

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 682 OF 2016

BIDHAN KUMAR GHOSH 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>16</p> <hr/> <p>20.12.2018</p>	<p>For the Applicant : Mr. M. Karim, Mr. A. Samad, Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee, Mr. D. Koley, Advocate</p> <p>In this application, the applicant, a Group 'D' staff has challenged the memo dated 27th June, 2016 whereby he has been transferred from Cooch Behar to Mathabhanga.</p> <p>Mr. M. Karim, learned advocate appearing on behalf of the applicant, relying on the statements in the application submits that since a prayer was made on 30th June, 2016 before the Director of Agriculture and Ex-Officio Secretary, Department of Agriculture, Government of West Bengal, Kolkata, the respondent no.3 to review the order of transfer on the grounds set out therein, the impugned order may be set aside. Submissin is the Deputy Director of Agriculture (Administration), Cooch Behar, the respondent no. 5 is not the competent authority to issue the order of transfer. In support of his submission Mr. Karim has relied on the judgement of the</p>	

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	<p>Calcutta High Court passed in W.P.S.T. No. 1065 of 2008 (Subir Bose Versus State of West Bengal and Ors.) 2010 (3) SLR 285. He has also relied on the notification dated 5th May, 2009 and a subsequent amendment to it, issued by the Finance Department, Audit Branch, Government of West Bengal in support of his submission.</p> <p>Mr. G.P. Banerjee, learned advocate for the State respondent submits that the Supreme Court in State of U.P. & Ors. versus Gobardhan Lal (2004) 11 SCC 402, particularly in paragraph 7 thereof, has held that transfer is an incident inherent in the terms of appointment. It is also an essential condition of service. Unless the order of transfer is shown to be in violation of statutory provision or statutory rule or is an outcome of mala fide exercise of power or passed by an authority not competent to do so, it cannot be lightly interfered with and the interim order already passed may be vacated.</p> <p>Heard learned advocates for the parties. In the instant case, challenge to the transfer order has been made on the ground that his change of residence will cause hardship. Moreover, he has to look after his family members which include his 82 year old blind mother. Further, the Principal Agriculture Officer, Cooch Behar is the competent authority to issue an order of transfer and not the Deputy Director of Agriculture (Administration),</p>	

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	<p>Cooch Behar, the respondent no. 5, who has issued the order of transfer.</p> <p>It appears that though in ground no.VI it has been stated that the distance between Cooch Behar and Mathabhanga in the same district is more or less 60 kilometres, in the application dated 30th June, 2016, it is stated to be about 50 kilometres. Today a distance of 50 kilometres is no distance at all. Since we find that the distance is about 50 kilometres, he can traverse it within a short span of time and can look after his family members which include looking after his ailing old mother.</p> <p>So far as the submission relating to the jurisdiction of the Deputy Director of Agriculture (Administration), Cooch Behar, the respondent no. 5 to issue the order of transfer is concerned, we find he is competent enough to transfer a Group 'D' government employee within the district and in this case, the Principal Agriculture Officer, Cooch Behar has no role to play.</p> <p>The judgement of the Calcutta High Court in Subir Bose Versus State of West Bengal and Ors.(Supra) is inapplicable as the judgement in State of U.P. & Ors. versus Gobardhan Lal (Supra) was not brought to the notice of the Court and in the said judgement, particularly paragraph 7 thereof, the Supreme Court had held that :</p>	

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	<p style="text-align: center;">“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and as is found necessitated by exigencies of</p>	

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	<p>service as long as the official status is not affected adversely and there is no infringement of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”</p> <p>Moreover, in Subir Bose (Supra) the petitioner therein was transferred from I.T.I. Howrah Homes to I.T.I. Alipurduar, a distance about 451 kilometres, whereas in the instant case he has been transferred from Cooch Behar to Mathabhanga a distance of about 50 kilometres. So far as the notification dated 5th May, 2009 and amendment thereto are concerned it relates to recruitment and not transfer which has no application in the present case. Since it is a settled position of law that transfer is a part of one’s service career and cannot be intervened very lightly, no order is passed on this application. The application is dismissed. Interim order already passed is vacated.</p> <p><u>LATER :</u></p> <p>After the judgement is passed, Mr. Karim</p>	

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SCN.	<p>submits that his client is prepared to join at Mathabhanga within a stipulated time and leave may be granted to his client to make a representation, ventilating his difficulties, after joining which may be directed to be considered by the authorities to which Mr. Banerjee does not object.</p> <p>In view of such submission made by Mr. Karim, after the applicant joins his post at Mathabhanga, he is at liberty to file representation ventilating his difficulties before the Deputy Director of Agriculture (Administration), Cooch Behar, the respondent no.5 within four weeks which will be considered by the said respondent no.5 by passing a reasoned order to be communicated to the parties within eight weeks after giving an opportunity of hearing to the applicant and after verifying the records.</p> <p>(P. Ramesh Kumar) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	