

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00683/2020

Date of order: 9.9.2024

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Leena Mistry,
Wife of Dr. Kaushik Das,
Presently residing at Greenfield Oasis,
Block- Mandakini, Flat No. 1C,
P.O Rasapunja, P.S Bishnupur,
District = South 24 Parganas,
Pin 700104

--Applicant.

Versus

1. Union of India,
Service through the Secretary,
Department of Personnel & Training,
Government of India,
North Block,
New Delhi-110001.
2. The Joint Secretary,
Govt. of India,
Ministry of Personnel, Public Grievances & Pensions,
(Department of Personnel and Training, North Block
New Delhi - 110001.
3. The Director,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
Government of India,
North Block,
New Delhi-110001.
4. Employees' State Insurance Corporation,
(Ministry of Labour and Employment, Govt. of India)
Panchdeep Bhawan,
CIG Road,

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New Delhi - 110002.

5. The Additional Commissioner for
Director General,
Employees' State Insurance Corporation;
Panchdeep Bhawan,
CIG Road,
New Delhi - 110002.
6. The Deputy Director (MA),
Employees' State Insurance Corporation;
Panchdeep Bhawan,
CIG Road,
New Delhi - 110002.
7. ESI-PGIMSR,
ESIC Medical College
& ESIC Hospital & ODC (EZ), Joka,
Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.
8. The Asst. Director (Administration),
ESI-PGIMSR, ESIC Medical College
& ESIC Hospital & ODC (EZ) Joka,
Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.
9. The Dean,
ESIC Hospital & ODC (EZ),
Joka, Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.
10. The Medical Superintendent,
ESIC Hospital & ODC (EZ),
Joka, Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.
11. The Deputy Director (Finance),
ESIC Hospital & ODC (EZ),

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Joka, Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.

12. The Deputy Director (Dean Office),
ESIC Hospital & ODC (EZ),
Joka, Diamond Harbour Road,
P.O- Joka,
Kolkata - 700104.

13. The I/C,
MDDC Haldia,
Basudevpur, Haldia,
Purba Medinipur,
Pin 721604.

--Respondents.

For the Applicant : Mr. R.N. Barik, Counsel

For the Respondents : Mr. S. Chowdhury, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal in second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (a) To cancel, rescind, revoke and/or withdrawn Office Order No. 412-T-11/11/158 (O.A. No. 569 of 20)/2020 dated 01.09.2020 for transfer of the applicant from ESI Hospital & ODC (EZ), Joka to MDCC Haldia and as also the corresponding release order dated 03.09.2020 and permit the applicant to continue working in her present place of posting ESI hospital, Joka in the Department of Pulmonary and Chest Disease.
- (b) The applicant be permitted to rejoin her earlier post as MD of Pulmonary and Chest Diseases in ESIC Joka.
- (c) Cost of and incidental to this application.
- (d) Pass such other or further order or orders."

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2. Heard Ld. Counsel for both sides, examined pleadings and documents on record. Ld. Counsel for the applicant has submitted his written notes of arguments.

Ld. Counsel for the applicant would submit that, the applicant had joined the Office of the respondent authorities on 28.7.2015 as an IMO Gr. II and she was all along posted in ESI-PGIMSR, ESIC Medical College, ESIC Hospital & ODC (EZ), Joka, Kolkata. The applicant's spouse had joined the same institution on 1.9.2012 as IMO Gr. II and is presently on study leave at Medical College, Kolkata.

That, although the authorities have issued a moratorium order on rotational transfers vide their office order dated 4.6.2020, in total violation thereof, the applicant was transferred to ESIC, MDCC, Haldia vide order dated 4.8.2020 and stood as relieved on 6.8.2020.

Aggrieved by such transfer order, the applicant had earlier approached this Tribunal in O.A. No. 350/00569/2020, which was disposed of on 14.8.2020, and, in compliance thereof, the respondent authorities issued a speaking order on 1.9.2020, rejecting her claim for retention at ESI-PGIMSR, ESIC Medical College, ESIC Hospital & ODC (EZ), Joka, Kolkata. Being aggrieved with such rejection and with a claim to quashing of such speaking order, the applicant has approached this Tribunal in the instant O.A.

