temporary basis and therefore, the Government is well within its power to depute the Government Servant to any other Department mentioned in the said provision on deputation basis, hence, the application filed by the applicant deserves no relief and needs to be dismissed.

6. Challenging the impugned order, learned counsel for applicant submitted that it is a clear position that the applicant is the only doctor in J&K to carry out the procedures to be undergone in the Genetic Clinic and in the absence of a qualified Doctor, the Clinic would face closure. Costly medical equipment has been installed in the clinic to give patient care to the women who otherwise have to go outside J&K to get the test done which costs them nothing less than Rs. 1 Lakh besides putting the entire families to hardship and that too in time of



pandemic where the incomes have gone down and to travel long distance is hazardous to health and direction of the Government of India to public at large is to desist from taking long journeys but then the respondents are unresponsive to such hardships. It was further argued that unresponsiveness of the administration to the suffering of the poor people can be gauged from the fact that since 2019, the genetic clinic remains closed and entire costly medical equipment is becoming junk. Learned counsel for applicant further argued that even the claim of the learned counsel for respondents that the administration is going to establish genetic clinic in the district is a hollow claim since no action has been taken to install the medical equipment and give specialized training to the doctors and that nothing prevented the administration from posting another doctor in Doda so, that the public of Doda does not suffer and the genetic clinic does not face closure.

7. It was further argued by learned counsel for applicant that the impugned order insofar as it concerns the applicant is violative of the statutory rules. It has been submitted that Rule 52 B of J&K Civil Service Regulations has been deleted from the Statute by virtue of

SRO 192 dated 28.05.2007 and placed reliance upon Madan Lal Samyal v/s State of J&K, 2018 (4) JKJ 249 (HC). Therefore, the order of deputation of the applicant is null and void and being impermissible under law deserves to be set aside.



8. On the other hand, learned counsel for respondents submitted that the contentions of the applicant regarding the closure of the clinic, the suffering of the people etc are all matters over which this Tribunal has no scope and jurisdiction to adjudicate upon. This Tribunal has no jurisdiction to adjudicate upon the issues raised by the applicant since these issues do not fall within the scope of ‘service matters’ And if at all, and assuming but not conceding that these matters fall under the scope of public interest litigation, the matters do not come within the jurisdiction of this Tribunal. On the matter of deputation of the applicant under the J&K Civil Services Regulations, it has been submitted by learned counsel for respondents that no doubt that Article 52 B has been deleted vide SRO No. 192 dated 28.05.2007 but the impugned order in question is governed by re-cast Article 22-D of the Regulations, as such, the petition being devoid of merit deserves to be dismissed.

9. We have heard and considered the arguments of the learned counsel for the parties and gone through the material on record.



10. We may note that in the Medical Department of Jammu & Kashmir, there exist two Gazetted Services; one is the Jammu & Kashmir Medical (Gazetted) Service and the other is Jammu & Kashmir Medical Education (Gazetted) Service. The Recruitment Rules (RRs) for both of the Services were framed in 1970 & 1979 respectively. The post of Assistant Surgeon (since designated as Medical Officer) occurs in category '2' of the Medical (Gazetted) Service. Appointment to this is 100%, by direct recruitment. In the Medical Education (Gazetted) Service, the posts of Registrars/Demonstrators (for short 'Registrar') occur in the Teaching Wing at Sr. No.VI. The recruitment to this is by way of deputation from Medical (Gazetted) Service.

11. Regarding the contentions of the applicant about the closure of the genetic clinic and its effect on the public at large and therefore, makes the impugned order null and void, we are of the opinion that any matter regarding the working of the clinic is a matter which falls

within the exclusive functioning of the Executive and would at the most be matter of public interest and not fall within the jurisdiction of this Tribunal.



12. It is a settled principle of law that the preamble of an Act suggests what was the Act was intended to deal with. In the present case, the preamble of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Act') reads as under:

"An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of 1 [any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution] and for matters connected therewith or incidental thereto."

