

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.Nos. 532/2000, 561/2001, 646/2001,  
656/2001 & 666/2001

Friday this 11th day of January, 2002.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.532/2000

1. C.D.Joy,  
Trained Graduate Teacher(for short as TOP),  
Malayalam,  
Jawahar Navodaya Vidyalaya (JNV),  
Chennithala, Alleppey.
2. Ajayakumar.B.  
TGT, JNV, Neriyamangalam, Ernakulam.
3. Mercy Paul,  
TGT, JNV, Kottayam.
4. Lizzamma Mathew,  
TGT, JNV, Kottayam.
5. Sreelatha A.K  
TGT, JNV, Vechoochira, Pathanamthitta.
6. Anitha C.V.  
TGT, JNV, Malampuzha, Palakkad.
7. Kumari K.R.  
TGT, JNV, Calicut.
8. Ajithakumari.K.  
TGT, JNV, Vechoochira, Pathanamthitta.
9. Sreekumar.G.,  
TGT, JNV, Malappuram.
10. Sudhakaran Nair,  
TGT, JNV, Neriyamangalam, Ernakulam.
11. Preethy,  
TGT, JNV, ITC Campus,  
Kottarakkara, Kollam.
12. Subha.A.  
TGT, JNV, Calicut.

Applicants

(By Advocate Sri V.R.Ramchandran Nair)

vs.

1. Union of India, represented by the  
Secretary, Ministry of Human Resources &  
Development, Department of Education,  
New Delhi.

2. The Director,  
Navodaya Vidyalaya Samiti,  
New Delhi.
3. Joint Director,  
Administration,  
Navodaya Vidyalaya Samiti,  
New Delhi.
4. Abraham Plakeel,  
Plakkeel House,  
Piravom P.O., Ernakulam District.
5. Mrs. Usha K.S.  
Thandaseery House, Panangad PO,  
Kodungallur Via,  
Trichur District 680665.
6. Mrs. Maya Devi Pillai,  
Kaduvanthuruthil House,  
Konni, Mangaram P.O.  
Pathanamthitta.
7. P. Vasu, Parappurath House,  
Kolakkattuchali P.O.  
Chelembra, Malappuram.
8. Alex L, Thadathil Puthenveedu,  
Chempakkaramenalloor,  
Anchal P.O., Kollam.
9. Ramachandra Chakyar K.R.,  
Chakyar Bhavan,  
Vallachira, Thrissur. .... Respondents

(By Advocate Sri Mathews J. Nedumpara)

Mr. Vadakara V.V.N. Menon, Advocate (R4-9)

O.A.561/2001

Rosamma Sebastian,  
Trained Graduate Teacher (Malayalam),  
Jawahar Navodaya Vidyalaya,  
Malampuzha 678 651. .... Applicant

(By Advocate Shri K.P. Dandapani)

vs.

1. Union of India,  
represented by Secretary,  
Ministry of Human Resources & Development,  
Department of Education,  
New Delhi.
2. The Director,  
Jawahar Navodaya Vidyalaya Samiti,  
New Delhi-110048.

3. The Principal,  
Jawahar Navodaya Vidyalaya,  
Malampuzha 678 651  
Palakkad District.

(By Advocate Mr. C.Rajendran, SCGSC(R-1)  
Mr.Mathews J.Nedumpara (R2-3)

O.A.646/2001

Sreelatha.A.K.  
Trained Graduate Teacher(TGT for short),  
Malayalam,  
Jawahar Navodaya Vidyalaya(JNV)  
Vechoochira, Pathanamthitta District.

..Applicant

(By Advocate Sri V.R.Ramchandran Nair)

vs.

1. Union of India represented by  
the Secretary, Ministry of Human Resources and  
Development, Department of Education,  
New Delhi.
2. The Director,  
Jawahar Navodaya Vidyalaya Samiti,  
New Delhi.
3. Joint Director,  
Administration,  
Navodaya Vidyalaya Samiti,  
New Delhi.
4. The Deputy Director,  
Navodaya Vidyalaya Samiti(Hyderabad Region),  
6-1-119/C. Padmaraonagar, Secunderabad-25.
5. Abraham Plakkeel, Phakkeel House,  
Piravom P.O.,  
Ernakulam District,  
Working as TGT, Navodaya Vidyalaya Samiti.

.. Respondents

(By Advocate Shri Mathews J.Nedumpara (R2-4)  
Mr.Vadakara V.V.N.Menon, Advocate(R5)

O.A.656/2001

Lizamma Mathew,  
Trained Graduate Teacher(TGT for short),  
Malayalam,  
Jawahar Navodaya Vidyalaya(JNV for short),  
Vadavathoor, Kottayam, residing at  
JNV quarters, Vadavathoor, Kottayam. ..Applicant

(By Advocate Sri V.R.Ramchandran Nair)

vs.

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1. Union of India represented by the Secretary, Ministry of Human Resources & Development, Department of Education, New Delhi.
2. The Director, Jawahar Navodaya Vidyalaya Samiti, New Delhi.
3. Joint Director, Administration, Navodaya Vidyalaya Samiti, New Delhi.
4. The Deputy Director, Navodaya Vidyalaya Samiti(Hyderabad Region), 6-1-119/C, Padmaraonagar, Secunderabad-25. .. Respondents

(By Advocate Sri Mathews J.Nedumpara)

O.A.666/2001

K.Sudhakaran Nair,  
Trained Graduate Teacher(TGT for short),  
Malayalam,  
Jawahar Navodaya Vidyalaya(JNV for short),  
Neriyamangalam, Ernakulam, residing at  
JNV Quarters, Neriyamangalam, Ernakulam.

.. Applicant

(By Advocate Shri V.R.Ramchandran Nair)

vs.

1. Union of India represented by the Secretary, Ministry of Human Resources & Development, Department of Education, New Delhi.
2. The Director, Jawahar Navodaya Vidyalaya Samiti, New Delhi.
3. Joint Director, Administration, Navodaya Vidyalaya Samiti, New Delhi.
4. The Deputy Director, Navodaya Vidyalaya Samiti(Hyderabad Region), 6-1-119/C, Padmaraonagar, Secunderabad-25. .. Respondents

(By Advocate Mr.Mathews J.Nedumpara)

The Application having been heard on 12.12.2001, the Tribunal on 11.1.2002 delivered the following:

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ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

As the basic issues involved in all these cases is the same, these cases are being heard and disposed of by this common order.