3. The primary grounds, inter alia, on which the applicant has challenged the actions of the respondent authorities are as follows:-

- (i) That, the applicant's spouse is also a Medical Officer Gr. II and, that, as he is located in Kolkata on study leave, the applicant would claim that she is entitled to be posted with

her spouse in the same station by virtue of DOPT's O.M. dated 30.9.2020 (Annexure A-6 to the O.A.).

- (ii) That, vide Office Order dated 4.6.2020 (Annexure A-4 to the O.A.) a total moratorium was imposed on rotational transfer upto 30.4.2021, and, that, as there were no administrative reasons to fill up vacancies due to promotion/retirement and consideration of requests by officers/staff on compassionate grounds in MDDC, Haldia, the applicant's transfer could not have been treated as an exception to such moratorium.
- (iii) The applicant's transfer order is in contradiction to the policy for optimum utilization of GDMOs with Post Graduation qualification.
- (iv) That, such transfer order was not on account of administrative reasons or public exigencies, and, hence was illegal and ought to be quashed.
- (v) That, the Dean of ESI - PGIMSR had already recommended release of one GDMO post in favour of the applicant.
- (vi) That, there was no requirement to fill up the all four posts in ESIC, MDDC, Haldia as because sufficient number of patients do not attend such centre. There is neither any scope of enhancement of work, nor has any emergency situation arisen from exceptional works therein.

According to the applicant, the two doctors attached to the MDD centre, Haldia are sufficient to address to the health needs of the patients in such centre, and, hence, the

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respondents' actions in trying to fill up the third post is manifestly illegal.

4. Per contra, the respondents have argued as follows:-

- (i) That, the applicant was appointed as IMO Gr. II on 28.7.2015, and, that, she was initially posted at ICU (PACCU) and remained in such post for nearly four years, until she was posted in the Department of Pulmonary Medicine (TB & Chest Medicine) from 11.4.2019.
- (ii) That, presently, one regular senior specialist of SAG Cadre and one Assistant Professor are posted in the Department of Pulmonary Medicine (TB & Chest Medicine).
- (iii) That, a circular bearing No. 412-Z-11/15/1/2013/Vol-VIII dated 30.10.2013 (Annexure A-13 to the O.A.) guides the rotational transfer policy between ESIC Hospital & ODC (EZ), Joka as well as to MDDC Haldia.
- (iv) That, MDDC, Haldia, is an extension of ESIC Hospital & ODC (EZ), Joka and that MDDC, Haldia is manned by way of rotational transfer of medical, para-medical and nursing staff from ESIC Joka.

5. The respondents, would, further clarify certain salient features of the said rotational policy as follows:-

- (a) The transfer of an incumbent under the said transfer policy is only for a period of one year.
- (b) That, the transfers under the said transfer policy is on the basis of recommendation of the 'fairness committee'

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constituted to streamline implementation of the said transfer policy.

According to the respondents:

(i) Under such rotational transfer policy, the applicant was the junior-most eligible IMO who was to be transferred to MDDC, Haldia during January, 2019.

The applicant, however, was on maternity leave during 1.8.2018 to 25.1.2019, and, hence, one Dr. Manoj Kumar Das, her immediate senior, was posted in lieu of the applicant, at MDDC Haldia. On completion of her maternity leave, the applicant became liable to be transferred to MDDC Haldia. As she was nursing an infant child, on humanitarian grounds, the respondent authorities suo motu extended such concession considering the post natal circumstances of the applicant, and, Dr. Manoj Kumar Das was retained in MDDC Haldia.

(ii) That, a letter bearing No. 412.A.12/11/SS/Vol-II on the issue of revised sanction on rationalization dated 16.2.2019 (Annexure RJ-6 to the rejoinder), would reveal that there is no sanctioned post of IMO & Specialist as per revised sanctioned strength dated 21.1.2019 indicating that the applicant was a surplus staff at ESIC Hospital & ODC (EZ), Joka.

(iii) That, the applicant was posted to the extended Unit of Haldia as per the recommendations of the "fairness committee" constituted under the said rotational policy.

(iv) That, although there was a moratorium on rotational transfer vide order dated 31.1.2020, Dr. Manoj Das had requested for compassionate transfer back to ESIC Hospital & ODC (EZ) on grounds of medical

treatment of his autistic son and he had foregone joining time and composite transfer grant to avail of such transfer.

Hence, Dr. Manoj Kumar Das was accommodated as per the exception to the moratorium orders and the applicant was directed to be posted at MDDC, Haldia vide orders dated 4.8.2020 (Annexure A-3 to the O.A.).

