

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL
Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : HON'BLE JUSTICE SOUMITRA PAL, HON'BLE CHAIRMAN.

Case No. – OA 52 of 2022.

JANAJIT CHAKRABORTY – VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. B. Sau, Advocate.
<u>3</u> 21.2.2022	For the State Respondents	: Mr. G.P. Banerjee, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6(5) of the Administrative Tribunals Act, 1985.

In the application Janajit Chakraborty, the applicant, a senior lecturer, in DIET, Howrah has prayed for several reliefs, the relevant portion of which is as under :-

“ a) An order do issue directing the respondent specifically respondent no.2 to consider the representation of the applicant dated 25.01.2022 and to cancel, quash and/or set aside the impugned order dated 13.07.2021 passed by the respondent no. 2 as said order is not a speaking and reason order according to direction of the Hon'ble High Court by considering the representation dated 26.02.2021 of the petitioner and extent time from 28.02.2022 to join new place of considering the pandemic situation and ill health of old mother aged about 81 years.

b) A father order do issue upon the respondents specially respondent no. 2 to consider the representation of the applicant dated 25.01.2022 and to set aside or not to give effect of the said impugned transfer of the applicant to Jalpaiguri by order dated 13.07.2021 being annexure 'A-4' and extend the time from 28.02.2022 to join new place

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.
THE STATE OF WEST BENGAL & ORS.

till the disposal of the present application... ”.

Earlier the applicant had challenged the order dated 23rd February, 2021 issued by the Director, State Council of Educational Research and Training, West Bengal, Calcutta transferring the applicant to Coochbehar on the ground that the respondent no. 2 does not have the jurisdiction to issue the order of transfer by filing an application being OA 224 of 2021 (Janajit Chakraborty – versus- The State of West Bengal & others) which, after hearing the parties was disposed of by order dated 22nd March, 2021, the relevant portion of which is as under :-

“.....Having heard the learned advocates for the parties and considering the facts and circumstances of the case, the application is disposed of by granting liberty to the applicant to file a representation ventilating his grievances afresh before the respondent no. 2 along with a copy of this order downloaded from the internet/website, within four weeks after he joins the post as Senior Lecturer, DIET, Coochbehar, pursuant to the order dated 23rd February, 2021, and if such representation is filed within the time as stipulated, it will be disposed by the said respondent no.2 by passing a reasoned order to be communicated to the parties within eight weeks after giving an opportunity of hearing and after verifying the records..... ”.

Aggrieved by the order dated 22nd March, 2021, the applicant filed a writ petition being WPST 40 of 2021 (Janajit Chakraborty – versus- The State of West Bengal & others), which was disposed of on 21st June, 2021 by passing an order, the relevant portion of which is as under :-

“.....It appears from record that the petitioner made a representation on 26th February, 2021 for consideration of the order of

transfer from Howrah to Coochbehar on the ground that he had recently lost his father and he has to look after his mother, who is presently 80 years old and critically ill. He is the only child and his presence in the residence is necessary. This representation appears to have not been considered by the authorities concerned. However, before the Tribunal, it appears to have been contended on behalf of the petitioner that leave may be given to the petitioner to file a representation after his joining the post. There appears to be some ambiguity as the petitioner had filed an application which was pending at the time when a direction was given for filing a further representation.

We feel that in the interest of justice, the authorities concerned shall sympathetically consider the representation filed by the petitioner on 26th February, 2021 within a period of four weeks from the date of communication of this order by either of the parties by giving a reasonable opportunity of hearing to the petitioner through virtual mode or physically by maintaining covid protocol and dispose of the said representation by a reasoned order. In view of the fact that the representation is already on record, there would be no necessity to file a fresh representation.

The Director, State Council of Educational Research and Training is directed to consider the said representation in terms of our order. The Director shall decide the issue uninfluenced by the observations made by us in this order in accordance with law.

The impugned order of transfer shall remain stayed for a period of eight weeks or till the decision of the Director is communicated to the petitioner whichever is earlier.

It is made clear that in the event the transfer order is upheld, the same may not be given effect to for a period of one week

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.
THE STATE OF WEST BENGAL & ORS.

from the date of its communication to the petitioner.....

.....

We have not gone into the merits of the transfer order.

.....

With the above direction WPST 40 of 2021 is disposed of....”.

Thereafter on 8th July, 2021, the applicant filed an application before the Director, State Council of Educational Research and Training, West Bengal, Calcutta, - the respondent no. 2, the relevant portion of which is as under :-

“.....I have no intention to disobey the order of the authority, as I have never challenged the transfer order. But by this order I am again transferred to the same Institute, Coochbehar where I had started my service in 1999 and have to leave my old severely sick mother alone which is impossible for me as a human being.

So with due respect I am humbly requesting you to allow my mother to say with me at the end days of her life and I can do my service and seva to a physically and mentally broken widow. Hence reconsider your order sympathetically and humanly and allow me to stay in Howrah DIET.....”.

