

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – OA 278 OF 2020

DR. SAJAL BISWAS 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>3</p> <hr/> <p>05.10.2020</p>	<p>For the Applicant : Mr. Bidyut Kumar Halder, Mr. Indranil Halder, Advocates</p> <p>For the Respondents: None</p> <p>In this application, Dr. Sajal Biswas, the applicant has challenged the transfer order dated 28th July, 2020 transferring him from Maslandapur BPHC, North 24 Parganas to BMOH, Jasodanga RH, Alipurduar. Mr. Bidyut Kumar Halder, learned advocate for the applicant submits that since from 11th December, 2011 when he was appointed as Medical Officer, transfer order has been issued on 27th April, 2012, 28th January, 2015 and thereafter on 20th February, 2017, the present transfer order dated 28th July, 2020 transferring him to BMOH, Jasodanga RH, Alipurduar is illegal as it is contrary to the memo dated 10th August, 1990, particularly paragraph 7 thereof wherein it is stipulated that "7. Normally no M.O. shall be transferred in the last 3 years of service unless separate administrative ground exists in some particular case." Mr. Halder has relied on an interim order passed on 10th January, 2020 in O.A. 1027 of 2019 : Arup Kumar Das vs. The State of West Bengal and Others in support of</p>	

ORDER SHEET

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	<p>his contention.</p> <p>Heard Mr. Halder. We find that the notification dated 28th July, 2020 issued by the Health Department transferring the applicant from Maslandapur BPHC, North 24 Parganas to BMOH, Jasodanga RH, Alipurduar has not been challenged. Prayer has been made not to transfer the applicant. Be that as it may, assuming that it has been challenged, we find settled law is that a memo cannot be the guiding principle with regard to transfer of a government servant as transfer is essential in government service. However, we are quite aware that transfer should not be mala fide and illegal.</p> <p>Perusing the application we find no ground has been taken that it is arbitrary and mala fide. Moreover the transfer orders of 11th January, 2011, 27th April, 2012 and 28th January, 2015 and the transfer order dated 20th February, 2017 are not under challenge. We find that after about three and half years he has been transferred by the transfer order dated 28th July, 2020. We find no ground has been made out that it is arbitrary and illegal. Moreover, a memo cannot be the guiding principle with regard to an order of transfer in view of the law laid down by the Supreme Court in State of Uttar Pradesh and Others -Vs- Gobardhan Lal : (2004) 11 SCC 402 which is as under:</p> <p style="text-align: center;"><i>“7. It is too late in the day for any government servant to</i></p>	

ORDER SHEET

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	<p><i>contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot likely be interfered with as a matter of course or routine for any or every type of grievance sought to be made. 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</i></p>	

ORDER SHEET

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	<p><i>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 infraction 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 notices supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.</i></p> <p><i>8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the</i></p>	

ORDER SHEET

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	<p><i>niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer....."</i></p> <p>The order passed on 10th January, 2020 in O.A. 1027 of 2019 : Arup Kumar Das vs. The State of West Bengal and Others, relied on by Mr. Halder, does not come to the aid of the applicant as therein in a space of about six months the applicant has been transferred thrice whereas in the instant case, the applicant has been transferred by notification dated 28th July, 2020 after about three and half years. Hence, no order is passed in</p>	

ORDER SHEET

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SCN.	<p>this application. The application is dismissed.</p> <p>Since for circumstances beyond control the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	