(v) That, the vacancy on departure of Dr. Manoj Kumar Das was affecting patient care service at MDCC, Haldia and the I/C, MDCC, Haldia had repeatedly requested the authorities for posting of an IMO to handle and take care of the patients at MDDC, Haldia. Hence, the respondents would highlight that the applicant's transfer was indeed on the grounds of administrative exigencies.

6. As the speaking order is under challenge, the same is reproduced as under:

ESI-PGIMSR AND ESIC HOSPITAL & ODC (E.Z.)
DIAMOND HARBOUR ROAD, JOKA, KOLKATA, 700 104
(A statutory body under the Ministry of Labour & Employment,
Government of India)
AN ISO 9001:2015 CERTIFIED ORGANIZATION
Fax 2467 2795, Phone: 2467 1764 / 6280 / 1322

12-T-11/11/158 (OA No. 569 of 20)/ 2020

Dated: 01.09.2020

ORDER

Dr. Leena Mistry was appointed as IMO Grade-II vide Hqrs Office Order of Appointment Memorandum No. A-14/13/1/2006-Med IV/Col: 1 dated 13.07.2015 & 21.07.2015 and subsequently joined ESIC & ODC (EZ), Joka on 28.07.2015 (FN).

1. Dr. Leena Mistry was initially posted at ICU (PACCU) from 28.07.2015.
2. MDDC, Haldia is an extended unit of ESIC Hospital & ODC (EZ), Joka.
3. Before transfer to MDDC, Haldia which is an extended part of ESIC Hospital & ODC (EZ), Joka, she was posted in the Dept. of Pulmonary Medicine (TB & Chest Diseases) from 11.04.2019.
4. She has been transferred to MDDC, Haldia vide this Office Order No. 79 of 2020 dated 04.08.2020.
5. The stated Office Order No. 79 of 2020 dated 04.08.2020 has been issued as per the policy recommended by "Fairness Committee on Transfer" of this Hospital, so issued vide Circular No. 412-Z-11/15/1/2013/Vol-VIII dated 30.10.2013.

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6. The petitioner submitted representation on 05.08.2020 by quoting ESIC Hqrs. Office Order No. A-22/13(T)/2020-Med VI Covid- 19 dated 04.06.2020 regarding Moratorium on rotational transfer of officers / staffs in view of Covid-19 pandemic and claim her transfer order is neither based on administrative reasons to fill up any vacancy due to promotion/ retirement nor based on any request from her side on compassionate ground.
7. The Competent Authority did not accept her claim/representation dated 05.08.2020 considering her transfer as administrative exigencies to sustain coveted patient care service at MDDC Haldia which is an extended part of ESIC Hospital & ODC (EZ), Joka and released her on 06.08.2020 with the advice to report for duty at MDDC, Haldia vide release order no 412-U.22/14/MDDC Haldia/2015 dated 06.08.2020.
8. Aggrieved by and dissatisfied with no response to her representation dated 05.08.2020 the petitioner filed an OA No. 569 of 2020 before the Hon'ble CAT Kolkata Bench. Hon'ble CAT Kolkata Bench vide its order dated 14.08.2020 has disposed off the OA "to consider the representation of the applicant at Annexure A7 to the OA, if received at his end, within a period of two weeks from the date of received of a copy of this order. Till such time that the representation is disposed off, as the applicant has already been relieved as per Annexure A8 to the OA, the respondents may not take any coercive measures to compel her to join her transfer place of posting".
 - 8.1 In compliance of above directions of Hon'ble CAT Kolkata Bench as received by the advocate of the respondents on 28.08.2020, the representation of the petitioner which was received by this office on 05.08.2020 through e-mail was again perused by the Competent Authority.
 - 8.2 In accordance with direction of Hon'ble CAT Kolkata Bench I have taken into consideration the contentions expressed by the applicant in her representation dated 05.08.2020.
9. I have gone through the facts made out in the representation and taken note of the facts transpiring from related matter and records and the same reveals following:-
 - 9.1 The stated transfer is an administrative exigencies yielded for a request made by Dr. Manoj Das, IMO Grade I for his transfer on medical ground of his autistic child and accordingly his transfer request was accepted by the Competent Authority without TA/DA/Joining time that means no cost to the Government for the stated transfer.
 - 9.2 As per the rotational transfer policy of this Hospital defined by fairness committee on transfer, IMOs serving in this hospital will have to undergo for mandatory rotational transfer to MDDC as per seniority list starting from junior most. Likewise in the instant case Dr. Leena Mistry was junior most among the available IMOs yet to be transferred to MDDC and was supposed to be on rotational transfer in the month of January 2019.
 - 9.3 Whereas the Competent Authority took a humanitarian view in the case of petitioner i.e. Dr. Leena Mistry since she was nursing mother of an infant aged less than six months.
 - 9.4 Therefore breaking the serial and turn, the immediate next IMO senior to her, Dr. Manoj Das was considered for transfer. He has served his stipulated period at MDDC, Haldia and his transfer back to ESIC Hospital, ODC (EZ), Joka was due as per the recommendation of the Fairness Committee. However he served four more months in addition to the definite period on account of lockdown prevailing in this pandemic condition.
 - 9.5 In this situation, considering the representation of Dr. Manoj Das the Competent Authority of this Hospital transferred him back at ESIC Hospital, ODC (EZ), Joka at own cost without providing him TA/DA/Joining time.

