

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

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

Case No. **OA- 272 OF 2018**

DR DEBASISH 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><u>01</u> 25.04.18</p>	<p>For the Applicant : Mr.G.P.Banerjee Mr.A.Lahiri Learned Advocates</p> <p>For the Respondents : Mr.S.Ghosh Learned Advocate</p> <p>The applicant has prayed for quashing of the order dated April 2, 2018 passed by the Respondent No.1 and order of transfer of the applicant dated January 29, 2018 issued by the Respondent No.4. Previously, the applicant prayed for quashing of the said order of his transfer dated January 29, 2018 by filing OA-103 of 2018. The said OA-103 of 2018 was disposed of by this Tribunal on March 13, 2018 by giving direction to the Respondent No.1 to consider the representation submitted by the applicant in connection with his transfer. The contention of the applicant is that the issues raised by the applicant in his representation have not been considered by the Respondent No. 1 by passing a reasoned order on April 2, 2018.</p> <p>Mr.Banerjee, Learned Counsel for the applicant contends that the applicant cannot be transferred at all from his present post of Medical Officer at Suri Sadar</p>	

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	<p>Hospital due to stay of operation of previous order of transfer of the applicant from the said post by the Hon'ble High Court. Mr.Banerjee argues that the applicant being the Course Director of D.N.B. course cannot be transferred from his present assignment till the end of the year 2021. The gist of submission made by Mr.Banerjee is that the order of transfer of the applicant and the reasoned order passed by the Respondent No.1 in connection with the representation of the applicant are liable to be set aside.</p> <p>Mr.Ghosh, Learned Counsel appearing on behalf of the State Respondents submits that the grounds taken by the applicant for challenging the order of transfer do not exist any more. By elaborating his argument, Mr.Ghosh submits that the applicant has not taken any initiative for renewal of Physically Handicapped Certificate after the year 2013 and the wife of the applicant is no more serving Government employee of Suri Sadar Hospital after the year 2008. He further contends that the applicant is working as Medical Officer at Suri Sadar Hospital for about fifteen (15) years by</p>	

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	<p>challenging various orders of transfer before the Tribunal or before the Hon'ble High Court in violation of interest of public service.</p> <p>The applicant joined as Medical officer of Suri Sadar Hospital on January 14, 2003. Transfer of Medical Officer attached to any Government Hospital is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service. The Tribunal can intervene in the order of transfer, if the said order is found to be arbitrary or malafide or punitive in nature or violative of any statutory provision. Now, we would like to consider the submission made on behalf of the applicant for deciding whether the impugned order of transfer and the impugned reasoned order passed by the Respondent No.1 are arbitrary or malafide or punitive in nature or violative of any provision of law.</p> <p>The applicant was transferred after completion of three (3) years of service as Medical Officer of Suri Sadar Hospital by order dated May 11, 2006, but the said order</p>	

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	<p>was withdrawn by the administration when the applicant approached the 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 January 29, 2009 which was unsuccessfully challenged before the Tribunal by filing OA-319 of 2009. The order of the Tribunal was challenged before the Hon'ble High Court by filing WPST-584 of 2009. The Hon'ble Division Bench of the High Court at Calcutta passed an interim order staying operation of order of transfer of the applicant and the said interim order was extended until further order in WPST-584 of 2009. The applicant was again transferred from the post of Medical Officer of Suri Sadar Hospital by an order dated May 28, 2013 which was again challenged by the applicant by filing an application in connection with WPST-584 of 2009 and obtained stay of operation of the said order of transfer. With the above factual matrix, Mr.Banerjee submits that the applicant cannot be transferred from his present post of Medical officer of Suri Sadar Hospital by the impugned order of transfer dated January 29, 2018. We are unable to accept</p>	

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	<p>this contention made on behalf of the applicant on consideration of long tenure of the applicant at Suri Sadar Hospital for a period of 15 years, particularly when the applicant belongs to service whose members can be transferred in public interest throughout the state of West Bengal. The issue whether the applicant can be transferred during pendency of hearing of WPST-584 of 2009 before the Hon'ble High Court can only be decided by the Hon'ble High Court and not by this Tribunal.</p> <p>The grounds for challenging successive orders of transfer of the applicant from Suri Sadar Hospital are that the applicant is physically handicapped person and that his wife is working as Government employee of Suri.</p> <p>On consideration of the reasoned order dated April 2, 2018 passed by the Respondent No.1, we find that the applicant did not bother to appear before Central Medical Board at Medical College & Hospital, Kolkata on three (3) consecutive dates for deciding the validity of the Handicapped Certificate issued in his</p>	

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	<p>favour and thereby the Handicapped Certificate issued in favour of the applicant was valid only till January 13, 2013. The plea taken by the applicant that his wife is an employee of Suri Sadar Hospital was found to be false by the Respondent No.1 who has observed that the wife of the applicant submitted resignation and the said resignation letter was accepted w.e.f. April 22, 2008. Accordingly, the above two issues raised by the applicant to stall the order of transfer was rightly decided by the Respondent No.1.</p> <p>With regard to the plea of the applicant that there cannot be any change in the faculty after commencement of D.N.B. course as per Accreditation Policies and General Instructions issued by National Board of Examination, Ministry of Health & Family Welfare, Government of India, the Respondent No.1 has rightly observed in the reasoned order that the Department of Health & Family Welfare, Government of West Bengal will take care of the situation by engaging proper faculty for the D.N.B. course at Suri Sadar Hospital. The applicant cannot be prejudiced, if</p>	

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	<p>disruption takes place in running D.N.B. course at Suri Sadar Hospital, because the Department of Health & Family Welfare, Government of West Bengal will be duty bound to take appropriate steps by identifying the faculty to impart pre-clinical and para-clinical subjects to D.N.B. students after transfer of the applicant from the said assignment. Accordingly, we are unable to accept the contention made on behalf of the applicant that the applicant will be prejudiced for his transfer from Suri Sadar Hospital and for being deprived of faculty of D.N.B. course.</p> <p>With regard to the submission made on behalf of the applicant that he has been discriminated for his release from the present post of Suri Sadar Hospital, while many other doctors of Suri Sadar Hospital have not been released after transfer, we would like to observe that the decision to release or not to release any Medical Officer of the Government Hospital depends on many considerations including exigency of public service. The exigency of public service may necessitate stay of release of a particular Medical Officer. That apart, the tenure of the doctors whose release was held up at Suri Sadar</p>	

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BLR	<p>Hospital is not disclosed by the applicant who is serving for fifteen (15) years at Suri Sadar Hospital.</p> <p>So, the plea of discrimination taken by the applicant has not been substantiated. Moreover, the applicant cannot take the said plea to evade transfer after having long tenure of fifteen (15) years at Suri Sadar Hospital.</p> <p>In view of our above findings, we cannot persuade ourselves to hold that the impugned order of transfer or the impugned reasoned order passed by the Respondent No.1 are illegal or arbitrary or malafide or punitive in nature or violative of any provision of law. We do not find any merit in the present application. As a result, the original application is dismissed.</p> <p>Urgent xerox certified copy of the order, if applied for, be given to the parties on priority basis on compliance of all necessary formalities.</p> <p style="text-align: center;">(S.K.Das) MEMBER(A)</p> <p style="text-align: center;">(R.K.Bag) MEMBER (J)</p>	