

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

RESERVED ON: 19.03.2026

DELIVERED ON: 17.04.2026

PRESENT:

THE HON'BLE MR. JUSTICE REETO BROTO KUMAR MITRA

WPA NO. 12309 OF 2025

DR. DEBASHIS HALDER

- VERSUS -

THE STATE OF WEST BENGAL AND ORS.

Appearance:

Mr. Samim Ahammed, Adv.

Mr. Arka Maiti, Adv.

Ms. Gulsanwara Pervin, Adv.

Ms. Saloni Bhattacharya, Adv.

Ms. Reshma Khatun, Adv.

..... for the Applicant/Petitioner

Mr. Kalyan Bandopadhyay, Sr. Adv.

Ms. Pramiti Banerjee, Adv.

Mr. Arka Nag, Adv.

Mr. Debayan Sen, Adv.

Mr. Niket Ojha, Adv.

..... for the State

Mr. D. N. Maiti, Adv.

Mr. A. Santra, Adv.

..... for the respondent no. 5

Reetobroto Kumar Mitra, J.:

1. The petitioner is aggrieved that he has been transferred from the medical college of his choice in Howrah, while serving as a senior resident to Gazole, Malda.
2. The petitioner is a qualified medical practitioner, having successfully completed his post-graduate degree in Anesthesiology from the Medical College, Kolkata, which is affiliated to the West Bengal University of Health Sciences (for short, "WBUHS"). The petitioner is duly registered with the Medical Council in the batch of 2020-2023. The petitioner participated in the counselling process and had also executed a bond, required of persons willing to serve as senior resident based on their final MD examination marks, in terms of the notification dated February 20, 2025, which invited eligible candidates to participate in the centralized counselling process for selection and posting of incumbents to various government hospitals in West Bengal.
3. Upon participation, the petitioner had secured Rank 24 in the merit list in Anesthesiology and was allotted the post of senior resident at the Department of Anesthesiology, Howrah District Hospital. This was in terms with the self-declaration given by the petitioner that he was willing to be engaged in the Howrah District Hospital under the indemnity bond. The self-declaration was given on February 27, 2025.

4. The petitioner had served the first year in the Howrah District Hospital, being the hospital of his choice, and thereafter was asked to join Gazole State General Hospital, Malda. It is this posting from Howrah to Malda which has been assailed in this writ petition.
5. Mr. Samim Ahammed, appearing for the petitioner, has raised the following issues:
 - a. The transfer of the petitioner is contrary to the self-declaration that he would not seek any change from the place of engagement opted by him, which was finalised.
 - b. The Standard Operating Procedure (hereinafter "SOP") envisaged in the Memo No. HF/O/HS(MA)/222/HFW-43011(11)/152/2022-ADMIN dated February 16, 2023 (page 82 of the writ petition) has been grossly violated.
 - c. The SOP contemplates engagement of candidates after completion of their post-graduate degree at different medical colleges and hospitals as senior resident for one year through counselling. Thus, upon counselling, the Howrah District Hospital was allotted to the petitioner.

- d. Therefore, his appointment to the Howrah District Hospital could not have been changed and he could not have been asked to join in Malda. Thus, there has been a gross deviation from the SOP.
- e. Of the entire list of 871 candidates, there has been a selective procedure adopted for only two persons, including the petitioner, which is in violation of the SOP.
- f. The SOP has been followed for all the other 869 candidates but not for the petitioner and another.
- g. In the list of vacancies from which interested persons had to opt/choose their medical college/hospital, Gazole in Malda was not even there with a vacancy. Thus, the vacancy in Gazole was created only out of bias against the petitioner and put him in difficulty.
- h. The petitioner had written to the concerned authority on May 27, 2025, and finally on May 29, 2025, challenging the unilateral posting of the petitioner from the medical college of his choice to a far-flung place in Malda.

