

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 190 of 2025

Sudip Chanda

Versus

State of West Bengal and others

For the Petitioner : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv
Mr. Soumya Majumdar, Sr. Adv
Mr. Bikram Banerjee
Mr. Sudipta Dasgupta
Ms. Sagarika Goswami
Mr. Arka Nandi
Ms. Sinjini Chakrabarti.

For the Respondents/ State : Mr. Kishore Datta, Advocate General
Mr. Swapan Banerjee
Ms. Sumita Shaw
Mr. Soumen Chatterjee.

For the Respondent Nos. 5 & 6 : Mr. Mrinal Kanti Mukherjee
Mr. Dipanjan Biswas.

Judgment on : September 24, 2025.

Madhuresh Prasad, J.:

1. The present writ petition arises out of an order dated 04.09.2025 passed by the West Bengal Administrative Tribunal (SAT for short) whereby the petitioner's Original Application No. 322 of 2025 along with M.A. 67 of 2025 and M.A. 82 of 2025 has been disposed of as being without any merit.

2. The brief factual background of the matter is that the petitioner was working as an Industrial Development Officer (IDO for short) posted in the Directorate of Micro, Small and Medium Enterprise (MSME) at the New Secretariat building in Kolkata.
3. The petitioner was General Secretary of the West Bengal Industrial Development Officer, Welfare Association. While performing his duties diligently, he claims to be taking up the welfare issues of the Government employees. He claims to be a leading personality pursuing the issue regarding grant of Dearness Allowance to employees in the State of West Bengal. He also participated in agitations and rallies conducted under the banner of "Sangrami Joutha Mancha" for getting Dearness Allowance for the employees of the State. He also claims to have made several complaints by way of representations regarding the present Head Assistant (Establishment) namely Satyajit Swarnakar (respondent No. 6). The representations were made alleging that the official actions of respondent No. 6 were politically motivated.
4. The respondent No. 6 is the working President of "Paschimbanga Rajya Sarkari Karmachari Federation", which according to the present writ petitioner is an association having a different political ideology and having affiliation with the ruling political dispensation. It is the case of the present writ petitioner that on account of ideological rivalry between the petitioner's association and the association of respondent No. 6, the respondent No. 6 proposed the petitioner's transfer from the Directorate (Head Quarter) to a Block Office of the department under the Block Development Officer Kalchini Development Block, Alipurduar. When such written proposal was made on 30.07.2024, the then Director put a note on the recommendation asking the respondent No. 6 to discuss the issue.

Photocopy of the recommendation containing the note of the then Director has been placed on record.

5. The respondent No. 6 pursued the present petitioner's transfer as recommended, but without any success. Thereafter, authorities constituted a committee of three Joint Directors vide Office Order dated 25.03.2025 issued under the signature of the Director, which was entrusted the responsibility for transfer and posting of all employees and officers under the Directorate of MSME. One Assistant Director, one IDO and one Head Assistant, namely the respondent No. 6 was attached with the Committee for rendering assistance to the committee. As soon as the respondent No. 6 was attached to the committee, the work of transfer was reallocated to another Joint Director by an order dated 08.04.2025 issued by the Director MSME Government of West Bengal.
6. Within a month from such reallocation, a transfer order dated 07.05.2025 was issued transferring 26 IDOs, including the present writ petitioner.
7. The writ petitioner is an officer holding a position (IDO) who normally is posted in the district head quarters. He is a Senior Officer of his department and was posted in the Head Quarters. By the impugned transfer order dated 07.05.2025, he is transferred to a Block Office, at such a great distance, about 700 kms away. It is this transfer order which the petitioner assailed before the SAT.
8. At the very outset the learned Senior Advocate submitted that the petitioner's service has a transfer liability. He cannot object to any transfer, as transfer is an incidence of his service. However, the present transfer is based on a proposal made by respondent No. 6, suffers with mala fide in law and is unsustainable.
9. It is submitted by the learned Senior Advocate for the writ petitioner that the transfer order if viewed keeping in background the above noted facts and circumstances leaves no room for doubt that the petitioner's transfer to the office

of the Block Development Officer (BDO) Kalchini Deo at Alipurduar about 700 k.m. away from his present place of posting is vitiated by *mala fide*.

