



## Central Administrative Tribunal Jammu Bench, Jammu

T.A. No.4648/2021  
(SWP No.1903/2018)

Wednesday, this the 24<sup>th</sup> day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd, Jamshed, Member (A)**

Ahmad Ali & others

..Applicants  
(Mr. M A Qayoom, Advocate)

### **Versus**

Deputy Commissioner / Chief Executive Officer, LAHDC, Kargil

..Respondents  
(Mr. Raghu Mehta, Senior Central Government Standing  
Counsel)

## ORDER (ORAL)

### **Mr. Justice L. Narasimha Reddy:**



The applicants were appointed as Safaiwalas, Orderlies, Chowkidars and Nursing Orderlies in Ladakh Autonomous Hill Development Council (LAHDC), Kargil, at various points of time. In the years 2015 and 2016, they are said to have been transferred to other departments on their own request and with the consent of officers of Medical Department. Stating that various complaints are received as regards the functioning of the Health Care Institutes of Kargil District, the Deputy Commissioner/Chief Executive Officer (CEO), LAHDC passed an order dated 07.08.2018, directing that all the Class-IV employees, i.e., Nursing Orderlies, Orderlies, Chowkidars and Safaiwalas of the Medical Department shall stand repatriated to the said Department. The names of those persons were mentioned in Annexure-A appended thereto. The names of the applicants figured therein. The applicants filed SWP No. 1903/2018 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 07.08.2018.

2. According to the applicants, though they were initially appointed in Medical Department of LAHDC, on a request made by them and with the consent of borrowing and lending Departments, they have been transferred on permanent basis

and there was absolutely no basis with the respondents in setting at naught, such an arrangement. It is also stated that the respondents did not issue any notice to them before passing the impugned order.



3. The applicants further contend that some of them earned promotion in the Department to which they were transferred. Various other grounds are also urged. On 13.08.2018, the Hon'ble High Court passed an interim order directing maintenance of *status quo*.
4. The record discloses that the respondents did not file counter affidavit.
5. The SWP has since been transferred to this Tribunal in view of re-organization of the State of Jammu and renumbered as T.A. No.4648/2021.
6. Today, we heard Mr. M Q Qayoom, learned counsel for applicants and Mr. Raghu Mehta, learned Senior Central Government Standing Counsel.
7. It is not in dispute that the applicants were originally appointed in the concerned posts in Medical Department of LAHDC, Kargil. The circumstances under which the applicants are said to have been transferred are not immediately before us.

The orders passed in respect of some of the applicants are filed in the SWP. A perusal of the same discloses that in some cases, it was transfer and in certain cases, it was on lien. The Deputy Commissioner/CEO took the view that the sending of these applicants from Medical Department was on deputation and accordingly, he directed their repatriation.



8. In case the applicants were permanently absorbed in various Departments, they become members of that cadre. If on the other hand, the arrangement was only temporary in nature and for a limited period, it tends to become one of deputation. Added to that, the authority, which issued the orders of appointment of the applicants and who made the transfers, are not immediately before us. One thing, which is clear, is that the same authority, which ordered transfer, has passed the order of repatriation. Therefore, it cannot be said that the Deputy Commissioner /CEO does not have the jurisdiction, once the so-called transfer of the applicants was issued, through orders passed by the Deputy Commissioner / CEO.

9. We are of the view that the applicants can be given opportunity to make representation to the Deputy Commissioner / CEO of LAHDC, duly enclosing (a) their orders of appointment, (b) the orders of transfer; and (c) the nature of benefits, that are said to have been conferred in the Department, to which they

have been transferred. On such representation, the concerned authority can pass appropriate orders.



10. We cannot ignore the serious situation that is prevailing in the hospitals. The impugned order was prompted only with a view to ensure that the hospitals work with an element of efficiency. If all the employees, who are expected to upkeep the hospital, leave and join other organizations, one just cannot expect the hospitals to function. It was not even mentioned that the vacancies, that was caused on account of the transfer of concerned employees, were filled by other persons. The Deputy Commissioner / CEO felt the responsibility, which he has towards the general public, and ensured that the persons, who are posted in Medical Hospital, are meant to work, if any serious infirmity has taken place.

11. One aspect is that the names of the applicants were not struck off in the medical department, nor it is stated that they submitted even the technical resignation. Existence of provision in the other services, for appointment by transfer, is another aspect. Equation of post also becomes necessary when the selection and appointment is as Nursing Orderly, the so-called transfer can be only to an identical or similar post.

12. Learned counsel for applicants placed reliance upon the judgments of Hon'ble Supreme Court in **D K Yadav v. J M A Industries Limited**, (1993) 3 SCC 259 and **Shri Gajanan L. Pernekar v. State of Goa & another**, (1999) 8 SCC 378.



Those are the cases, in which permanent transfer of employees from one Department to another was set at naught. In the instant case, serious doubt exists as to whether there was any transfer or absorption at all. Once the word 'repatriation' is used by the same authority, who passed the order of transfer, it tends to become the one of deputation. It hardly needs any mention that a deputation would remain for a limited period and on expiry thereof, the employee has to come back to the parent department. In matters of this nature, the principles of natural justice have hardly any role to play.

13. We, therefore, dispose of the T.A.

- (a) Declining to interfere with the impugned order, but
- (b) Leaving it open to the applicants to make representation(s) to the Deputy Commissioner / Chief Executive Officer of the LAHDC, enclosing therewith the orders of appointment, orders of transfer and the orders, through which any benefit was conferred by the Department, where they have been made to work till recently and directing that orders thereon shall be passed within eight weeks.

(c) Directing that in view of the impending necessity in the hospitals at a time when the serious Covid-19 situation is emerging, the applicants shall forthwith join the duties in the Medical Department, Kargil, which, in turn, would be subject to outcome of the orders, that the Deputy Commissioner / Chief Executive Officer may pass.



There shall be no order as to costs.

**( Mohd. Jamshed )**  
Member (A)

**( Justice L. Narasimha Reddy )**  
Chairman

**March 24, 2021**  
/sunil/mbt/vb/ankit/