

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 309 OF 2022
JOYDEV SAHA - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

09
14.12.2023

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|---------------------------|---|------------------------------|
| For the Applicant | : | Mrs.M.Ghosh Advocate |
| For the State Respondents | : | Mrs.Sonali Mitra 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.

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

By a common order of transfer, Joydev Saha, the applicant was transferred on promotion to the post of Head Surveyor from Teesta Irrigation Division, Jalpaiguri to Alipurduar Irrigation Division on 29.09.2021 issued by the Director of Personnel & Ex-Officio Chief Engineer, Irrigation and Waterways Directorate. Against such a transfer order transferring him to another town, the applicant has taken the plea that he is a physically handicapped person suffering from some health hazards. Representations furnished by the applicant was considered and regretted by the authorities with the comment that his request to be retained at the present place Jalpaiguri will be reviewed when such an opportunity arises. The documents available in this application also indicate that due to his physical and health conditions he has not been able to perform his duties as a Surveyor even in the present place of posting. In fact, the authorities had also considered to recommend him for compulsory retirement. A Medical Certificate dated 16.02.2022

issued by the District Hospital, Jalpiguri remarks that the applicant is a Ortho medically Handicapped person (POLIO) and his movements are restricted for “rough field and undulating” work. It also appears from one of his representations that he was inclined to forgo the promotion so that he does not have to move from the present place of posting. The prayer of the applicant in this application is also to set aside the entry remark “forgo promotion” in his service book.

From the submissions of the learned counsels and records, it is clear that the applicant being a Polio patient is physically not in a position to do any survey works in the field. In fact, due to his physical limitations as indicated in the record, he has not been doing any physical survey work for the past 3 (three) years though the post he holds is of a Surveyor. The Tribunal is also of this view that such person with physically disabilities cannot be forced to perform a duty which he is not capable of. Despite knowing and in records of this fact, the authorities promoted him from the post of Surveyor to Head Surveyor. Giving him additional responsibilities of Head Surveyor was thoughtless and preposterous action on the part of the respondents. To make the matter further complicated, the applicant was transferred to another town, probably 100 kms. away. As a Surveyor he has not been able to perform duties in the field, the question of moving him to another town and taking upon responsibilities as the Head Surveyor was meaningless. Since the applicant has forgone his promotion for the sake of continuing to stay in the same place, Jalpaiguri, therefore, the question of compelling him to move to Alipurduar does not arise.

In view of the above observations, the Tribunal disposes of this application by directing the respondent No.3, Director of Personnel and Ex-Officio Chief Engineer to cancel the entry of the applicant’s name

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from the order dated 29.09.2021 and since he has declined the promotion and refused to comply the order, he be allowed to continue in the earlier post of Surveyor in the same office of Teesta Irrigation Division, Jalpaiguri.

Accordingly, the application is disposed of.

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

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