BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. 448/86

Shri Chandrakant Shirodker,
Govt. Primary School Teacher,
R/o Housing Board, Gogol,
Margao-Goa.

O.A. 449/86

Shri Umakant Sinai Kunde,
Sanvorcotto, Cuncolim,
Salcete - Goa.

O.A. No.450/86

Shri Krishna Yeshwant Naik,
Resident of Mayorde,
Salcete-Goa.

O.A. No.451/86

Shri Venkatesh J.P.Angle,
Resi of Sanvorcotta,
Cuncolim, Salcete-Goa.

OA No.452/86

Shri Baburao Patil,
Govt. Primary School Teacher,
R/o Margao-Goa.

OA No.453/86

Shri Krishna G. Bhat,
R/o Cuncolim, Salcete, Goa.

O.A. No.454/86

Shri Paulo alias Poly Peter,
Rodrigues, R/o Maina,
Curtorim-Goa.

O.A. No.455/86

Shri Narayan B. Takur,
R/o Takaband, Salcete, Goa.

O.A. No.456/86

Shri Narayan T. Patil,
R/o Zorbhat, Chinchinim,
Salcete Goa.

O.A. No.457/86

Shri Fatu B. Aiyer,
R/o Gudi-Paroda, Quepem-Goa.

O.A. No.458/86

Shri Siddappa M.Gadkari,
r/o Katta, Quepem-Goa. ... Applicants

C.A. No.459/86

Shri Gajanan Shikerkar,
r/o Talvade, Cuncolim,
Salcete-Goa.

C.A. No.460/86

Shri Kashinath Bandodkar,
r/o Raia, Salcete-Goa.

O.A. No.461/86

Shri Ballappa S. Pujari
r/o Sanvorcotta, Cuncolim,
Salcete-Goa.

O.A. No.462/86

Shri Bharmu S. Vazantri,
r/o Chinchinim,
Salcete-Goa.

O.A.No.463/86

Shri Shatuppa M. Kole,
r/o Dandevaddo, Chinchinim,
Salcete-Goa.

O.A.No.464/86

Shri Taliram K.Borker,
r/o Panzorkhon, Cuncolim,
Salcete-Goa.

O.A.No.465/86

Shri Shrikant K. Naik,
r/o Cuncolim, Salcete-Goa.

O.A.No.466/86

Shri Sumant Painguinkar,
r/o Cuncolim, Salcete-Goa.

O.A. No.467/86

Shri Amarnath Dessai,
resident of Comba,
Margao-Goa.

O.A.No.468/86

Shri Sadanand Gosavi,
Calata, Majorda,
Salcete-Goa. Applicants

V/s

1. Director of Education,
   Government of Goa, Daman & Diu,
   Director of Education,
   Panaji-Goa. Respondents

2. Assistant Director of Education (ADM)
Govt. of Goa, Daman & Diu,
Directorate of Education,
Panaji-Goa.

3. The Govt. of Goa, Daman & Diu,
through Chief Secretary,
Panaji-Goa.

4. Union of India through
Home Secretary,
Ministry of Education,
New Delhi. Respondents

Corum: Hon'ble Shri S.P. Mukherji , Member (A)

Appearances

Shri V.S. Borkar for
the applicants.

Shri M.I. Sethna for
the Respondents.

JUDGMENT Date : 9.10.1987

The applicants in the 21 applications mentioned above have a common cause of action and grievance and, therefore, these 21 applications are being disposed of by a common judgment as follows.

2. The applicants are working as Primary School Teachers under the Director of Education, Goa. They are aggrieved by the impugned order No.45/27/86-Adm.II(Vol.VII)/2730 dated 6.11.1986 by which they have been transferred to various Primary Schools within Goa. Actually they have been working as Teachers in Salcete Taluk in the Southern Educational Zone of Goa and by the aforesaid order they have been transferred to mostly Northern and Central Zones. The genesis of this transfer goes back to the transfer orders dated 12.8.1986 and 17.7.1986 by which a number of lady teachers in the Primary Schools with Marathi medium had to be transferred to other zones as they happened to be juniormost and rendered surplus with the closure of Marathi medium in their schools. Sometime in September-October 1986. The Government of Goa took a decision on file that female teachers should not be transferred and on the basis of that decision the transfer orders of these juniormost

surplus female teachers were cancelled. Since they had to be retained in Salcete taluk in the Southern zone the Respondents thought it fit to transfer the male teachers of this taluk to other zones to accommodate these juniormost surplus female teachers. This has aggrieved the applicants who are male teachers of Salcete taluk. The main grievance of the applicants before us is that since they were neither juniormost nor surplus they should not have been transferred from their present postings in the middle of the academic year to far off places in other zones. They have also argued that their transfer is against the policy guidelines issued by the Goa Government, on the ground that some of them are at the verge of superannuation, some have not completed five years of tenure prescribed for them and some of them are sick and have other family commitments. The Respondents have taken the plea that the policy guidelines are not binding on them and the transfer of the applicants has been necessitated because as a matter of policy the Respondents are not transferring the female surplus teachers of Solcete taluk as these female cannot be expected to work in the remote areas without adequate residential and transport facilities.

