

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

Hon'ble Justice Soumitra Pal,                      Hon'ble Chairman &  
 Hon'ble Mr. P. Ramesh Kumar,                      Administrative Member.

CASE NO. OA 105 of 2014.

**DR. SANTI KUMAR PAL –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>29  <hr/>           26.6.2019.</p>	<p>For the Applicant : Mr. A. Hati,            Ms. P. Roy Mishra,            Advocates.</p> <p>For the State Respondents : Mrs. S. Agarwal,            Advocate.</p> <p>In this application, the applicant has prayed            for certain reliefs, the relevant portion of which is as            under :-</p> <p>“(a) An order directing the authority            concerned (The C.M.O.H, Murshidabad), his agent,            subordinate and successors not to implement the            impugned detailment order dated 07.01.2014 issued by            the incompetent authority which is Annexure “B” to the            Original Application.</p> <p>(b) An order directing the said C.M.O.H.,            Murshidabad not to disturbed his service at the present            place of posting at Murshidabad Medical College &amp;            Hospital, which is present place of posting of the            applicant.”</p> <p>After the matter was admitted, directions            were issued to file reply and rejoinder. According to Mr.            A. Hati, learned advocate for the applicant, as interim            order was declined by the Tribunal, the applicant had</p>	

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	<p>preferred a writ petition, being WPST 76 of 2014, before the High Court praying for interim order, which was declined on 24<sup>th</sup> March, 2014.</p> <p>It appears that the applicant belongs to cadre of West Bengal Health Service. In the year 2002, the applicant was transferred to Murshidabad Medical College and Hospital. While being posted at Murshidabad Medical College and Hospital, an order contained in the memo dated 7<sup>th</sup> January, 2014 was issued by the Chief Medical Officer of Health, Murshidabad temporarily detailing him to work in the same capacity at Jangipur S.D. Hospital to overcome the crisis prevailing at that time in the said hospital. This order of detailment is under challenge.</p> <p>Pursuant to the directions, reply has been filed. Though rejoinder was filed 8<sup>th</sup> May, 2019, Mr. Hati submits that he is not relying on the rejoinder. Though three supplementary applications, all undated, have been filed by the applicant, Mr. Hati is relying on the supplementary application filed on 3<sup>rd</sup> January, 2017 and not on the other two supplementary applications.</p> <p>The learned advocate appearing for the</p>	

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	<p>applicant relying on the Original Application, the supplementary application, the Notification dated 20<sup>th</sup> August, 2001, particularly paragraph 2 thereof, and referring to the reply submits that as under the law the Chief Medical Officer of Health has no control over the transfer, posting and establishment matters, the order of detailment is bad in law and is without jurisdiction. Though it is evident from the order of detailment that he has been temporarily detailed there is nothing on record to show what prompted the Chief Medical Officer of Health to issue the order of detailment. As there was no exigency, the order for detailment is uncalled for. Since the Chief Medical Officer of Health, Murshidabad has not filed reply rebutting the allegations in the Original Application, appropriate order may be passed. On a query, it is submitted that the applicant does not belong to the West Bengal Medical Education Service.</p> <p>Mrs. S. Agarwal, learned advocate appearing on behalf of the State respondents, relying on the reply submits that order of detailment is not akin to transfer. Moreover, it is apparent from orders dated 31<sup>st</sup> December, 2013 and 2<sup>nd</sup> January, 2014, being annexures</p>	

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	<p>R-1 and R-2 to the reply, what had warranted the Chief Medical Officer of Health, Murshidabad to issue the order of detailment. The Notification dated 20<sup>th</sup> August,2001 relied on by the applicant is not applicable and the order dated 4<sup>th</sup> September, 1996 issued by the Director of Health Services, empowering the Chief Medical Officer of Health to issue order of detailment within his/her district to combat crisis prevails.</p> <p>In reply it is submitted by Mr. Hati that since he was detailed for about three months and even till date no fact has been brought to the notice of the Tribunal about the exigency leading to the issuance of the order of detailment, the impugned order of detailment may be quashed.</p> <p>On a query, Mr. Hati submits on instruction that even after the order of detailment, the applicant did not join his duty for about three months due to his illness and litigation and had joined on 8<sup>th</sup> April, 2014.</p> <p>Heard Mr. Hati and Mrs. Agarwal.</p> <p>Admittedly it appears from the order contained in the memo dated 31<sup>st</sup> December, 2013 and the order dated 2<sup>nd</sup> January, 2014 that due to certain</p>	

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	<p>factors the applicant was detailed as Medical Officer at Jangipur S.D. Hospital. The question is whether the order of detailment is an order of transfer. It is clear from the order dated 4<sup>th</sup> September, 1996 issued by the Director of Health Services that in case of extreme emergency the Chief Medical Officer of Health can detail any Medical Officer under his/her control and can place the officer in any place within his/her district to combat crisis. In the instant case, the applicant was not transferred but was detailed by order dated 7<sup>th</sup> January, 2014 by the Chief Medical Officer of Health, Murshidabad and the reason is apparent therefrom. The facts leading to the issuance of order of detailment are evident from annexures R1 and R2 to the reply. Thus the Notification dated 20<sup>th</sup> August, 2001 relied on by Mr. Hati is not applicable. The order dated 4<sup>th</sup> September, 1996 issued by the Director of Health Services empowering the Chief Medical Officer of Health in the district by stipulating that " On the occasion of extreme emergency they can detail any Medical Officer under his/her control to any place within his/her district to combat crisis" prevails and in no way is in conflict with the said notification. In such circumstances</p>	

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	<p>the impugned order dated 7<sup>th</sup> January, 2014 detailing the applicant was issued. As seen an order of detailment is issued for a specific period to tide over the crisis arising out of the emergent situation and is not an order of transfer. Therefore, the Chief Medical Officer of Health was justified in issuing the order dated 7<sup>th</sup> January, 2014, which is clear from the annexures R-1 and R-2 of the reply.</p> <p>Since the applicant is not in the West Bengal Medical Education Service and belongs to West Bengal Health Service, the Chief Medical Officer of Health, Murshidabad has the authority and is the appropriate authority to issue the order of detailment and hence, the order dated 7<sup>th</sup> January, 2014 cannot be called into question.</p> <p>There is another aspect of the matter. Though reply has been filed on behalf of the State respondents, since rejoinder filed on 8<sup>th</sup> March, 2019 by the applicant is not pressed, reply prevails which contains annexures R1 and R2 spelling out the reason for detailment.</p> <p>Hence as the Chief Medical Officer of Health,</p>	

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Skg.	<p>Murshidabad has the jurisdiction to issue the order of detailment and as seen detailment order is not order of transfer, therefore, the Original application is without merit and is thus dismissed.</p> <p>(P. Ramesh Kumar) Member (A).</p> <p>(Soumitra Pal) Chairman.</p>	