9.6 The inevitable vacancy so created was affecting patient care service at MDDC, Haldia. Repeated request was received from I/C, MDDC, Haldia to post an IMO to normalize patient care service.

9.7 Hence the question of transferring an IMO from ESIC Hospital, ODC (EZ), Joka to MDDC, Haldia was unavoidable. So the stated transfer Order had to be issued.

9.8 Since the applicant's circumstances were already considered once, in view of the ongoing administrative exigencies the same cannot be considered again as it would violate the very purpose of the recommendation of the fairness committee.

9.9 The transfer of Dr. Leena Mistry has been issued as per the policy made by "Fairness Committee on Transfer" of this Hospital.

9.10 Further the applicant stated in his representation that 02 GDMO posts are already sanctioned in Department of Pulmonary Medicine but the fact is posts have been sanctioned but the stated posts have not yet been released. It is further to mention that Chest Medicine Department of this Institute already have one regular Specialist of SAG cadre and one Asst. Professor. The determining criteria laid down in the rotational transfer policy as per seniority list ascending from junior most. Circular on rotational transfer hearing No. 412-Z-11/15/1/2013/Vol-VIII dated 30.10.2013 does not state that PG qualification is an exemption for this rotational transfer of one year tenure to MDDC. Further in the past there are instances of posting of IMOs with PG qualification being transferred to MDDC as per rotational transfer policy.

9.11 Regarding point no. 2 of the representation it should be clearly noted that this is a rotational transfer of one year and not a permanent posting. So the issue is not valid in this regard.

10. In view of aforesaid the representation dated 05.08.2020 of the petitioner has been considered but cannot be acceded to.

11. This Speaking Order is issued in compliance with directions of Hon'ble CAT, Kolkata Bench in OA No. 350/00569/2020.

Sd/-

Dr. Manabendra Nath Roy
Medical Superintendent, ESIC Hospital, Joka

The following is inferred from the abovenoted speaking order:-

- (i) The stated transfer is based on an administrative exigency caused by transfer of Sri Manoj Das, IMO Grade I to Joka on medical grounds of his autistic child which qualified as an exception to the moratorium on rotational transfers till 30.4.2021.
- (ii) As per the rotational transfer policy, serving IMOs will have to undergo mandatory rotational transfer to MDDC as per seniority list starting from the junior most IMO. Dr. Leena

Mistry was the junior most amongst the available IMOs, and hence was eligible for rotational transfer in January, 2019.

The authorities exempted Dr. Leena Mistry in January, 2019 on humanitarian grounds since she was nursing her new born infant.

The IMO who was immediately senior to her, Dr. Manoj Das, was therefore considered for transfer. Dr. Das has served more than his stipulated period at MDCC, Haldia, and, his transfer back to ESIC Hospital, ODC (EZ), Joka was due as per the recommendation of the fairness committee. Hence, as Dr. Das, had more than completed the stipulated transfer tenure as per the rotational transfer policy, he had represented to be posted at ESIC, Joka, on medical grounds of his autistic son, upon consideration of which, he was posted at Joka creating a consequent vacancy.

