

**CENTRAL ADMINISTRATIVE TRIBUNAL
SRINAGAR BENCH, SRINAGAR**

O.A. No. 240/2024

Reserved on: 19th April, 2024

Pronounced on: 22.04.2024

C O R A M

**HON'BLE MR. D.S. MAHRA, MEMBER(J)
HON'BLE MR. PRASANT KUMAR, MEMBER(A)**

Abdul Rashid Sheer Gujri
S/o Gh. Mohd Sheer Gugri
R/o Nambal Har Kremshore
District Budgam
Pin Code - 191111

..... Applicant

By Advocate :

Mr. Arif
Sikander Mir

Versus

01. Union Territory of Jammu and Kashmir through
Commissioner/Secretary to Government General
Administration Department, Civil Secretariat,
Srinagar/Jammu – 190001.
02. Commissioner/Secretary, Planning Development and
Monitoring Department, Civil Secretariat,
Srinagar/Jammu - 190001

..... Respondents

By Advocate :-

Mr. Bikram Deep Singh, DAG for R1
Mr. Waseem Gul, GA for R2

ORDER (FINAL)

Per Hon'ble Mr. D.S. Mahra, M(J):

01. Learned counsel for the applicant has impugned the Government Order No. 801-JK(GAD) of 2024 dated 06.03.2024 by which the applicant has been deputed to the Union Territory of Ladakh for a period of two years or till he is recalled, whichever is earlier. The said order further provides that the applicant shall be deemed to have been relieved from his present place of posting with immediate effect and he shall report to the General Administration Department of Union Territory of Ladakh after availing the joining time. The applicant is a permanent employee of the Union Territory of J&K and he has been deputed to the Union Territory of Ladakh for a period of two years.

02. Learned counsel for the applicant has filed this present OA challenging the said deputation order on the sole ground that the consent of the applicant was not obtained/taken before passing the impugned order or before transferring the applicant on deputation to the Union Territory of Ladakh.

03. Learned counsel for the respondents submits that it is within the jurisdiction/power of the respondents to transfer its employees to the different Departments on deputation as well as to the other States and Central Departments, and for that purpose, the consent of the employee is not at all required.

04. Heard the learned counsel for the parties.

05. The term deputation has been defined and mentioned under Article 22(D) of J&K Civil Service Regulations, 1956 which is reproduced as under:

(a) "The term "Deputations" 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) 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 transfers made in public interests to Municipalities, Local Bodies, Statutory Bodies and all other Non-Government Organizations Bodies and Institutions within or outside the State.

(b) Government Servants in service who are appointed to posts outside their parent cadre on direct recruitment having competed for such appointments with other candidates whether on permanent or a temporary basis will not be regarded as on "Deputation". Permanent transfers from one cadre/Department to another will also not be treated as deputations. Similarly, Government Servants who seeks appointments in Public Sector Undertakings, Corporations and Companies etc of their own

accord or while on deputation are absorbed permanently in such Organizations and Institutions will not be treated on deputation.

(c) Interim arrangements of posting of members of a Service in the event of conversion of a Government Office/Organizations or a portion thereof into a Public Sector Undertaking/Autonomous Body/Company/Corporations will also not be treated as deputation.

06. Article 52(C) of the J&K Civil Service Regulations, 1956 provides for terms and conditions of deputation as follows:

- (i) The period of deputation in any case should not exceed three years. It may, however, be extended further by one year on the request of the borrowing agency but in any case the total period of deputation shall not exceed a period of four years at a time.*
- (ii) An Employee appointed on deputation may elect to draw either the pay in the scale of pay of deputation position or the Basic Pay and pay scale of the Parent Cadre plus personal Pay, if any:*

07. As per the definition of the Deputation as well as the terms and conditions prescribed under the J&K Civil Service Regulations, 1956 the term deputation will cover appointments made by transfer of in-service Government employee in public interest outside his Parent Organization on temporary basis. It may be from one Department to another Department or from Government Department to the Public Sector Corporations etc, or from Government Department to Central Government or Government Department to any other State or Union Territory.

