



**Government of Jammu and Kashmir
Higher Education Department
Civil Secretariat J&K**

Subject: OA No.61/1331/2023 titled Vishally Sharma Vs UT of J &K & Ors.

Government Order No. 204 -JK (HE) of 2024
Dated: 20 .03.2024

Whereas, Applications were invited through online portal for effecting transfers of Assistant Professors, Associate Professors, Physical Tanning Instructors and Librarians. Detailed instructions were issued for applying through online Portal.

Whereas, the Applicant Ms. Vishally Sharma, Assistant Professor in Mathematics applied through online portal and she was transferred from Government Maulana Azad Memorial College, Jammu (Zone A) to Government Degree College, Akhnour (Zone B) vide Government Order No. 278-JK(HE) of 2023 dated 03.10.2023;

Whereas, The applicant being aggrieved of the Government Order No. 278-JK(HE) of 2023 dated 03.10.2023 filed OA No.1331/2023 titled Vishally Rajput Vs UT of J&K &Ors before the Hon'ble Central Administrative Tribunal, Jammu praying for following reliefs:-

"....i) Quash order impugned bearing Government Order No. 278-JK(HE) of 2023 dated 03.10.2023 to the extent it pertains to her transfer from Govt. Maulana Azad Memorial College, Jammu to Govt. Degree College, Akhnour.

ii) Direct the respondents to refer the applicant for her Medical examination by the Standing Medical Board, Jammu Medical College and based upon the opinion of Standing Medical Board, reconsider the transfer order impugned.

iii) Direct the respondents to allow the applicant to continuously serve in Govt. Maulana Azad Memorial College, Jammu.

iv) Any other relief which the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case...."

Whereas, the Hon'ble CAT after hearing the applicant disposed of the OA by passing order dated 06.10.2023, the operative part of which is reproduced as under:

"..... Accordingly, the Original Application is disposed of with a direction to respondents to treat this O.A as representation of the applicant and decide the same by passing a reasoned and speaking order.

Before taking such a decision, the applicant shall also be afforded an opportunity of hearing. The whole exercise shall be undertaken within a period of two weeks from the date of receipt of a certified copy of this order.
Ordered accordingly

However, there shall be no orders so as to costs."

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, vide letter dated 14.03.2024, the applicant was requested to appear in the Administrative Department. The applicant appeared on the scheduled date and time and was heard in person. The applicant requested to adjust her suitably in the nearby Colleges as doctor has advised her to avoid prolonged travelling.

Whereas, in terms of Rule 27 of J&K Classification Control and Appeal Rules, 1956, a member of a service or class of a service may be required to serve in any part of the Union Territory of Jammu and Kashmir on any post borne on the cadre of such service or class;

Whereas, the issue of transfer and postings has been considered time and again by the Hon'ble Supreme Court, and the entire law is settled by catena of decisions of the Apex Court. It is settled law that transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No Government servant, therefore, has any legal right for being posted at any particular place. Moreover transfer from one place to another is necessary in public interest and exigency in public administration as held in "Gujrat Electricity Board Vs Atma Ram Sugomal Poshani", AIR 1989 SC 1433, which reads as under:-

"An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency."

"...transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules'.



Whereas, In E. P. Royappa v. State of Tamil Nadu AIR 1974 SC555, it has been held that:-

"...Transfer of a Government servant appointed to a particular transferable post from one place to another place is an incidence of service and does not affect or alter his terms and conditions of service. The Government has power to transfer its employees from one post to another carrying equivalent pay scale and grade."

In Rajendra Singh & Ors. v. State of U.P. &Ors., (2009) 15 SCC 778 it has been held that:-

"... It is well settled that transfer is an exigency of service. An employee does not have any indefeasible right to remain posted at a particular place ad-infinitum or seek a posting of his choice. It is also no longer res integra that orders of transfer can only be interfered with by courts if the same are questioned on the ground of malafides or lack of jurisdiction or if the same is otherwise contrary to statutory rule governing such transfers. (J&K Central Non-Gazetted Electrical Employees Union, Rajouri v. State of J&K &Ors 2017 (6) JKJ[HC] 431 See & Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna &Ors. (1981) 2 SCC 72)

In National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574, it has been held that:-

"... No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since 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. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, 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/ management, as against such orders passed in the interest of administrative exigencies of the service concerned..."

In Syed HilalAhamd&Ors. v. State 2015 (3) JKJ[HC] 398; 2015 SLJ it has been held that:-

"...transfer is an incidence of service and a Government Servant is subject to orders of transfer on administrative exigencies and a Government Servant cannot insist that he is entitled to continue in a particular station/post for a definite period."

In A. D. Manhas (Dr) v. State &ors 2005 JKJ (HC) (1) 314, it has been held that:-

"...transfer is an exigency of service and it is the prerogative of the employer to see at what place the service of an employee can be utilized properly in the larger

public interest. An employee holding transferable post has no right to insist that he should be allowed to serve at a particular place for a particular period. Simply because he has been transferred against the higher post, does not mean that he would have to perform the duties of that post. The only purpose of his transfer against the post appears to be that his pay etc shall be drawn against said post..."

Whereas, the case of the applicant was examined in light of the written submissions adduced by the applicant as well as the standing rule position, it has been found that with regard to modification of her transfer to Zone A, it is to state that it is not possible to retain the applicant for such long time in Zone A so that a fair chance be given to the faculty working outside Zone A. The applicant has more than 06 years stay in Zone A and she has been suitably transferred to GDC Akhnoor, Zone-B.

Now ~~Therefore~~, in view of the above stated facts and circumstances, the claim of the applicant has been considered in light of the directions passed by the Hon'ble Central Administrative Tribunal, Jammu on 06.10.2023 passed in OA No.1331/2023 titled Vishally Sharma Vs UT of J&K &Ors and the same has been found not tenable under Rules and is hereby rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Alok Kumar), IRS

Principal Secretary to the Government

No: HED-LEG/131/2023-04 (7312489)

Dated:- 20 .03.2024

Copy to the:-

1. Joint Secretary, J&K, Ministry of Home Affairs, Government of India.
2. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K UT.
3. Director Colleges, J&K for information.
4. Principal GGM Science College for immediate compliance.
5. Principal, GCW Udhampur for information.
6. Concerned.
7. Private Secretary to Principal Secretary to Government, Higher Education Department.
8. ALO, Higher Education Department for information.
9. I/c website.
10. Government Order file (w.2.s.c).



(Sanjay Kumar Tickoo)

Under Secretary to the Government