- (iii) The consequent vacancy so created having affected patient care service at MDCC, Haldia, repeated requests were received from I/C, MDCC, Haldia to post an IMO to address the rising incidence of patients in the pandemic situation. Accordingly, the applicant was transferred to MDCC, Haldia.
- (iv) The transfer order of the applicant has been issued as per the recommendation made by "Fairness Committee on Transfer".
- (v) The Chest Medicine Department of the respondent Institute is attended by one regular Specialist of SAG cadre and one Asst. Professor.

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- (vi) The circular on rotational transfer does not exempt post graduates from such transfer and historically, IMOs with PG qualifications have been transferred to MMDC as per rotational transfer policy.
- (vii) As the tenure of rotational transfer is only for one year, the aggressive resistance of the applicant to such transfer is neither reasonable nor valid.

Having heard both Counsel, and, having considered rival arguments, the applicant's claim deserves to be examined in terms of rules and settled judicial ratio.

- (a) The concept of transfer has been summed up in **B. Varadha Rao v. State of Karnataka, 1986 (3) SLR 60 (SC)** wherein it has been held that,

"... it is now settled that the Government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post."

In **Seshrao Nagorao Umap v. State of Maharashtra, (1985) II LLJ 73 (Bom.)** the Hon'ble Court had pointed out that transfer is also an implied condition of service, and, hence, as held in **K. Sivankutty Nair v. Managing Director, Syndicate Bank, 1984 (2) SLR 13 (Kant)** an employee cannot, as a matter for right, seek transfer to a place of his choice. This view was further reiterated in **Union of India v. N.P. Thomas, 1993 Supp (1) SCC 704** that, since a public servant holds a transferable post, he has no vested right to remain in a particular place nor can he insist that he must be posted at one place or the other because no Government can function in such manner. The Hon'ble Court

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had also held in **Rajendra Singh v. State of UP, (2009) 15 SCC 178** that the government servant is liable to be transferred in administrative exigencies from one place to another, and, that, such transfer is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary.

The applicant's appointment orders at A-1 to the O.A. does not declare her appointment as IMO in ESIC as a "non transferable post."

(b) We next would proceed to examine the context in which transfer orders will be justified.

The Hon'ble Court had, in **Jogendra Mohanty v. State of Orissa, 1979 (1) SLR 892**, reiterated in **Union of India v. S.L. Abbas, AIR 1993 SC 2444**, had held that the prerogative of making the transfers is that of the employer, and, that, who is to be transferred and where, is the matter for the appropriate authority to decide.

It has also been settled by judicial dicta in **N.K. Singh v. Union of India, (1995) I LLJ 854 & Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 169**, as cited in **Bank of India Staff Union v. Bank of India, (1996) II LLJ 1219** that,

"Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated. Challenge in courts of a transfer, when the career prospects remain unaffected and also there is no detriment to the government servant must be eschewed and interference by courts should be rare. Such interference may be made only when a judicially manageable and permissible ground is made out.

It is settled law that a transfer which is an incident of service not to be interfered with the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

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It is needless to emphasise that a government employee or any servant of a public undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that concerned employee holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting.

In the instant matter, the respondent authorities have argued that the applicant has been transferred to an extended unit of ESIC, Joka only for one year and also that such transfer was necessitated as an administrative exigency on the repeated requests of the IC, MDDC, Haldia to cope with the increased inflow of patients on account of the situation created by the pandemic. It cannot be disputed that the services of a Pulmonologist are essential to deal with complications that had arisen with the spread of the pandemic and it is difficult to accept the fact that the authorities were not acting in public interest in moving the applicant from Joka, (where she is reportedly, as per RJ 6, a surplus staff), to Haldia, where her services would be of benefit to the patient community. The applicant has echoed such sentiments in her averment that, "she has been sincerely and diligently serving mankind in the global epidemic." Such diligence, however, cannot remain confined only to the patients in ESIC, Joka.

Accordingly, when a transfer order is issued to address administrative exigency, and, in public interest, it cannot be faulted with infraction of any professed norm or principle governing the transfer and the applicant's allegations in challenging the public exigency fails to be substantiated.

(c) The applicant would rely on the order dated 4.6.2020 regarding moratorium on her transfer.

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In this context, we would be guided by **Jogendra Mohanty v. State of Orissa, 1979 (1) SLR 892** and **K. Nirmalinandan v. M. Divakaran, 1989 (5) SLR 422 (Ker)** wherein the Hon'ble Courts had held that executive guidelines create no rights in the officer and he is not entitled to rely on the guidelines to challenge the order of transfer. Further, in **K. Nirmalinandan (supra)** it was held that administrative guidelines relating to transfer do not fetter the right of the Government to transfer a Government servant in the public interest.