- i. This posting was not just unilateral, it is also the result of an administrative bias and malice in law.
 - j. The concept of malice in law stems, in this case, from the participation in the protest regarding an unfortunate event that had unfolded in the R. G. Kar Medical College and Hospital. Thus, the administrative bias was really in the nature of a retributory measure to teach the petitioner a lesson, under the garb of an administrative requirement which allegedly warranted such posting.
 - k. The petitioner has relied upon a decision of this Hon'ble Court by the learned Single Judge in WPA 12496 of 2025 (Dr. Aniket Mahata -vs- The State of West Bengal & Ors.), which was duly affirmed by a Division Bench of this Hon'ble Court in MAT 1736 of 2025 (State of West Bengal & Ors. Vs. Dr. Aniket Mahata & Ors.), as well as the fact that the order of the Division Bench has been upheld by the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No(s). 35788/2025 on December 11, 2025.
6. Thus, in view of the aforesaid submissions, the petitioner ought to be re-posted to the original college of his choice, Howrah District Hospital, and

the transfer by way of Memo No. HF/O/HS(MA)/725/SF-11/2025 dated May 26, 2025, should be set aside.

7. Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing for the respondent, has defended the order of posting on the following grounds:

- i. The petitioner is in the second year of his residency and is thus not covered by the SOP. The initial appointment, which is for a period of one year, is covered by the SOP. The initial appointment is thus the result of the counselling process as specified in the SOP, while the second and third years are not based on counselling.
- ii. It is true that Gazole State General Hospital was not a hospital included in the list of options for Anesthesiology. The hospital had not been upgraded and a seasoned Anesthesiologist was not required at the time of counselling.
- iii. He has placed reliance on a Memo No. CMOH/MLD/Estb/649 dated March 20, 2025, by which Gazole Rural Hospital has been upgraded to the category of "State General Hospital".

- iv. In fact, he also drew support from the document saying that funds for renovation of the building had been approved and subsequent thereto various surgical procedures, including Orthopaedic and General Surgery, will occur at the said hospital in future, on account whereof an Anesthesiologist was required at the said hospital.
- v. Thus, the posting of the petitioner cannot be termed as unjust, arbitrary, or retaliatory in any manner whatsoever.
- vi. In so far as the applicability of the decision in Dr. Aniket Mahata (supra) is concerned, this particular case is completely different from that of Dr. Aniket Mahata. Dr. Aniket Mahata was a first-year incumbent and thus covered by the counselling process, and truly the transfer could not have been made. In the instant case, since the petitioner is a second-year senior resident, the applicability of the counselling round to the petitioner is not applicable. There is no question of the counselling round extending to the petitioner, the window of retaining the hospital/medical college of the incumbent's choice is restricted to the first year only. For the second and third year, there is no such process through counselling which can bind the State to retain such an incumbent in the hospital of his choice.

vii. Thus, the State authority is within its right to post a petitioner after completion of the first year as a senior resident. Therefore, this case is not covered by Dr. Aniket Mahata (supra).

viii. The petitioner, while executing the bond, makes a specified declaration that he is willing to work in multiple speciality/super speciality hospital/secondary/tertiary level hospitals in West Bengal for a continuous period of three years. Thus, the petitioner by his own accord has agreed to serve the State in any medical college, as specified in the bond, throughout the State of West Bengal. Hence, he cannot claim a right not to be transferred from the college of his choice for the entire tenure of three years.

ix. He has placed reliance on three decisions of the Hon'ble Supreme Court of India:

I. 1989 2 SCC 602;

II. 2009 11 SCC 678;

III. 2022 12 SCC 1.

8. I have heard learned counsel for the parties and perused the record and gone through the material on record.
9. A few admitted facts are relevant before embarking on the adjudication of this matter.
10. The admitted facts are summarised as under:
 - a. The petitioner is a successful candidate having secured Rank 24 in the merit list, and was allotted the post of senior resident at the Department of Anesthesiology, Howrah District Hospital.
 - b. The petitioner had executed a self-declaration form for SR bond engagement affirming that he would not request any change of the place of engagement. The place of engagement was given as the Howrah District Hospital.
 - c. In the final engagement list published on May 26, 2025, the petitioner was found to have been posted at Gazole State General Hospital, Malda.
11. On this very short conspectus, the disputes have arisen.

