

**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 536 of 2023.

ARPITA PATRA & ORS - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and  
Date of order

04  
08.02.2024

For the Applicants : None.

For the State Respondents : Mr. Shaon Bhattacharya,  
Learned 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.

Affidavit of service filed be kept with the record.

The prayer of the applicants in this application is for setting aside the impugned transfer order issued by the respondent authorities. The applicants are Health Assistant (Females) posted in different districts. By an administrative order dated 14.09.2022, these 11 (eleven) applicants as well as others, numbering a total of 384 Staff Nurse (Grade-II) were transferred from one place to another. As per this Memo, these transfers have been made in the larger public interest.

Submission of learned counsel for the applicants is that such transfer order are void in the eyes of law because these applicants have been transferred from their present place of posting within one year of their tenure.

From the submissions of the learned counsels and the papers in this application, it appears that the applicants, who are Staff Nurses, Grade-II were, after appointment, were posted in different places and subsequently transferred out to these new places, many to the districts in the North Bengal. A total of 384 of Staff Nurses Grade-II were transferred as Community Health Officer by this order. A

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supplementary order No. 406 dated 03.11.2022, was also issued declaring those who had not joined as yet as “deemed released”.

Aggrieved by such transfer order, the applicants furnished their representations before the respondent authorities requesting for review of such transfer order. Some of the representations, as seen in this application have also conveyed their refusal to join. Since the authorities were not responding, WPA 12895 of 2023 was filed in the Hon’ble High Court which directed the respondent No. 1 Health Secretary to consider their requests for their posting at their Home/nearby districts, subject to availability of the posts sympathetically. In terms of such an order, the Director of Health Services passed a revised transfer order No.896 dated 16.6.2023. Still aggrieved, the applicants approached this Tribunal praying for a direction to consider their representations.

From close examination of the records in this application and hearing the submissions of the learned counsels, the impression gathered is that the applicants were unhappy with their transfer to far off places, especially in the North Bengal region. From a note submitted by the Health Secretary before the Chief Secretary, it appears that there was a shortage of trained Community Health Officers in different Swastha Kendras. The proposal before the Government was for placement of GNMs and Nursing Staff to man these Swastha Kendras. The proposal received the approval of the competent authority.

It is a well settled fact that the State Government exercises the discretion of posting and transfers and it is part of employees’ responsibility to comply with such orders. The applicants have also not expressed any malpractice, corruption, nepotism on part of the authorities while issuing the transfer order. It appears to be an purely administrative decision to fill up the vacant posts in Swastha Kendras by these applicants as they are trained nurses. It is needless to say administration of Health sector is an important responsibility of the State.

The Hon’ble Supreme Court in (2004) 11Supreme Court Cases 402 in GOBORDHAN LAL –Versus- STATE OF U.P. AND OTHERS, the respondent has

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made it very clear that “.....*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 , transfer cannot likely be interfered with as a matter of course or routine*”.

*“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 .....except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer...”*”.

In view of such strong opinion given by the Hon’ble Apex Court in the above matter, this Tribunal also feels that transfers and postings, not only fall under the exclusive domain of the State authorities, but, it is also incumbent upon the applicants, as employees, to comply with such order. It is reiterated that the applicants having challenged this transfer order have not expressed any victimisation or nepotism on part of the respondents. Further, this Tribunal is also aware of the fact that this matter was heard by the High Court and a direction passed. So hearing this matter and passing any order in this Tribunal may cause res-judicata. It has also been made clear by the State respondents that this is a temporary measure till all the vacant posts in Swastha Kendras are filled up.

In view of above observations and finding no merit in their prayers, this application is disposed of without passing any orders.

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

Sk.