2. The facts of the individual applications, as alleged in the applications, can be briefly stated thus:

O.A.No.532/2000

3. The applicants were recruited as Trained Graduate Teachers in regional language Malayalam in the Hyderabad Region under the second respondent. They are presently working under the various Navodaya Vidyalayas situated in different places in the State of Kerala. As the applicants are all Trained Graduate Teachers in Malayalam according to the provisions of sub-rules (iv) and (v) of Rule 2 of the Recruitment Rules, they having been recruited to the Hyderabad Regional Cadre were expecting that they would not be transferred to other regions. While so, the third respondent on 25.2.2000 issued Annexure-A3 circular wherein it was inter alia stated that the regional language teachers were liable for rotational transfer between the States where their language is taught and Hindi speaking States. Apprehending that on the basis of the above circular, the applicants would be subjected to transfer to distinct States and Hindi speaking areas, the applicants have filed this joint application seeking to set aside the impugned circular Annexure A3 to the extent it provides for transfer of T.G. Teachers regional languages, Hyderabad Region to the Hindi

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speaking States and for a declaration that providing for compulsory rotational transfer of the third language teachers alone from Hyderabad region to Hindi speaking area is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. It has been alleged that knowledge of local language of the region of posting being an essential condition for recruitment, transfer to a different region with different local language is impermissible as that would disable the teachers so transferred to perform their duties effectively.

4. The respondents 1 to 3 in their reply statement seek to justify the impugned order on the ground that it was a new transfer policy evolved in the year 1994 taking into consideration the representations made by language teachers working in the Northern States for a long time to give them transfer to their native places and that as in the order of appointment of the applicants, it had been clearly stated that they were liable to be posted anywhere in India, the claim that the applicants cannot be transferred out of Hyderabad region, is unsustainable. The transfer to other regions is further sought to be justified on the ground of compulsory migration of 30% students from non-Hindi speaking area to Hindi speaking area and vice versa. The

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respondents further contend that knowledge of local language is not a condition precedent for appointment as a regional language teacher.

5. Respondents 4 to 9 who were transferred from various Hindi speaking area to the schools in Hyderabad region on the basis of Annexure A3 have got themselves impleaded as additional respondents. But they have not filed any reply statement.

O.A.646/2001

6. The applicant who is working as Trained Graduate Teacher, Malayalam, Navodaya Vidyalaya, Vechoochira has filed this application challenging the order dated 27.6.2001(A-9) to the extent of her transfer to Bareilly and Annexure A10 order which is issued as a consequence of Annexure A9. The impugned orders are assailed on the ground that as per the recruitment rules ,Trained Graduate Teacher being a regional cadre, a T.G.T. is not liable to be transferred out of the region of his recruitment. Sri Abraham Plakeel has got himself impleaded as additional respondent, but did not file any reply statement. The

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respondents 1 to 4 did not file any reply, but learned counsel of the respondents stated that this case also would be argued on the basis of the pleadings in O.A. 532/2000.

O.A.561/2001

7. The applicant a Trained Graduate Teacher, Malayalam in Jawahar Navodaya Vidyalaya ,Malampuzha has filed this application challenging her transfer to Mau, Uttar Pradesh on the grounds as canvassed in O.A.532/2000. The official respondents have adopted the reply statement in O.A. 532/2000.

O.A.656/2001

8. The applicant Lizamma Mathew has filed this application challenging the order dated 27.6.2001(Annexure A8) to the extent of her transfer to Tong, Rajasthan and order dated 9.7.2001(Annexure A9) issued by the 4th respondent pursuant to Annexure A8 order. Grounds of challenge are the same as in O.A. 532/2000. No reply statement has been filed by the respondents.

O.A.666/2001

9. The applicant a Trained Graduate Teacher, Malayalam,working in Jawahar Navodaya Vidyalaya, Neriymangalam has filed this application challenging the order dated 27.6.2001(Annexure A4) to the extent it

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transfers him to Jaunpur, U.P. and the order dated 9.7.2001 (Annexure A5) issued by the 4th respondent pursuant thereto. The grounds of challenge are the same as in O.A. 532/2000. Respondents adopt the reply statement in O.A. 532/2000.

10. After hearing the learned counsel for all the parties, this Bench of the Tribunal by the judgment dated 8th August, 2001 rejected all the contentions raised by the respondents and finding that the Tribunal has jurisdiction to entertain the application and that the Annexure A3 order in O.A. 532/2000 providing for rotational transfer of T.G.T. regional languages from one region to another cannot be sustained as it was repugnant to the sub-rule (iv) and (v) of Rule 2 of Navodaya Vidyalaya Samiti Recruitment Rules 1965 and was made without a general or special order placing the category of T.G.T. posts in the all India cadre as provided in sub-rule (v) of Rule 2, set aside Annexure A3 in O.A. 532/2000 and the various impugned orders in all the applications. The respondents 1 to 3 in O.A. 532/2000 challenged the order of the Tribunal before the Hon'ble High Court of Kerala in O.P. 25992/2001. The respondents produced certain additional documents before the Hon'ble High Court and relying on those documents sought to sustain the impugned orders in these applications. The Hon'ble High Court finding that these documents were not placed before the Tribunal and therefore the Tribunal was not in a position to examine all the relevant aspects of the matter vide its order dated 28th September 2001 disposed of the

writ petition permitting the parties to file documents, if any, before the Tribunal and directing the Tribunal to reconsider the application afresh in the light of various documents produced.

11. After the matter was remanded to the Tribunal by the Hon'ble High Court of Kerala, the respondents 1 and 2 in O.A. 532/2000 filed additional reply statements and produced additional documents Annexure R(a) to R(h) . The respondents in the additional reply statement contend that as Navodaya Vidyalaya is a society and not an instrumentality of State within the meaning of Article 12 of the Constitution of India, the application is not maintainable , that the recruitment rules (Annexure A1) not being a statutory recruitment rule promulgated under proviso to Article 309 of the Constitution of India, the violation of any of its terms does not confer on the employees a right to seek relief, that the Annexure A3 was issued by the competent authority as the transfer policy was approved by the Minister, that Annexure A3 is as much valid as Annexure A1 and the policy decisions contained in Annexure A3 is not subject to judicial review. The applicants in O.A. 532/2000 produced additional documents Annexures A12 to A21 and refuted the averments made in the additional reply

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statement and contend that under Section 19 of the Administrative Tribunals Act, the Tribunal has jurisdiction to entertain the application.

12. We have heard the learned counsel of all the parties and have considered all the pleadings and the documents including the additional documents produced by the respondents as also the applicants.

13. The argument of the respondents that the Tribunal has no jurisdiction to entertain this application relating to transfer of the employees of the Navodaya Vidyalaya Samiti has no force at all for the reason that the Navodaya Vidyalaya Samiti is discharging Governmental functions being fully funded by the Government of India and also because by the notification issued by the Government of India, Department of Personnel and Training No.H-11017/7/94-AT(Vol.III) dated 17.12.1998 (G.S.R.748(E)) in exercise of the powers conferred by sub-section(2) of section 14 of the Administrative Tribunals Act,1985, the Navodaya Vidyalaya Samiti has been brought under the purview of the Administrative Tribunals Act with effect from 1st January 1999. In view of sub-section 2 of Section 14 of the Administrative Tribunals Act, which reads as follows:-

"(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section(3) to cal or oher authorities within the territory of India or lunder the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government.

this Tribunal has got jurisdiction to entertain this application relating to transfers of the employees of the Navodaya Vidyalaya Samiti, which is a service matter and relates to conditions of service.

