

Sr. No. 03
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
WP (C) No. 1944/2022

Abdul Shakoor Hussaini ...Appellant(s)/Petitioner(s)
Through: Mr. Altaf Haqani, Sr. Adv. with
Mr. Asif Wani, Advocate

Vs.

Union of India and others ...Respondent(s)
Through: Ms. Rehana Qayoom, Adv. vice
Mr. T.M. Shamsi, DGS
Mr. S.N. Ratanpuri, Advocate with
Ms. Fiza, Advocate

CORAM:
HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE
HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

ORDER
29.08.2024

Per Atul Sreedharan-J (Oral):

1. The brief facts of the case are as follows:
2. The instant petition has been filed against the impugned order passed by the learned Central Administrative Tribunal (CAT), Srinagar Bench, which had disposed of the Transfer Application (TA) filed by the petitioner herein on the ground that the same was premature.
3. The factual aspects of the case briefly states that the petitioner was promoted by the Department and after a period of probation he was confirmed and after the passage of four years, the petitioner was sought to be reverted as his promotion was allegedly not in consonance with rules.
4. Page 28 is the Communication dated 14.12.2015, on the basis of which the petitioner preferred his case before the Central Administrative Tribunal, Srinagar Bench, which is an internal communication of the department addressed by the Deputy Director of the Prasad Bharti Akashani Bhawan, New Delhi to the Head of Office Radio Kashmir Srinagar, Jammu & Kashmir. The said communication states that the petitioner was promoted without adherence to the rules and that as the same was erroneous, his promotion may be reviewed immediately and revert him to the post of General Assistant under intimation to the Directorate. Pursuant to this letter

no order was ever passed by the Head of Office of Radio Kashmir, Srinagar Jammu & Kashmir, reverting the petitioner to his previous post. The document adverted to by the petitioner which is the impugned communication dated 14.12.2015 has not been addressed to the petitioner. It is not clear as to how the petitioner got possession of the said document as it is an inter department communication and the same has not been acquired under the Right to Information Act. It more certainly is not a notice to show cause why the petitioner shall be reverted.

5. Learned senior counsel appearing on behalf of the petitioner has placed before this Court the judgment of the Supreme Court in a case titled "*M/S Siemens Ltd. Vs. State of Maharashtra & Ors*" 2006 (12) SCC 33, whereby, the Supreme Court has held that ordinarily a Writ Court would not exercise discretionary jurisdiction in entertaining a writ against notice to show cause unless and until the show cause notice itself clearly discloses the predisposition of the authority to act in a particular manner. In this particular case no show cause notice has ever been issued to the petitioner.
6. Under the circumstances, we deem it appropriate to dispose of this petition by directing the respondents that in the event they want to revert the petitioner to the previous post they shall issue a show cause notice to that effect to the petitioner and consider his response and pass a reasoned order one way or the other. If the final order is against the petitioner, he is given the liberty to agitate his cause afresh before the Appropriate Forum after the cause of action arises.
7. The Department shall also accord a personal hearing to the petitioner and he also be given the opportunity of placing all such documents before the department that he may so desire to establish his case and the same shall be taken into consideration.
8. With the above, this petition stands disposed of without prejudice either side.

(MOHAMMAD YOUSUF WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR
29.08.2024
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