

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

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

Case No – OA-103 OF 2018
DEBASHIS DEBANGSHI Vs. 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;"><u>02</u> 13.03.18</p>	<p>For the Applicant : Mr.G.P.Banerjee Mr.A.Lahiri Learned Advocates</p> <p>For the Respondent : Mr.S.Ghosh Learned Advocate</p> <p>The applicant has prayed for setting aside the order of transfer dated January 29, 2018 issued by the Respondent No. 3 by filing the original application under Section 19 of the Administrative Tribunals Act, 1985.</p> <p>It appears from the materials on record that on December 12, 1990, the applicant has joined as Medical Officer at Nashipur Block Primary Health Centre in the district of Murshidabad. He was transferred as Medical Officer to Suri Sadar Hospital in the district of Birbhum on January 14, 2003. The applicant was transferred from Suri Sadar Hospital by order dated May 11, 2006 to the District Hospital at Darjeeling, but the said order was withdrawn when the applicant approached this Tribunal by filing OA-1561 of 2006. The applicant was again transferred from Suri Sadar Hospital to Indira Matri-O-Sisu Kalyan Hospital, Kolkata by order dated</p>	

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	<p>January 29, 2009 which was challenged by the applicant before this Tribunal by filing OA-319 of 2009. Without getting favourable order from the Tribunal, the applicant approached the Hon'ble High Court by filing WPST-584 of 2009. On November 16, 2009, the Division Bench of the Hon'ble High Court passed an interim order staying operation of the transfer order of the applicant. The period of the said interim order was subsequently extended until further order on the basis of order dated February 3, 2010 passed in WPST-584 of 2009. During suspension of operation of the said transfer order of the applicant, the Respondent No. 3 issued another transfer order dated May 28, 2013, which was challenged by the applicant by filing a separate application in connection with WPST-584 of 2009 before the Hon'ble High Court. On June 21, 2013, the Division Bench of the Hon'ble High Court again passed an interim order staying operation of the transfer order of the applicant dated May 28, 2013 till the hearing of the writ petition. During pendency of the said writ petition before the Hon'ble High Court, the Respondent No. 3 has issued the</p>	

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	<p>present transfer order dated January 29, 2018 for transfer of the applicant from Suri Sadar Hospital to Gardenreach State General Hospital. We are informed that the applicant has already been released from his post during pendency of the original application before the Tribunal.</p> <p>Mr.Banerjee, Learned Counsel representing the applicant has made two fold submissions: first, the Respondent No.3 cannot issue the impugned transfer order without cancelling the previous transfer orders which have already been stayed by the Division Bench of the Hon'ble High Court till the final hearing of WPST-584 of 2009, and secondly, the applicant has already been identified as faculty for teaching pre clinical and para clinical subjects to DNB students. The further submission of Mr.Banerjee is that there cannot be any change in the faculty after commencement of DNB course as per Accreditation Policies & General Instructions issued by National Board of Examinations, Ministry of Health & Family Welfare, Government of India.</p>	

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	<p>Mr.Ghosh, Learned Counsel representing the State Respondents submits that the applicant is working for more than 15 years in the same post at Suri Sadar Hospital. He further submits that the applicant cannot have the right to work in the same post for 15 years when the condition of service of the applicant is transferable throughout the State of West Bengal.</p> <p>We have found from the materials on record that the applicant has submitted one representation before the Respondent No. 3 on February 7, 2018 immediately after receiving of the order of transfer dated January 29, 2018 and the said representation has not been considered till date by the Respondent No.3. On perusal of the said representation, it appears that the applicant has put forward both the grounds urged by Mr.Banerjee before the Tribunal in connection with the transfer of the applicant. Since the representation is still to be considered by the authority concerned, we are not inclined to make any observation on the grounds put forward on behalf of the applicant in the present</p>	

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	<p>application, because our observations may cause prejudice either to the applicant or to the authority who will consider the said representation.</p> <p>In view of our above findings, we direct the Respondent No.1, Principal Secretary, Department of Health & Family Welfare, Government of West Bengal to consider the representation submitted by the applicant on February 7, 2018 before the Respondent No.3 (Annexure-J to the original application) in accordance with law within a period of 2 (two) weeks from the date of communication of the order. The operation of the impugned order of transfer dated January 29, 2018 (Annexure-H to the original application) and consequent order of release of the applicant from the post of Medical Officer of Suri Sadar Hospital will remain stayed for a period of 2 (two) weeks or till the date of disposal of the representation by the Respondent No.1, whichever is earlier. If the representation is allowed in favour of the applicant, the Respondent No. 1 & 3 will modify the transfer order accordingly. If the representation is rejected by the Respondent No.1, the transfer order</p>	

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BLR	<p>dated January 29, 2018 and the consequential order of release of the applicant from the post of Medical Officer of Suri Sadar Hospital will be effective from the date of disposal of the representation by the Respondent No.1. With the above direction, the original application is disposed of.</p> <p>Let a plain copy of this order be supplied to both parties.</p> <p style="text-align: center;"> (S.K.Das) MEMBER(A) </p> <p style="text-align: center;"> (R.K.Bag) MEMBER (J) </p>	