

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 160/2015
MP Nos. 1079/2015 & 166/2015

Date of decision: 22.07.2015

Tariq Ahmed Kakroo vs. State and another

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing counsel:

For petitioner (s): Mr. G. A. Lone, Advocate
Mr. Abhinav Sharma, Advocate

For respondent(s): Mr. Vishal Sharma, AAG

(i) Whether to be reported in Press, Journal/Media : Yes/No

(ii) Whether to be reported in Journal/Digest : Yes/No

1. This is a writ petition, seeking a **writ of certiorari** for quashing Government Order No. 47-GAD of 2015 dated 15.01.2015, whereby petitioner has been ordered to report back to the J&K State Power Development Corporation (for short, the Corporation) and the Corporation has been directed to take steps for revival of petitioner's lien against the post held by him prior to his deputation as OSD in the Chief Minister's Private Office vide Government Order No. 301-GAD of 2009 dated 21.02.2009. Besides, petitioner seeks **writ of mandamus** for directing respondents to allow the

petitioner to serve in the Chief Minister's Secretariat as OSD or to adjust him on some other suitable equivalent post in the General Administration Department. Petitioner also seeks **writ of mandamus** commanding the respondents to re-designate the petitioner as Deputy Secretary in the Government in accordance with proposal/recommendation made by the Chief Minister's Secretariat and to pay him salary and other allowances available as OSD in Chief Minister's Secretariat.

2. Heard. I have perused the record.
3. A few facts, which are not disputed, require to be stated. Pursuant to Vacancy Notice No. PDC/Estt./Legal/1470-1475 dated 09.07.2008 issued by the Corporation/respondent No.2, petitioner on the recommendation of the Selection Committee was appointed vide Order No. PDC/133 of 2008 dated 18.10.2008 as Deputy General Manager (Legal) in the Corporation. The appointment of the petitioner initially was on probation for two years and the appointment order provided also that service conditions of the petitioner will be governed in accordance with rules followed by the State Government for their

employees till such time as the Corporation adopts its own rules.

4. The State Government vide Government Order No. 301-GAD of 2009 dated 21.02.2009 issued by the General Administration Department (GAD)/ respondent No.1, transferred the petitioner and posted him as OSD in the Chief Minister's Private Office at Srinagar on deputation basis. In compliance with this order the Corporation relieved the petitioner from the Corporation on 25.02.2009 to enable him to join his new place of posting. Respondent No. 1 in continuation with the transfer-cum-deputation order dated 21.02.2009 issued Government Order No. 765-GAD of 2009 dated 15.06.2009, whereby sanction was accorded to creation of a temporary post of OSD in the pay scale of Rs.10,000-15,200 (pre-revised-non-plan) in the Chief Minister's Private Office at Srinagar for the purpose of the drawal of salary of the petitioner against the post so created. This order was issued with a condition that:

“The post shall cease to exist after transfer of Shri Tariq Ahmed from the Hon’ble Chief Minister’s Office either by way of his repatriation to parent organization or otherwise.”

5. The Managing Director of the Corporation vide his communication No. JKSPDC/ADM/EG-103/CJ/4052

dated 05.02.2010 addressed to the Administrative Secretary of the General Administration Department/respondent No.1 requested for repatriation of the petitioner to the Corporation for the reason that the Corporation was confronted with many court cases and other legal issues. The Managing Director also requested the Administrative Secretary that if the services of the petitioner are required by the GAD, the same may be communicated to his office so that the Corporation is able to make alternate arrangement by making fresh recruitment of Deputy General Manager (Legal). The respondent No.1 vide his Communication No. GAD(Ser)Genl/29/2009 dated 26.03.2010 addressed to the Managing Director of the Corporation turned down the request for repatriation of the petitioner by intimating that "the request was placed before the Competent Authority (Hon'ble Chief Minister) who has directed that Sh. Tariq Kakroo's services are required as OSD."

6. Pursuant to and consequent upon the refusal of its request for petitioner's repatriation, the Corporation issued order No. PDC/CJ/65 of 2010 dated 20.04.2010, whereby with the approval of the Chairman of the Corporation viz. the Chief Minister, the lien of the petitioner from the

Corporation was ordered to be terminated w.e.f. 19. 04. 2010. The respondent No.1 on its part vide Government Order No. 1056-GAD of 2010 dated 16.09.2010, deleted that portion of Government Order No. 765-GAD (supra) whereby the post of OSD created in the office of the Chief Minister was made *coterminous* with the exit of the petitioner by providing that the same shall cease after transfer of the petitioner from the Chief Minister's office either by way of repatriation or otherwise. Later the Special Secretary, Chief Minister's Private Office vide Communication No. SS/HCM/POS/1753 dated 10.10.2011 intimated the Financial Advisor/CAO of Chief Minister Secretariat that the petitioner has successfully completed the period of probation on 18.10.2010 so necessary entries are required to be made in his Service Book.

