



Government of Jammu and Kashmir
Public Works (R&B) Department
Civil Secretariat, Jammu/Srinagar.

Subject: CPSW No. 676/2018 in SWP no. 1003/2018 titled Maharaj Krishan Zutshi V/s Khurshid Ahmed and others- settlement of absence period-thereof.

Government Order No:- 311-PW(R&B) of 2021

Dated:- 20-10-2021

Whereas, Shri Maharaj Krishan Zutshi joined in the department as Junior Engineer (Mechanical) Grade-II (Degree Holder) on 09.03.1988; and

Whereas, Shri Maharaj Krishan Zutshi alongwith his family migrated to Jammu in the month of April 1990 during the mass migration of Kashmiri Pandits from the Valley having security reasons; and

Whereas, after his migration to Jammu, Shri Maharaj Krishan Zutshi was adjusted as migrant employee in the office of the Executive Engineer, PHE Division, Udhampur; and

Whereas, Shri Zutshi was placed as I/c Assistant Engineer(Mechanical) vide Government Order No.555-Works of 2001 dated 31.12.2001 and transferred to JK Power Development Corporation vide Government Order No. 313-Works of 2002 dated 27.06.2002 and adjusted in the office of Executive Engineer (Mechanical) Division BHEP-Chanderkote vide Managing Director, JK Power Development Corporation Order No.PDC/MD/82 of 2002; and

Whereas, in compliance of JK power Development Corporation Order No.PDC/MD / 82 of 2002, Shri Zutshi joined in the office of Executive Engineer, Mechanical Division BHEP- Chanderkote and served their till the

year 2005; and

Whereas, Shri Zutshi was placed as I/c Assistant Executive Engineer vide Govt. Order No.10-PW(R&B) of 2005 dated 07.01.2005 and pursuant to his placement was transferred to JKERA vide Order No.147-PW(R&B) of 2005 dated 21.04.2005. The Director Urban ERA Jammu vide his Order No.PS/ERA/RKH-30-05 dated 02.05.2005, transferred the petitioner to PIU-Srinagar; and

Whereas, feeling aggrieved of the order of his transfer to Srinagar, Shri Zutshi submitted a representation on 03.05.2005 to the Director Urban ERA Jammu, for reconsidering his transfer to Jammu in view of the prevailing situation in the Kashmir Valley and also of the fact that he had since migrated to Jammu in the year 1990; and

Whereas, the said representation was forwarded by the Director Urban ERA to CEO JKERA and subsequently to the Administrative Department for further course of action; and


Whereas, vide Government Order No. 150-PW(R&B) of 2009 dated 07.07.2009, Shri Zutshi was transferred to PHE (I&FC) Department; and

Whereas, vide Government Order No.347-PW(Hyd) of 2009 dated 29.09.2009, Shri Zutshi was transferred to Kashmir Division in the Mechanical Irrigation Sub Division Sambora-MID Anantnag; and

Whereas, Shri Zutshi instead of joining upon the posts to which he was transferred remained absent from his duty w.e.f. 04.07.2005 to 01.08.2011 without any information to the department; and

Whereas, Shri Zutshi submitted representation on 01.08.2011 before the Commissioner/Secretary to Government, PW(R&B) Department, requesting therein for his posting in Jammu region on health grounds; and

Whereas, the department vide Govt Order No. 372-PW(R&B) of 2014 dated 19.08.2014 ordered an inquiry into the unauthorized absence from duty and appointed Mr. D.K. Razdan, the then Chief Engineer (Mechanical), Jammu as Inquiry Officer. The Inquiry officer concluded the inquiry and submitted the report with the following findings/



recommendations:

"Since the representation of Shri Maharaj Krishan Zutshi reveals that he was under Medical Treatment from 04.07.2005 to 20.07.2011 and has stated in his reply dated 18.09.2014 that he could not inform Director Urban, ERA, Jammu about his ailment and was not in a position to join in PHE (I&FC) Department in response to Government Order No. 150-PW(R&B) of 2009 dated 07.07.2009 as he was again posted in Valley vide above quoted Government Order and was under Medical Treatment as well, keeping in view the above findings and giving due consideration to the mental health of Shri Maharaj Krishan Zutshi during the period of absence from duty, lenient view may be taken in deciding the case and he may be asked to remain careful in future."

