

**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 526 of 2017.

JAYDEV KHAN – 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>11 20.12.2018.</p>	<p>For the Applicant : Mr. S.N. Ray, Advocate.</p> <p>For the State Respondent : Mr. S. Ghosh, Advocate.</p> <p>In this application the applicant, a Group "C" staff, has challenged the order of transfer from Dighirpar (E) S/C, Dighirpar GP to Kripakhali S/C, Itkhola GP by the Chief Medical Officer of Health, South 24-Parganas being annexure P-7 to the application on several grounds.</p> <p>It is submitted by Mr. S.N. Ray, learned advocate for the applicant that the order of transfer is in violation of the memo dated 15<sup>th</sup> December, 1997 issued by the Director of Health Services and the Government Order dated 13<sup>th</sup> March, 2009 issued by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare, Government of West Bengal. It has been stated that this order of transfer if carried out will cause hardship to the applicant as he has to travel more than 75 Kilometres.</p> <p>So far as the order dated 15<sup>th</sup> December, 1997 is concerned we find that it is an order passed by the Director of Health Services and not a statutory rule. In this regard it is appropriate to refer to the judgement of</p>	

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	<p>the Supreme Court in State of U.P. and Others –Vs- Gobardhan Lal in (2004) 11 SCC 402, particularly paragraph 7 thereof, which is as under :</p> <p><i>“.....It is too late in the day for any government servant to 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 lightly 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 consequence of depriving or denying the</i></p>	

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	<p><i>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 guideline 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....". Therefore, the order dated 15<sup>th</sup> December, 1997 cannot be taken into consideration.</i></p> <p>The Government order dated 13<sup>th</sup> March, 2009 issued by the Joint Secretary to the Government of West Bengal under the Department of Health and Family Welfare, MA Branch is not applicable in the case of the applicant as it relates to transfer and posting in respect of staff under West Bengal Health Services upto the level of Deputy Chief Medical Officer of Health and not of Group 'C' staff.</p> <p>Now it is well settled position of law that</p>	

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	<p>transfer is a part of one's service career and unless it is shown that the transfer order is in violation of statutory rule or is arbitrary or malafide , it cannot be interfered with. In the instant case, no statutory rule has placed to demonstrate that it was in violation of statutory rule or statute. It has also not been shown that the order of transfer is malafide or the CMOH, South 24-Parganas was not competent to issue the order of transfer. Therefore, there is no merit in this application. Hence the application is dismissed. Interim order passed on 21<sup>st</sup> June, 2017 is vacated.</p> <p>LATER:</p> <p>After judgement is passed, Mr. S.N. Ray, learned advocate for the applicant submits that his client is prepared to join at Kripakhali S/C, Itkhola GP within a stipulated time and leave may be granted to his client to make a representation ventilating his difficulties, which may be directed to be considered by the authorities to which Mr. S. Ghosh, learned advocate for the State respondent does not object.</p> <p>In view of such submission made by Mr. S.N.</p>	

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Skg.	<p>Ray, learned advocate for the applicant after the applicant joins his post at Kripakhali S/C, Itkhola GP , the transferred post, he is at liberty to file a representation ventilating his difficulties before the Chief Medical Officer of Health, South 24-Parganas District – respondent no. 3 within a fortnight which will be considered by the said respondent no. 3 by passing a reasoned order to be communicated to the parties within eight weeks after giving an opportunity of hearing to the applicant and after verifying the records.</p> <p>(P. Ramesh Kumar) Member(A).</p> <p>(Soumitra Pal) Chairman.</p>	

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