12. The disputes in a nutshell are that the petitioner ought not to have been posted at Gazole, but in Howrah, for the following reasons:
- a. Gazole was not a hospital featuring in the list of original vacancy matrix.
 - b. The petitioner, due to his rank, was entitled to be posted in Howrah which was his first preference and not elsewhere.
 - c. The posting at Gazole is on account of a clear departure from the established SOP.
13. This has been refuted by the respondent on the following terms:-
- a. Transfer is not a matter of right.
 - b. Hence, the transfer of the petitioner to Gazole was due to need-based reasons and cannot be challenged by the petitioner, as he had undertaken to work in any hospital in West Bengal. The issues of SOP and transfer based on the counselling are restricted to students of the first year only. The petitioner being in the second year cannot claim the application of the counselling process for any beneficial transfer.

14. To appreciate the rival contention, it is imperative to first understand the entire process of appointment and posting of doctors as senior residents under indemnity bond in various medical colleges/teaching institutions in West Bengal.
15. Doctors with requisite qualification, as specified from time to time, are given the option to apply and obtain posting as senior resident on the basis of merit list and on the basis of the counselling rounds. The SOP contained in Memo No. HF/O/HS(MA)/222/HFW-43011(11)/152/2022-ADMIN dated 16th February, 2023, clarifies in clause 6 that the Director of Medical Education will arrange to collect the particulars of all candidates from the concerned medical colleges, which would include, amongst others, the rank obtained in the final MD examination. The Directorate of Medical Education would thereafter, along with the concerned Branch of the Department (MERT), arrange engagement of such candidates completing post-graduate degree at different hospitals/teaching institutions as senior resident for initial one year through counselling process based on merit list prepared on the basis of the collected stated particulars (as in clause 6) of SOP.
16. The SOP also specifies that after completion of the first year as per the bond service by such candidates, the Director of Health Services along with the concerned Branch of the Department (HS-MA) will arrange for appointment of such candidates at different secondary tier hospitals and

rural hospitals in the State as Senior Resident “through further counselling”, “based on the merit list already prepared” on the basis of collected stated particulars. Thus, the stated particulars and the counselling process will together form the merit list which will decide as to where a candidate will be posted. Thus, the higher the rank of the candidate and depending on his choice, the more likely he is to get a college of his choice/preference. Thus, if a candidate has chosen a particular hospital, he has the right to be posted there provided no other candidate with a better rank than him has already opted for that particular seat or for that particular seat in that hospital.

17. Thus if there is a single vacancy in a college and if a higher ranked candidate has already opted for a particular post in a particular hospital as senior resident, lower ranked candidates, even if that particular college is their first preference, will not get posted there.
18. This is the process of appointment and/or posting of a candidate to a particular college.
19. The applicability of the SOP is not restricted to the first year candidates only. The SOP merely states that posting in the first year will not ensure nor grant a right to any candidate that he gets posted to the same hospital for the next year or the years thereafter. Thus it is possible that Candidate “A” gets a posting in Hospital “X” in the first year, but is not able to obtain

the same hospital in the next year, if a higher ranked candidate in the merit list has opted for it.

20. The petitioner has opted for a post in Anesthesiology in Howrah Medical College and Hospital where there were two vacancies.
21. The petitioner was initially posted at Howrah. However, in the second year, the petitioner for reasons which are not very clear from the records was posted at Gazole.
22. The reasons sought to be furnished by the respondent are that Gazole, though not featuring in the vacancy list because it was not a State General Hospital at the time, has been specifically upgraded by Memo No. CMOH/MLD/Estb/649 dated March 20, 2025. Thus, the said hospital required an Anesthesiologist at Gazole, Malda, to assist in Orthopaedic and General Surgeries which would take place in the said hospital. Thus, the petitioner being an Anesthesiologist and having executed an indemnity bond, thereby agreeing to serve in hospitals in West Bengal, was duty bound to take up the job of Anesthesiology at Gazole. There is, according to the respondents, no reason to question the “transfer of the petitioner to Gazole from Howrah”. It is, as if, the entire process has happened in the usual course of business and need not be interfered with.