10. In order to sustain the allegation of mala fide the learned Senior Advocate has drawn attention of this Court towards application filed under the Right to Information Act, 2005 (RTI Act) seeking various information regarding the process leading to the petitioner's transfer. In response thereto information has been provided to the writ petitioner that:

"usually no senior IDO with more than 15 years of experience is transferred from the Headquarter to a BDO Office unless constrained by such a situation as it has evolved concerning the District of Alipurduar and Darjeeling where there is not a single IDO for total 6 (six) blocks of Alipurduar and 5 (five) blocks of Darjeeling District(Except Siliguri Subdivision).

Because of such situation recently 3 Senior IDOs having more than 15 years of experience have been transferred to the BDO Offices at a distance of more than 200 kms. from the Directorate Headquarter."

11. In response to a query for being supplied the notesheet pages containing the processing and decision leading to issuance of the impugned transfer order the authorities under the RTI Act have responded that:

"Larger public interest doesnot justify the disclosure and sharing of such information may cause unwarranted invasion into the privacy and confidentiality of a Govt. office".

12. Learned Senior Advocate submits that the undue secrecy maintained by the authorities is also a glaring proof of the fact that the authorities are reluctant to share the information, as it is likely to expose the *mala fide*.

13. It is submitted by the learned Senior Advocate that even before the Tribunal and this Court in the present proceeding, the applicant made specific assertion in this regard. The authorities, however, have neither come out with the records to show the processing of the transfer order, nor they have enclosed any evidence in this regard. Relying on decision of the apex Court in the case of **Bharat Singh & Ors.**

V. State of Haryana & Ors. reported in (1988) 4 SCC 534, it is submitted that a specific plea of *mala fide* was taken based on the proposal dated 30.07.2024. The authorities, therefore, were required to enclose the evidence in support of their contention that the transfer order has been issued under bona fide exercise, in administrative exigency. Authorities have not come out with the details and, therefore, such omission to disclose the evidence in support of the averments regarding the transfer being a bona fide exercise, gives rise to an inference that the uncorroborated averments in the reply is vitiated in substance and is unacceptable. In this connection he also relied upon a recent decision of this Court dated 10.09.2025 in the case of ***Anup Mondal & Ors v. Union of India & Ors*** passed in ***WPCT 242 of 2024 with WPCT 204 of 2024 (Union of India & Ors v. Anup Mondal & Ors.)*** .

14. The learned Senior Advocate for the writ petitioner submits that it is shocking to note that the Respondent No. 6 who is a Head Assistant being an employee, lower in rank and status than the writ petitioner, has been made a Member of the Committee and deciding the transfer of an officer in the rank of the petitioner, and making recommendation in this regard.
15. He further submits that the Director is the appropriate authority in the matter of transfer of the petitioner, who is an IDO. It is surprising that the respondent No. 6 who is just a member to assist the Transfer Committee has filed a reply to oppose the petitioner's OA before the Tribunal and made allegations regarding the veracity of the document/ proposal dated 30.07.2024 being relied upon by the writ petitioner. The fact that the private respondent has knowledge of the all issues is glaring proof that he has played a vital role in the petitioner's transfer.
16. The learned Senior Advocate for the State Government, on the other hand,

submits that the petitioner has remained at Kolkata for a considerable period of time i.e. for the last about 11 years. No employee can claim to continue at any posting. His service is liable to transfer in any office in the State . He has thus been transferred, because there is no IDO for the six (6) Blocks in the District of Alipurduar. The transfer is in exigency of administration and therefore, requires no interference.

17. It is further submitted that the petitioner's second appeal under the RTI Act seeking disclosure of the self-same information, is pending consideration in the second appeal. The authorities, therefore, have not placed any document/s on record in the present proceeding in support of their stand. The plea of mala fide is unfounded. There is no infirmity in the petitioner's transfer. Therefore, the Tribunal has rightly rejected the petitioner's Original Application (OA).

