

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

Hon'ble Justice Soumitra Pal.
& The Hon'ble Mr. P. Ramesh Kumar .

Case No. OA 642 of 2017.

PARITOSH PRAMANICK – 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>10 02.08.2018.</p>	<p>For the Applicant : Mr. A. Hati, Mrs. F. Bandyopadhyay, Mr. K. Ghosh, Mrs. P. Roy Mishra , Advocates.</p> <p>For the State Respondent : Mr. G. Halder, Advocate.</p> <p>In this application the applicant, who is at present posted as Senior Lecturer in DIET, 24-Parganas (South), has challenged the order of transfer dated 11th July, 2017 transferring him to DIET, Uttar Dinajpur , 2nd Campus as Senior Lecturer in Charge.</p> <p>It is submitted by Mr. Hati, learned advocate for the applicant that the order of transfer is bad and arbitrary as he was transferred to the present place of posting on 26th August, 2016. It is further submitted that since persons similarly situated are continuing in their posts, as evident from the rejoinder to the report filed by the State Council of Education and Training, Government of West Bengal, therefore, the order of transfer is bad in law. Since he has to look after his father, who is now 85 years of age, son and daughter are studying and there are female members in the family, the authorities should</p>	

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	<p>consider his case sympathetically. In this connection, the learned Advocate for the applicant has relied on the judgement of the Hon'ble Supreme Court passed in B. Varadha Rao – Vs- State of Karnataka and Ors reported in AIR 1986 SC 1955 in support of his contention.</p> <p>Moreover, it is submitted that he is prepared to join the transferred place at Uttar Dinajpur within six months. Prayer has also been made for consideration of the representation dated 12th July, 2017 against the impugned order of transfer.</p> <p>Learned advocate appearing on behalf of the State Respondents relying on the report prepared by the Director of State Council of Education and Research and Training, which is on record, submits that the authorities by Notification dated 24th April, 2015 have declared that ten Primary Teacher Training Institutes (PTTI), which have been constructed in the districts of Bankura, Dakshin Dinajpur, Uttar Dinajpur, South 24-Parganas, Murshidabad, Birbhum, Purba Medinipur, Pachim Medinipur, Purulia and Malda under Backward Region Grant Fund, are the Second Campuses of District Institute of Education and Training of the respective districts and</p>	

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	<p>one Primary Teacher Training Institute at Alipurduar, set up under backward region Grant Fund, has been designated as District Institute of Education and Training. The Department has issued instruction to operationalise the said second campuses. Relying on the report, it is submitted that in order to operationalise the second campuses personnel are needed to be transferred from the existing pool of faculty members in the 16 District Institute of Education and Training of West Bengal- DIETs- of West Bengal and accordingly a detailed plan has been worked out and the order of transfer dated 11th July, 2017 is for implementation of the said scheme. In this regard reference has been made to paragraph 1d of the report to demonstrate the fact that persons similarly situated have also been transferred from their present place of posting.</p> <p style="text-align: center;">Heard learned advocates for the parties.</p> <p>Evidently the petitioner has challenged the order of transfer transferring him from the present place of posting at South 24-Parganas to Second Campus, DIET, at Uttar Dinajpur.</p>	

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	<p>In our view, transfer is an incident of service and the petitioner cannot deny the same. The petitioner in his rejoinder has not able to controvert the statements made in paragraph 1a to 1d of the report of the events leading to transfer. The applicant has not been able to demonstrate that the order of transfer was in violation of any statutory rule. The principles of law laid down in B. Varadha Rao(supra) are not applicable as therein the order of transfer was against the conditions of service. Rather in the said judgement it has been held that <i>"...It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfer, without sufficient reasons to justify such; transfer, cannot, but be</i></p>	

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	<p><i>held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair....”.</i></p> <p>In the instant case, the petitioner, who is a Senior Lecturer of DIET, 24-Parganas (South) as Senior Lecturer has been directed to be transferred along with others to operationalise the second campuses. It is to be noted that the petitioner has been unable to demonstrate that the order of transfer is in violation of Statutory Rules. Therefore, the order of transfer cannot be interfered with. Thus, the order of transfer dated 11th July, 2017 does not call for interference. Hence, the application is disposed of. Interim order passed on 20th July, 2017 is vacated.</p> <p>After the judgement is pronounced, Mr. A. Hati, submits that the authorities may be directed to consider the representation dated 12th July, 2017 appearing at page 39 of the application addressed to the</p>	

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Skg.	<p>Respondent no. 3. In view of the submission made, after the petitioner joins the transferred post at Uttar Dinajpur, the Respondent no. 3 shall dispose of the representation dated 12th July, 2017 by passing a reasoned order to be communicated to the parties within eight weeks after giving an opportunity of hearing and after verifying the records.</p> <p>(P. Ramesh Kumar) Member(A).</p> <p>(Soumitra Pal) Chairman.</p>	