

Central Administrative Tribunal  
Jammu Bench, Jammu

Hearing through video conferencing

**Original Application No. 61/726/2024**

This the 16th day of July 2024

**Hon'ble Mr. Rajinder Singh Dogra, Judicial Member**

1. Ashok Kumar Ranchhodbhai Parmar, IAS, Age 59 years, Chairman, Bureau of Public Enterprises, Finance Department, Government of UT of Jammu and Kashmir-110011.

...Applicant

(Through Advocate: Mr. Ashutosh Khanna)

Versus

1. Shri Manoj Sinha, Hon'ble Lieutenant Governor of UT of J&K, Raj Bhawan, Gupkar Road, Srinagar-190001.
2. Shri Rajiv Gauba, Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi-110004.
3. Ajay Kumar Bhalla, Union Home Secretary, Ministry of Home Affairs, Room No. 113, North Block, New Delhi-110001.
4. S. Radha Chauhan, Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Room No. 112, North Block, New Delhi-110001.
5. Chief Secretary, Government of Jammu & Kashmir, Room No. 307, 3<sup>rd</sup> Floor, Civil Secretariat, Srinagar-190001.
6. Shri Rajeev Rai Bhatnagar, Advisor to Hon'ble Lieutenant Governor, Government of Jammu & Kashmir.
7. Shri Shaleen Kabra, IAS (AGMUT: 1992), Financial Commissioner (Additional Chief Secretary), Jal Shakti Department and Financial Commissioner (Revenue), Government of Jammu and Kashmir, Room No. 568/569, 5<sup>th</sup> Floor, New Secretariat, Jammu and Kashmir, Srinagar-190009.
8. Dr. Arun Kumar Mehta, Ex-Chief Secretary, Government of UT of Jammu and Kashmir, Flat No. B-403, Rama Krishna Apartment, Sector No. 23, Dwarka, New Delhi-110075.

...Respondents

(Through Advocate: Ms. Monika Kohli, Sr. Additional Advocate General for Respondents No. 1, 5, 6 & 8/Mr. Raghu Mehta, Sr. C.G.S.C. for Respondents No. 2, 3 & 4/Mr. Hunar Gupta, D.A.G. for Respondent No. 7)



**ORDER**

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-



- i. Commanding the respondent No. 1, 5 and 6 to upgrade grading on assessment of work output, personal attributes, and functional competency from 5 to 10 (on a score of 1-10), to upgrade overall numerical grade of 5 to 10 (on a score of 1-10), and to expunge the Adverse Remarks in the Performance Appraisal Report (PAR) for the reporting period 04/05/2022 to 06/08/2022 for performance of the applicant as Principal Secretary, Jal Shakti Department.
- ii. Command the respondent no. 2, 3 and 4 to grant all consequential benefits particularly the empanelment of the applicant as Additional Secretary w.e.f. year 2019 and as Secretary w.e.f. year 2023 in light of the expunged remarks and revised grading for the reporting period 04/05/2022 to 06/08/2022 for performance of the applicant as Principal Secretary, Jal Shakti Department.”

2. From the perusal of record, it transpires that the applicant has impleaded the Hon'ble Lieutenant Governor of Union Territory of Jammu & Kashmir by name, which is not permissible in view of Article 361 (4) of Constitution of India. Article 361 is reproduced below for reference:-

- (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring



- appropriate proceedings against the Government of India or the Government of a State.
- (2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.
  - (3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.
  - (4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.”

3. When considering the specifics of the case in hand, a straightforward interpretation of Article 361 of the Constitution of India makes the legal point evident that no civil proceedings can be instituted against the Hon’ble Lieutenant Governor, until the expiration of two months next after notice in writing has been delivered to the Hon’ble Lieutenant Governor stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims. The applicant has failed to produce any proof or evidence, that such a notice has been made and delivered. Hence, this Tribunal is not inclined to grant any relief to the applicant to this extent.

4. Secondly, it is seen from the records, that the applicant has impleaded all the respondents by their name in the O.A. and the



applicant is seeking relief concerned with his ACR and his empanelment as Additional Secretary and Secretary from the respondents in their private capacity. It is not clear as to how the applicant can claim reliefs related to his service conditions from the respondents in their private capacity. It is also seen that the applicant has unnecessarily impleaded Cabinet Secretary of India and Secretary, DoPT as party in the O.A. by name, though no allegations has been made by the applicant against them in the O.A.

5. Lastly, it is seen that the applicant has not impleaded the necessary parties viz Union of India and State of Jammu & Kashmir in the O.A. Hence, the O.A. is liable to be dismissed on the ground of non joinder of necessary parties.

6. When the learned counsel for the applicant was granted the opportunity to withdraw the O.A., he declined to do so and submitted that appropriate orders may be passed by this Tribunal.

7. It is quite astonishing to note that the applicant, a senior IAS officer with extensive knowledge of Constitution of India and its laws, proceeded to file Original Application seeking relief against the Hon'ble Lieutenant Governor, who has been bestowed with immunity under Article 361 of the Constitution of India. More regretful is the action of Mr. Ashutosh Khanna, Advocate representing the applicant, in this case, who as an Advocate had the duty to correctly advice the applicant. It can be safely said that the instant O.A. has been filed just to harass the respondents.



8. In view of the aforesaid facts and circumstances of the case and in order to prevent filing of such mischievous and frivolous petitions in future, this O.A. is dismissed while imposing a cost of Rs. 1,00,000/- (One Lakh Only) to be deposited by the applicant in Advocate's Welfare Fund maintained by Hon'ble High Court of Jammu & Kashmir. The cost shall be deposited within two weeks of receipt of copy of this order and receipt of same be filed in the Registry of this Tribunal.

**(Rajinder Singh Dogra)**  
**Judicial Member**

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