In **Varadha Rao (supra)** the Hon'ble Apex Court observed to the following effect:-

"The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfer in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

Accordingly, when the services of a Pulmonologist are in demand in the extended health facility, the applicant cannot disparage such requirements by holding the status of MDDC, Haldia in question, by observing that the said Unit has no enhanced workload or is not subject to any exigencies. In this, we would be guided by the ratio in **K.B. Shukla v. Union of India, 1979 (2) SLR 58 (SC)**, wherein the Hon'ble Apex Court has held that the Government alone is best suited to judge as to the existence of exigencies of such a service requiring appointment by transfer.

Accordingly, we would hold that the respondent authorities were the best judge to decide on the events that led to the administrative exigencies and in calling for the service of the applicant therein.

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(d) The applicant has also advanced the location of her spouse as a ground by virtue of DOP&T O.M. dated 30.9.2009 to agitate her plea that she is entitled to remain in the same station as her spouse.

We would herein refer to **Akshya Kumar Beura v. Director Higher Education, 1991 Lab IC 2190 (Ori-DB)** wherein the Hon'ble Court had held the plea of separation by transfer and the consequent hardship principle will have no application where the husband and wife are not under the same master i.e. in two different educational institutions.

In this case, while the applicant is a serving IMO at ESIC, Joka, her husband is pursuing higher studies at Calcutta Medical College on study leave. An incumbent under study leave cannot claim to be posted for discharge of his duties in any particular station; hence, the guidelines contained in DOP&T O.M. dated 30.9.2009 will cease to apply, duly supported by ratio contained in **Askhya Kumar Beura (supra)** in case of the applicant.

(e) The applicant has also questioned her transfer based on her claim that as a Post Graduate, she would deserve immunity from being transferred to extended centres and health facilities.

While deliberating on the subject of preeminence of the present transfer, the Hon'ble High Court of Calcutta in **C.C. Kar (Dr.) v. State of West Bengal, 1986 (2) SLR 251 (Cal-DB)** had held as follows:-

"..... if degree of pre-Eminence in a Post-graduate discipline be relevant factor for testing validity or otherwise of an order transferring a post-graduate teacher, the Court would be an unenviable position of pronouncing upon the merits of a post-graduate teaching staff whom the government might attempt to transfer elsewhere. In our view, it is not for the court to decide whether public interest would be better served by retaining him in the said Post-graduate Institute or

by transferring him to an under graduate Institute. When such transfer is based upon a policy decision of the Government the Court may not review the propriety of formulation of such an executive policy."

Accordingly, the applicant's claim to immunity on grounds of her Post Graduate clarification also fails, particularly, as the respondents have clarified that the rotational transfer policy does not exclude Post Graduates from the ambit of transfer, and, as a matter of course, other post graduates have been transferred to MDDC, Haldia.

7. The applicant has challenged her transfer on the primary grounds of co-locational posting with her spouse, application of the moratorium on rotational transfer during the pandemic, her pre-eminence on account of her Post Graduate qualification as well as non-justification of administrative exigencies.

We find, however, that the respondents have routed her rotational transfer on the recommendation of the Fairness Committee. That, there is a pressing need of a Pulmonologist at MDDC, Haldia, justifying an administrative emergency. That, post graduates are not exempt from rotational transfer, and, also the fact that the applicant's spouse admittedly, being on study leave, DOP&Ts O.M. dated 30.9.2009 is not applicable to the applicant. It is also noted that the applicant's tenure to her transferred post would only be for a period of one year.

8. Accordingly, the applicant's challenge, neither being substantiated by infraction of professed norms of transfer nor on robust satisfaction of any malafide, fails to merit attention in terms of the settled ratio of **N.K. Singh (supra)**, **Abani Kanta Ray (supra)** and **S.L. Abbas (supra)**. The applicant's insistence on continuing to function at ESIC, Joka is

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controverted by the ratio in *Varadha Rao (supra)* as well as other related judgments.

9. Accordingly, her claim fails and the O.A. is dismissed on merits.

Interim order dated 10.9.2020 stands vacated.

There will be no order on costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Bidisha Banerjee)
Judicial Member