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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 11240/2016

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28th November, 2016

ZAHOOOR AHMED AKHOON

..... Petitioner

Through: Mr. Suhail Khan, Advocate.

versus

ARCHAEOLOGICAL SURVEY OF INDIA

..... Respondent

Through: Mr. Manish Mohan, CGSC with
Mr. Shivam Chanana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, petitioner seeks compassionate appointment on the ground that petitioner's father died in harness.

2. In the opinion of this Court, this Court does not have territorial jurisdiction because, admittedly, the father of the petitioner was employed with, worked and died in harness while working for the respondent at Srinagar, Jammu and Kashmir. Entire services of the father of the petitioner were therefore performed at Srinagar, Jammu and Kashmir.

3. Merely because office of the respondent is situated at Delhi and it is thus argued on behalf of the petitioner that the competent authority sits at Delhi which will pass the order for appointment, will not give this Court territorial jurisdiction because the order of grant of compassionate appointment or denial of compassionate appointment will have to be communicated to the petitioner where the petitioner is residing and as per the memo of parties petitioner is residing at Village Pandrathan, Srinagar, Kashmir. It is only on the receipt of such a communication that a cause of action will arise in favour of the petitioner and the receipt of the communication will be not as Delhi but at Srinagar and hence the existence of jurisdiction at Srinagar and lack of jurisdiction of the Delhi courts.

4. Merely because an order can be passed in favour of the petitioner as per the writ petition at Delhi, the same will not give territorial jurisdiction to this Court ,because, it is not the passing of the order which will give cause of action but the communication thereof to the petitioner. An order in the Government file, unless communicated, does not create a right or a liability is a settled legal position right from the Constitution Bench judgment of the Supreme Court in the case of ***Bachhittar Singh Vs. The State of Punjab, AIR 1963 SC 395*** and which ratio of ***Bachhittar Singh's*** case (*supra*) has been recently followed by the Supreme Court in the judgment in the case of

Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, 2009 (1) SCC 180. The relevant paragraphs of the judgment in the case of ***Sethi Auto Service Station (supra)*** are paragraphs 14 to 17 and the same read as under:-

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

15. In *Bachhittar Singh v. The State of Punjab* a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to the Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said Article and was then communicated to the party concerned. The court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

16. To the like effect are the observations of this Court in *Laxminarayan R. Bhattad v. State of Maharashtra*, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.

17. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to

hold that the recommendation of the Technical Committee of the DDA fructified into an order conferring legal right upon the appellants.”

(underlining added)

6. A query was posed to the counsel for the petitioner as regards the lack of territorial jurisdiction of this Court and it was asked if the petitioner wanted this Court to grant liberty to him to approach the competent Court in Jammu and Kashmir, but counsel for the petitioner says that the judgment be passed.

7. In view of the above, this writ petition is dismissed as this Court has no territorial jurisdiction.

NOVEMBER 28, 2016/ AK

VALMIKI J. MEHTA, J