

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. –OA 811 OF 2023

DR. RINA DAS - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Mr. Srikanta Dutta, Mrs. Rituparna Sarkar Dutta, Advocates
<u>3</u> 25.07.2024	For the State Respondents	:	Mr. Gautam Pathak Banerjee, Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

From the submissions of the learned counsel, the Tribunal understood that the applicant has been transferred frequently during the last one year and nine months. Thus, the prayer in this application is for restraining the respondent from passing such transfer orders.

After hearing the submissions of the learned counsel, it is understood that on four occasions from 26.11.2021 till 22.08.2023 the applicant has been transferred from one place to another. However, the applicant has complied with all the transfer orders and has not prayed for setting aside any of these orders. Learned counsel for the applicant submits that the respondents may be directed not to pass such transfer orders arbitrarily but rather follow the transfer policy vide Memo dated 18.11.1996 and 08.03.2022 appearing at page 50 and 53 of this application.

The frequent transfers so mentioned and felt aggrieved by the applicant is from the incidents as following:

The applicant was transferred :

- (i) From R.G. Kar Medical College & Hospital, Kolkata to Nil Ratan Sarkar Medical College & Hospital, Kolkata on 26.11.2021 on promotion to the post of Assistant Professor.
- (ii) From Nil Ratan Sarkar Medical College & Hospital, Kolkata to R.G. Kar Medical College & Hospital, Kolkata on 26.07.2022 as Associate Professor.
- (iii) From R.G. Kar Medical College & Hospital, Kolkata to Burdhaman Medical

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College, Purba Bardhaman on 13.04.2023 as Associate Professor.

- (iv) From Burdhaman Medical College, Purba Bardhaman to R.G. Kar Medical College & Hospital, Kolkata on 22.08.2023.

From the statement recorded in this application, the applicant is a resident of Kolkata. In the matter of transfers the Hon'ble Supreme Court of India in 2004 (11) SCC 402 in State of U. P. and Others -Vs- Gobardhan Lal has stated the following:

".....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 Unless the order of transfer is shown to be an outcome of a mala fide exercise of power, an order of transfer cannot likely be interfered with as a matter of course or routine.....cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest.....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.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals...."

As it is clear from the observations of the Hon'ble Court, it is not the mandate of this Tribunal to interfere with administrative matters like transfer of employees. Passing any direction as sought for by the applicant in this application for restraining the authorities to pass any transfer order, unreasonable or arbitrary, cannot be considered by this Tribunal. Though transfer policies have been framed, but Tribunals cannot direct the respondent authority to follow it rigidly for the reason that the respondent authority looks after the Health and Family Welfare sector of the State. There may be exigencies and

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necessities in transferring medical personnel in the larger public interest. It is also observed that by transfer order dated 22.08.2023, the applicant has been transferred from Burdhaman Medical College, Purba Bardhaman to R.G. Kar Medical College & Hospital, Kolkata closer to residence of the applicant. Out of total four transfer orders, three were for posting at Kolkata.

As guided by the Hon'ble Supreme Court of India, the employees have to remember that transfers are incidental to the service unless it was done with mala fide intention by the employer. In this case, though the applicant was transferred twice in 2023, but it cannot be termed as arbitrary and whimsical.

The application is disposed of without any direction as prayed.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.

WEST BENGAL ADMINISTRATIVE TRIBUNAL