

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 549 of 2021.

SHRI ALOK KUMAR MUKHOPADHYAY- VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. G.P. Banerjee, Advocate.
<u>1</u> 06.08.2021.	For the State Respondents	: Mr. M.N. Roy, Advocate.

The matter is taken up by the single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020 and 456-WBAT/2J-15/2016 dated 16<sup>th</sup> July, 2021 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunal Act, 1985.

At the very outset, it is submitted by Mr. G.P. Banerjee, learned advocate for the applicant that since the matter relates to transfer of the applicant and is urgent, copies of the application have already been served on all the respondents. Prayer is leave may be granted to file affidavit of service in the Registry of the Tribunal.

As prayed for let affidavit of service be filed in the Registry in course of this day.

Mr. M.N. Roy, learned advocate appears on behalf of the respondents.

It is submitted by Mr. Banerjee that the applicant, who is fifty-nine years of age and who has suffered from COVID, has been transferred from Kolkata to Cooch Behar pursuant to the Notification dated 26<sup>th</sup> July, 2021, being annexure "A" to the application which is under challenge. Submission is it is at variance with the memorandum dated 29<sup>th</sup> November, 2011, particularly the paragraph B(iv) therein. Further the impugned order of transfer is illegal as the release order has been issued on 4<sup>th</sup> August, 2021 after copies of the original application along with the notice was served on the respondent nos. 1 and 2 on 2<sup>nd</sup>

**ORDER SHEET**

Form No.

SHRI ALOK KUMAR MUKHOPADHYAY.

Case No. **OA 549 of 2021.**

**Vs.**

THE STATE OF WEST BENGAL & ORS.

---

August, 2021. However, it is submitted that the District Inspector of Schools (Secondary Education) - the respondent no. 3 was served with the copies of the application and notice on 4<sup>th</sup> August, 2021. Submission is since the applicant has to look after his mother, who is eighty-eighty years of age and he himself is on the verge of retirement, the impugned order of transfer as well as the consequential release order may be quashed.

Mr. Roy supporting the order of transfer submits that the memorandum dated 29<sup>th</sup> November, 2011 is merely a guideline as transfer is a part of one's service career. Though column B(iv) stipulates one should not be posted for more than three years in the same post and as the applicant has served in the said post for three years ten months, as it is a routine transfer, no order may be passed. On a query it is submitted that the representation dated 28<sup>th</sup> July, 2021 may be considered after the applicant joins the transferred post.

There is no dispute that the applicant, fifty-nine years of age and is due to superannuate on 31<sup>st</sup> August, 2022, by order dated 26<sup>th</sup> July, 2021 has been transferred from Kolkata to Cooch Behar. It appears that the application was filed on 2<sup>nd</sup> August, 2021 in the Registry of the Tribunal and the respondent nos. 1 and 2 were served with the copies of the application along with the notice on the same date. The District Inspector of Schools (Secondary Education) - respondent no. 3 was intimated on 4<sup>th</sup> August, 2021.

Considering the facts and circumstances of the case, as the release order was passed after the respondent nos. 1 and 2 were intimated about the moving of the original application, the transfer order dated 26<sup>th</sup> July, 2021 and the consequential release order is arbitrary and

**ORDER SHEET**

Form No.

SHRI ALOK KUMAR MUKHOPADHYAY.

Case No. **OA 549 of 2021.**

**Vs.**

**THE STATE OF WEST BENGAL & ORS.**

---

illegal and are set aside and quashed. Since the applicant is fifty-nine years of age and has suffered COVID, a sympathetic view be taken. Accordingly, the Commissioner of School Education, Government of West Bengal – the respondent no. 2 is directed to consider the representation dated 28<sup>th</sup> August, 2021, appearing at page 16 of the application, by passing a reasoned order to be communicated to the parties within three weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal, after giving an opportunity of hearing and after making necessary enquiries. It is made clear that in the event the reasoned order is adverse, same shall not be given effect to for a week. It is made clear that this order is in respect of the applicant only.

Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

(SOUMITRA PAL)  
CHAIRMAN.

Sk.