

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present- HON'BLE JUSTICE SOUMITRA PAL,  
HON'BLE SAYEED AHMED BABA,

HON'BLE CHAIRMAN &  
ADMINISTRATIVE MEMBER.

Case No. - OA 668 of 2021.

DR. SIKHA KARMAKAR - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. G.P. Banerjee, Advocate.
<u>02</u> 26.11.2021	For the State Respondents	: Mr. S.N. Ray, Advocate.

Affidavit of service filed be kept on record.

In this application, Dr. Sikha Karmakar, the applicant has challenged the reasoned order passed by the Secretary, Department of Health and Family Welfare, Government of West Bengal, whereby her application for transfer has been rejected.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the applicant submits that no cogent reason has been assigned rejecting her application for transfer. Referring to the order contained in the memo dated 30<sup>th</sup> September, 2020 it is submitted though the applicant has been transferred, Dr. Sujata Ghosh, her junior, is continuing in her post.

Mr. S.N. Ray, learned advocate for the State respondents submits that the order is well reasoned and may not be interfered with.

Heard learned advocates for the parties. The relevant portion of the reasoned order passed by the Secretary, Department of Health and Family Welfare, Government of West Bengal pursuant to the order passed in OA 15 of 2020 (Dr. Sikha Karmakar –vs- The State of West Bengal and Others) on 13<sup>th</sup> February, 2020 is as under :-

*“Now, therefore, after giving the incumbent patient hearing and after considering the entire gamut of the situation it is ordered that, the prayer of the petitioner Dr. Sikha Karmakar for transfer to any health institution within Kolkata is considered and rejected as transfer is*

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*integral and incidental to the service. At the moment Dr. Sikha Karmakar shall continue to execute her duty at her present place of posting in the interest of public service, until further order.*

*Thus the matter is disposed of.....”.*

Perused the order. We find that the order under challenge is precise and well reasoned as it cannot be denied that transfer is an integral and incident to public service. There is no allegation of bias against the respondents. Further the issue is covered by the judgement passed in (2004)11 SCC 402 (State of U.P. and Others – versus- Gobardhan Lal) wherein it has been held 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

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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....”.

Moreover, it is the prerogative of the administration regarding posting and transfer of a public servant. That apart reliance on the order contained in the memo dated 30<sup>th</sup> September, 2020 issued by the Director of Health Services, Government of West Bengal on behalf of the applicant is misconceived as it relates to ‘detailment’ and not ‘transfer’. Therefore, no order is passed on the application. The application is disposed of.

Skg.

(SAYEED AHMED BABA)  
MEMBER (A).

(SOUMITRA PAL)  
CHAIRMAN.

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