18. Learned Advocate representing the Respondent No. 6 has appeared and made submissions in line with the submission being advanced by the learned State Counsel. He has also drawn attention of the Court towards the reply filed before the Tribunal to submit that the letter dated 30.07.2024 being relied upon by the petitioner to allege mala fide is false and fabricated, only for the purpose of obtaining an order from the Court to somehow stall his transfer. The petitioner has not approached the Court with clean hand and therefore, does not deserve any relief.

19. The submissions made on behalf of the State and the Respondent No. 6 regarding the transfer being in exigency of service normally, in our opinion would be by itself sufficient to disentitle the petitioner from any relief in respect of a transfer. The law in this regard is settled that in exercise of judicial review, the writ Court should eschew interfering with a transfer order, unless it is shown that the transfer is to a lower post, in violation of any Rule or Statute; and suffers from

the vice of *mala fide*.

20. In the present case keeping in background the proposal dated 30.07.2024 made by respondent No. 6 for petitioner's transfer to Kalchini Dev. Block, we have taken note of the submissions regarding constitution of a three-Member Committee by Joint-Director; as also the fact that the respondent who proposed petitioner's transfer was made an attachee to the committee must be taken note of. Thereafter, the erstwhile Joint Director who refused to act upon the recommendation dated 30.07.2024 made by the Respondent No. 6 was replaced by another Joint Director who was assigned the work of transfer, vide order dated 08.04.2025 within a month, thereafter i.e. on 07.05.2025 the petitioner was transferred to the very same station, which was proposed by the respondent No.6, on 30.07.2024.

21. In the present case, however we find that in spite of opportunity before the Tribunal and before this Court the authorities have chosen not to come out with the records to show a *bona fide* processing of the transfer order; or any decision to meet the allegation, that petitioner's transfer is as per recommendation of respondent No. 6. On the contrary, they have maintained a calculated silence and raised a plea of office privacy so as to justify non-disclosure of the records, concerning, an otherwise, claimed to be a routine transfer. They have resisted the disclosure of records by raising a plea that it would allow invasion of privacy of the Government office. We are not impressed with such arguments as normally when such *mala fide* is alleged based on some documentary evidence then the authorities sustain their stand regarding decision being *bona fide* by producing documentary evidence from the records of the process leading to government decision, before the Court and/or Tribunal, on a routine basis.

Respondent authorities cannot justify non-disclosure of such records based on such a specious plea regarding privacy of the Government, that also before this Court exercising writ jurisdiction under Article 226 of the Constitution of India. Withholding of such information in view of an allegation of *mala fide* being made out by the writ petitioner, on the basis of a photocopy of letter dated 30.07.2024, also gives rise to an inference and presumption that there is some substance in the allegation levelled by the writ petitioner.

22. In this connection we are inclined to accept the submissions advanced by the learned Senior Advocate appearing on behalf of the writ petitioner relying on decision in the case of **Bharat Singh & Ors (supra)**, in paragraph 13 of the judgment the apex Court in similar circumstances where the points raised in the affidavit filed in the writ petition was not supported by any evidence in his support has held:

"13. ...In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it...."

23. We also consider it fruitful to refer to a more recent decision of the apex court in the case of **Ms. X versus The Registrar General, High Court of Madhya Pradesh and Another**, reported in **(2022) 14 SCC 187**, wherein dealing with an allegation of the State action being arbitrary, the Apex Court held that there is a presumption of validity of State action and the burden is on the person who

alleges violation of Article 14 of the Constitution of India to prove the assertion.

However, since sufficient material was placed by the petitioner therein to support an allegation of arbitrariness, the Apex Court held in paragraph 58:

“58. It could thus be seen that this Court has held that there is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 of the Constitution of India to prove the assertion. It has been further held that where no plausible reason or principle is indicated nor is it discernible and the impugned State action appears to be arbitrary, the initial burden to prove the arbitrariness is discharged, thereby shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The limited scope of judicial review is only to satisfy that the State action is not vitiated by the vice of arbitrariness and no more. It is equally settled that it is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate. It has been held that the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case.”

