

**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 – OA 412 OF 2019

**THAKURDAS TARAFDAR** 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 style="text-align: center;">2</p> <hr/> <p>18.07.2019</p>	<p>For the Applicant : Mr. Upendra Ray, Mr. Sandipan Pal, Advocates</p> <p>For the Respondents : Mr. G.P. Banerjee, Advocate</p> <p style="text-align: center;">Let affidavit of service filed today be kept on record.</p> <p style="text-align: center;">In this application, the applicant, a Fire Operator posted at Kakdwip, has prayed for certain reliefs, the relevant portion of which is as under:</p> <p style="text-align: center;">“a) An order declaring that the reasoned order dated 21.05.2019 passed by the Director General, West Bengal Fire &amp; Emergency Services is not maintainable and must be set aside as it is bad in the eye of law;</p> <p style="text-align: center;">b) An order thereby directing the respondent authorities not to act in furtherance to the purported Transfer Order dated 30.10.2017 &amp; Release Order dated 31.10.2017;</p>	

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	<p>c) An order directing the respondent authorities to immediately revert back the applicant to Baruipur Fire Station from Kakdwip Fire Station in the same post i.e. Fire Operator along with it's service benefits along with all due arrear salaries without any delay whatsoever and hence the period of transferring applicant that is from 01.11.2017 to till date should be treated as on duty.”</p> <p>It appears that the applicant had earlier moved the Tribunal challenging the order of transfer dated 30<sup>th</sup> October, 2017 and release order dated 31<sup>st</sup> October, 2017 by filing an application being O.A. 1054 of 2017. Being aggrieved by the order passed by the Tribunal the applicant moved before the High Court by filing a writ petition, being W.P.S.T. No. 22 of 2018 which was dismissed on 7<sup>th</sup> May, 2018. Thereafter the applicant, after getting certain information under the RTI Act, 2005, filed an application before the Tribunal, being O.A. 743 of 2018, praying for certain reliefs, the relevant portion of which is as under:</p> <p>“a) An order declaring that the said Transfer Order dated 30.10.2017 &amp;</p>	

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	<p>Release Order dated 31.10.2017, is not maintainable in the eye of law and is bad and be set aside;</p> <p>b) An order thereby directing the respondent authorities not to act in furtherance to the purported Transfer Order dated 30.10.2017 &amp; Release Order dated 31.10.2017;</p> <p>c) An order directing the respondent authorities not to place the petitioner under leave and or any type of Absence from the date of his representation and further not to deduct the salary of the petitioner and to hold his service as a continued service without any break whatsoever and to consider him as on duty and in service along with service benefits;</p> <p>d) An order directing the respondent authorities to immediately revert back the applicant to Baruipur Fire Station from Kakdwip Fire Station in the same post i.e. Fire Operator along with it's service benefits without any delay whatsoever;”</p>	

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	<p>The application, being O.A. 743 of 2018 was disposed of on 26<sup>th</sup> September, 2018 by passing an order, the relevant portion of which is as under:</p> <p style="text-align: center;">“Having heard Mrs. S. Agarwal and considering the facts and circumstances of this case, this Original application is disposed of by directing the Director General, West Bengal Fire &amp; Emergency Services, Kolkata, the respondent No.2 to dispose of the representation dated 8<sup>th</sup> August, 2018, being annexure A-5 to the Original application, by passing a reasoned order to be communicated to the parties within 8 weeks from the date of presentation of copy of this order after giving an opportunity of hearing and after verifying the records.”</p> <p>Thereafter, the applicant had filed Review Application, being R.A. 5 of 2018, for reviewing the order passed on 26<sup>th</sup> September, 2018, which was disposed of on 4<sup>th</sup> April, 2019 by passing an order the relevant portion of which is as under :</p> <p style="text-align: center;">“Heard learned advocates for</p>	

