

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

**The Hon'ble Justice Ranjit Kumar Bag  
& The Hon'ble Dr. Subesh Kumar Das**

**Case No – OA 163 OF 2019**

Dr. Bholanath Manna v/s 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
05 11.04.2019	<p>For the Applicant : Mr. S. Ghosh, Mr. R.K. Mondal, Mr. G. Halder, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Mr. R.A. Chowdhury, Learned Advocates.</p> <p>The applicant has prayed for quashing of the order of his transfer dated December 21, 2018 issued by the Joint Secretary to the Government of West Bengal, Department of Health &amp; Family Welfare and order of release dated February 23, 2019 issued by the Medical Superintendent-cum-Vice Principal, IPGME&amp;R – SSKM Hospital, Kolkata and direction upon the respondents to consider his representation dated February 26, 2019 for modification of the order of transfer.</p> <p>The contention of the applicant is that he joined as Medical Officer in SSKM Hospital, Kolkata on July 7, 2012 and he joined as Medical Officer of Blood Bank of SSKM Hospital, Kolkata on November 28, 20016. The applicant has been transferred from the post of Medical Officer of Blood Bank of SSKM Hospital to the post of Medical Officer of Blood Bank of Sub-Divisional Hospital at Mathabhanga in the district of Cooch Behar by issuance of Notification dated December 21, 2018.</p>	

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About seventy five Medical Officers have been transferred from one place to another place by issuance of Notification dated December 21, 2018 issued by the Joint Secretary to the Government of West Bengal, Department of Health & Family Welfare. The applicant was released from the post of Medical Officer of Blood Bank of SSKM Hospital by the respondent no. 4 on February 23, 2019, but the applicant has not yet reported to the Superintendent of Sub-Divisional Hospital, Mathabhanga.

Mr. S. Ghosh, Learned Counsel for the applicant, contends that the order of transfer is issued by way of punishment. He further contends that the copy of order of transfer was not served on the applicant and as such the applicant was totally in the dark about the order of transfer till February 23, 2019 when he was released and a copy of the order of transfer along with order of release was forwarded to him through Whatsapp. Mr. Ghosh argues that the applicant served as Medical Officer under the State of West Bengal for about twenty five years and as such he should not be compelled to join in his new assignment in the remote corner of North Bengal without consideration of the representation submitted by him on February 25, 2019. He has urged this Bench to grant stay of operation of the transfer order and release order at least for a limited period of one week for consideration of the representation of the applicant by the Additional Chief Secretary to the Government of West Bengal, Department of Health &

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Mr. G.P. Banerjee, Learned Counsel representing the state respondents, has referred to paragraph 4 (ii), (iii), (iv) of the reply and submitted that the order of transfer was communicated to the applicant by the respondent no. 4, Medical Superintendent-cum-Vice Principal, IPGME&R – SSKM Hospital, Kolkata and uploaded in the Website on the date of issuance of Notification on December 21, 2018. He further submits that on February 23, 2019, the said respondent no. 4 asked the applicant to meet him in his chamber and had shown the order of transfer dated December 21, 2018 to the applicant in his chamber. The further submission of Mr. Banerjee is that the applicant declined to receive copy of transfer order and left the chamber of the respondent no. 4 on the pretext of coming back very soon, but subsequently he submitted one application for grant of leave on the ground of illness with effect from the date of order of transfer i.e. December 21, 2018. The reply of the state respondents indicates that the respondent no. 4 was compelled to issue the release order of the applicant on February 23, 2019 and forwarded the copy of both order of transfer and order of release to the applicant through Whatsapp. Mr. Banerjee argues that a copy of order of transfer and a copy of release order were also subsequently sent to the postal address of the applicant under registered post with AD and the same was received by the mother of the applicant on March 1,

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2019. According to Mr. Banerjee, the order of transfer of the applicant is a routine order of transfer and as such the question of consideration of representation of the applicant should not be condition precedent of joining of the applicant in his new assignment.

