

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).**

Case No. – OA 137 of 2023.

NEPAL CHANDRA PRODHAN - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and  
Date of order

5  
04.10.2023

For the Applicant : Mr. S. Bhattacharjee,  
Ld. Advocate.  
For the State respondents : Mr. S.N. Ray,  
Ld. 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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsel for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the transfer order as well as release order issued on 08.02.2023 from Murshidabad to Midnapore by Manager, Home for Lunatic Vagrants, Murshidabad with a direction to the applicant to join his new place of posting at Midnapore. The applicant was earlier posted in Murshidabad as Group-D in Home for Lunatic Vagrants, Murshidabad.

Submission of Mr. Bhattacharjee is that as per prevailing norms, no Group-D employee is to be transferred outside more than 20 Kms. of his residence. In this case, the applicant's residence is at Kandi, Murshidabad. Mr. Bhattacharjee submits that a copy of Memorandum No. 326 dated 28.02.2002 issued by Health & Family Welfare Department. The Guideline for transfer of Group-D employees states that "In all cases of transfer of Group-D employees, the posting should be restricted within 20 Kms. range from his normal place of residence".

Since Midnapore is more than 250 Kms. from Kandi, Murshidabad,

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this transfer order and release order is violation of the Memorandum quoted above.

Submission of Mr. Ray is that this Memorandum is not applicable to the applicant since he has been promoted to the post of Helper vide order dated 17.10.2005. Moreover, this Memorandum is for employees of Health & Family Welfare Department, not Social Welfare Department to which the applicant belongs.

While disputing that the post of Helper is not a promotion post, Mr. Bhattacharjee also presents a copy of Memo issued by the Finance Department being No. 9770-F dated 19<sup>th</sup> August, 1983 and submits that the transfer policy of Group –D employees are covered by this Notification. Therefore, in compliance to such Notification, the transfer order dated 08<sup>th</sup> February, 2023 be set aside.

Mr. Bhattacharjee also stresses that not only this transfer order was bad in law, but also ignored his medical condition. In support of this, reference is made to the medical report in this application. One such medical report appears to be from the Christian Medical College, Vellore in which the applicant has been diagnosed as “*RIGHT KNEE OSTEOARTHRITIS TRICOMPARTMENTAL*” and recommended for total knee replacement.

Considering the Notification No. 9770-F which is a guideline for transfer of Group-D employees and also considering that the applicant has a medical problem, the Tribunal comes to the finding that the respondent was either not aware of such transfer policy of Group –D or ignored it. The Tribunal also finds that besides ignoring such transfer policy, his medical condition, as evident from the records submitted by the applicant from the reputed medical institutes as well as from the Government Hospitals, the transfer and release of the applicant was not in conformity with the prevalent rules. The respondent was also insensible to that fact that a Group-D whose residence is in Murshidabad have been ordered to serve in another district which may be 250 Kms away from his residence, which Mr. Bhattacharjee stated.

With the above observation, the Tribunal set aside the transfer order dated 08<sup>th</sup> February, 2023 and followed by the release order of the same date with a direction to the Respondent No. 2 – the Controller of Vagrancy, West Bengal & Joint

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Secretary, Office of the Controller of Vagrancy, West Bengal to reconsider the matter in the light of the Finance Department's Memo No. 9770-F dated 19<sup>th</sup> August, 1983 and his medical records.

With this, the application is disposed of.

(SAYEED AHMED BABA)  
Officiating Chairperson and Member (A).

Skg.

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