Thereafter the Director, State Council of Educational Research and Training, West Bengal, Calcutta, - the respondent no. 2 passed an order on 13th July, 2021, the relevant portion of which is as under :-

“....Sri Janajit Chakraborty was transferred from DIET South 24 Parganas to DIET Howrah on the basis of his verbal prayer. On considering his request, SCERT(WB) posted to Sri Chakraborty as in-charge of DIET Howrah but he has requested to release him from the post of in charge of DIET, Howrah. Again, on the basis of his request SCERT (WB) issued an order to release him from the in-charge of DIET

Howrah and charge is handed over to the then Principal of DIET Howrah. At present he is serving at DIET, Howrah as Senior Lecturer from 06.02.2018. After issuing transfer order dt. 23.02.2021, Sri Chakraborty has filled a petition at The West Bengal State Administrative Tribunal to challenge his transfer from DIET Howrah to DIET Coochbehar. But WBSAT has mentioned in the judgement order that “....liberty of the petitioner may be granted for filing a representation after he joins ie. DIET Coochbehar at Senior Lecturer.” He violated the judgement order of Hon’ble WBSAT since SCERT(WB) have not received any joining report from Sri Chakraborty. Again he filled a petition at the Hon’ble High Court, Calcutta.

Pursuant to the Judgement of the Hon’ble High Court dt. 21.06.2021, SCERT(WB) conducted a hearing on 08.07.2021 at the chamber of the Director, SCERT(WB). On considering his prayer and as per the transfer policy Sri Janajit Chakraborty, Senior Lecturer, DIET Howrah is now transferred to the DIET Jalpaiguri as Senior Lecturer.

He is to join at the new place of posting within 20 days from the issuance of this order.

This is being issued in partial modification of order No. 715/F.N. 264(Pt.)/SCERT dt. 23.02.2021 with the direction delegated to the Director, SCERT(WB) by the Hon’ble High Court, Calcutta and in the interest of public service....”.

Aggrieved by the order dated 13th July, 2021, the applicant again moved the Tribunal by filing an application being OA 498 of 2021 (Janajit Chakraborty – versus- The State of West Bengal & others), which, after hearing the parties, was disposed of by passing an order on 30th July, 2021, the relevant portion of which is as under :-

“.....On a query the opinion of Mr. Sau was sought for

whether his client is willing to join at the transferred post at Jalpaiguri and thereafter, to furnish a representation for re-transfer or to keep the order of transfer and the release order in abeyance till 31st December, 2021. Mr. Sau after taking instruction from his client has submitted that the order of transfer as well as the release order may be deferred till 30th June, 2022. On a proposal, it is submitted by Mr. Sau that his client is agreeable for having the transfer and release order deferred till 28th February, 2022.

In view of the submission of Mr. Sau, the application is disposed of by keeping the impugned order of transfer dated 13th July, 2021 as well as the release order dated 20th July, 2021 in abeyance till 28th February, 2022 and thereafter, the applicant shall join the transferred post.

It is made clear in view of this order the respondent authorities, particularly the Director, State Council of Educational Research and Training, Kolkata and the Senior Lecturer-in-charge, DIET, Howrah, - the respondent nos. 2 and 3 respectively, shall allow the applicant to resume his duties at Howrah...". (Emphasis supplied)

Again on 25th January, 2022, the applicant filed a representation "For reconsideration of the transfer order" before the respondent no. 2 , the relevant portion of which is as under :-

".....As Govt employee I cannot refuse the issue of transfer, but I request and humble appeal to you to transfer me, at DIET Nadia, Hooghly, Bardhaman, Banipur, or to let me stay at Howrah so that I can take care of my old mother. Madam, I am requesting again to your kind self to consider my mother's life as because if I am gone, anything may happen in this pandemic situation and this incident will be a death blow to her. I can submit all medical documents to you....".

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.
THE STATE OF WEST BENGAL & ORS.

It is submitted by Mr. B. Sau, learned advocate for the applicant that since the mother of the applicant is very ill, the respondents may be directed to set aside the order of transfer dated 13th July, 2021 and to extend the time to join at the new place of posting.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondents submits that earlier the applicant had filed a representation dated 26th February, 2021 and had challenged the order of transfer dated 23rd February, 2021 issued by the respondent no. 2 which was disposed of by passing an order on 23rd March, 2021 by granting liberty to the applicant to file a representation ventilating his grievances before the said respondent no. 2.

Aggrieved, the applicant had filed a writ petition being WPST 40 of 2021 which was disposed of on 21st June, 2021 staying the order of transfer for a period of eight weeks or till the decision of the Director is communicated to the applicant whichever is earlier and also recording the High Court has not gone into the merit of the order of transfer.