3. I have heard arguments of the learned counsel for both parties and gone through the documents carefully. I am not going into the question of the constitutional validity of the so called policy decision taken by the Goa Government not to transfer the female teachers. This is because the learned counsel for the Respondents could not show any policy direction or guidelines formally issued by the Respondents to this effect. The learned

counsel was however good enough to show me the file in which the Chief Minister on the question of transferring the female teachers directed that juniormost male teachers were to be transferred. No formal policy guidelines or orders as such were issued. The learned counsel for the applicants also did not press for the examination of the constitutionality of the alleged policy and confined his prayer to the question of transfer of the applicants vis-a-vis the male primary school teachers of the State Education Cadre as a whole.

4. It appears that the question of surplus teachers was confined to Salcete taluk and a good number of teachers teaching in Marathi medium would have been rendered surplus and lost their jobs. The recognised principle in such a situation is that the juniormost should go first. The juniormost surplus teachers happen to be all female teachers. In order to save them from retrenchment the Respondents transferred them to schools with Marathi medium in other zones, out of the Southern zone. Later, however, the Respondents took a further sympathic view and decided with the approval of the Chief Minister that instead of transferring them from Salcete taluk to outlying and remote places in other zones they could be retained in Salcete taluk and to accommodate them, the male teachers ~~of Salcete, Canacona~~ may be posted outside. The Chief Minister's direction was that the juniormost male teachers should only be displaced. The Respondents instead of considering the cadre of the State as a whole picked up the junicrmost male teachers only with

reference to those who happened to be working in Salcete taluk and transferred them to other zones. In doing so they have ignored the fact that some of them were to retire within two years and some of them had been posted in their present posting herdly 2 to 3 years ago. There is nothing on record to show that there was any seniority list of primary school teachers on a taluka basis. The seniority is maintained on a State basis and the Chief Minister's direction was to displace the juniormost male teachers.

5. I feel that since a sacrifice had to be made by the male teachers in order to accommodate the surplus female teachers of Salcete taluk it was less then fair to the applicants that the sacrifice had to be borne entirely by the male teachers who happened to be working at Salcete taluk at a particular point of time. Justice and equity demand that the brunt of displacement should be shared equally by all the taluks and educational zones within the State. The learned counsel for the applicants agreed that the applicants will be satisfied if their transfer arising out of the peculiar circumstances of the case is based on a Statewise concept of juniority and not on taluk-wise basis. Learned counsel for the Respondents brought to my notice the view taken by the Supreme Court in B. VARADARAO V. STATE OF KARNATAKA AND OTHERS AIR 1986 SC 1955 that transfer is a normal incidence of a Government service and that Government is the best judge as to how to distribute and utilise the services of its employees. In the same judgment itself the Supreme Court held further that the policy of transfer should be reasonable and fair and should apply to

everybody equally. Relying upon this judgment of the Supreme Court itself I am persuaded to think that in the instant case before me a fair and reasonable dispensation would be that by which the burden of transfer is shared by the juniormost male teachers not only of Salcete taluk but by all the talukas and zones of the State equally. This means that only the juniormost male primary school teachers in the State cadre as a whole should be transferred to accommodate the female surplus primary school teachers and not the applicants alone who happened to be working in Salcete Taluk and some of whom may not be juniormost male teacher in the State seniority list. The circular of the Government of Goa No.36/24/84/Adm. II/1639 dated 15.9.84 at page 43 of the Paper Book also lays down that 'Teachers who are juniormost in service shall be transferred first' and that in case more than one teacher join service on the same date, 'the teacher who is junior in service may be declared surplus and transferred' (emphasis added).

6. Though I accept the contention of the learned counsel for the Respondents that the policy guidelines are not binding or mandatory in nature yet I feel that once the policy guidelines are issued, unless there are overwhelming reasons to the contrary they should be honoured more by observance than by breach. In K.K.JINDAL V. GENERAL MANAGER, NORTHERN RAILWAY, ATR 1986 CAT 304 Shri Justice K. Madhava Reddy, Chairman of the Tribunal observed as follows: "Though the State was not bound to enunciate a policy in this regard in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy".

7. Learned counsel for the Respondents fairly accepted that the applicants S/Shri C. Shirodker (OA No.448/86), U.S. Kunde (OA No.449/86) and V.J. Angle (OA No.451/86) having only about two years of service to retire could be retained in their original posting. I accept this and direct accordingly.

8. In accordance with the transfer policy guidelines issued by the Respondents on 5.6.1985, husband and wife who happen to be both in Government service should be retained in the same station. On this basis I direct that the applicants S/Shri K.Y. Nayak (OA No.450/86), S.M. Kole (OA No.463/86) and T.K. Borker (OA No. 464/86) should be retained in Salcete taluk where their wives are working.

9. The Respondents are directed to identify 21 junior-most primary school male teachers (other than the six applicants covered by the preceding two paragraphs), on a Statewise basis who have more than two years of service left before superannuation and/or who do not have their spouses in Government service in the same taluk and fill up the posts which were to be filled up by the junior surplus female teachers, by posting such male teachers so identified. If any of the remaining 15 applicants fall amongst these 21 teachers he will continue to stay in his impugned posting, otherwise he will be reposted to his original post from which he was transferred by the impugned order.

10. All the 21 applications mentioned are disposed of on the above lines. There will be no order as to costs. A copy of this judgment may be placed on all the 21 case files.