7. The General Administration Department/ respondent No.1 issued Government Order No. 46-GAD of 2015 dated 15.01.2015, whereby it was ordered *inter alia* that "the officials posted/ deployed in private office of former Chief Minister at Srinagar (Annexure-D) shall report to the I/C Winter Secretariat Srinagar/their parent departments wherefrom they have been drawn respectively till further orders." Annexure-D to this order which contained the list of all such officials

did not include the name of the petitioner. Respondent No.1, however, on the same day issued Government Order No. 47-GAD of 2015 dated 15.01.2015 in continuation with Government No. 46-GAD (supra), whereby it has been ordered that the petitioner "Mr. Tariq Ahmed Kakroo, OSD in the Chief Minister's Private Office, Srinagar shall report back to his parent organization i.e. J&K State Power Development Corporation." It has been ordered further that the Corporation shall draw the salary of the petitioner against any available post and take further steps for revival of his lien against the post held by him in the Corporation prior to his deputation in Chief Minister's Private Office at Srinagar vide Government Order No. 301-GAD (supra). Petitioner feels aggrieved by issue of Government Order No.47-GAD (supra). Hence this writ petition.

8. Petitioner has questioned his sending back (repatriation) to the Corporation and seeks quashing of the impugned Government Order No. 47-GAD of 2015 dated 15.01.2015 on the grounds that with the termination of his lien the Corporation has ceased to be his parent department/organization, that he has been permanently absorbed in the post of OSD in the Chief Minister's Private Office under the control of

the General Administration Department and that there is no provision in the J&K Civil Services Regulation, 1956 (CSR) for revival of lien.

9. Case set up by the petitioner is that with the termination of his lien as Deputy General Manager (Legal) from the Corporation vide order dated 20.04.2010 (supra) the petitioner ceased to be an employee borne on the cadre of the Corporation and the relationship of employer and employee which existed between the petitioner and the Corporation prior to the said order came to an end. It is averred that even after termination of his lien from the Corporation the petitioner could not have been absorbed against the post of OSD which he was holding on deputation basis for the reason that the said post vide Government Order No. 765-GAD of 2009 dated 15.06.2009 was created on temporary basis *coterminous* with the exit of the petitioner on repatriation to his parent organization or otherwise. In order to overcome this anomalous situation, respondent No.1 had decided to create a post of OSD in the office of the Chief Minister on permanent basis and therefore, vide Government Order No. 1056-GAD of 2010 dated 16.09.2010, the condition that the post was *coterminous* with his exit was deleted. With the issue of Government Order dated 16.09.2010, the post of OSD in Chief

Minister's Office became a permanent post and is held by the petitioner on permanent basis. The petitioner thus got permanently absorbed in the Private office of the Chief Minister's Secretariat, which is part of the General Administration Department, against the post of OSD by necessary implication and his relationship with the Corporation came to an end. The Corporation, therefore, no longer remains the parent organization of the petitioner. It is averred further that petitioner completed his probation period after his absorption as OSD in the Chief Minister's Secretariat and necessary entries in his Service Book were got effected vide Communication No. SS/HCM/POS/1753 dated 10.10.2011 (supra). It is contended by the petitioner that with a view to provide promotional avenues to the petitioner, the Chief Minister's Secretariat somewhere in March, 2014 submitted a proposal to the Competent Authority to re-designate the petitioner as Deputy Secretary in the said Secretariat. The Establishment Committee constituted by respondent No. 1 appears to have considered the proposal but deferred the decision on the ground that issue required further examination.

10. It is contended by the petitioner also that with the imposition of Governor's Rule in the State after the

elections to the State Assembly held in December, 2014, the office of Chief Minister ceased to function so respondent No.1 vide Government Order No. 46-GAD of 2015 dated 15.01.2015 ordered repatriation of staff posted/deployed in personal sections of the former Chief Minister and the Ministers. Petitioner, however, was not covered by that order as the same did not apply to permanent staff in the Chief Minister's Office and therefore, his name did not figure in Annexure-D, which related to officials posted/deployed in the private office of the former Chief Minister at Srinagar. In regard to the impugned Government Order No. 47-GAD dated 15.01.2015 the petitioner has alleged that he has been the victim of a conspiracy hatched at some level in the administration. To buttress his allegation, petitioner has contended that respondent No.1 despite being well aware that petitioner's lien in the Corporation had since been terminated and he had been regularly absorbed as OSD in the Chief Minister's Office, yet issued the impugned order of repatriation of the petitioner. It is contended by the petitioner that the Corporation was compelled to terminate petitioner's lien after respondent No.1 declined its request to repatriate the petitioner to the Corporation and that with a view to utilize the

services of the petitioner in the Chief Minister's Office, the temporary post of OSD was converted into a permanent post and petitioner allowed to hold the said post. It is contended by the petitioner that the permanent staff of Chief Minister's Secretariat is on the strength of and subject to administrative control of the General Administration Department. It is alleged by the petitioner that instead of allowing the petitioner to continue at the post held by him or adjusting him on some equivalent post in the General Administration Department, respondent No.1 decided to ease out the petitioner from the services of the Government by sending him back to the Corporation, which had already ceased to be his parent organization with the termination of his lien as Deputy General Manager (Legal). The petitioner seeks quashing of the impugned order on the grounds that he is not liable to be repatriated as he had been holding the post of OSD in substantive capacity and the order impugned is impregnate with malice in law. The impugned order cannot sustain in law also for the reason that same is inconsistent and contrary to well established principles of service jurisprudence. Respondent No.1 has failed to appreciate that an officer whose lien in his erstwhile department has been