14. The argument of the learned counsel of the respondents that the Annexure A1 recruitment rules not being rules framed under proviso to Article 309 of the Constitution and therefore not having statutory force, there is no sanctity to whatever provision contained therein and therefore the Annexure A3 transfer policy though it is in contravention to the provision of Annexure A1 rule cannot be interfered with, also is very feeble and cannot be accepted. Annexure A1 recruitment rules is the recruitment rules governing the recruitment and service conditions of teachers and other staff of the Navodaya Vidyalaya Samiti framed under Rule 24 of the Rules of Navodaya Vidyalaya Samiti. Sub-rule (iv) and (v) of Rule 2 of these Rules reads as follows:-

"(iv) All teaching staff other than Principals, and Vice-Principals and PGTs and all non-teaching staff upto and including Office Superintendents working in Navodaya Vidyalayas in a region, shall be borne on the concerned Regional Cadre. The seniority of Post Graduate Teachers, which is a feeder post for promotion to Vice-Principal, would be maintained on all India basis.

(v) All Group 'A' and 'B' employees of the Samiti including Principals and Vice Principals, will be borne on respective all India Cadres. The seniority of employees borne on Regional Cadre will be maintained at the Regional basis. Notwithstanding anything contained herein any class or category of posts and incumbents thereof, may be placed in the Regional Cadre or All India Cadre, as the case may be by general or special orders of Director, NVS."

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It is evident from what is stated in sub rule (iv) that all teaching staff other than Principals, and Vice-Principals and PGTs and non-teaching staff upto and including Office Superintendents working in Navodaya Vidyalayas in a region shall be borne on the Regional cadre. It is also well settled that an employee cannot be transferred outside his cadre without his consent unless becomes necessary on unavoidable administrative reasons to do so. Here what is impugned is a provision for transfer from one region to another region contained in a circular and the orders of transfer on the basis of the said circular. The transfers have not been made to take care of extreme emergent administrative exigencies, but only to provide posting to T.G.T, Malayalam who had been working in Hindi speaking area for a long time. So long as the T.G.T. regional language are not taken out of the regional cadre and placed in the all India cadre as provided for in sub-rule (v) of Rule 2 by a general or special order of the Director, Navodaya Vidyalaya Samiti, transfer of T.G.T. regional language from the region of their recruitment to another region cannot be made,unless such a transfer is unavoidable in the exigencies of service which is not the case in these cases. Alongwith the additional reply statement, the respondents have produced Annexures R(a) to R(h) .Annexure R(a) is the Memorandum of Association of the Navodaya Vidyalaya Samiti. Annexure R(b) is the copy of minutes of the meeting of the review committee of transfer policy of the Navodaya Vidyalaya Samiti held on 8th January, 1999 , which shows that certain recommendations were made by the committee for providing transfer policy of the employees of the Navodaya

Vidyalaya Samiti which inter alia mentioned that third language teachers on completion of 5 years of service in the region of their initial posting may be transferred to a different region on a rotational basis. Annexure R(c) is the copy of the letter forwarding the minutes of the XXth meeting of the Executive Committee of the Navodaya Vidyalaya Samiti held on 20th September, 1999 i.e. Annexure R(d) in which it is seen that the committee has ratified the revised transfer policy. Annexure R(e) is a copy of the communication dated 12.11.99 of the Director, Navodaya Vidyalaya Samiti regarding revised transfer policy in respect of the Vidyalaya staff of the Samiti wherein it is stated that third language( regional language) teachers on completion of five years of service in the region of their initial posting may be transferred to a different region on rotational basis. Annexure R(f) is some of the relevant rules of the Samiti. Annexure R(g) is a seniority list of TGT and Annexure R(h) is an extract from Swamy's Complete Manual on Establishment and Administration regarding classification of posts. None of these documents prove that a general or special order placing the T.G.T. in the all India cadre had been issued. Therefore without placing the T.G.T. in the all India cadre, taking it away from the regional cadre as provided for in sub-rule(v) of Rule 2, it is not generally permissible to transfer a T.G.T. regional language from Hyderabad region to a different region unless there is pressing administrative requirement to do so. We are not satisfied that there has been any pressing administrative need.Whether framed under proviso to Article



309 or not, the Annexure A1 is the Recruitment Rules which govern the recruitment and conditions of service of the employees of the Samiti and the same is bound to be followed by the Samiti. By issuing a circular in a manner not provided for in the Recruitment Rules, the conditions of service cannot be altered to the detriment of the employees.

15. In the Recruitment Rules for appointment as Trained Graduate Teacher, the essential qualification No.(2) reads as follows:

"Competence to teach through the concerned regional language except in case of TGT, English and TGT, Hindi."

Recruitment is made on regional basis. A candidate recruited from Hyderabad region as third language teacher should have the proficiency to teach the particular third language in the regional language in the schools within that region. Such a teacher need not have the proficiency to teach in the regional language of West Bengal or Orissa or any other region for that matter. It is therefore to be noted that in practice also it would be very difficult for a third language teacher recruited in one region to effectively teach the language in other regional language in which he is not proficient.

13. The learned counsel of the respondents relied on a ruling of the Hyderabad Bench of the Tribunal in O.A.622 of 2000. In almost identical circumstances the Hyderabad Bench dismissed the O.A. holding that policy decisions of the Government are not open to challenge before the Tribunal and

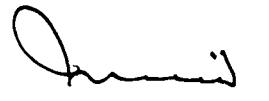
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that the TGT has an all India transfer liability. The learned counsel also pointed out that in the appointment order of the applicants it had been mentioned that they are liable to serve anywhere in India. Learned counsel argued that since the facts and circumstances are almost identical, these applications need to be dismissed following the ruling of the Hyderabad Bench of the Tribunal. We have gone through the ruling of the Hyderabad Bench of the Tribunal referred to. We see that the question whether without issuing a general or special order placing the TGT who belonged to the regional cadre into the all India cadre in the manner prescribed in Rule 2(v) of the Recruitment Rules, a mere letter can be issued providing for inter cadre transfer which is the issue in these cases, was not considered by the Hyderabad Bench of the Tribunal in that case as there was no pleading to that effect. In the cases before us this issue has been raised and we find that in view of the provision in the Recruitment Rules (Rule 2(iv)) that all teaching staff other than Principals, and Vice-Principals and PGTs and all non-teaching staff upto and including Office Superintendents working in Navodaya Vidyalaya in a region shall be borne on the concerned Regional Cadre and as no special or general order has been issued by the Director, Navodaya Vidyalaya Samiti placing the T.G.T, regional language in the all India cadre, we find that the impugned order Annexure A3 in O.A. 532/2000 is not sustainable. Even if the appointment order contains a

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clause that the appointee may have to work anywhere in India, if that condition is against the provisions of the Recruitment Rules, it has no legal validity.