13. So, the Preamble indicates that it is an Act to provide for the adjudication by the Tribunal of the disputes with regard to recruitment



and conditions of service of persons referred to thereunder. In fact, the preamble of the Act read with its provisions makes the legislative scheme very clear that the Tribunal is to adjudicate upon the disputes and complaints with regard to the matters concerning recruitment and service conditions of public servants. To fully understand the powers and jurisdiction of the Tribunal, we may refer to certain provisions of the Act:-

“Section 3 (q):

“service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects—

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) (iii) leave of any kind;
- (iv) (iv) disciplinary matters; or
- (v) (v) any other matter whatsoever;



Section 15:

Jurisdiction, powers and authority of State Administrative Tribunals. — (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court in relation to—

- (a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;
- (b) all service matters concerning a person not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society] owned or controlled by the State Government;
- (c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.



(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations or societies controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any service or post in



connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.”

14. Looking to the facts of the case and the provisions of the Act, it is beyond doubt that this Tribunal has jurisdiction to adjudicate solely upon the dispute and complaints with respect to recruitment and service conditions of the persons specified in the Act. Therefore, in our opinion, the closure of the genetic clinic is not relatable to the service conditions of the applicant and so, the Tribunal has no jurisdiction to adjudicate on the questions as to how the genetic clinic is to be administered and run by the Government. How to marshal its resources lies within the prerogative of the Government. Law is settled that exigencies of administration, fall within the domain of administrative decision making and being matters of policy, Judicial review is to tread warily.



15. Applicant has challenged the legality of the impugned order on the ground that it is based on a statutory provision i.e. Article 52 B of the CSR which stands deleted by SRO No. 192 dated 28.05.2007 and therefore, the impugned order has no legs to stand upon and be set aside.

16. Rebutting this argument, learned counsel for respondents submitted that the impugned order is based on Article 22-D which was recast by SRO No. 192 dated 28.05.2007. Learned counsel submitted that because of exigency of the service and for better patient care in Doda, as is apparent from the impugned order, deputation of many doctors including the applicant was necessitated. SRO No. 192 lays down that the term 'deputation' covers appointment made by transfer of 'in-service' Government servants in public interest outside their parent organisation on a temporary basis and so, the respondents are within their competency to transfer an employee (applicant) on deputation from his parent department to another department.

17. Looking to the arguments of the parties and the Statutory provisions, the contention of applicant that the impugned order is based on a non-



existence provision cannot be accepted. The matter in hand is squarely covered by Article 22 – D of the Regulations. Respondents have relied upon Rule 27 of CCA Rules, 1956 and Article 22- D of the CSR to contend that the Government has the power to transfer by way of deputation, an employee from outside his parent department to another department and there is no requirement for seeking consent from the concerned employee who is required to be transferred by way of deputation outside his parent cadre.

18. It would profitable to refer to Rule 27 and Article 22 – D as under:

“27. Postings and transfers

(1) A member of a service or class of a service may be required to serve in any part of the Jammu and Kashmir State in any post borne on the cadre of such service or class.”

SRO-192:

Article 22-D: (a) Deputation:- the term “Deputation will cover appointments made by transfer of “In-service” Government servants in public interests outside their parent Organization on a temporary basis. The deputation may be from one Government Department to another of the State Government or from a Government Department (of a State) to any Corporation, Company, Autonomous



Body, Public Sector Undertaking wholly owned and controlled either by the State Government or by the Central Government, or any other State Government in the country. It shall include transfer made in made public interests to Municipalities, Local Bodies, Statutory Bodies, and all other Non-Government Organizations Bodies and Institutions within or outside the State.”

19. We may refer to Ghulam Abass v. State of J&K, (2011) 4 JKJ 74 decided by Hon’ble High Court vide judgment dated 01.11.2011 wherein it has been observed that:

"The SRO 192 dated 28.05.2002 provides that deputation will cover appointment made by transfer of in-service Government servants in public interest outside their parent organisation on temporary basis. In terms of Rule 27 of the Rules of 1956, Government servant can be transferred from one post to another post in his service or cadre of service. Rule 27, thus, authorizes the competent authority to transfer an employee on any post in any part of J&K State borne on the cadre of such service or class. In terms of Article 22-D, the competent authority has power to appoint by transferring an in-service Government servant in public interest outside his parent organization on a temporary basis. The competent authority in terms of Article 22-D is thus clothed with the



power to transfer a member of service or class from outside his cadre which transfer is christened as deputation which, expression also covers appointment of in-service Government servant on temporary basis outside his parent organization. The competent authority/Government has statutory power to depute an employee for a temporary period outside his parent organization. The Government/competent authority is repository of the power of transferring inservice Government servant outside his parent organization.