terminated and who has been permanently absorbed in the borrowing department cannot be repatriated. The petitioner has pointed out that the scribe of the impugned order was aware that petitioner had ceased to be the employee of the Corporation and therefore, it was provided in the order that the Corporation shall take steps for revival of his lien against the post earlier held by him in the Corporation. Petitioner has contextually alleged that the impugned order besides being actuated by *mala fide* considerations is not sustainable in law for the reasons that there is no provision in the CSR for revival of lien. Petitioner has also questioned the jurisdiction of respondent No.1 to direct the Corporation to take a particular decision in view of the complete autonomy in the matter of administration granted to the Board of Directors of the Corporation. Petitioner has contended also that the impugned order more than order of repatriation is an order of reversion as the petitioner as he at the time of his deputation was holding the post of Deputy General Manager (Legal) in the pay scale of Rs.9000-14,100 but was absorbed as OSD in the Chief Minister's Secretariat in the pay scale of Rs.10, 000-15,200 (pre-revised). The impugned order, therefore, has been issued in violation of Article 311 of the Constitution of India

and the principles of Natural Justice, a concomitant of Article 14 & 16 of the Constitution.

11. It is contended by the petitioner that he had been appointed in the Corporation on the basis of his qualification as a post graduate in law after a selection process conducted by duly appointed Selection Committee. He was taken on deputation in the Chief Minister's Secretariat and subsequently in view of his efficiency at work he was permanently absorbed as OSD in the pay scale of Deputy Secretary to the Government. All these orders were passed in the interest of administration. The petitioner could have ventured to find some alternate avocation in life but he was satisfied when he became a permanent employee in the Chief Minister's Secretariat and when a proposal was mooted by his department for his re-designation as Deputy Secretary in the Government. The petitioner was legitimately expecting that even if he is not re-designated as Deputy Secretary, he would be entitled to be inducted in J&K Administrative Services in accordance with **the J&K Administrative Service Rules, 2008**. The order impugned has not only deprived him of his right to march ahead in life legitimately but has the effect of putting him to very disadvantageous position by reducing him in

rank as well as reducing his salary. The impugned order has put him in a very anomalous situation inasmuch as he at present neither is a member of Chief Minister's Secretariat nor that of the PDC.

12. Respondent No.1 has opposed the writ petition. At the outset, respondent No.1 has termed the pleas raised by the petitioner as 'misdirected and misconceived'. It is contended that law is well settled that a deputationist has no right to claim permanent absorption in the post on which he is sent on deputation.

13. While reiterating the factual position in line with the resume given in initial paragraphs of this text, stand of respondent No.1 is that the basic order of deputation dated 21.02.2009, which restricted petitioner's transfer on deputation basis only, has neither been modified nor rescinded even after deletion of the condition relating to creation of the post of OSD on temporary basis vide Government Order No. 765-GAD of 2009 dated 15.06.2009. The post of OSD was created merely for the purpose of payment of salary to the petitioner, which cannot be filled up by permanent absorption of a person brought on deputation. The deletion of the condition contained in Government Order No. 765-GAD would in no way change the basic fact

that the post created in Chief Minister's Private Office was only a temporary creation for drawing salary of the petitioner. It is contended also that personal staff of Ministers and the Chief Minister is provided through deputation from different departments, this arrangement subsists till the time these dignitaries hold the office and after that the staff is reverted back to their parent departments where they hold the lien. Respondent No. 1 has thus refuted petitioner's claim that by necessary implication he has been permanently absorbed in the Chief Minister's Private office against the post of OSD.

14. In regard to the communication dated 26.03.2010 (supra), whereby respondent No.1 declined request of the Corporation for repatriation of the petitioner, it is contended that respondent No.1 had only conveyed that services of the petitioner were 'still' required. By conveying merely that the services of the petitioner were 'still' required respondent No. 1 had not authorized the Corporation to terminate the lien of the petitioner and as the termination of the lien was inconsistent with service rules, respondent No. 1 has ordered revival of his lien by the Corporation. It is contended that lien of an employee is governed by

Article 37-A to 37-J of the CSR, which provide for the manner in which an employee acquires lien on a post to which he is appointed and the procedure to be followed for termination of lien on the adjustment against another post outside his cadre/organization. It is contended in this context that the petitioner, when his lien was terminated by the Corporation, was still on probation so he had not acquired the lien on the post by that time and therefore, the order of termination of the lien by the Corporation is *non est* and in no way can facilitate the cause of petitioner. The petitioner therefore, continued to be borne on the establishment of the Corporation till the date he has been repatriated vide the impugned order. The petitioner cannot be allowed to jump the ladder and seek absorption as a matter of right against the temporary post of OSD created merely for the purpose of drawal of his salary during the period of his deputation. Creation of the post or any other condition imposed in the creation order will not change the nature and substance of the basic deputation order. It is further contended by respondent No.1 that lien cannot be terminated in such a manner that the officer is left without any lien against any post. It is alleged by respondent No.1 that a bare perusal of grounds taken by the