14. In the light of the above discussion, we are of the considered view that the applicants are bound to succeed. The applications are therefore allowed. The impugned orders Annexure A3 in O.A. 532/2000 and the transfer of the applicants by the impugned orders in other individual cases are set aside. There is no order as to costs.



(T.N.T.NAYAR)  
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)  
VICE CHAIRMAN

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APPENDIX

O.A. 532/2000

1. Annexure A1 True copy of recruitment rules as per notification No. F2-29-NVS (Admn) dt. 22.6.95.
2. Annexure A2 True copy of order No.F.73/93-NVS (Estt) dt. 28.3.1994 issued by the 2nd respondent .
3. Annexure A3 True copy of order No.F.No.2-1/2000-NVS(Estt)dated 25.2.2000 issued by the 3rd respondent revising the transfer policy.
4. Annexure A4 True extract of the relevant portion of the Notification in Employment News dt. 8th February, 1997 calling for applications to fill up the vacancies of teachers in JNV.
5. Annexure A5 True copy of interim order dated 29.10.1998 passed by the High Court of Kerala in O.P.No. 18068/98.
6. Annexure A6 True copy of judgment dt. 29.3.2000 in T.A.14/1999
7. Annexure A7 True copy of report No.3-1/98-99/JNV a DT. 3.7.1998 regarding the performance of the 1st applicant issued by the Principal, JNV, Alleppey.
8. Annexure A8 True copy of representation dated 30.4.2000 submitted by the 1st applicant to the 2nd respondent.
9. Annexure A9 True copy of order No.F.No. 1-48/NVS(HR)/7242 dt.8.12.92 issued by the Deputy Director Navodaya Vidyalaya Samiti to the 1st applicant.
10. Annexure A10 True copy of the rules for absorption in Navodaya Vidyalaya Samiti.
11. Annexure A11 True copy of order No.1-24 (Genl)/NVS/H/R/90-91/5220 dt. 19.7.90 issued by the Deputy Director, Hyderabad Region to the 4th applicant.

12. Annexure A12 True copy of order No.F.No. 2-17/2001-NVS(Estt.) dt. 27.6.01 of the Assistant Director(Estt).

13. Annexure A13 True copy of order No.F.No. 1-4(IR)/NVS(hr)/2001-02/RL/ 1126 dt.9.7.01 issued by the Deputy Director, Navodaya Vidyalaya, Secunderabad.

14. Annexure A14 True copy of letter No.1-24 (Genl)/NVS(H/R)/90-91/5220 dt. 19.7.70 issued by the Deputy Director, Navodaya Vidyalaya.

15. Annexure A15 True copy of news item appeared in the Malayala Manorama daily dated 6.5.1992.

16. Annexure A16 True copy of the news item appeared in the Mathrubhumi employment news dated 22.2.297.

17. Annexure A17 True copy of communication dated 15.10.92 by the the Navodaya Vidyalaya ,Vechoochira.

18. Annexure A18 True copy of communication dt. 11.2.98 regarding recommendations of V Central Pay Commission.

19. Annexure A19 True copy of notification No. 2-29/94-NVS (Admn)dt. 29.5.97/11.6.97 issued by the Director,Navodaya Vidyalaya.

20. Annexure A20 True copy of notification No. F.No.1-5/98-NVS(Admn) dt. 18.6.01 issued by the Director,Navodaya Vidyalaya.

**Respondent's Annexures:**

1. Annexure R(a) Copy of the Memorandum of Association of Navodaya Vidyalaya Samiti.

2. Annexure R(b) Copy of the Minutes of the Review Committee held on 8.1.99.

3. Annexure R(c) Copy of the letter dated 29.9.99 communicating the minutes of Executive Committee Meeting.

4. Annexure R(d) Copy of the Minutes of Executive Committee Meeting.

5. Annexure R(e) Copy of the Communication dated 12.11.99 of the Director,Navodaya Vidyalaya Samiti.

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6. Annexure R(f) Copy of the Rule 24 to 32 of the Samiti's Rule.
7. Annexure R(g) Copy of the seniority list of Malayalam Teachers prepared by Hyderabad Region.
8. Annexure R(h) Copy of the relevant page of Swamy's Complete Manuel and on Est. and Admn. of 1999.

O.A.No.561/01

**Applicant's Annexures:**

1. Annexure A1 Photocopy of the order vide Ref.No. 1-36/NVS(hr)/89-90/13747 dt. 23.11.1989 of the Deputy Director, Navodaya Vidyalaya Samiti, Hyderabad Region.
2. Annexure A2 Photocopy of notification published by the 2nd respondent vide No. F.2-29/94-NVS(Admn.) dated 22.6.1995.
3. Annexure A3 Photocopy of transfer policy policy published vide F.No.2-1/2000-NVS(Estt.) dated 25.2.2000 by the Navodaya Vidyalaya Samiti.
4. Annexure A4 True photocopy of the relevant extract of the Office Order No. 2-17/2001-NVS(Estt.) dated 27.6.2001 passed by the Asstt. Director(Estt.), Navodaya Vidyalaya Samiti, New Delhi.

O.A.No.646/2001

1. Annexure A1 True copy of appointment order of the applicant on deputation No. F.No.1-36/NVS(hyd)/89-90/8227 dt. 10.8.89 .
2. Annexure A2 True copy of the rules for absorption of the deputationists in NVS.
3. Annexure A3 True copy of the tentative seniority list of TGTs(Malayalam) of JNVs as on 31.3.1997.
4. Annexure A4 True copy of appointment order No. A3/18136/91 dated 7.9.91, appointing the applicant as HSA.
5. Annexure A5 True copy of recruitment rules as per notification No.F.2-29/94-NVS (Admn) dated 22.6.1996.

6. Annexure A6 True extract of the relevant portion of the notification in Employment News dated 8.2.1997 calling for applications to fill up the vacancies of teachers in JNV.

7. Annexure A7 True copy of order No.F.No.2-1/2000-NVS(Estt) dated 25.2.2000 issued by the 3rd respondent revising the transfer policy.

8. Annexure A8 True copy of order dated 3.7.2001 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in M.A.NO.734/2001 in O.A.532/00.

