

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 62/610/2020

Pronounced on: This the 17th day of September 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)



1. Ghulam Nabi Dar, Aged about 29 years, S/o Abdul Rehman Dar, R/o Limber Tehsil Boniyar, District Baramulla. Place of employment: District Police Lines, Srinagar Belt, 610-IRP/3rd BN.
2. Aijaz Ahmad Khan, Aged about 30 years, S/o Mohammad Fareed Khan, R/o Naganari Tehsil Uri District Baramulla Place of employment: District Police Lines, Srinagar. Belt No. 615-IRP/3rd BN.
3. Javeed Ahmad Bhat, Aged about 31 years, S/o Ab Satar Bhat, R/o kalaroos Tehsil and District Kupwra. Place of employment: District Police Lines, Srinagar. Belt No. 615-IRP/4th BN.

.....Applicants

(Advocate: Mr. Mansoor Ahmad Mir)

Versus

1. Union Territory of Jammu and Kashmir through Commissioner/Secretary to Home Department, Civil Secretariat, Srinagar/Jammu.
2. Director, General of Police Jammu and Kashmir, Jammu/Srinagar.
3. Additional Director General of Armed Police Jammu and Kashmir, Srinagar-190001.
4. Inspector General of Police Kashmir Zone, Srinagar.
5. Inspector General of Police Armed/IRP Kashmir, Srinagar.
6. Commandant IRP 3rd Battalion Parihaspora, Baramulla.
7. Commandant IPR 7th Battalion Waien Kupwara.
8. Senior Superintendent of Police Srinagar, Kashmir.
9. Principal Commander Training Center Lethpora, Pulwama Kashmir.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

(ORDER)

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

1. Applicant Ghulam Nabi Dar and two other applicants have filed the present O.A. seeking the following reliefs:



- “A. Order of quashment be issued in favour of the Applicants and against the respondents for quashing the impugned Order No. 829 of 2020 dated 11.08.2020 issued by respondent No. 8 (Annexure-A-4) and also of the order date 12.11.2019 issued by the respondent N. 9 (Annexure-A-5) to the extent of Applicants as the impugned orders stands passed in violation of SRO 202.
- B. A Direction be issued in favour of the Applicant and against the respondents commanding them to revert and post the applicants back to their parent districts (Baramulla and Kupwara) in accordance to their districts (Baramulla and Kupwara) in accordance with their service conditions laid down under SRO 2020 particularly in view of exception attached to clause 8 of SRO 202 since the applicants have been appointed against available vacancy on the basis of being a resident of backward area.
- C. Allow costs of this application to the applicant.
- D. Pass such other orders or reliefs as deems just and proper in the attendant facts and circumstances of the case in favour of the applicant and against the respondents.”



2. Case of applicants is that they were appointed as constables in J&K Armed Police in the RBA category in the year 2016. It is the case of applicants that in terms of Clause 8 of J&K Special Recruitment Rules, 2015, they were serving in their respective districts when the respondents in violation of clause 8 permanently adjusted them in Srinagar district before the expiry of the period of seven years mentioned in clause 8 by way of impugned orders detailed in the O.A. Hence the present petition seeking quashment of impugned orders and directing the respondent to post the applicants to their parent districts of Baramulla and Kupwara.

3. In the objections filed by the respondents, it has been averred that SRO 202 was amended by G.O. No. 194 of 2020 dated 17.06.2020 by virtue of which the probation period of 5 years was substituted with 2 year, as such, the applicant can be posted outside their home districts. The posting and transfer of an employee is the sole prerogative of the employer and transfer can only be assailed on ground of violation of statutory rules or being mala fide in nature or suffers from lack of jurisdiction. It has been averred that the applicants belong to the police force and are shirking their duties by avoiding their transfer more so, in

times, when militancy activities are at their peak. Hence the O.A. being meritless be dismissed.



4. We have heard and considered the arguments of learned counsel for applicants and learned DAG for respondents and gone through the material on record.

5. It would be relevant to note Clause 8 of J&K Special Recruitment Rules, 2015 which reads as below:

“Provided that any person appointed against any available vacancy on the basis of being a resident of backward area or an area adjoining Line of Actual Control shall serve in such area for a period of not less than seven years”

6. It has been argued by learned counsel for applicants that the applicants have not completed their minimum tenure of seven years as ordained by clause 8 of J&K Special Recruitment Rules, 2015 and, therefore, the impugned orders being violative of the statutory provision of clause 8 of SRO 202, cannot be sustained and to be set aside.

7. On the other hand, learned DAG submitted that clause 8 does not impede the action of the Government from transferring the applicants before the completion of seven years and that the statutory provision



pertaining to the transfer of a Government employee is Rule 27 of the J&K Civil Services (Classification, Control and Appeals) Rules, 1956 (hereinafter referred to as the Rules of 1956) provides that an employee borne on a particular service or class of service may be required to serve in any part of J&K State in any post borne on the cadre of such service or class and so long as the order of transfer is not vitiated by mala fides and not in violation of any statute or suffers for want of jurisdiction of the Authority issuing it, the same cannot be interfered with by the Tribunal.

8. Applicability of Clause 8 is sought by the applicants to set aside the impugned orders. The language of Clause 8 is very clear and lays down that any person appointed against any available vacancy on the basis of his being a resident of backward area or an area adjoining Line of Actual Control shall serve in such areas for a period of not less than seven years. However, this clause does not prohibit the Government (employer) from transferring the applicants outside such area in the interest of administration. The clause is abundantly clear and cannot be interpreted to mean that State under all circumstances is to ensure that that a person appointed under reserved category of RBA is to serve for a period of not less than seven years in such areas. The State is, thus,

not duty bound keep such person in such areas though correspondingly, the applicants who have been appointed on the basis of reservation, may not be in a position to seek their transfer outside such area till they complete seven years of service in such backward areas.



9. Learned DAG has referred to Rule 27 of Rules of 1956 which came up for interpretation Full Bench Judgment dated 31.08.2015 of the Hon'ble High Court of J&K in SWP No. 1476/2014 titled Syed Hilal Ahmad v/s State of J&K. In the said judgment, it was held that:

“10. Rule 27 of the 1956 Rules clearly states that a member of service or class of service is required to serve in any part of the Jammu and Kashmir State in any post borne on the cadre of such service or class. The said Rules are applicable to all the government servants of the State of Jammu and Kashmir. Hence it is not open to a government servant to say that he/she should be allowed to serve at a particular station for a definite period. Power is vested with the government or the authority concerned to post a government servant on a cadre by way of transfer to any place. The said Rule nowhere mentions that a person transferred or posted must be allowed to serve at the particular station for a minimum period of two years. The guidelines/policy issued through Government order, should be in consonance with the Rule and if we construe that the minimum term of the government servant



on a post shall be two years and maximum three years, as mandatory it would conflict with Rule 27 of the 1956 Rules, which, in categorized terms, mandates that a member of a service is required to serve in any part of the Jammu and Kashmir State in any post borne on the cadre and all transfers and postings be made by the authority prescribed by the government.”

“13. It is also settled proposition of law that transfer is an incidence of service and a government servant is subject to orders of transfer on administrative exigencies. A government servant cannot insist that he is entitled to continue in a particular station/post for a definite period. Interference in the orders of transfer by the Courts are very limited i.e. only on three grounds orders of transfer can be interfered, namely, if the order of transfer is passed in violation of any statutory Rule, or on mala fide reasons or by an incompetent authority.”

10. In view of the facts and circumstances of the case, We do not find any ground for interference in the order impugned. The O.A. being meritless is accordingly dismissed. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-