08. Rule 25 of J&K Civil Service Regulations, 1956 provides and authorizes the Government to transfer its employee from one post to another post or from one Department to another Department. It authorize the competent authority to transfer its employee on any post in any part of J&K State or outside its Cadre or State. Similarly, as per Article 22(D) of the J&K Civil Service Regulations, 1956, the competent authority has the power to transfer an in-service Government servant in public interest outside his Parent Department on temporary basis. It nowhere says that in exercising such power

and on deputation the consent of the concerned employee is necessary. In other words, the combined reading of regulations 22(D), 27, 52(C) of J&K Civil Service Regulations, 1956, it nowhere mentions that before exercising the power of transfer or transfer on deputation from one Cadre to another Cadre or from one Department to another Department, the consent of the concerned employee is necessary.

09. The Hon'ble High Court of J&K in the matter of ***Ghulam Abass versus State of J&K and Ors SWP No. 2648/2010 & SWP No. 2531/2010 decided on 01.11.2011*** while dealing with the same issue held that the consent of the employee is not necessary before transferring in service Government servant in public interest outside his parent organization on temporary basis. The relevant provisions of transfer/deputation of an employee did not mention about taking prior consent of the concerned employee.

10. This Tribunal cannot bring something which is not in Rules or which is not provided under the Rules. It is the duty of the Court to give plain meaning to the Legislation. Tribunal cannot bring in the Rules which is not, otherwise there, provided by the State Legislature. Whatever is not directly provided, the Tribunal cannot provide the same indirectly.

11. The Hon'ble High Court of J&k in the case of ***Ghulam Abass versus State of J&K and Ors.*** while dealing with the similar issue has held as follows:

“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. The impugned order is an order passed under Article 22-D (supra). The contention raised by Mr. Shukla, learned counsel appearing for the petitioners that in order to transfer an employee outside his parent organization, there is to be a requisition from the borrowing department, and no objection from the parent department, as also consent from the concerned employee, cannot be accepted for the following reasons.

(a) The Government/Competent authority has statutory power to

temporarily transfer an in-service Government employee in public interest outside his parent organization on a temporary basis. This power conferred on the Government/competent authority in terms of Article 22-D is not hedged with any condition.

In case the argument of the learned counsel for the petitioner is to be accepted, that would be re-writing Article 22-D, inasmuch as, the conditions would be introduced in the said provision of the statute. The language of Article 22-D being plain and clear intendment sought to be achieved being obvious, it does not thus require any interpretation, even otherwise, Court do not legislate laws. 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.

(b) Schedule II-A (Executive) appended to Rules of 2007 under the caption Technical VI (A) provides that 90% of the Junior Engineers are to be recruited by deputation from the Public Works Department and 10% by promotion from amongst the Works Supervisors appointed by the competent authority in the Rural Development Department under the recruitment Rules of 1990 and having undergone a Degree or Diploma Course in Engineering from recognized institution. It is further provided that in case of the non-availability of eligible Works Supervisors under promotion quota these remaining posts shall also be diverted to the deputation quota from Public Works Department. The Statute thus provides deputation of Junior Engineers from Public Works Department to rural Development Department to the Public Works Department for transferring 258 Junior Engineers to Rural Development Department. The Public Works Department is, thus under Statutory obligation to depute Junior Engineers to Rural Development Department. In view of the aforesaid provisions of Rules of 2007, there is statutory requisition on the part of the

Rural Development Department and a corresponding statutory obligation on the part of Public Works Department to comply with the said statutory requisition.

(c) By transferring petitioners from outside parent organization, it is neither pleaded in the writ petition nor it was argued at the time of hearing that any of their service rights have been adversely affected.

12. In view of the settled position of law, this O.A. No. 240/2024 dismissed. No order as to costs.

PRASANT KUMAR
Member(A)

D.S. MAHRA
Member(J)

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