9. Annexure A9 True copy of order No.F.2-17/2001-NVS(Estt) dt. 27.6.2001 issued by the Asst.Director, Navodaya Samiti.

10. Annexure A10 True copy of order No.F.No.1-4 (IR)/NVS(hr)/2001-02/r1/1126 DT. 9.7.2001 issued by the 4th respondent.

11. Annexure A11 True copy of representation dt. 17.7.2001 submitted by the applicant to the 2nd respondent.

12. Annexure A12 True copy of order No.STF-1/JNV/92-93 dated 15.10.1992 appointing one K.M.Daniel as Chowkidar.

O.A.No.656/01

**Applicant's Annexures**

1. Annexure A1 True copy of order No.F.1-36-NVS (MR)/91-92/12008 dt. 23.9.91 issued by the 4th respondent.

2. Annexure A2 True copy of order No.1-24(Genl)/NVS(H/R)/90-91/5220 sdt. 19.7.90 issued by the 4th respondent.

3. Annexure A3 True copy of the tentative seniority list of TGTs(Malayalam) of JNVs as on 31.3.97.

4. Annexure A4 True copy of recruitment rules as per notification No.F.No.2-29/94-NVS(Admn) dated 22.6.1995.

5. Annexure A5 True extract of the relevant portion of the notification in employment news dated 8.2.1997 calling for applications to fill up the vacancies of teachers in JNV.

6. Annexure A6 True copy of order No.F.No.2-1/2000-NVS(Estt) dated 25.2.2000 issued by the 3rd respondent revising the transfer policy.

7. Annexure A7 True copy of order dt. 3.7.2001 of the Tribunal in M.A.734/01 in O.A.532/2000.

8. Annexure A8 True copy of order No.F.No.2-17/2001-NVS(Estt) dt. 27.6.01 issued by the Asst.Director,Navodaya Vidyalaya Samiti.

9. Annexure A9 True copy of order No.F.No.1-4(IR)/NVS(HR)2001-02/RL/1126 dt.9.7.01 issued by the 4th respondent.

10. Annexure A10 True copy of representation dt. 20.7.2001 submitted by the applicant to the 2nd respondent.

11. Annexure A11 True copy of sorder No.STF-1/JNV/92-93/dated 15.10.92 appointing one K.M.Daniel as Chowkidar.

O.A.No.666 /2001

Applicant's Annexures:

1. Annexure A1 True copy of the rules for absorption of the deputationists in NVS.

2. Annexure A2 True copy of order No.F.No.2-1/2000-NVS(Estt) dated 25.2.2000 issued by the 3rd respondent revising the transfer policy.

3. Annexure A3 True copy of order dt. 3.7.2001 of the Tribunal,Ernakulam Bench, in M.A.734/2001 in O.A.532/00.

4. Annexure A4 True copy of order No.F.No.2-17/2001-NVS(Estt) dated 27.6.01 issued by the Asst.Director, Navodaya Vidyalaya Samiti for the 2nd respondent.

5. Annexure A5 True copy of order No.F.No.1-4/(IR)/NVS(hr)/2001-02/RL/1126 dt. 9.7.01 issued by the 4th respondent.

6. Annexure A6 True copy of representation dt. 20.7.2001 submitted by the applicant to the 2nd respondent.

7. Annexure A7 True copy of order No.STF-1/JNV/92-93 dated 15.10.92 appointing one K.M.Daniel as Chowkidar

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.Nos.532/2000, 561/2001, 646/2001.  
656/2001 & 666/2001

Wednesday, this the 8th day of August, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE SHRI T.N.T.NAYAR,ADMINISTRATIVE MEMBER

O.A.532/2000

1. C.D.Joy,  
Trained Graduate Teacher(for short as TGT)  
Malayalam,  
Jawahar Navodaya Vidyalaya (JNV),  
Chennithala, Alleppey.
2. Ajayakumar.B.  
TGT, JNV, Neruyamangalam,Ernakulam.
3. Mercy Paul,  
TGT, JNV, Kottayam.
4. Lizzamma Mathew,  
TGT, JNV, Kottayam.
5. Sreelatha A.K  
TGT, JNV, Vechoochira, Pathanamthitta.
6. Anitha C.V.  
TGT, JNV, Malampuzha, Palakkad.
7. Kumari K.R.  
TGT, JNV, Calicut.
8. Ajithakumari.K.  
TGT, JNV, Vechoochira, Pathanamthitta.
9. Srreekumar.G.,  
TGT, JNV, Malappuram.
10. Sudhakaran Nair,  
TGT, JNV, Neruyamangalam, Ernakulam.
11. Preethy,  
TGT, JNV, ITC Campus,  
Kottarakkara, Kollam.
12. Subha.A.  
TGT, JNV, Calicut.

Applicants

(By Advocate Sri V.R.Ramchandran Nair)

vs.

1. Union of India, represented by the  
Secretary, Ministry of Human Resources &  
Development, Department of Education,  
New Delhi.

2. The Director,  
Navodaya Vidyalaya Samiti,  
New Delhi.
3. Joint Director,  
Administration,  
Navodaya Vidyalaya Samiti,  
New Delhi.
4. Abraham Plakeel,  
Plakkeel House,  
Piravom P.O., Ernakulam District.
5. Mrs. Usha K.S.  
Thandaseery House, Panangad PO,  
Kodungallur Via,  
Trichur District 680665.
6. Mrs. Maya Devi Pillai,  
Kaduvanthuruthil House,  
Konni, Mangaram P.O.  
Pathanamthitta.
7. P. Vasu, Parappurath House,  
Kolakkattuchali P.O.  
Chelembra, Malappuram.
8. Alex L, Thadathil Puthenveedu,  
Chempakkaramenalloor,  
Anchal P.O., Kollam.
9. Ramachandra Chakyar K.R.,  
Chakyar Bhavan,  
Vallachira, Thrissur. .... Respondents

(By Advocate Sri Mathews J. Nedumpara)  
Mr. Vadakara V.V.N. Menon, Advocate (R4-9)

O.A. 561/2001

Rosamma Sebastian,  
Trained Graduate Teacher (Malayalam),  
Jawahar Navodaya Vidyalaya,  
Malampuzha 678 651. .... Applicant

(By Advocate Shri K.P. Dandapani)

vs.

1. Union of India,  
represented by Secretary,  
Ministry of Human Resources & Development,  
Department of Education,  
New Delhi.
2. The Director,  
Jawahar Navodaya Vidyalaya Samiti,  
New Delhi 110048.

3. The Principal,  
Jawahar Navodaya Vidyalaya,  
Malampuzha 678 651  
Palakkad District.

(By Advocate Mr. C.Rajendran, SCASC(R-1)  
Mr.Mathews J.Nedumpara (R2-3)

O.A.646/2001

Sreelatha.A.K.  
Trained Graduate Teacher(TGT for short),  
Malayalam,  
Jawahar Navodaya Vidyalaya(JNV)  
Vechoochira, Pathanamthitta District.

..Applicant

(By Advocate Sri V.R.Ramchandran Nair)

vs.