In the case on hand petitioners have been transferred from their parent organization to Rural Development Department. The said power is traceable to Article 22-D as has been recast in terms of SRO 192 dated 28.05.2007”

“(a) The Government/Competent authority has statutory power to temporarily transfer an inservice Government employee in public interest outside his parent organisation on a temporary basis. This power conferred on the Government/competent authority in terms of Article 22-D is not hedged with any condition.”

“Thus in view of the language in which Article 22-D is couched an in-service Government servant can be transferred on temporary basis in public interest outside his parent organization. For exercising such powers only public interest is to be seen. If the consent of the



concerned Government employee would be pre-requisite for exercising such power, then the Government/competent authority which is charged with the duty of providing efficient administration and proper services to the common masses, will be deprived from taking decision in most of the cases as the concerned employee may refuse to give his consent.”

“On the other hand the judgment cited by Mrs. Goswami, learned Dy. AG appearing for the respondents provide that deputation and transfer are synonyms and deputation would also mean transfer of an employee though outside the parent organization. The Article 22-D provides that deputation covers appointment made by transfer of in-service Government Servant in public interest outside their parent organization on temporary basis. The statutory rules thus make the expression transfer and deputation akin to each other and authorizes the competent authority to make temporary deputation of its employees.”

20. We also may refer to *Abdul Ahad v. State Of J & K*, 2002 KLJ 495 decided by Hon’ble Jammu and Kashmir High Court wherein it has been observed that:

“Indubitably, an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is malafide or that the service Rules prohibit such transfer or that the authorities, who have issued the order, had not the



competence to pass the order as it is held by the Supreme Court in State Bank of India v. Anjan Sanyal and others, AIR 2001 SC 1748. It is not disputed that the order of transfer has been issued by a competent authority. The only grievance is that the order is malafide and for extraneous considerations. It stems out evidently from the frame of the transfer order that it has been made for administrative reasons, and no other purpose could be carved out by the petitioner much less on the alleged ground of malafide during debate. In the instant case. The petitioner admittedly had been relieved by respondent No 4 by issuing the relieving order dated 6-7-2001 and the order of transfer stood implemented. Transfer is always understood and construed as an incident of service, the petitioner could not show that the transfer is malafide and made not for professed purpose. Such as in normal course or in administrative interest or in the exigencies of the service. Service of an officer to another department is treated as equivalent to service in parent department where lien is retained as is in this case and borne out from the transfer order, which reads as under:

"Dr. Abdul Ahad, Incharge Professor Anatomy Government Medical College, Srinagar is hereby transferred and directed to report to Director, Sher-i-Kashmir Institute of Medical Sciences forthwith for utilization of his services in Medical College, Bemina. He will retain lien in his parent department. By order of the Govt. of Jammu & Kashmir."

5. Deputation and transfer are not inconsistent and rather complementary and supplementary to each other. Term transfer as used in rule 27 of the J&K Civil Service (CC&A) rules is synonymous with the term deputation as used in Regulation 52(B) of the Civil Service Regulations. The combined reading of **Rule 27 of the Rules and Regulation 52(B) of the Regulations** would show that on fact transfer and deputation are intended to meet and cover the same exigencies. No



fundamental or non fundamental, legal or statutory right of the petitioner has been violated and there being no substance in the writ petition, it is hereby dismissed along with all connected CMPs and disposed of accordingly. Stay, if any, granted shall stand vacated in resultant thereof.”

21. Looking to the facts and circumstances of the case, we are of the opinion that the impugned order deputing the applicant to GMC, Doda has been passed in public interest i.e for patient care and in accordance with rules and no right of applicant has been violated. The T.A. being meritless is dismissed. Stay granted shall stand vacated. We may refer to the Miscellaneous Application filed by the application seeking a direction to the respondents to disburse the arrears of his salary. Respondents are directed to consider and release the arrears of salary in accordance with rules. The decision shall be taken within a period of four weeks from today. T.A. is accordingly disposed of. No costs.

(TARUN SHRIDHAR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)