petitioner reveals that petitioner aspires for entering into Kashmir Administrative Service (KAS) against the post of Deputy Secretary through lateral entry, notwithstanding that the Corporation employees are not eligible to be inducted into the KAS. Respondent No.1 has contended in this regard that having been appointed against a post of Deputy General Manager (Legal) in pay scale of Rs.9000-300-14,100, petitioner is aspiring to be absorbed against the post of OSD created temporarily in the office of the Chief Minister in pay scale of Rs.10,000-15,200 equivalent to the pay scale of the Deputy Secretary/ equivalent level. It is contended by respondent No.1 that the unilateral decision of the Corporation to terminate the lien of the petitioner, that too when he had not acquired it by not having completed two years of service, would normally tantamount to discharging him from the service as termination of lien in such a situation without having acquired the same carried no meaning.

15. The Corporation/Respondent No.2 in its counter affidavit has averred that the Corporation had sought repatriation of the petitioner as it was confronted with several legal issues including many court cases. In its request letter dated

05.02.2010 to respondent No.1 for repatriation of the petitioner the Corporation had made it clear that in case the services of the petitioner are indispensable and required in the GAD, the same may be communicated to it to enable it to make alternate arrangement by making fresh recruitment on the post of the Dy. General Manager (Legal). The Corporation in the counter affidavit has pointed out that as it does not have its own rules so it was made clear in the order of appointment of the petitioner that his service conditions would be governed in accordance with the rules applicable to the employees of the State Government called the Civil Service Regulation. It is averred further that because of the refusal to repatriation of the petitioner by respondent No.1, the Corporation terminated the lien of the petitioner and taking notice that the post of DGM held by the petitioner became substantially vacant and that petitioner was no longer on the rolls of the Corporation, the termination of lien was acted upon. The Corporation has thus opposed the writ petition stating that the petitioner has since ceased to be the employee of the Corporation.

16. Question in regard to a deputationist's right to claim absorption in the borrowing department is no

longer *res integra* even though it is noticed that such a question has not been mooted for debate in this case. Such a question, if raised, would not have had any substance as there is no quarrel with the well-settled principle of law that a deputationist has no legal right to be absorbed in the post to which he is deputed and he can at any time be repatriated to his parent department/organization. At the same time, however, possibility of absorbing a deputationist permanently in the borrowing organization is not ruled out. Supreme Court in **Union of India and another v Ramakrishnan and others, (2005) 8 SCC 394**, while restating the general principle that a deputationist has no legal right to continue or to be absorbed in the post, has held also that there is no bar thereto as well.

17. Petitioner by the medium of this writ petition is not claiming absorption in the post of the OSD to which he was transferred on deputation from the Corporation. Petitioner rather questions his sending back (repatriation) to the Corporation by the impugned order on the grounds that he has already been permanently absorbed in the borrowing department, that his relationship with his parent organization has ceased to exist with the

termination of his lien by the Corporation and that his repatriation dehors the service rules.

18. Mr. G. A. Lone, learned counsel for the petitioner submitted that with the refusal of respondent No.1 to repatriate him at the time when repatriation was sought by the Corporation and termination of his lien by the Corporation coupled with deletion of the coterminous nature of the post of OSD held by him, the petitioner stood absorbed against the said post of OSD and no longer remained an employee of the Corporation nor the Corporation can be treated as parent department of the petitioner. Dilating his point, Mr. Lone argued that with the issue of Government order No.1056-GAD of 2010 dated 16. 09.2010, the post of OSD held by the petitioner no longer remained a temporary post nor coterminous with petitioner's exit from that post on repatriation or otherwise. Mr. Lone submitted that respondent No.1's refusal to petitioner's repatriation to the Corporation and issuing of Government Order No.16.09.2010 thereby deleting conditionality from the post of OSD which the petitioner was holding had amounted to creation of an isolated post of OSD in the Chief Minister's Office under the control of the GAD to

permanently absorb the petitioner against that post. In support of his arguments, Mr. Lone read out para 113 of the contemporaneous record in relation to passing of order dated 16. 9. 2010 placed on the file of the case on behalf of the respondent No. 1. Mr. Lone submitted further that the impugned order dehors service rules and is illegal for the reason that rules in general or the CSR in particular do not provide for repatriation of a deputationist after he has been permanently absorbed in the borrowing department nor do the rules provide for revival of the lien after it has been terminated.

19. Per contra, Mr. Vishal Sharma, learned AAG, submitted that termination of petitioner's lien by the Corporation was illegal inasmuch as no lien was acquire by the petitioners during his probation period. Mr. Sharma submitted that petitioner, who is an employee of the Corporation, wants to be inducted into Government service in indirect way and argued vehemently that a deputationist has no legal right to claim absorption in the borrowing department. Mr. Sharma argued also that status of the petitioner *vis a vis* respondent No. 1 did not change even after deletion of the conditionality

from the order whereby only a temporary post was created for drawing the salary of the petitioner.