1. Union of India represented by  
the Secretary, Ministry of Human Resources and  
Development,Department of Education,  
New Delhi.

2. The Director,  
Jawahar Navodaya Vidyalaya Samiti,  
New Delhi.

3. Joint Director,  
Administration,  
Navodaya Vidyalaya Samiti,  
New Delhi.

4. The Deputy Director,  
Navodaya Vidyalaya Samiti(Hyderabad Region),  
6-1-119/C. Padmaraonagar, Secunderabad-25.

5. Abraham Plakkeel,Phakkeel House,  
Piravom P.O.,  
Ernakulam District,  
Working as TGT, Navodaya Vidyalaya Samiti.  
.. Respondents

(By Advocate Shri Mathews J.Nedumpara (R2-4)  
Mr.Vadakara V.V.N.Menon,Advocate(R5)

O.A.656/2001

Lizamma Mathew,  
Trained Graduate Teacher(TGT for short),  
Malayalam,  
Jawahar Navodaya Vidyalaya(JNV for short),  
Vadavathoor, Kottayam, residing at  
JNV quarters, Vadavathoor, Kottayam. ..Applicant

(By Advocate Sri V.R.Ramchandran Nair)

vs.

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1. Union of India represented by the Secretary, Ministry of Human Resources & Development, Department of Education, New Delhi.
2. The Director, Jawahar Navodaya Vidyalaya Samiti, New Delhi.
3. Joint Director, Administration, Navodaya Vidyalaya Samiti, New Delhi.
4. The Deputy Director, Navodaya Vidyalaya Samiti(Hyderabad Region), 6-1-119/C, Padmaraonagar, Secunderabad-25. .... Respondents

(By Advocate Sri Mathews J.Nedumpara R2-4)

O.A.666/2001

K.Sudhakaran Nair,  
Trained Graduate Teacher(TGT for short),  
Malayalam,  
Jawahar Navodaya Vidyalaya(JNV for short),  
Neriyamangalam, Ernakulam, residing at  
JNV Quarters, Neriyamangalam, Ernakulam.

.... Applicant

(By Advocate Shri V.R.Ramchandran Nair)

vs.

1. Union of India represented by the Secretary, Ministry of Human Resources & Development, Department of Education, New Delhi.
2. The Director, Jawahar Navodaya Vidyalaya Samiti, New Delhi.
3. Joint Director, Administration, Navodaya Vidyalaya Samiti, New Delhi.
4. The Deputy Director, Navodaya Vidyalaya Samiti(Hyderabad Region), 6-1-119/C, Padmaaraonnagar, Secunderabad-25. .... Respondents

(By Advocate Mr.Mathews J.Nedumpara R2-4)

The Application having been heard on 8.8.2001, the Tribunal on the same day delivered the following:

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ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

These five applications present similar facts and the basic issue to be decided in all these cases is one and the same. Therefore, they are being heard and disposed of by this common order.

2. The facts in the individual cases which are absolutely necessary for a proper adjudication of the issues are briefly stated as follows:

O.A.532/2000

3. The applicants 12 in number, are Trained Graduate Teachers in regional language, Malayalam under the second respondent and are working under the various Navodaya Vidyalayas situated in different places in the State of Kerala. According to Navodaya Vidyalaya Samiti Recruitment Rules, 1995, the applicants were all recruited as Trained Graduate Teachers(Malayalam). Sub Rule (iv) and (v) of Rule-2 of the said rules reads thus:

"(iv) All teaching staff other than Principals, and Vice-Principals and PGTs and all non-teaching staff upto and including Office Superintendents working in Navodaya Vidyalayas in a region, shall be borne on the concerned Regional Cadre. The seniority of Post Graduate Teachers, which is a feeder post for promotion to Vice-Principal, would be maintained on all India basis.

(v) All Group 'A' and 'B' employees of the Samiti including Principals and Vice Principals, will be borne on respective all India Cadres. The seniority of employees borne on Regional Cadre will be maintained at the Regional basis. Notwithstanding anything contained herein any class or category of posts and incumbents thereof, may be placed in the Regional Cadre or All India Cadre, as the case may be by general or special orders of Director, NVS."

In view of the above sub rules, the applicants were expecting that they would not be transferred to other Regions. Finding that on 25.2.2000, the third respondent issued a Circular F.No.2-1/2000-NVS(Estt) to Deputy Directors of all Regional Offices of Navodaya Vidyalaya Samiti, wherein it is stated that the regional language Teachers were liable for rotational transfer between the States where their language is taught and Hindi speaking States, and apprehending that the applicants are liable to be transferred to distant States and Hindi speaking areas, the applicants have jointly filed this application seeking to set aside the impugned circular dated 25.2.2000(A-3) to the extent it provide transfers of TG Teachers (regional languages) Hyderabad region to the Hindi speaking States and for a declaration that providing compulsory rotational transfers of the IIIrd language Teachers alone from Hyderabad region to Hindi speaking area is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. It has also been contended that knowledge of the local language of the region of posting is an essential condition for recruitment, the transfer of the applicant to a different region with different local language is impermissible and would disable the applicants to perform their duties efficiently.

4. On behalf of respondents 1 to 3, a statement has been filed seeking to justify the impugned action on the ground that a new transfer policy was evolved in 1994 taking into consideration the representation made by the language

Teachers working in Northern States for a long time to be given rotational postings to their native places. It is also contended that the appointment order of the applicants contain a clause that they are liable to be posted anywhere in India and as the transfer is an incident of service, the applicants do not have a cause of action for setting aside the impugned order. The transfer is also sought to be justified on the ground of compulsory migration of 30% students from non-Hindi speaking area to Hindi speaking area and vice versa. As the knowledge of local language is not a condition precedent for appointment as Regional Language Teacher, the applicant would not be put to any prejudice on account of the transfer, contend the respondents.

5. Respondents 4 to 9 who have been transferred from various Hindi speaking states to Schools in the Hyderabad Region, pursuant to the impugned order A-3, have got themselves impleaded as additional respondents. They have not filed any statement.

O.A.646/2001

6. The applicant who is a Trained Graduate Teacher, Malayalam, working in the Navodaya Vidyalaya, Vechoochira, has in this application challenged the order dated 27.6.2001(A-9) to the extent of his transfer to Bareilly. The transfer is assailed on the ground that as per the Recruitment Rules, TG Teacher which is treated as regional cadre, is not liable to be transferred out of the region.

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He has also challenged A-10 order which is issued as a consequence of A-9. The applicant is also one of the applicants in O.A.532/2000. One Shri Abraham Plakeel has got himself impleaded as additional respondent No.5, but did not file any reply statement. The official respondents also did not file a reply statement, but the learned counsel for the official respondents states that as the issue involved in this case being the same as the issue in O.A.532/2000, the case can be heard on the basis of the pleadings in that case.