24. In the instant case also the applicant / writ petitioner has produced the letter dated 30.07.2024, written by respondent no. 6, containing a recommendation for his transfer to the office of the BDO, Kalchini Development Block. The respondent authorities however in spite of opportunity before the tribunal, as well as before this court in the present proceedings did not produce the document/s or records relating to the decision-making process pursuant to which the petitioner's transfer was notified to the office of the BDO Kalchini. They have made a denial in the reply, but chose not to support the same with reference to any material whatsoever, and therefore have failed to show that the letter dated 30.07.2024 was not considered while deciding petitioner's transfer.

25. Apart from issuance of letter dated 30.07.2024 we find that the petitioner alleges that the same is followed by a series of events, including constitution of the three-member committee for transfers, as also change of the Director, which in

our view, *ipso facto* cannot be viewed with any doubt or motive. In this regard we are guided and bound by the exposition of law in this regard in paragraph 61 of judgement in the case of **Ms. X** (supra):

“61. It is trite that the State is under the obligation to act fairly without ill will or malice — in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Where malice is attributed to the State, it can never be a case of malice or spite on the part of the State. It would mean exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others.”

26. The only allegation or ground urged on behalf of the applicant is that the transfer was affected as per the recommendation of his rival, respondent No. 6. In view of consideration above, we are inclined to accept this submission advanced on behalf of the applicant / writ petitioner. He has in our opinion discharged his burden, shifting the onus on the respondents, which the respondents have failed to discharge.

27. At this juncture, we consider it apposite to take note of the authorities response to copy of the recommendation dated 30.07.2024 which is to be found in paragraph No. iv of their reply, and reads:

“...It is specifically stated that the Director, MSME, WB neither received any such letter dated 30.07.2025 of the Paschim Banga Rajya Sarkari Karmachari Federation regarding proposal for transfer of IDOs, appearing at page 117 of OA, nor acted upon the same in any manner whatsoever at the time of issuance of the transfer order dated 07.05.2025 in respect of 26 Industrial Development Officers, as alleged. The applicant has to make strict proof thereof otherwise it will be presumed that the said letter dated 30.07.2024 is a false and fabricate document....”

28. In this paragraph they have made a bald denial that the recommendation was not received and not acted upon. As regards the veracity of the document, they have made vague and evasive reply that it is subject to strict proof by the

petitioner failing which it will be presumed to be false and fabricated.

29. The Tribunal, however, after taking note of the submissions has found the allegations made by the applicant to be due to ill founded reasons. Merely because the order by which the petitioner was transferred contained the transfer of 25 other IDOs the Tribunal has rejected the *mala fide* alleged by the petitioner before the Tribunal. The Tribunal has also taken into consideration the law which mandates that power to transfer an employee is the complete domain of the authority empowered to transfer.

30. In view of the limited scope for interference in a transfer, we are conscious that in every case, on mere allegation of mala fide the authority cannot be called upon to justify a transfer order. It is only in circumstances like the present one where specific allegation of mala fide has been made relying upon a document dated 30.07.2024 and the respondent have not come out with any material whatsoever to support their claim that the transfer is without considering the recommendation dated 30.01.2024; and that it is a product of administrative exercise in exigency of service, that we are inclined to interfere with the transfer order. Moreso, in view of the fact that the applicant/ writ petitioner was transferred to the station, as per the recommendation.

31. We, therefore, find the transfer order dated 07.05.2025 to be vitiated by mala fide in the eye of law and therefore unsustainable. We quash the same in so far as the petitioner is concerned, and reserve the liberty of the authorities to take decision afresh regarding the petitioner's posting to any other station, in accordance with law.

32. In view of our findings above we further hold that the writ petitioner cannot be made to suffer loss of salary and emoluments for this period as well as current

salary. Arrears be paid to the petitioner within 8 weeks from the date of receipt/
production of a copy of this order.

33. The writ petition is allowed in the above terms. Original Application being 322 of
2025 also stand allowed accordingly.

34. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the
parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

Later

Prayer is made for stay by the learned A.G.P.

In view of the nature of order passed, we have considered the prayer and find no scope
for passing stay order.

Prayer is rejected.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)