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	<p>the parties. Since the issue of transfer though raised is not agitated on behalf of the applicant, no order be passed on the issue of transfer.</p> <p style="text-align: center;">So far as the submission regarding non-payment of salary, non-allotment of work and other issues are concerned as the applicant has stated in paragraph 7 of the review application that “the matter was considered and heard by the Learned Tribunal, but the Learned Advocate appearing on behalf of the applicant could not place the case properly and did not make the Tribunal aware of the true facts and circumstances of the case”, we are of the view that it cannot be a ground for review of the order, dated 26<sup>th</sup> September, 2018 passed in O.A. 743 of 2018. Therefore, the review application is dismissed.”</p> <p>Mr. U. Ray, learned advocate appearing on behalf of the applicant submits that in the instant application, the applicant has also challenged the order dated 21<sup>st</sup> May, 2019, passed by the Director General,</p>	

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	<p>West Bengal Fire &amp; Emergency Services, the relevant portion of which is as under:</p> <p style="text-align: center;">“During personal hearing the applicant made verbal submissions. His submission was that he had transferred on frequent intervals though the Department has no formal transfer policy. Lastly, he was transferred from Baruipur Fire Station to Kakdwip Fire Station of South 24-Pgs Division under West Bengal Fire &amp; Emergency Services. In his representation dt. 08.08.2018 (Annexure-A-5 of OA No. 743 of 2018) he prayed to transfer him back at Baruipur Fire Station under South 24-Pgs Division, West Bengal Fire &amp; Emergency Services.</p> <p style="text-align: center;">It observed that the posting of an employee is made on the basis of requirement of employees for Public Service, the performance and activities of an employee to maintain the strength of the fire personnel at the various fire stations, to maintain overall efficiency of the Department.</p>	

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	<p>West Bengal Fire &amp; Emergency Services provide Emergency services for the safety of life and property of the general public. Emergent situation may occur in any time which is successfully operated by the fire personnel. The applicant had been transferred (vide Memo No. WBFES / S24PGS / 923 / (24) / 2017 dated 30.10.2017) along with other seventeen fire personnel due to administrative reason and in the interest of public service, that was not arbitrary, illegal or mala fide in nature. Moreover, the applicant appeared before me without maintaining proper manner, which is indisciplined in nature and against the code of conduct in a Disciplined and uniformed Government Service.</p> <p>Hence, after careful consideration of the representation as well as the submissions of the petitioner and after application of my judicious mind, I am convinced that there is no reason to change his present</p>	

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	<p>place of posting, and post him back at Baruipur Fire Station. The Government has already been requested to formulate a formal transfer policy. There is nothing on record to show that his transfer was arbitrary. The matter is disposed of accordingly.”</p> <p>It is submitted by Mr. Ray that since from the list of dates mentioned in the representation dated 8<sup>th</sup> August, 2018, it is evident that from 2008 till 2017 the applicant from time to time has been arbitrarily transferred and as persons similarly situated are not being transferred, the impugned order passed by the Director General may be set aside and the respondents may be directed to revert the applicant to Baruipur.</p> <p>Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondent submits that in the instant application, the applicant has tried to re-open the issue which had already been settled. There are many departments where there is no transfer policy and transfer is a part of service of a government employee. The Fire Brigade Department, an emergency service can be compared with the Police Department.</p>	



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SCN	<p>In our view if orders are passed on this application it would amount to reviewing the order passed on 26<sup>th</sup> September, 2018 in OA 743 of 2018 and again reviewing the order dated 4<sup>th</sup> April, 2019 passed in RA 5 of 2019 which is not permissible under the law. Since evolving a transfer policy is an act of the government after examining all facts and circumstances and Court has no role to play and in view of what has been discussed hereinbefore, the impugned order dated 21<sup>st</sup> May, 2019 passed by the Director General, West Bengal Fire and Emergency Services, the respondent no.2 calls for no interference. Hence for the reasons as aforesaid the application is dismissed.</p> <p>(P. Ramesh Kumar) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	