20. For resolving the debate the four orders/communication issued in succession after the Government Order No.301-GAD of 2009 dated 21.2.2009, whereby petitioner was transferred and posted on deputation as OSD in the private office of the Chief Minister, have been noticed. These are; i) **Government Order No. 765-GAD of 2009** dated 15.06.2009, whereby a temporary post of OSD was created in the Private Office of the Chief Minister with a condition that the same shall cease to exist after transfer of the petitioner either by repatriation or otherwise, ii) **communication No. GAD-(Ser)GenI/29/2009** dated 26.03.2010, whereby respondent No.1 conveyed refusal to repatriation of the petitioner which was sought by the Corporation, iii) **Order No. PDC/CJ/165 of 2010** dated 20.04.2010, whereby the Corporation ordered the termination of the lien of the petitioner from the Corporation and iv) **Government Order No.1056-GAD of 2010** dated 16.09.2010, whereby the condition contained in order dated 15.10.2009 (supra) that the post of OSD shall cease to exist after exist of petitioner from that post was deleted. These

four orders/communication for handiness are reproduced below in their substance in the similar order:

i) "Reference: Cabinet Decision No. 68/6/2009
dated 13.06.2009

Government Order No. 765-Gad of 2009
Dated: 15.06.2009

In continuation to Government Order No. 301-GAD of 2009 dated 21.02.2009, sanction is hereby accorded to the creation of a temporary post of OSD in the pay scale of Rs.10, 000-15,200 (pre-revised-non plan) in the Hon'ble Chief Minister's Private Office at Srinagar for drawl of salary of Shri Tariq Ahmad. The post shall cease to exist after transfer of Shri Tariq Ahmad from the Hon'ble Chief Minister's office either by way of his repatriation to parent organization or otherwise.

By order of the Government of Jammu and Kashmir.

Sd/-
(Ahmadullah Shah)
Special Secretary to Government
General Administration Department

Dated:15.06.2009"

ii) "**NO. GAD (Ser)GenI/29/2009 Dated 26.03.2010**

Subject: Posting of Shri Tariq Ahmad Kakroo,
Deputy General Manager (Legal).

Sir,

I am directed to refer your letter No. JKSPDC/ADM/EG-103/CJ/4052 dated 5.2.2010 whereunder you have requested for repatriation of Shri Tariq Ahmad Kakroo, Deputy General Manager (Legal), presently

on deputation as OSD in the Hon'ble Chief Minister's private Office at Srinagar to attend the court cases and other legal issues in the State Power Development Corporation. You have further requested that in case the services of Shri Kakroo are required by the Government, the same may be intimated to enable the Corporation to make alternate arrangements for filling up of the post of Deputy General Manager (Legal).

Your request was placed before the Competent Authority (Hon'ble Chief Minister) who has directed that Shri Tariq Kakroo's services are required as OSD.

Yours faithfully,
Sd/-

Deputy Secretary to Government,
General Administration Department"

iii) Subject :-Termination of lien of Sh. Tariq Ahmed Kakroo, DGM (Legal) from JKSPDC.

**ORDER NO.PDC/CJ/165 FO 2010
DATED: 20- 04- 2010**

Whereas,.....

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Whereas.....

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Whereas,.....

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Whereas,.....

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Whereas vide letter No.GAD (Ser) Genl/29/2009 dated 26.03.2010 it was communicated by General Administration Department that the PDC request was placed before the competent Authority

(Hon'ble Chief Minister) who has directed that Shri Tariq Kakroo's services are required as OSD.

Whereas,

.....

Now, therefore, in view of above, it is hereby ordered that the lien of Sh. Tariq Ahmed Kakroo Deputy General Manager (Legal) is terminated from JKSPDC w.e.f. 19.04.2010.

Sd/-
(B.R.Sharma) IAS
Managing Director"

iv) **"Government Order No. 1056-GAD of 2010**
Dated : 16.09.2010

It is hereby ordered that the following condition appearing in Government Order o. 765-GAD of 2009 dated 15.05.2009 shall be deemed to have been deleted:-

"The post shall cease to exist after transfer of Shri Kakroo from the Hon'ble Chief Minister's Office either by way of his repatriation to parent organization or otherwise."

By order of the Government of Jammu and Kashmir.

Sd/-
(Ahmadullah Shah)
Special Secretary to Government
General Administration Department."

(Underlining by me)

21. It is seen that the position did not change with addressing communication dated 26.03.2010 (supra) by respondent No.1 to the Corporation

because in its plain language what was conveyed to the Corporation is that the services of the petitioner were required as OSD meaning thereby that Corporation's request for his repatriation was declined. The simple aftermath of this communication was that petitioner had to continue on deputation against the coterminous temporary post of OSD created vide order No. 765-GAD (supra). Things, however, changed remarkably in quick succession thereafter giving a clear glimpse of the intention and purpose, as they were. Pursuant to and consequent upon communication dated 26.03.2010, the Corporation vide order dated 20.04.2010 (supra) terminated the lien of the petitioner from the Corporation. Endorsements on this order would show that its copy among others was sent to the GAD, that is, respondent No.1. It is obvious that respondent No.1 did not raise any objection to or question the Corporation's action in terminating the lien of the petitioner, whose services had been borrowed by respondent No.1 on deputation basis only and it is not stated why it was not. By opting not to take up the matter with the Corporation, respondent No.1 in fact had expressed its no objection to the termination of the lien of the petitioner from the Corporation.

