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| YSerial No. andDate of order. 1 | Order of the Tribunal with signature2 | Office action with date and dated signature of parties when necessary3 |
|  *10* *22.02.2018**H.S* | *For the Applicant : Mr. Swapan Kumar Nandi,* *Learned Advocate.**For the Respondents : Mr. Goutam Pathak Banerjee,* *Mr. Biswa Priyo Roy,* *Learned Advocates.* *The applicant has challenged order of transfer dated September, 04, 2013 issued by the respondent no. 2 (Annexure C1 to the original application) and the show cause notice dated August 12, 2014 issued by the respondent no. 3 in connection with unauthorised absence of the applicant (Annexure H to the original application) by filing the present application Under Section 19 of the Administrative Tribunals Act, 1985.* *The applicant was Medical Officer (Orthopedic) attached to Sreerampur Walsh Sub-Divisional Hospital in the District of Hooghly. He was transfer from his post at Sreerampur Walsh Sub-Divisional Hospital to Kurseong Sub-Divisional Hospital in the District of Darjeeling as Medical Officer (Orthopedic) by Notification dated September 4, 2013 issued by the respondent no. 2. The applicant joined as Medical Officer (Orthopedic) at Kurseong Sub-Divisional Hospital in the District of Darjeeling on October 1, 2013, but thereafter remained absent from duty till date. On August 12, 2014 the respondent no. 3 issued notice to the applicant calling upon him to show cause as to why disciplinary action will not be taken against him for his unauthorised absence from duty after October 1, 2013 till the date of issuance of the said show cause notice.* *By referring to the guidelines for posting and transfer of Medical Officers of West Bengal Health Service issued by the Department of Health and Family Welfare, Government of West Bengal on November 26, 2001 (Annexure C to the original application), Mr. Swapan Kumar Nandi, Learned Counsel for the applicant submits that the guidelines issued by the Government of West Bengal are binding on the Government, but the said guide lines have not been followed in giving posting to the applicant. He has relied on the decision of Allahabad High Court in case of “ Chandra Shekhar and another V Registrar” reported in 1996 (1) E.S.C. 152 (Allahabad) in support of his contention that the guidelines issued by the Government are binding on the Government.* *On the other hand, Mr. Goutam Pathak Banerjee, Learned Counsel for the respondents submits that the applicant cannot challenge the order of transfer after resuming his duty by accepting the order of transfer.* *On perusal of the judgment passed by the Allahabad High Court in “ Chandra Shekhar and another V Registrar” (Supra), we find that the Allahabad High Court dealt with a case were the wife claimed for posting along with the husband belonging into the same service. In the present case, the transfer order was issued by the respondent no. 2 in connection with about 40 (forty) Medical Officers in the interest of public service. So, the ratio of the decision of Allahabad High Court in the reported case cannot have any bearing on the facts of the present case. Moreover, the guidelines for posting and transfer of Medical Officers of West Bengal Health Services issued by the Department of Health and Family Welfare, Government of West Bengal indicate that any Medical Officer can be transferred by the Government at any time at any place on the administrative exigency. Since the transfer is condition of service of the Government Officers and since the applicant joined as Medical Officer in the Sub-Divisional Hospital at Kurseong by accepting the order of transfer, we are of the view that the applicant is estopped from challenging the transfer order. Moreover, we do not find any basis for challenging the transfer order of applicant. Nor is there any valid ground for challenging the show cause notice dated August 12, 2014, particularly when the applicant is absent from duty after October 1, 2013 till the date of issuance of show-cause notice on August 12, 2014. The un-authorised absence from duty may be construed as misconduct and the same is good ground for initiating disciplinary action against any government employee. In view of our findings, we do not find any merit in the present application. As a result, the original application is dismissed.* *Plain copy to both parties.* **( S.K.DAS) ( R.K.BAG)**  **Member ( A) Member (J)**  |  |