Thereafter, the applicant had filed a representation dated 8th July, 2021. Referring to the representation dated 8th July, 2021 it is submitted that though the applicant has submitted that he has no intention to disobey the order of the authority, the applicant is not complying with the order of transfer. In the present application, the applicant has challenged the order dated 13th July, 2021 passed by the respondent no. 2 and against the said reasoned order, the applicant had moved the Tribunal by filing an application being OA 498 of 2021, which was disposed of by order dated 30th July, 2021. Submission is the applicant had instructed his learned advocate for deferment of the order of transfer till 30th June, 2022 and later on instruction, the learned advocate submitted, which has been recorded in the order dated 30th July, 2021

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.
THE STATE OF WEST BENGAL & ORS.

that he is agreeable for having the transfer and release order be deferred till 28th February, 2022 and as on the basis of the undertaking given by the applicant the application was disposed of keeping the impugned order of transfer dated 13th July, 2021 as well as the release order dated 20th July, 2021 in abeyance till 28th February, 2022 , the application may be dismissed. Since the State has to run the administration and as transfer of an employee is a part of his service career and as the applicant has not stated that the order of transfer is against the prevalent rules, no order may be passed.

Heard learned advocates for the parties.

There is no dispute that earlier the applicant had challenged the order dated 23rd February, 2021 issued by the respondent no. 2 transferring him to Coochbehar, which was disposed of by giving liberty to the applicant to file representation ventilating his grievances before the respondent no.2 after he joins the post as senior Lecturer, Coochbehar and if such representation was filed, it would be disposed of by the said respondent by passing a reasoned order to be communicated to the parties after giving an opportunity of hearing.

Aggrieved the applicant filed a writ petition being WPST 40 of 2021 which was disposed of by staying the order of transfer for a period of eight weeks or till the decision of the respondent no.2 is communicated to the applicant and also recording the High Court had not gone into the merits of the order of transfer.

Thereafter the applicant was heard by the respondent and the order of transfer was reviewed and by order dated 13th July, 2021, the applicant was transferred to Jalpaiguri as Senior Lecturer. Aggrieved the applicant filed a writ petition being 498 of 2021 which was disposed of by an order passed on 30th July, 2021. Significantly, it appears from the

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.
THE STATE OF WEST BENGAL & ORS.

said order that the opinion was sought for from the learned advocate for the applicant whether the applicant was willing to join at transferred post at Jalpaiguri and thereafter to furnish a representation for retransfer and for keeping the release order in abeyance till 31st December, 2021. The learned advocate for the applicant after taking instruction from his client had submitted, which is recorded in the order, that the order of transfer and the release order may be deferred till 30th June, 2022. It also appears from the said order that the learned advocate for the applicant was agreeable for getting transfer and the release order deferred till 28th February, 2022. It is significant to note that in view of the submission made on behalf of the applicant the order of transfer dated 13th July, 2021 as well as the release order dated 28th July, 2021 was directed to be kept in abeyance till 28th February, 2022 and thereafter in the order it has been recorded that *“the applicant shall join the transferred post”*. It was also directed that in view of that order, the Director, State Council of Educational Research and Training and senior Lecturer-in-charge, DIET, Howrah, the respondent no. 2 and 3 respectively *“To allow the applicant to resume his duties at Howrah”*. While at Howrah, it appears from the annexure ‘A-6’ that the applicant has again filed an appeal for *“Reconsideration to transfer order”* before the respondent no.2 and therein he has stated *“As Govt. employee I cannot refuse the issue of transfer, but, I request and humble appeal to transfer me, at DIET Nadia, Hooghly, Bardhaman, Banipur, or to let me stay at Howrah so that I can take care of my old mother...”*.

It appears that the applicant through his learned advocate had intimated that he agreed to get transferred and on his undertaking the order of transfer dated 13th July, 2021 as well as the release order dated 28th July, 2021 was kept in abeyance. However, now he has come

up with the plea for extension of time “from 28.2.2022 to join new place till the disposal of the present application” as evident from the prayers which is contrary to the undertaking given before the Tribunal. Prayer for such extension of time cannot be accepted in view of the undertaking given before the Tribunal. That apart, there is no categorical statement or ground to demonstrate that the order of transfer is at variance with any statutory rule. The State has to run the administration and in order to run the administration, orders are issued which unless shown to be palpably wrong, has to be obeyed. In these circumstances the Tribunal cannot sit on appeal over the order of the State issued in the interest of the administration.

In this regard, it is appropriate to refer to law laid down in the judgement of the Supreme Court in (2004) 11 SCC 402 (State of U.P. and others – versus- Gobardhan Lal), the relevant portion of which is as under :-

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 service as long as the official status is not affected adversely and there is no infraction 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.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer....”.

Therefore, since the applicant has gone back from the undertaking given as recorded in the order dated 30th July, 2021 that “...he was agreeable for having the transfer and release order deferred till 28th February, 2022....” and as the applicant thereafter was directed

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.
THE STATE OF WEST BENGAL & ORS.

to join the transferred post and as the challenge to the order of transfer is without any legal foundation and as it is covered by the law laid down in State of U.P. and Others (supra) , no order is passed on the application.

The application is disposed of.

(SOUMITRA PAL)
CHAIRMAN.

Skd.

WEST BENGAL ADMINISTRATIVE TRIBUNAL

ORDER SHEET

Form No.

JANAJIT CHAKRABORTY.

Case No. **OA 52 of 2022.**

Vs.

THE STATE OF WEST BENGAL & ORS.

WEST BENGAL ADMINISTRATIVE TRIBUNAL