22. Contextually, it is important to note that lien on appointment of a government servant as defined in Rule 21 of the CSR, which apply to the employees of the Corporation, is a privilege given to him by the Government 'to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively.' Lien of a government servant is directly related to his absence for a long duration for reasons such as deputation to another department and preserves his right to join that post after the period of absence or repatriation. With the termination of his lien by the Corporation pursuant to refusal of respondent No.1 to repatriate him, petitioner lost his right of joining in the Corporation against the post he was appointed against and the silence of respondent No.1 in this regard was no less indication of its intention not to repatriate the petitioner in future. Respondent No. 1 had not only refused the repatriation of the petitioner but had virtually consented to termination of his lien by the Corporation. Had the intention not been so, respondent No.1 would not have remained silent and left the petitioner to his fate without any lien

and chance of returning home. Intention of respondent No.1, however, became clearer with the issue of order No. 1056-GAD (supra), whereby the condition that creation of temporary post of OSD in the office of Chief Minister was coterminous with exit of petitioner was deleted. By deleting this condition Respondent No.1 virtually made clear not to repatriate the petitioner to the Corporation and had indirectly absorbed him against the post of OSD. Not only that, the Chief Minister's Secretariat confirmed the services of the petitioner by directing the Financial Advisor/CAO of the Secretariat vide communication No. SS/HCM/POS/1753 dated 10. 10. 2011 that the petitioner, who by that time was still on probation, 'has successfully completed the period of probation on 18 10. 2010' so necessary entries are require to be made in his service book'. Petitioners' confirmation by the Chief Minister's Secretariat in turn confirms that petitioner was permanently absorbed against the post of the OSD. The legality of the impugned order will have to be discussed and determined in this backdrop.

23. It is noticed with surprise that respondent No.1 in his counter affidavit instead of explaining as to why it did not object to the termination of lien of the

petitioner by the Corporation has questioned the legality of the termination of lien. Instead of explaining as to what was the intention and purpose behind refusing repatriation of the petitioner, deleting the condition that the post of OSD was coterminous with the exit of the petitioner vide Order No. 1056 of GAD (supra) and confirming the petitioner because of completion of probation, the stand of respondent No. 1 is that vide communication dated 26.03.2010 (supra), the Corporation was informed only that the services of the petitioner were 'still' required as OSD and was not authorized to terminate the lien of the petitioner. The respondent No. 1 has questioned legality of the termination of the lien also on the ground that petitioner was on probation so his lien could not have been terminated and has further sought to make out that even after termination of lien and passing of Order No. 1056 of GAD the basic order of deputation, which restricted petitioner's transfer on deputation basis only, has neither been modified nor rescinded and petitioner continued to be on deputation and has refuted petitioner's absorption in the post of OSD .

24. Respondent No. 1 has thus raised a question in regard to his own action of refusing the repatriation

of the petitioner and passing Government Order No. 1056-GAD of 2010 dated 16.09.2010, whereby the condition attached to Government Order No. 765-GAD of 2009 dated 15.06.2009 was deleted. Having regard to the stand taken by respondent No. 1, it needs to be stated that in judicial proceedings a statutory/executive authority is not expected to support, justify or explain an order passed by him on the grounds other than those available from the order itself or the connected record and not to set up a contrary case in its pleadings. Reference in this regard is made to **Hindustan Petroleum Corporation Ltd. v Darius Shapur Chennai, AIR 2005 SC 3520**, where Their Lordships have held:

28....When an order is passed by a statutory authority, the same must be supported either on the reasons stated herein or the grounds available there for in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit dehors the order or for that matter dehors the record."

25. Be that as it may, questions raised by respondent No. 1 are required to be resolved first. Mr. Lone pointed out and rightly so that respondent No. 1 in his counter affidavit is not correct in asserting that

by its communication dated 26.03.2010 respondent No. 1 had conveyed only that services of petitioner were 'still' required as OSD and had not authorized the Corporation to terminate his lien. Had it been so the meaning of the letter could have been that petitioner's repatriation as at that time was refused. This communication as reproduced above on its plain look would show that word 'still' does not figure in its text. Text of the letter of its own, however, may also not make it clear whether the refusal to repatriation of the petitioner was for the time being only or for ever. The true intent and purpose behind refusal of repatriation and Government Order No. 1056-GAD (supra) and their implication are exposed when the refusal letter and Order No. 1056-GAD are read in context and juxtaposition with the Corporation's letter of request for repatriation of the petitioner dated 05.02.2010 (supra).

