

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal (Chairman)****& The Hon'ble Mr. P. Ramesh Kumar (Administrative Member)****Case No –O.A. 346 of 2019****BIPLAB DE Vs The State of West Bengal & Ors.**

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<p style="text-align: center;">1</p> <hr/> <p>25.04.2019</p>	<p>For the Applicant : Mr. S. Prasad Dalapati, Mr. S. Dewan, Advocate</p> <p>For the Respondents : Mr. G.P. Banerjee, Advocate</p> <p style="text-align: center;">Affidavit of service filed today be kept on record.</p> <p>Though the matter has appeared under the heading 'New Application', since Mr. G.P. Banerjee, learned advocate has appeared on behalf of the State respondents and as it is prayed by Mr. S. P. Dalapati, learned advocate for the applicant, that the matter may be taken up for hearing, the matter is taken up for hearing.</p> <p>In this application, the applicant, - who was appointed as Upper Division Clerk and thereafter by virtue of order dated 16th June, 2004, was appointed on promotion to officiate temporarily to the post of "Head Clerk" under the Executive Engineer, Cooch Behar Division, Public Health Engineering Directorate and who was thereafter transferred from Cooch Behar to Murshidabad by order dated 6th January, 2017, - has prayed for a direction upon the respondents to allow him to resume his duty at Murshidabad Circle, P.H.E.</p>	

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	<p>Directorate after considering his representations dated 30th January, 2019 and 12th February, 2019. Prayer has also been made to calculate and consider the commuted leave on medical ground and earned leave on medical ground from 18th January, 2017 to 1st December, 2017 (affixing holiday on 2nd December, 2017 and 3rd December, 2017) and earned leave from 26th March, 2018 to 11th May, 2018 (Pre-affixing holiday on 24th March, 2018 and 25th March, 2018, affixing holiday on 12th May, 2018 to 14th May, 2018) due to death of his mother and father as due and admissible and for a direction to the Executive Engineer, Cooch Behar, P.H.E. Department to sanction the said leave which may be accounted towards increment, seniority, qualifying service and for pensionary and other benefits.</p> <p>It appears from records that challenging the order of transfer the applicant had moved the Tribunal in O.A. 65 of 2017 which was dismissed on 27th January, 2017. Aggrieved, the applicant filed a writ petition, being W.P.S.T. No. 37 of 2017, which was dismissed by passing an order on 23rd May, 2017 the relevant portion of which is as under:</p> <p style="text-align: center;">“So far as transfer for administrative reason on public interest is concerned, there is limited scope of</p>	

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	<p>interference by the Court. The order of transfer records the same is being effected in the interest of public and it appears to be a chain transfer. The violations, which the petitioner complained of, in our view, do not give rise to any enforceable legal right to the petitioner. We do not find any reason to interfere with the order of the Tribunal.</p> <p style="text-align: center;">The writ petition is, thus, dismissed.”</p> <p>Aggrieved still, the applicant filed a Special Leave Petition, being Petition (s) for Special Leave to Appeal (C) No(s). 30362 / 2017, before the Supreme Court of India, which was dismissed by an order passed on 17th November, 2017, the relevant portion of which is as under:</p> <p style="text-align: center;">“We do not find any reason to entertain the Special Leave Petition, which is, accordingly, dismissed.</p> <p>However, taking note of the submission that the son of the petitioner is studying in Class X and he has to appear in Board Examinations in April, 2018, the</p>	

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	<p>petitioner shall be permitted to continue in Cooch Behar till 30.04.2018 or till the exams are over, whichever is earlier.”</p> <p>It is pertinent to mention that the applicant thereafter had filed an application, being CAN 2952 of 2018 in W.P.S.T. 37 of 2017 for modification of the order dated 23rd May, 2017 which was dismissed by an order dated 10th December, 2018 by passing an order the relevant portion of which is as under:</p> <p>“CAN 2952 of 2018 is an application for modification of an order dated May 23, 2017 passed by a coordinate Bench of this Court.</p> <p>The coordinate Bench dismissed the writ petition filed by the applicant / petitioner (hereafter the applicant), wherein the order of the West Bengal Administrative Tribunal dated January 27, 2017 dismissing the original application of the applicant was under challenge. In such original application an order transferring the applicant from Cooch Behar to Murshidabad had been challenged.</p> <p>The coordinate Bench was of</p>	

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	<p>the view that as and when for administrative reason or in public interest a transfer is ordered and it is subjected to challenge scope of interference by the writ court is limited and since the applicant had been transferred in the interest of public service, no enforceable legal right accrued in his favour. By filing this application, the applicant has sought to urge before this Court that despite joining the transferred post at Murshidabad, he has neither been allotted any job nor paid his salary.</p> <p>If indeed that be so, it affords a fresh cause of action to the applicant to move the tribunal. No case for modification of the order dated May 23, 2017 has been set up.</p> <p>The application stands dismissed, with liberty as aforesaid.”</p> <p>It is submitted by Mr. Dalapati that though on 19th March, 2018 the applicant went to join the office at Murshidabad, as evident from page 41 of the application, according to him though he had joined, however, till date no duties have been allotted. Hence, it is submitted that</p>	

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	<p>appropriate order may be passed directing the respondents to record his date of joining being 19th March, 2018 and to allot him duties and to pay salary.</p> <p>Mr. Banerjee submits that it is evident from the petition that though the applicant was released from Cooch Behar on 26th January, 2017, however, the applicant on 4th Decmeber, 2017 had submitted a letter regarding his joining at Cooch Behar as evident from page 38 of the application. Therefore, the applicant could not have joined at Murshidabad and has not joined and the applicant has landed in this situation for a fault of his own. Submission is for his unauthorised absence, departmental proceeding has been initiated against the applicant to which Mr. Dalpati submits that he is yet to receive any order regarding such proceeding.</p> <p>Heard Mr. Dalpati and Mr. Banerjee. Keeping in mind the orders passed by the Tribunal, the High Court and the Supreme Court and since we find that by memo dated 21st May, 2018 the Executive Engineer, Cooch Behar, PHE Directorate has sent the Last Pay Certificate and the service book of the applicant to the Superintending Engineer, Murshidabad Circle, P.H.E. Directorate, which means he has been released by the Cooch Behar Division and as we find that the applicant had joined Murshidabad on 19th March, 2018, this</p>	

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SCN.	<p>application is disposed of by directing the Superintending Engineer, Murshidabad Circle, P.H.E. Directorate, Murshidabad, the respondent no.5 to allow him to join in the post concerned within forty eight hours from the date of presentation of a copy of this order, if not already joined.</p> <p style="text-align: center;">Urgent photostat certified copy of this order be furnished to the parties.</p> <p>(P. Ramesh Kumar) MEMBER (A)</p> <p style="text-align: right;">(Soumitra Pal) CHAIRMAN</p>	