

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

Case No. –OA-498 of 2021

Janajit Chakraborty. - **VERSUS** - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. B. Sau, Advocate.
<u>2</u> 30.07.2021.	For the State Respondents	: Mr. G. P. Banerjee, Advocate.

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

Let affidavit of service filed today be kept on record.

In this application, Janajit Chakraborty – the applicant, 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 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 reasoned order according to direction of the Hon'ble High Court by considering the representation dated 26.02.2021 of the petitioner.

b) A father order do issue upon the respondents specially respondent no.2 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' till the disposal of the present application.”

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It appears from the application that the applicant was appointed as the Lecturer in Government Primary Teachers Training Institute at Coochbehar on 12th July, 1999. At present his place of posting is at Hooghly, DIET. The applicant, whose mother is about 80 years old and requiring daily medical attention, had moved an application, being OA-224 of 2021, challenging the order of transfer to Coochbehar, which was disposed of on 22nd March, 2021 by passing an order 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 of 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.”

Still aggrieved the applicant challenged the order passed by the Tribunal by filing a writ petition, being WPST 40 of 2021, : Janajit Chakraborty –Versus – The State of West Bengal and others, the relevant portion of which is as under :

“It appears from record that the petitioner made a representation on 26th February, 2021 for reconsideration of the order of transfer from Howrah to Coochbehar on the ground that he had

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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 Education 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.

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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 from the date of its communication to the petitioner.

The petitioner is directed to serve a copy of this application upon Mr. Tapan Mukherjee, learned Additional Government Pleader by tomorrow i.e. 22nd June, 2021. Mr. Mukherjee is requested to communicate this order to the Director in order to enable the Director to take appropriate steps in this matter.

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

The Legal Remembrancer is directed to regularise the appointment of Mr. Tapan Mukherjee and Mr. Biswabrata Basu Mallick, Advocate, as junior to Mr. Mukherjee in this matter,

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

Pursuant thereto the Director, SCERT (WB) has passed an order contained in the memo dated 13th July, 2021, the relevant portion of which is as under :

“Pursuant to the Judgment 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

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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. ”

Mr. B. Sau, learned advocate for the applicant submits as the mother of the applicant requires medical attention, the order of transfer may be quashed.

Mr. G. P. Banerjee, learned advocate for the State respondents submits that since transfer is a part of service career of the applicant, no order may be passed.

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.

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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.

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

S.M.