

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

**Present :-**

**JUSTICE RANJIT KUMAR BAG**

**MEMBER (J)**

**-AND-**

**DR. SUBESH KUMAR DAS**

**MEMBER (A)**

**J U D G M E N T**

**-of-**

**Case No O.A. 107 of 2017**

**Asoke Halder ..... Applicant.**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant :-**

Mr. D.N. Roy,  
Mr. B. Nandy,  
Ld. Advocates.

**For State Respondents :-**

Mr. S. Bhattacharyya,  
Ms. R. Sarkar,  
Departmental Representative.

**Judgment delivered on : April 27, 2018**

**Judgment delivered by : Justice Ranjit Kumar Bag  
MEMBER (J)**

## J U D G M E N T

The applicant has prayed for quashing of the order of his transfer from Barasat to Cooch Behar and subsequent order of release from his present assignment at Barasat on the grounds that the orders have been passed by the Respondent No. 4 & 5 respectively in mala fide way.

2. The applicant was discharging his duties as Special Revenue Officer, Grade-II (in short, SRO-II) and Block Land and Land Reforms Officer at Barrackpore in the district of North 24 Parganas from the month of October, 2015. On July 11, 2016, the applicant was placed under suspension on contemplation of departmental enquiry against him. The said order of suspension was challenged by the applicant before the Tribunal by filing OA No. 1065 of 2016. On December 21, 2016, this Tribunal had set aside the order of suspension of the applicant on the ground of not preparing charge memo against the applicant within a period of three months from the date of issuance of the order of suspension. This Tribunal directed the State respondents to permit the applicant to join his duties whenever he would report. The contention of the applicant is that he was not permitted to join his duties in his old post of SRO-II at Barrackpore in terms of the order passed by the Tribunal. On January 16, 2017, the applicant submitted application before the Respondent No. 2 through proper channel praying for permission to join his duties, so that he can draw his salary for the month of December, 2016. Ultimately, the Respondent No. 5 allowed the applicant to join his duties in the headquarters of North 24 Parganas at Barasat on January 18, 2017. The contention of the applicant is that he was not assigned any duty though he was permitted to resume duty at Barasat on January 18, 2017. On January 27, 2017, the applicant was transferred by the Respondent No. 4 from his present post of SRO-II at Barasat to the district of Cooch Behar in the interest of public service. The Respondent No. 5 issued the release order of the applicant from the post of SRO-II at Barasat on January 31, 2017. The Tribunal passed an interim order on February 13, 2017 by granting stay of operation of order of transfer and the order of release of the applicant and the said interim order is still in force.

3. Mr. D.N. Roy, Learned Counsel representing the applicant has contended that the order of transfer of the applicant is mala fide and punitive in nature. According to Mr. Roy, the applicant was not allowed to resume his duties in his old post of SRO-II at Barrackpore even after cancellation of order of suspension. He further submits that the Respondents were vindictive and revengeful and as such the applicant was transferred from Barasat to Cooch Behar immediately after permitting him to resume his duties at Barasat. By referring to the guidelines issued by the Department of Land and Land Reforms, Government of West Bengal for transfer of the officers belonging to West Bengal Subordinate Land Revenue Service, Mr. Roy has specifically argued that the applicant should have been transferred in the districts falling under Zone-C instead of transferring the applicant to Cooch Behar which is falling under Zone-A. Relying on the decision of the Hon'ble Supreme Court in "Somesh Tiwari V. Union of India and Others" reported in (2009) 2 SCC 592, Mr. Roy has contended that the order of transfer of the applicant is vitiated by mala fide and as such the said order is liable to be quashed.

4. Mr. S. Bhattacharyya, the authorised representative of the State Respondents has referred to paragraph 3 of the Reply and submitted that the applicant has been transferred to Cooch Behar in public interest as there was need of more officers of the rank of the applicant for completion of the work of land survey. According to Mr. Bhattacharyya, the order of transfer of the applicant has no connection with the order of cancellation of his suspension pending departmental enquiry. The further contention of Mr. Bhattacharyya is that the departmental enquiry initiated against the applicant by issuance of charge memo immediately after revocation of the order of suspension by the Tribunal, has already been concluded by the Enquiry Officer and necessary follow up action will be taken by the Disciplinary Authority within short span of time. Relying on the decision of the Hon'ble Supreme Court in "State of UP V. Gobardhan Lal" reported in (2004) 11 SCC 402, Mr. Bhattacharyya argues that the guidelines of transfer of the Government employee cannot have any statutory force and the same cannot confer any legally enforceable right on the employee for quashing of the order of transfer.

