

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das

Case No – **OA 1093 OF 2017 & MA 78 of 2018**

Tapas Mandal Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">04 25.06.2018</p>	<p>For the Applicant : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Respondents : Mr. S. Ghosh, Learned Advocate.</p> <p>The applicant was appointed as Pharmacist of Group-A in the cadre of West Bengal Subordinate Health Services temporarily under order dated September 26, 1989 issued by the Director of Health Services, West Bengal. It is contended on behalf of the applicant that the applicant worked as Pharmacist in the district of Coochbehar, in the sub-division of Jhargram in the district of Paschim Medinipur and at Debra in the district of Paschim Medinipur and thereafter a Basulia Rural Hospital in the district of Purba Medinipur as LR Pharmacist from January 18, 2002 to June 11, 2011. He also worked as LR Pharmacist at Deulbarh Primary Health Centre from June 17, 2011 to May 31, 2012 and thereafter at Purba Medinipur District Hospital as LR Pharmacist from June 1, 2012 till the date of issuance of transfer order. The applicant has been detailed to work as LR Pharmacist at Dhekua Primary Health Centre under Sutamata Block in the district of Purba Medinipur by order dated October 30, 2017 issued by CMOH, Purba Medinipur which is under challenge in the present application.</p>	

ORDER SHEET

Tapas Mandal

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 1093 of 2017 & MA 78 OF 2018**

Mr. G.P. Banerjee, Learned Counsel for the applicant, contends that the applicant has been detailed to work as LR Pharmacist for prolonged period of time, while some permanent posts of Pharmacists in the district are lying vacant. He further submits that the applicant submitted one representation before the respondent no. 2, Director of Health Services, West Bengal on March 8, 2014, which was recommended by the respondent no. 4, CMOH, Purba Medinipur on March 18, 2014 under his Memo. No. 998, but the said representation is still pending for consideration of the respondent no. 2. Mr. Banerjee has further submitted that the applicant got the interim order of stay of operation of the order of transfer and as such the applicant cannot be released from his present assignment during pendency of the original application before the Tribunal.

Mr. Ghosh, Learned Counsel representing the state respondents, submits that the applicant has been detailed to work as LR Pharmacist for administrative convenience and the applicant has already been released from his present assignment, but the applicant has not joined his new assignment, though interim order passed by the Tribunal is not in force.

It is well settled that the transfer is a condition of service to which the applicant belongs, but the order of transfer cannot be passed by way of punishment or

ORDER SHEET

Tapas Mandal

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 1093 of 2017 & MA 78 OF 2018**

<p>in malafide way or in violation of the statutory provisions. In the instant case, the applicant has been working as Leave Reserve Pharmacist (in short LR Pharmacist) under CMOH, Purba Medinipur from January 18, 2002 and the grievance of the applicant is that he should have been posted in one of the permanent posts of Pharmacist, particularly when such posts are in existence within the district of Purba Medinipur. On consideration of the materials on record, we find that the Superintendent of Purba Medinipur District Hospital had sent one letter to the respondent no. 4, CMOH, Purba Medinipur on April 21, 2017 by disclosing the fact that there are some sanctioned posts of Pharmacists in the district, which are lying vacant. The admitted position is that the applicant submitted representation before the respondent no. 2 on March 8, 2014 praying for permanent posting of Pharmacist, which was duly recommended by the respondent no. 4, CMOH, Purba Medinipur on March 18, 2014, but no action has yet been taken by the respondent no. 2 in this regard. The order of detailment of the applicant as LR Pharmacist cannot be branded as illegal or malafide or punitive in nature, though the applicant has been serving in his capacity as LR Pharmacist for more than 16 years i.e. from January 18, 2002. Since the permanent posts of Pharmacists are lying vacant in the district of Purba Medinipur and since the representation submitted by the applicant and forwarded by CMOH, Purba Medinipur is still pending</p>	
--	--

ORDER SHEET

Tapas Mandal

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 1093 of 2017 & MA 78 OF 2018**

for consideration of the respondent no. 2, we are of the view that the present order of detailment of the applicant as LR Pharmacist cannot be made operative before disposal of the representation submitted by the applicant.

Accordingly, we direct the respondent no. 2, Director of Health Services, West Bengal to consider the representation submitted by the applicant on March 17, 2014 and forwarded by CMOH, Purba Medinipur on March 18, 2014 in accordance with law within a period of 4 (four) weeks from this date. If the representation of the applicant is allowed, the order of detailment of the applicant as LR Pharmacist issued on October 30, 2017 (Annexure-E to the original application) will be modified by the respondent no. 2 and appropriate order will be passed by the respondent no. 2 in connection with the posting of the applicant. If the representation of the applicant is rejected by the respondent no. 2, the applicant will join his new assignment as LR Pharmacist within joining time admissible to him under the rules after rejection of representation of the applicant. The order of detailment of the applicant as LR Pharmacist issued by respondent no. 4, CMOH, Purba Medinipur on October 30, 2017 (Annexure-E to the original application) will remain suspended for a period of 4 (four) weeks or till the date of disposal of the representation submitted by the applicant, whichever is earlier.

ORDER SHEET

Tapas Mandal

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 1093 of 2017 & MA 78 OF 2018**

<p>Sanjib</p>	<p>With the above direction, both original application and Miscellaneous Application No. 78 of 2018 stand disposed of.</p> <p>Let urgent plain copy of this order be supplied to both parties.</p> <p>(S.K. DAS) MEMBER(A)</p> <p>(R. K. BAG) MEMBER (J)</p>	
---------------	--	--