O.A.561/2001

7. The applicant, who is working as Trained Graduate Teacher, Malayalam in Jawahar Navodaya Vidyalaya, Malampuzha, has filed this application challenging her transfer to Mau, Uttar Pradesh on the ground canvassed as in the other cases. The official respondents have adopted the reply statement in O.A.532/2000.

O.A.656/2001

8. Smt Lizamma Mathew, a Trained Graduate Teacher, Malayalam, Jawahar Navodaya Vidyalaya, Kottayam, has filed this application challenging the order dated 27.6.2001(A-8) to the extent of her transfer to Tong, Rajasthan and the order dated 9.7.2001(A-9) issued by the 4th respondent pursuant to A-8 order. The grounds on which the impugned orders assail are the same as in other cases.

O.A.666/2001

9. Shri K.Sudhakaran Nair, a Trained Graduate Teacher, Malayalam, in the Jawahar Navodaya Vidyalala, Neriyamangalam, has filed this application assailing the order dated 27.6.2001(A-4) to the extent it transfer him to Jaunpur(U.P) by the Navodaya Vidyalaya Samiti and the consequential order A-5 dated 9.7.2001 issued by the 4th respondent. The grounds are the same as in other cases. In this application also, the respondents have adopted the reply statement in O.A.532/2000.

10. We have heard Shri VR Ramachandran Nair, Smt Sumathi Dandapani, learned counsel for the applicants and Shri Mathews -J Nedumpara, Shri C Rajendran, SCGSC, learned counsel representing for official respondents and Shri Vadakara -V.V.N - Menon, learned counsel for the party respondents.

11. The learned counsel for the applicants assail the impugned orders of transfer as also the circular dated 22.6.95 A-1 (in O.A.532/2000) mainly on the ground that the stipulation contained in A-3 that regional language Teachers are liable for rotational transfer to Hindi speaking states, are arbitrary, irrational and in violation of the provisions contained in the Navodaya Vidyalaya Samiti Recruitment Rules 1995(A-1 in O.A.532/2000). Adverting to sub rule (iv) and (v) of Rule 2, the learned counsel with considerable tenacity argued that no general or special order of the Director, NVS has been issued placing the TGT regional

language in the all India cadre as provided for and permitted in the above said clause(iv and (v)). The learned counsel argued that it is not permissible to transfer TGT from one region to another, i.e. one cadre to another, and therefore, the provision of rotational transfer of regional language Teachers to Hindi speaking area is impermissible and unsustainable in law. Learned counsel also argued that while making recruitment to the various regions of regional language Teachers, the competence to teach through the concerned regional language except in case of TGT, English and TGT, Hindi has been prescribed as qualification in the annexure to the recruitment rules. Those who are not conversant with the regional language of a North Indian state would not be either qualified or proficient to teach Malayalam to students belonging to those areas and therefore such transfers are against public interest, argued the learned counsel. We find considerable force in the argument of the learned counsel for the applicants that without placing TGT regional language in the all India cadre taking away from the regional cadre as provided for in sub clause(v) of Rule 2 of the NVS Recruitment Rules quoted above, it is not permissible to transfer the TGT, Malayalam from Hyderabad region to a North Indian state by merely issuing a circular. An employee without his consent should not be transferred out of his cadre to another cadre normally. Shri Mathews. J. Nedumpara, learned counsel appearing for the official respondents and Shri Vadakara VVN Menon, the learned counsel appearing for the party respondents in O.A.532/2000 and O.A.646/2001, invited our

attention to a number of rulings of the Apex Court wherein it has been held that a writ would not lie against a Society or a Corporation which is not an instrumentality of the State. The respondents in the reply statement <sup>✓</sup> has not contended that Navodaya Vidyalaya Samiti is not an instrumentality of State and therefore the application is not maintainable. Therefore, the argument that the Navodaya Vidyalaya Samiti is not amenable to the writ jurisdiction, cannot be permitted to be raised without any pleadings in that behalf. However, we shall consider the question whether an application under Section 19 of the Administrative Tribunals Act would lie against an order passed by the Navodaya Vidyalaya Samiti. The argument of the learned counsel for respondents that the Navodaya Vidyalaya Samiti is not an instrumentality of the State and therefore, is not amenable to the jurisdiction under Article 226 of the Constitution is contrary to the statement made by the official respondents themselves in paragraph 5 of the reply statement which reads as follows:

"The averments and allegations contained in para 4.7 of the above O.A. are not correct and hence denied. It is most respectfully submitted that Navodaya Vidyalaya Samiti is an autonomous body under the Ministry of Human Resources and Development, Government of India, for the purpose of establishing Navodaya Vidyalayas through the country to provide quality education to the talented children predominantly from rural areas".

It is evident from the above statement that the Navodaya Vidyalaya Samiti is performing Governmental function,

funded fully by the Government and controlled by the Central Government and is therefore an instrumentality of the State. Since it has been notified under Section 14(2) of the Administrative Tribunals Act, 1985, we are of the considered view that the application is maintainable.

12. Shri Mathews J Nedumpara, relying on the ruling of the Apex Court in Executive Committee of U.P. State Warehousing Corporation, Lucknow Vs. Chandra Kiran Tyagi, AIR 1970 SC, 1244, wherein it was held that if, in passing an order, a statutory Corporation has violated its own rules which are not statutory, the order of termination from service could not be reversed, though the Corporation might be liable for damages. The learned counsel argued that the position in this case is identical. We are not persuaded to agree to this argument. First of all, the fact and circumstances are different. The Corporation in that case, was not an instrumentality of the State whereas in this case, we hold that the NVS is an instrumentality of the State. Further, in a later ruling, the Apex Court in State Bank of India Vs Anjan Sanyal and others, AIR 2001 SC, 1748 has held as follows:

"4. An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order..."