23. A second and rather interesting issue raised is that the petitioner cannot challenge this transfer, as transfer is not a matter of right. There is no dispute on this proposition; the Supreme Court, in cases such as 1989 2 SCC 602, 2009 11 SCC 678, and 2022 12 SCC 1, has categorically held that transfer is not a matter of right.
24. The moot question therefore arises, as contended by the petitioner, that this process is not a transfer at all. This is a fresh posting. The tenor of the respondent's submissions is also similar in that the genesis of this transfer or posting is not merely a shift from one place to another but an appointment on the basis of a merit list and a counselling process. Had there been no consideration on the basis of any merit list or counselling, this could well have been considered as a case of transfer. This is not so.
25. On a factual basis, from the records it appears that there are two vacant seats which were available and featured in the vacancy matrix provided by the respondent at the Howrah General Hospital, in the Department of Anesthesiology. It is also an admitted fact that at least one of the two posts is still lying vacant. Thus, it is clear that there is no other person above the petitioner in rank (considering merit list and counselling) who has opted for Howrah Medical College or has been given posting at Howrah. Thus there is no reason why the petitioner who had opted for Howrah and had been ranked as per the merit list and counselling process should not have been given the posting at Howrah.

26. The only reason could have been that the petitioner was required as an Anesthesiologist to immediately attend to the duties of Anesthesiology at Gazole. If Gazole had such requirement, one could have considered whether the petitioner could have been asked to continue at Gazole, which place he had already joined, to further continue in service.
27. It is also not in dispute that the petitioner has a few more days left to complete his tenure at Gazole. However, it is not a question of the tenure only. It is also a question of principle as to the manner and mode of posting the petitioner at Gazole is rather arbitrary, whimsical, and in contravention of the established SOP. Interestingly, Memo No. CMOH/MLD/Estb/649 dated March 20, 2025, merely states that funds had been approved for renovation of the old building at Gazole and after renovation various surgical procedures such as Orthopaedic and General Surgery “which will occur in future” would require the presence of an Anesthesiologist. On a query from Court, it was informed that not a single surgery has occurred from the date of the joining of the petitioner at Gazole till the date of last hearing of the petition, that is, March 19, 2026. The petitioner is an Anesthesiologist who went to work and had opted for Howrah, had the rank to be posted there, but has been unceremoniously sent to Gazole, where for the past almost one year he has not had the occasion to participate in a single surgery.

28. Without getting into the controversy of administrative bias, malice in law, or a retaliatory action as pleaded by the petitioner, though not argued in such detail, the very process of the petitioner's posting at Gazole is vitiated, as it is against the very tenet of the SOP established by the respondent themselves. It will also not be out of place to mention here that of the 778 candidates, 777 were allotted to their preferred place of posting and only in the case of the petitioner there seems to be an alteration. This alteration in the posting cannot be glossed over in any manner. Significantly, the SOP has been followed while posting of all others except for the petitioner, this is ex-facie discriminatory.
29. It may also be noted that in a similar matter a coordinate bench of this Hon'ble Court in the case of Dr. Aniket Mahata (supra) had set aside the posting of a candidate similarly situated, that is, within the merit list but not getting the posting of his preferred hospital. This decision has been upheld by a Division Bench of this Hon'ble Court by an order and judgment in the case of MAT 1736 of 2025 (State of West Bengal & Ors. Vs. Dr. Aniket Mahata & Ors.) dated November 6, 2025, which was also carried before the Hon'ble Supreme Court of India but was not entertained, as would appear from the order dated December 11, 2025.
30. The petitioner herein, even if not similarly situated as Dr. Aniket Mahata, only to the extent that the petitioner is in the second year of residency and Dr. Aniket Mahata was in the first year, the issue of the applicability of

clauses 7a, 7b and 7c of the SOP is clear and unequivocal. These clauses spell out the fact that while posting, whether a first year or a second year student, will be entitled to a rank in terms of merit and counselling. If merit-based criteria is not a qualifying parameter for engagement, then the choice exercised by the concerned doctor would have to be construed as a qualifying parameter. As in the case of Dr. Aniket Mahata (supra), the petitioner qualifies on both counts, and there is no reason disclosed by the State as to why his appointment at the institution of his choice in Howrah could not be afforded to him, and why he has been posted at a place of the State's choice in Gazole.