26. The Corporation vide its letter dated 5. 2. 2010 had requested respondent No.1 not only for repatriation of the petitioner but had also disclosed the necessity of seeking the repatriation and had further requested to communicate if the services of the petitioner are require by the GAD so that the Corporation is 'able to make alternate arrangement

by making fresh recruitment of Deputy General Manager (Legal)'. By its communication dated 26.03.2010, respondent No. 1 cannot be said to have refused repatriation for the time being only but with sufficient implication had also consented to filling up of the post held by the petitioner in the Corporation by fresh recruitment, which could have been possible only after terminating the lien of the petitioner. The respondent No. 1 had thus not only refused the repatriation of the petitioner but had also consented to termination of his lien from the corporation. The cumulative effect and implication of refusing the repatriation of the petitioner to his parent organization, consenting to filling up of the post held by him in the parent organization by fresh recruitment and issuing Order No. 1056-GAD thereby deleting the condition that the post held by the petitioner in the borrowing department was *coterminous* with his exit can be nothing other than that the Government/respondent No. 1 had absorbed the petitioner permanently in the post of OSD in the Chief Minister's Private Office. Doubt, if any, in this regard would be set at rest when the entire sequence of events is examined in backdrop of the contemporaneous record placed on the file on behalf of respondent No. 1 which is the main source of information for looking into the intent of

an administrative or statutory decision and can be examined by this court as per the law laid down by the Supreme Court in **East Coast Railway v Mahadev Appa Rao, AIR 2010 SC 2794** where Their Lordships have observed:

“8. There is no quarrel with the well settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reason stated in the order or any record or file contemporaneously maintained....”

27. Termination of petitioner's lien by the Corporation pursuant to refusal of his repatriation by respondent No.2 was taken cognizance in the office of the GAD/respondent No.1 vide paragraph No. 89 of the contemporaneous record and response of respondent No.1 is contained in paragraph No. 90. These two paragraphs along with connected paragraph No. 88 are reproduced hereunder:-

“88. The issue regarding repatriation or otherwise of Shri Tariq Ahmad Kakroo to JKSPDC on the request of Managing Director, JKSPDC (page 54 cf) was placed before the Hon'ble Chief Minister. The Hon'ble Chief Minister in his observations at note para 82 directed that Shri Kakroo's services are required as OSD. The decision of the competent authority was conveyed to Managing Director, JKSPDC on 26.3.2010 (page 56 cf).

89. Pursuant to the above decision, J&K State Power Development Corporation terminated the lien of Shri Tariq Ahmad Kakroo from JKSPDC vide Order No. PDC/CJ/65 of 2010 dated 20.04.2010 (placed on cf).

90. As Shri Kakroo has been left without a lien, it would be in the fitness of things to delete the following clause from Government Order No.765-GAD of 2009 dated 15.06.2009 so that he can acquire lien on the post of OSD in the Hon'ble Chief Minister's Private Office:-

‘The post shall cease to exist after transfer of Shri Tariq Ahmed from the Hon'ble Chief Minister's Office either by way of his repatriation to parent organization or otherwise.’

(underlining by me)

28. After exchange of proposals/opinions between the GAD and the Finance Department, record whereof is contained in paragraphs- 92 to 117 of the contemporaneous record, ultimate proposal made by the GAD is contained in paragraph No. 118, which reads:

“118. Since the proposal to adjust Shri Tariq Ahmad Kakroo against an ex-cadre post of OSD would not adversely effect the service career of any officer in any other service, we may, in the aforementioned background, submit the case to the HCM for consideration and approval to the continuation of the post of OSD held by Shri Kakroo on

permanent basis deleting the condition imposed by the Finance Department, to enable the officer to acquire lien on the said post, as proposed at para 114. NF.”

(underlining by me)

29. Contextually, it is relevant to refer to paragraph 114 as also the connecting paragraph 113, which read:

“113. Since Shri Kakroo’s services are required as OSD in the Hon’ble Chief Minister’s Private Office, directed for his continuation in private office, the opinion of the Finance Department is not favoured. The continuation of Shri Kakroo as OSD on a permanent basis is not going to impinge upon the service career of any officer in any manner. He will be holding an isolated post which will not form a part of any organized cadre.

114. Keeping in view the aforesaid position, may approve deletion of the following condition from Government Order No. 765-GAD of 2009 dated 15.06.2009 to pave way for adjustment of Shri Kakroo as OSD in the Hon’ble Chief Minister’s Private Office and acquisition of his lien on the said post:

‘The post shall cease to exist after transfer of Shri Kakroo from the Hon’ble Chief Minister’s Office either by way of his repatriation to parent organization or otherwise. ’

(underlining by me)

30. The proposal contained in paragraph 118 (supra) seems to have been approved by the Chief Minister in the month of September, 2010 and pursuant thereto Government Order No. 1056-GAD of 2010 dated 16.09.2010 (supra) was issued.

31. What clearly emerges from perusal and analysis of the contemporaneous record is that intention and purpose of the GAD/respondent No.1 in issuing Government Order No. 1056-GAD dated 16.09.2010 (supra) was to create a permanent post of OSD in isolated cadre in the Chief Minister's Office to pave way for absorbing the petitioner in that post on permanent basis and to enable him to acquire lien on the said post. It being so, GAD/respondent No.1 neither is justified in nor can be heard taking a stand that even after issuing the said Government Order, the basic Government Order No. 301-GAD of 2009 dated 21.02.2009 which restricted petitioner's transfer on deputation basis only has neither been modified nor rescinded or to say that petitioner was still on deputation with respondent No.1.

