

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das

Case No – OA 241 OF 2018

DR. MAITREYEE KAR Vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>1 20.04.2018</p>	<p>For the Applicant : Mr. Anindya Lahiri Mr. Subit Kumar Mandal Learned Advocate</p> <p>For the State Respondent: None</p> <p>The applicant has prayed for quashing the order of transfer dated March 29, 2018 issued by the respondent No. 2, by which the applicant has been transferred from the post of Medical Superintendent and Vice Principal, North Bengal Medical College and Hospital to the post of Associate Professor, Department of Anatomy, Malda Medical College and Hospital.</p> <p>It appears from the materials on record that the applicant was appointed in the post of Associate Professor of West Bengal Medical Education Service by notification dated May 20, 2014, issued by the respondent No.2 in the name of the Governor of the State of West Bengal. The contention of the applicant is that the applicant was appointed to perform the duty of Medical Superintendent and Vice Principal, North Bengal Medical College and Hospital by notification dated December 27, 2016 issued</p>	

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	<p>by the respondent No. 2 in the name of the Governor of the State of West Bengal. The Medical Council of India conducted an inspection of North Bengal Medical College and submitted report that the applicant is holding the post of Medical Superintendent and Vice Principal, North Bengal Medical College and Hospital without having experience of ten years in any administrative post. The veracity of the report was questioned by giving a reply to the effect that the applicant held various administrative posts for more than ten years. Ultimately, the applicant has been transferred to the post of Associate Professor, Department of Anatomy, Malda Medical College and Hospital by impugned order of transfer which has been challenged as arbitrary and mala fide.</p> <p>Mr. Anindya Lahiri, Learned Counsel for the applicant has contended that the impugned order of transfer is mala fide and in violation of the guidelines of transfer of members of West Bengal Medical Education Service. He further submits that the daughter of the applicant will appear in ICSE Examination in 2018-19 and the husband of the applicant is a Medical Officer in North Bengal Medical College & Hospital. Mr. Lahiri has branded the order of transfer as mala fide as the series of administrative reforms undertaken by the applicant as Medical Superintendent of North Bengal Medical College and Hospital had antagonized many persons in authority.</p>	

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	<p>He argues that the applicant will be deprived of Rs. 400/- (Rupees four hundred only) as administrative pay by the impugned transfer. The last contention of Mr. Lahiri is that the representation submitted by the applicant should be considered by the authority concerned in the proper perspective, so that the applicant can continue as Associate Professor, North Bengal Medical College and Hospital.</p> <p>None appears on behalf of the State respondents inspite of service of notice reflected from the affidavit of service filed on behalf of the applicant.</p> <p>Admittedly, the applicant is holding the post of Associate Professor, North Bengal Medical College and Hospital. She was appointed as Medical Superintendent and Vice Principal, North Bengal Medical College and Hospital for performance of administrative duties for which she used to draw Rs. 400/- (Rupees four hundred only) as administrative pay per month. This administrative pay is not attached to the applicant as her personal pay, but the same is attached to the post of Medical Superintendent. Accordingly, the applicant has no right to claim the administrative pay unless and until she performs the duty of Medical Superintendent. Since the applicant has been transferred from her substantive post of Associate Professor of North Bengal Medical</p>	

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	<p>College and Hospital to the present post of Associate Professor at Malda Medical College and Hospital, the applicant has not been lowered down in the rank by virtue of the impugned transfer. In our considered view, the applicant has no right to remain in the post of Medical Superintendent of North Bengal Medical College and Hospital for indefinite period of time.</p> <p>On consideration of the guidelines for transfer of members of West Bengal Medical Education Service in Memorandum dated November 18, 1996 issued by the Government of West Bengal, we find that paragraph 13 of the said guidelines clearly indicates that any member of West Bengal Medical Education Service can be transferred from one Medical Institution to another Medical Institution in West Bengal in the interest of public service, inspite of existence of norms of transfer. That apart, these guidelines are merely administrative directions for running the administration and the same does not confer any legally enforceable right on the members of West Bengal Medical Education Service to challenge the order of transfer for violation of these guidelines as laid down by the Hon'ble Supreme Court of India in "State of U.P. V. Gobardhan Lal" reported in (2004) 11 SCC 402.</p> <p>This Tribunal can intervene in the order of</p>	

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	<p>impugned transfer if the order of transfer is found to be arbitrary or illegal or mala fide or violative of any specific provisions of statute. Mr. Lahiri has forcefully argued that the present order of transfer is mala fide as the applicant has been transferred for taking initiative of various administrative reforms at North Bengal Medical College and Hospital. We have already observed that the applicant has no right to be attached to the post of Medical Superintendent as she was appointed as Associate professor in West Bengal Medical Education Service to perform the duty of teacher. So, the administrative reforms initiated at the instance of the applicant cannot have any bearing on her performance of duty in the substantive rank of Associate Professor of North Bengal Medical College and Hospital. We are unable to hold that there was any mala fide in the impugned order of transfer as contended on behalf of the applicant. Nor can we persuade ourselves to hold that the applicant has any right to remain in the post of Associate professor only in the North Bengal Medical College and Hospital on the ground that students of MD course are taught in the said medical college and hospital. However, the daughter of the applicant will appear in ICSE Examination in the next year and the husband of the applicant is Medical Officer of North Bengal Medical College and Hospital. The applicant has submitted one representation before the respondent No. 1 on April 6, 2018 in connection with her</p>	

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	<p>impugned transfer which has not been considered by the said respondent till date.</p> <p>Under the above circumstances, we direct the respondent No. 1, Principal Secretary, Department of Health and Family Welfare, Government of West Bengal to consider the representation submitted by the applicant on April 6, 2018 (Annexure 'M' to the original application) in accordance with law, after giving the applicant an opportunity of hearing, within a period of two weeks from the date of communication of the order. The operation of the impugned order of transfer dated March 29, 2018 (Annexure 'K' to the original application) will remain stayed for a period of two weeks or till the date of disposal of the representation by the respondent No. 1, whichever is earlier. If the representation is allowed in favour of the applicant, the respondent No. 1 and the respondent No. 2 will modify the order of transfer accordingly. If the representation is rejected by the respondent No. 1, the transfer order dated March 29, 2018 will be effective from the date of disposal of the representation by the respondent No. 1.</p> <p>With the above direction the original application stands disposed of.</p> <p>Let a plain copy of the order be supplied to the</p>	

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SCN.	<p>Learned Counsel for the applicant.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(R.K. Bag) MEMBER (J)</p>	