Having heard Learned Counsel representing both parties and on consideration of the fact that the applicant has been transferred along with about seventy five other Medical Officers working under the State of West Bengal, we cannot persuade ourselves to hold that the order of transfer of the applicant is by way of punishment. The fact of issuance of the show cause notice for malfunctioning of Blood Bank of SSKM Hospital was issued long after issuance of order of transfer of the applicant and as such we are unable to accept the contention that the said show cause notice persuaded the authority concerned for issuance of order of transfer. The fact of writing a letter by the applicant directly to the Director of Health Services, West Bengal and West Bengal Human Rights Commission and other higher authority by passing the normal route of sending the same through proper channel for revamping the administration of the Blood Bank of SSKM Hospital in the month of April 2018 can by no stretch of imagination persuade the authority concerned to issue the order of transfer along with seventy five other Medical Officers in the month of December 2018. No reasonable nexus is established between the letter of the applicant dated April 13,

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2018 and the order of transfer dated December 21, 2018. No reliable documents are forthcoming before us from which we can infer that the routine order of transfer of the applicant is an order of transfer by way of punishment as contended on behalf of the applicant.

The applicant has served as Medical Officer of SSKM Hospital for about seven years before issuance of his order of transfer from Kolkata to Mathabhanga. Mr. G.P. Banerjee has produced a print out from the Website of the Department of Health & Family Welfare, Government of West Bengal to establish that the order of transfer was uploaded in the Website on the date of issuance of Notification dated December 21, 2018. The fact of submission of leave application by the applicant in the month of February, 2019 for grant of leave on medical ground with effect from the date of transfer on December 21, 2018 as reflected in paragraph 5 of the reply unerringly points out that the applicant had full knowledge about order of transfer at least on February 23, 2019 when the order of release was issued by the respondent no. 4. No cogent reason is forthcoming before us as to why the applicant did not join in his new assignment even after his knowledge about order of transfer and the order of release on February 23, 2019 on which date he got both the orders at least through Whatsapp.

Under the above circumstances, we cannot persuade

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ourselves to hold that the applicant has no right to pray for consideration of his representation submitted on February 25, 2019 for modification of order of transfer before joining his new assignment at Mathabhanga.

In view of our above findings, we direct the applicant to join his new assignment at Mathabhanga in the district of Cooch Behar within a period of 10 (ten) days from this date i.e. within the period of joining time in terms of Rule 81 of WBSR, Part-I. The respondent no. 4, Medical Superintendent-cum-Vice Principal, IPGME&R – SSKM Hospital, Kolkata is directed to regularise absence of the applicant from duty during the period from the date of his release on February 23, 2019 till April 11, 2019 by grant of any kind of leave to the credit of the applicant and if no leave is available to the credit of the applicant by grant of Extra Ordinary Leave after taking necessary approval from the higher authority, if required within a period of 8 (eight) weeks from this date and take necessary follow up action for disbursement of salary to which the applicant is entitled till April 11, 2019. The applicant is at liberty to submit representation before the Additional Chief Secretary to the Government of West Bengal, Department of Health & Family Welfare after joining in his new assignment at Mathabhanga in the district of Cooch Behar. If such representation is submitted by the applicant within a period of 4 (four) weeks from the date of his joining in his new assignment, the Additional Chief Secretary to the

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Sanjib	<p>Government of West Bengal, Department of Health &amp; Family Welfare will consider such representation of the applicant in accordance with law within a period of 8 (eight) weeks from the date of receiving such representation and communicate the result of the same to the applicant within a period of 4 (four) weeks thereafter.</p> <p>With the above direction, the original application is <b>disposed of.</b></p> <p>Let a plain copy of this order be supplied to both parties.</p> <p>( S.K. DAS ) MEMBER(A)</p> <p>( R. K. BAG ) MEMBER (J)</p>	
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