(Emphasis added)

In this case, sub rule(iv) of Rule 2 of NVS Recruitment Rules 1995 clearly provides that all teaching staff other than Principals and Vice Principals and PGTs and all non-teaching staff upto and including Office Superintendents working in Navodaya Vidyalayas in a Region, shall be borne on the concerned Regional Cadre and the seniority of Post Graduate Teachers which is a feeder post for promotion to Vice Principal, would be maintained on all India basis. It is well settled that an employee cannot be transferred outside his cadre without his consent unless it becomes necessary on extreme administrative exigency. Clause(v) of Rule 2 provide that any class or category of posts and incumbents may be placed in the Regional Cadre or all India Cadre, as the case may be, by general or special orders of Director, NVS. So long as such a special or general order has not been issued, an employee cannot be transferred out of his cadre in the normal course. The argument of the learned counsel for respondents that the order dated 25.2.2000(A-3 in O.A.532/2000) can be treated as a special or general order also is not tenable because it is neither a general or special order issued by the Director of the Samiti placing the TGT in the all India cadre taking it away from the regional cadre, but is only a letter which states that as in the previous years, Samiti intended to undertake the annual transfers and in that process the regional language Teachers are also liable for rotational transfer between States where their language is taught and Hindi speaking States. Annexure A3 communication to the Deputy Directors of all Regional Offices is only a letter written by Joint Director, Administration, without quoting any

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authority for it cannot be construed as a general or special order provided for in the Recruitment Rules. The argument of the learned counsel for the respondents that the NVS Recruitment Rules, 1995(A-1 in O.A.532/2000) is not a statutory rule and therefore, A-3 dated 25.2.2000 has also equal force is untenable, because NVS Recruitment Rules is the Recruitment Rules governing the recruitment and service conditions of the Teachers and other staff of the NVS as is evident from A-1. Source of power has been drawn from Rule 24 of the Rules of Navodaya Vidyalaya Samiti, whereas, A-3 does not disclose the source of power and is only a letter issued only by the Joint Director(Administration), Recruitment Rules cannot be equated to a letter. Therefore, A-3 and A-1 do not stand on the same footing. The argument of the learned for the respondents that A-1 not being statutory rules issued under Article 309 of the Constitution or an administrative order by the Government, it does not have any statutory force, and that its violation cannot be questioned is not untenable because as Annexure A1 is the Recruitment Rules, its violation is not free from the pale of judicial scrutiny.

13. The applicants in these cases have accepted the appointment, according to the terms specified in the Annexure A1 Recruitment Rules. Any variation of the terms can be made only under due process as prescribed in the Rules. While the Recruitment Rules provides for placing any class or category of persons included in the Regional cadre into the all India cadre, see Rule 2, sub-rule V, without

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doing that by issue of a general or special order, officers from one cadre to the other cadre cannot be freely transferred in the normal course. In the Recruitment Rules for appointment as Trained Graduate Teacher, the essential qualification No.(2) reads as follows:-

Competence to teach through the concerned regional language except in case of TGT,English and TGT,Hindi."

Recruitment is made on regional basis. A candidate recruited from Hyderabad region as IIIrd language teacher should have the proficiency to teach the particular third language in the regional language in the schools within that region. Such a teacher need not have the proficiency to teach in the regional language of West Bengal or Orissa or any other region for that matter. Therefore in practice also it would be rather very difficult for a third language teacher recruited in one region to effectively teach the language in another regional language in which he is not proficient. When the 4th applicant in O.A.532 of 2000 made an application for appointment, finding that her appointment was being delayed, the Deputy Director, Navodaya Vidyalaya Samiti, Hyderabad region wrote to her a reply dated 19.7.90(Annexure A11 in O.A. 532/2000). It reads as follows:-

Sir/Madam,

With reference to your application for the post of TGT IIIrd language post, it is intimated that there are no vacancies in Hyderabad Region.

You are therefore requested to exercise your option to sponsor your name to other Regions in case vacancies exist in other regions.

Your option shall reach the undersigned on or before 11 July 1990 for taking necessary action. The necessary option form enclosed may be signed and sent to this office on or before 31.7.90."

This shows that recruitment is made specifically to one region and if appointment is to be made to another region, option of the individual is required. In the face of all these facts and circumstances, we find that the impugned order Annexure A3 in O.A. 532/2000 providing for rotational transfer from one region to another, cannot be sustained. The other impugned orders in individual cases to the extent it affects the individual applicants also therefore cannot be sustained.

14. The learned counsel of the respondents invited our attention to a ruling of the Hyderabad Bench of the Central Administrative Tribunal in O.A.622 of 2000. In almost identical circumstances the Hyderabad Bench dismissed the O.A. holding that policy decisions of the Government are not open to challenge before the Tribunal and that the TGT has an all India transfer liability. The learned counsel also pointed out that in the appointment order of the applicants it had been mentioned that they are liable to serve anywhere in India. The learned counsel therefore argued that these applications need to be dismissed following the view taken by the Hyderabad Bench. We are fully aware that the Bench has to take into account the ruling of a coordinate Bench of the Tribunal on identical issue. However the question whether without issuing a general or special order placing the TGT placed in the Regional cadre into the all India cadre in the manner prescribed in Rule 2(V) of the Recruitment Rules, a mere letter can be issued providing for inter cadre transfer which is the issue in these cases, was not considered by the

Hyderabad Bench in that case for want of pleading in that regard. There was no plea in the case before the Hyderabad Bench that the letter providing for inter regional transfer of Third Language Teachers recruited regionwise was against the provisions of the Recruitment Rules. In the case before us, the issue has been raised and therefore the decision of the Hyderabad Bench has no application in this case as the same is distinguishable in the light of the specific pleading in the cases before us. The contention that on account of a clause in the appointment order, the appointees could be posted anywhere in India, the applicants cannot impugn the transfer orders also, cannot be accepted, for a term in the appointment order against the provisions of the recruitment rules and against the specific terms of recruitment would not be valid and enforceable.

15. In the result in the light of the above discussions, all the applications are allowed. The impugned orders Annexure A3 in O.A.532/2000 and the transfer of the applicants by the impugned orders in these cases are set aside. There is no order as to costs.



(T.N.T.NAYAR)  
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)  
VICE CHAIRMAN

trs/njj

List of Annexures referred to in the Order:

O.A.532/2000

1. Annexure A1 True copy of recruitment rules as per notification No.F2-29-NVS(Admn) dated 22.6.1995 with schedule.
2. Annexure A3 True copy of Order No.F.No.2-1/2000-NVS(Estt) dated 25.2.2000 issued by the 3rd respondent revising the transfer policy.

O.A.646/2001

1. Annexure A9 True copy of order No.F.No.2-17/2001-NVS(Estt) dated 27.6.2001 issued by the Asst.Director, Navodaya Vidyalaya Samiti for the 2nd respondent.
2. Annexure A10 True copy of order No.F.No.1-(IR)/NVS(MR)/2001-02/RL/1126 dated 9.7.2001 issued by the 4th respondent.

O.A.656/2001

1. Annexure A8 True copy of order No.F.No.2-17/2001-NVS(Estt) dated 27.6.2001 issued by the Asst.Director, Navodaya Vidyalaya Samiti for the 2nd respondent.
2. Annexure A9 True copy of order No.F.No.1-4'(I R)/NVS(HR)/2001-02/RL/1126 dated 9.7.2001 issued by the 4th respondent.

O.A.666/2001

1. Annexure A4 True copy of order No.F.No.2-17/2001-NVS(Estt) dated 27.6.2001 issued by the Asst.Director, Navodaya Vidyalaya Samiti for the 2nd respondent.
2. Annexure A5 True copy of order No.F.No.1-4/(HR)/2001-02/RL/1126 dated 9.7.2001 issued by the 4th respondent.