31. The SOP has been formulated to ensure transparency, clarity, and to maintain fairness and balance in the issue of posting/deployment of doctors as senior residents. If the mandate of the SOP has been followed in the case of 777 out of 778 doctors, there is absolutely no ground for the State to say that the SOP does not apply to the petitioner or that the petitioner is required elsewhere (Gazole) rather than at Howrah.
32. While exercising the jurisdiction of judicial review, the Court has to be alive to the proposition as succinctly laid down by the Hon'ble Supreme Court of India in *Tata Cellular vs Union Of India* reported in 1994 6 SCC 651. The Court is not to take into account the correctness of an administrative action unless it is illegal or reeks of irrationality or

procedural bias. The Court is not to examine or go into the validity of the decision taken by the Government.

33. With this cautious approach, a plain reading of the SOP as formulated by the State, to which it is bound, shows that the mechanism devised therein is to ensure smooth, transparent and efficacious services of the doctors as senior resident during their bond period in a manner which would be in consonance with the basic principle of administrative law.
34. The SOP is clear and unequivocal. To negate any consideration of administrative bias or malice in law, the SOP has devised a mechanism which prescribes the method to proceed with posting. This method as enunciated in clauses 7a, 7b and 7c collates merit as well as counselling to achieve the principle of fairness, transparency and clarity. Interestingly, in the case of every other candidate the SOP has been meticulously followed except for this petitioner and another person.
35. The mechanism of the SOP has been devised with the ulterior aim to guarantee the rights of all doctors who have applied by way of bond for posting as senior residents. This SOP is merely the mechanism to uphold the rights of the citizen under Article 12 of the Constitution of India. The very purpose of the SOP is to eliminate any sort of arbitrariness, unfairness or opaque action on behalf of the state authorities. The State is thus bound to adhere to the standard fixed by it by way of this SOP. Any deviation,

disruption or derailment from the process as specified in the SOP by the State clearly warrants interference as it is a procedural impropriety touching the parameter of illegality and irrationality and warrants judicial interference. The decisions relied upon by the respondent are all in respect of transfer of an employee relating to his service, to which the transferee has no right. This is an accepted principle and cannot be equated with the posting of a doctor in the present case as the same does not qualify as a transfer.

36. The concerned clauses of the SOP dated February 16, 2023, 7a, 7b and 7c are clear and unequivocal. If the merit-based criteria is not a qualifying parameter for engagement as argued by the respondent, since according to the respondent it applies only to students of the first year, in that event the choice/preference exercised by the petitioner would have to be the qualifying parameter. It is not as if the petitioner was being transferred from one place to another but, as clearly enshrined in clause 7a, he would be appointed through further counselling based on merit list already prepared. Thus, even if the respondents' arguments are taken to be correct that the merit-based criteria is not a qualifying parameter, then there remains no other parameter on the basis of which posting would be made, other than the choice or preference of the concerned candidate.

37. In view of the aforestated, I am inclined to hold that the posting of the petitioner at Gazole was unfounded and clearly in violation of the

established rules and procedures under the SOP for the following reasons:-

- a. On a consideration of the SOP, the petitioner was within the merit list to obtain a posting/deployment at Howrah.
- b. The posting of the petitioner at Gazole is contrary to the SOP and particularly clauses 6 and 7.
- c. Though it is true that the petitioner had declared that he would serve in any hospital in West Bengal, it has to be construed that it means any hospital with a requirement. Gazole is not an established hospital with any requirement of an Anesthesiologist and did not feature in the vacancy matrix floated to the candidates.
- d. The continued vacancy of a post at the Howrah Medical College Hospital reflects that there is no other person/doctor above the rank of the petitioner in the merit list who sought an appointment in Howrah. Thus the petitioner is well entitled to have been posted/deployed at Howrah.
- e. The deviation in so far as the petitioner is concerned out of 778 candidates is a clear indication of an arbitrary action which

cannot be supported in any manner whatsoever. The petitioner is entitled to be treated at par with all other doctors in so far as their deployment/posting is concerned.

38. In view of the aforestated, I hold that the posting of the petitioner at Gazole is bad in law and hereby set aside the Memo No. HF/O/HS(MA)/725/SF-11/2025 dated May 26, 2025.
39. The respondents are directed to immediately allow the petitioner to join the post of senior resident in the Department of Anesthesiology at Howrah District Hospital in terms of the original allotment to him during the counselling held on February 27, 2025.
40. The writ petition is accordingly allowed.
41. There shall, however, be no order as to costs.
42. Urgent photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)