5. The issue for consideration of the Tribunal is whether the order of transfer of the applicant is liable to be set aside. The transfer of any Government employee is condition of service and as such any Government employee can be transferred in public interest, but the transfer cannot be done by way of punishment or in a mala fide way or in violation of any statutory provision. In “Somesh Tiwari V. Union of India” (supra), the Hon’ble Supreme Court has laid down the criteria for intervention of the Court in the order of transfer in paragraph 16 of the judgment, which is as follows :

*“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”*

6. By applying the above test, we would like to consider whether the order of transfer of the applicant was vitiated by mala fide. It is relevant to reiterate the background of transfer of the applicant from Barasat to Cooch Behar. The applicant was suspended on contemplation of departmental enquiry against him. The order of suspension was quashed by the Tribunal on December 21, 2016 in OA No. 1065 of 2016 with direction to the respondents to permit the applicant to join his duties as and when he would report. The applicant was permitted to join in the district headquarters at Barasat under District Land and Land Reforms Officer, North 24 Parganas after 28 days of the order of the Tribunal. He was transferred from Barasat to Cooch Behar after nine days of his joining at Barasat and was released from his post after four days of the order of transfer. The contention of the

applicant is that he has been transferred in a mala fide way as he approached the Tribunal against the order of his suspension. On the other hand, the Respondent No. 4 has taken the stand that the reasons for transfer of the applicant to Cooch Behar is to liquidate the arrears of work of survey of land in the district of Cooch Behar. It is pointed out in the reply submitted by the Respondent No. 4 that 27 posts of SRO-II and 5 posts of SRO Grade II of the district of Cooch Behar were filled up as a special drive for liquidation of arrears of work in connection with survey of land in the said district. On perusal of the order of transfer of 61 officers of the rank of SRO-II in the entire state of West Bengal by the Respondent No. 4 on January 13, 2017, we do not find the name of the applicant in the said order of bulk transfer of the officers in the entire state of West Bengal. The applicant was transferred from Barasat to Cooch Behar by issuing an isolated order on January 27, 2017. On perusal of the bulk order of transfer dated January 13, 2017, we find that the officers who join in the post of SRO-II in the Directorate on January 2, 2017 were transferred under said order of bulk transfer. The contention made on behalf of the State Respondents that the order of transfer of the applicant is innocuous in nature cannot be accepted on consideration of the sequence of events starting from quashing of order of suspension on December 21, 2016 till the order of transfer of the applicant on January 27, 2017. On the contrary, the allegation of transfer of the applicant in mala fide way cannot be brushed aside on consideration of the sequence of events pointed out hereinabove.

7. Now, we would like to consider the contention made on behalf of the applicant that the order of transfer of the applicant is in violation of guidelines of transfer issued by the Deputy Secretary of the Department of Land and Land Reforms, Government of West Bengal on January 29, 2003. The said guidelines indicate that the officers belonging to the rank of SRO-II shall first be posted in Zone A, but the applicant was never posted in Zone A at the initial stage after getting promotion to the rank of SRO-II. The guidelines further indicate that after completion of 3 years of service in Zone A, the officers belonging to the rank of SRO-II shall be transferred to Zone - B where the officer shall have to serve at least for 5 years before being transferred to Zone C. However, the said guidelines of transfer from one zone to another zone in the state may not be adhered to in the interest of

public service or under very exceptional circumstances. That apart, the said guidelines cannot confer any legally enforceable right on the applicant to challenge the order of transfer, particularly when the applicant himself was not posted in Zone A after initial promotion to the rank of SRO-II. The Hon'ble Supreme Court has laid down the criteria for interpretation of administrative guidelines for transfer in paragraph 7 of "State of UP V. Gobardhan Lal" (supra), which are as follows :

*"7.... 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 infringement of 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. In view of above interpretation of administrative guidelines for regulating transfer of Government employees, the applicant cannot challenge the order of transfer except on the ground of mala fide. Since the applicant has been transferred from Barasat to Cooch Behar immediately after quashing of order of suspension by the Tribunal by an isolated order of transfer of the applicant, we are inclined to hold that the impugned order of transfer and subsequent order of release of the applicant are vitiated by mala fides. Relying on the decision of the Hon'ble Supreme Court in "Somesh Tiwari V. Union of India" (supra), we are inclined to set aside the order of transfer dated January 27, 2017 (annexure D to the original application) and order of release of the applicant dated January 31, 2017.

9. In view of our above findings, the impugned order of transfer dated January 27, 2017 issued by the Respondent No. 4 and the impugned release order dated January 31, 2017 issued by the Respondent No. 3 are hereby set

aside. This order will not stand on the way of transfer of the applicant in the public interest.

10. The urgent xerox certified copy of the judgment and order may be supplied to the respective parties, if applied for, on urgent basis by giving priority on compliance of necessary formalities.

**(DR. SUBESH KUMAR DAS)**  
**MEMBER (A)**

**(RANJIT KUMAR BAG)**  
**MEMBER (J)**