Whereas, Shri Zutshi approached the Hon'ble High Court of Jammu and Kashmir through the medium of SWP No. 1003/2018 titled M.K. Zutshi V/s State and others praying therein for directing the respondents to take a decision/ consider the enquiry report; and

Whereas, the Hon'ble High Court disposed off the petition with the directions to respondents to take a final decision on inquiry report; and

Whereas, the petitioner filed a contempt petition also registered as Contempt petition No. 677/2018 for alleged violation of the order of the Hon'ble Court; and

Whereas, a Committee was constituted vide Govt. Order No.136-PW(R&B) of 2019 dated 26.11.2019 to examine the issue in light of orders of the Hon'ble High Court directions; and

Whereas, the Committee recommended to accept the recommendations of Inquiry Officer and accordingly the petitioner Sh. Maharaj Krishan Zutshi was allowed to join in the department vide a Speaking Order bearing Government Order No.112-PW(R&B) of 2020 dated 10.03.2020. The petitioner was directed to report to Chief Engineer Mechanical Engineering Department Jammu. The absence period w.e.f. 04-07-2005 till 10-03-2020 was ordered to be decided separately as per Rules; and

Whereas, the petitioner has retired on superannuation on 30-4-

2020 and is requesting for settlement of his absence period enabling to draw his salary and to process/ settle his pension case; and

Whereas, the case was referred to the Finance Department vide U.O. No. PWD-GAZZ/51/2021 dated 23.7.2021 for obtaining their opinion who vide U.O. No. FD-Code/34/2021-736 dated 16.8.2021 returned the case file with the following advise:-

"The case has been examined and the Department is advised to obtain the opinion of Law, Justice and P.A. Department in the first instance".

Whereas, the contempt petition filed by the petitioner came to be listed before the Hon'ble High Court at Jammu on 12-08-2021 and the Hon'ble High Court granted four weeks time to file compliance report in the matter; and

Whereas, the matter was taken up with the Law, Justice & Parliamentary Affairs Department for their opinion/ advice in the matter as desired by the Finance Department, who conveyed the following advice/ opinion vide U.O. No. Law-Ser/11/2021-10 dated 07.09.2021:

"Department is advised to decide the period of un-authorized absence of petitioner at their own level by taking an administrative decision in the matter."

Whereas, after receipt of the advice of the Law Department, the matter was again taken up with the Finance department who in turn vide U.O No.FD-Code/166/2021 dated 27.09.2021, advised *the department to take into consideration the recommendations of inquiry officer regarding the treatment of period of unauthorized absence and may consider treating the period of absence as dies-non in terms of Government instructions below Article-163 of J&K CSR Vol-I; and*

Whereas, the department accepted the advice of the Finance Department for settling the period of absence from duty of the petitioner w.e.f. 04-07-2005 to 10-03-2020 as dies-non (non-qualifying for any remuneration),



Now, therefore, in terms of Article 163 of J&K CSR Vol-I, it is hereby ordered that the period of unauthorized absence of Sh. Maharaj Krishan Zutshi, Retired I/c Assistant Executive Engineer (Mechanical) w.e.f. 04-07-2005 to 10-03-2020 shall and shall always be treated as Dies-Non.

By Order of the Government of Jammu & Kashmir

Sd/-

(Shailendra Kumar) IAS
Principal Secretary to the Government
Public Works (R&B) Department.

No: PWD-LIT/176/2021-05

Dated: 20-10-2021

Copy to the:

1. Joint Secretary (J&K), Ministry of Home Affairs, Govt. of India, New Delhi.
2. Director Finance, PW(R&B) Department.
3. Additional Secretary to the Government (R/S), PW(R&B) Department.
4. Additional Secretary (Law), PW(R&B) Department.
5. Chief Engineer, Mechanical Engineering Department Jammu/Kashmir.
6. OSD to Hon'ble Advisor(B) to Lieutenant Governor.
7. Shri Ravinder Gupta, Additional Advocate General, J&K High Court, Jammu.
8. Private Secretary to Principal Secretary to Government, PW(R&B) Department.
9. Government Order File/Stock file.


(Farooq Ahmad Malik)

Under Secretary to the Government
Public Works(R&B) Department