32. The crucial question that now comes up for debate is whether a Government servant after his permanent absorption in the borrowing

department/organization and termination of his lien in the parent organization can still be repatriated to his parent organization. Connected question mooted by respondent No. 1 is whether the termination of lien of the petitioner by the Corporation was illegal and non est because the Corporation should not have terminated the lien during probation period of the petitioner as no lien is acquired by a probationer.

33. Rule 21 of the CSR defines the "lien" of a Government servant. The connotation "lien" came to be interpreted by the Supreme Court in *Ram Lal Khurana v. State of Punjab*, AIR 1989 SC 1985. The Supreme Court ruled: 'Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed'. Rules 37-A to 37-J of the CSR deal *inter alia* with acquisition, suspension and termination of lien. As per Rule 37-A a Government servant shall acquire lien on a post on his substantive appointment to a permanent post. There is nothing in the rules to show or even to indicate by implication that a government servant when appointed to a permanent post shall not acquire lien to that post during his probation period. If a Government servant is transferred on

deputation to or is holding a post in another cadre or department/organization his lien shall revive as soon as he ceases to hold the post in that other cadre or department/organization and is repatriated. Note below Rule 37-C provides that when it is known that a Government servant on transfer to a post outside his cadre is confirmed in that post, his lien on the parent post shall terminate in his parent office. The Corporation cannot be said to have committed any illegality in terminating the lien of the petitioner after respondent No.1 refused his repatriation and consented to termination of his lien. Service rules in general and CSR in particular do not contain any provision to enable the Government or the parent department to revive lien once terminated. Once the lien of a Government servant on a particular post comes to an end, it cannot be revived. This being the rule position, contention of respondent No. 1 that termination of petitioner's lien by the Corporation was illegal or non est has no substance and is liable to be rejected.

34. The legal position, thus, emerging is that once a Government servant on deputation is absorbed in the borrowing department/organization and his lien in the parent department/organization is

terminated his repatriation dehors service rules and is illegal. The impugned order whereby the petitioner has been ordered to be sent back (repatriated) to the Corporation, therefore, dehors rules and is illegal. Even otherwise, respondent No.1, once having deliberately paved way for absorbing the petitioner in the post of OSD in the Chief Minister's office and acquire lien against that post cannot after five years be heard questioning the termination of lien and justifying direction for revival of the lien.

35. For all that said and discussed above, the irresistible conclusion to be drawn precisely is and I hold that with the refusal of the petitioner's repatriation to the Corporation and issue of Government Order No.1056-GAD of 2010 dated 16.09.2010 respondent No.1 has permanently absorbed the petitioner in the post of OSD in an isolated cadre created in the private office of the Chief Minister. He has acquired lien against the said post and therefore, he cannot be asked to report back (or repatriated) to the Corporation where his lien to appointment has since been terminated. The impugned order, therefore, dehors the service rules and is liable to be quashed.

36. Petitioner, in addition, has also sought a direction to the respondents to re-designate him as Deputy

Secretary in the Government in accordance with the proposal/recommendation made by the Chief Minister's Secretariat, decision whereon is said to have been deferred on 11.03.2014. In this regard, it is contended in paragraph 8 of the writ petition that after permanent absorption of the petitioner as OSD, the Chief Minister's Secretariat in the month of March, 2014 with a view to provide promotional avenues to the petitioner, submitted a proposal to the competent Authority to re-designate the petitioner as Deputy Secretary in the said Secretariat. The Establishment Committee constituted by respondent No.1 for the purpose appears to have considered the proposal but deferred the decision on the ground that issue required further examination. Respondent No.1 in its reply to paragraph 8 of the writ petition in the counter affidavit has not addressed to this aspect of the matter and has contented by saying that petitioner had never been appointed against the post of OSD. Whatever contended by the petitioner, however, is supported by the contemporaneous record produced on behalf of respondent No.1. The Chief Minister's Secretariat seems to have mooted a proposal to GAD/respondent No.1 "to examine the feasibility and desirability of re-designating Shri Kakroo as Deputy

Secretary in HCM's Secretariat to enable his placement on a Sustainable Career Progression Path over long term." No case for issuing any direction in this regard, however, is made out as cause of action for filing this writ petition arises only by the issue of the impugned Government Order No. 47-GAD dated 15.01.2015 (supra) whereby respondent No.1 directed sending back the petitioner to the Corporation. Changing designation of the petitioner for the purpose of his placement on 'Sustainable Career Progression Path', is a contemplated administrative decision about which no mandamus or direction can be issued by this Court at this stage.

37. Viewed thus, this writ petition insofar as it relates to the impugned Government Order No. 47-GAD of 2015 dated 15.01.2015 has merit and is allowed in terms that :

- i) by issue of a writ of **certiorari**, the impugned Government Order No. 47-GAD of 2015 dated 15.01.2015 whereby the petitioner has been ordered to 'report back to his parent organization i.e. J&K Power Development Corporation' is quashed; and

ii) by issue of a writ of **mandamus**, the Government/respondent No.1 is directed to allow the petitioner to continue in the service as OSD (supra). It would, however, be open for the Government to adjust the petitioner against any other equivalent post, if so desired.

38. Disposed of.

(Janak Raj Kotwal)
Judge

Jammu:

22.07.2015

Pawan Chopra