

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 880 OF 2018

Mrs. Sulekha Das 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
01 05.11.2018	<p>For the Applicant : Mr. A.K. Das Sinha, Learned Advocate.</p> <p>For the Respondents : Mr. S. Bhattacharjee, Mr. A. De, Departmental Representatives.</p> <p>The applicant is a Group-D employee working in the office of the respondent no. 5, Sub-Divisional Land & Land Reforms Officer, Midnapore Sadar. The applicant has prayed for quashing of order of her transfer dated October 3, 2018 issued by the Additional District Magistrate and District Land & Land Reforms Officer, Paschim Medinipur.</p> <p>The contention of the applicant is that she has been suffering from various ailments and as such she should not have been transferred to the office of G.P. No. 14 R.I. Office at Jhentla under Block Land & Land Reforms Office, Keshpur. Mr. Sinha, Learned Counsel for the applicant, contends that the order of transfer is in violation of administrative direction issued by the Secretary to the Government of West Bengal, Finance Department, Audit Branch on August 19, 1983. He further contends that the order of transfer is also in violation of administrative direction issued by the District Land & Land Reforms Officer, Paschim Medinipur on June 9, 2015. Mr. Sinha has brought to our notice the order dated June 11, 2013 passed</p>	

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by this Tribunal in OA-479 of 2013, whereby this Tribunal modified the order of transfer of one Paltu Pandey for giving effect to Memorandum dated August 9, 1983.

Mr. Bhattacharjee, the Departmental Representative of the state respondents, contends that the order of transfer is not in violation of Memorandum dated August 19, 1983. He further contends that administrative direction of District Land & Land Reforms Officer, Paschim Medinipur dated June 9, 2005 is in the nature of draft policy of transfer, whereby the said Land & Land Reforms Officer, Paschim Medinipur has sought for views of Sub-Divisional Land & Land Reforms Officer in connection with policy of transfer.

It appears from the materials on record that the applicant was posted in the office of respondent no. 5 on September 11, 2013. The materials on record do not indicate that the applicant has been suffering from any serious ailments, apart from common ailments by which a person can suffer at the age to which the applicant belongs. We do not consider the joint pain/back pain or hyperthyroidism as serious ailments of the applicant. We have ascertained from both the Learned Counsels representing the parties that the distance between Midnapore Sadar where the applicant has been working and Keshpur where the applicant has been transferred is about 20 kms. This distance can be travelled by any one as commuter for attending the office without changing the residence.

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The question for consideration is whether the respondent no. 3 has violated Memorandum dated August 19, 1983 in issuing the order of transfer of the applicant. On perusal of Memorandum dated August 19, 1983 issued by the Secretary to the Government of West Bengal, Finance Department, Audit Branch, we find that a Group-D employee can be transferred in the exigencies of public service, when the said transfer does not compel the employee to change the residence. In the instant case, the applicant can very well attend the office at Keshpur without changing the residence and as such we are unable to accept the contention made on behalf of the applicant that the order of transfer was issued in violation of Memorandum dated August 19, 1983. It is relevant to point out that the Tribunal modified the order of transfer of one Paltu Pandey in OA-479 of 2013 where the concerned employee was transferred from Midnapore Sadar to Gopiballavpur, which is situated at a distance of about 60 kms. from Midnapore Sadar as pointed out by Mr. Bhattacharjee, the Departmental Representative of the state respondents.

The last point for consideration is whether the respondent no. 3 has violated the administrative direction issued by respondent no. 5 on June 9, 2005 by issuing the impugned transfer order. In our view, the said administrative order is nothing but a letter issued to the respondent no. 5 by the respondent no. 3 for eliciting views of the respondent no. 5 in

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connection with policy of transfer of the employees of the department. Accordingly, the said administrative direction dated June 9, 2005 cannot have any binding effect on the respondent no. 3. Moreover, the administrative directions/guidelines for regulating transfer of Government employees cannot confer any legally enforceable right on the Government employee for challenging the order of transfer, unless the order of transfer is shown to be vitiated by malafide or in violation of statutory provisions. It is relevant to quote some portions of paragraph 7 of the Judgment of the Hon'ble Supreme Court in "State of UP v Gobardhan Lal" reported in (2004) 11 SCC 402, which is as follows :

"7. 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 contrary, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide 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

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competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of 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 malafides or is made in violation of any statutory provision.”

In view of the above proposition of law laid down by the Apex Court, we would like to hold that administrative guidelines in connection with transfer of Government employee cannot confer any legally enforceable right on the concerned employee for challenging the order of transfer, unless the order of transfer is shown to be vitiated by malafide or in violation of statutory provisions. In the instant case, the applicant has failed to make out any case that the order of transfer is malafide or in violation of statutory provisions.

Accordingly, the present application is **dismissed**.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib / HS