

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

- 1) MP 224/01 order page-1 dtd 19.9.01
2) MP 226/01 order page-1 dtd 19.9.01

O.A./T.A.No. 3245/01
R.A./C.P.No.
E.P./M.A.No.

1. Orders Sheet..... OAPg. 1to 3
CP 42/01 order page-1Pg. 1to 2 1031.1.02
2. Judgment/Order dtd 30.10.12.01Pg. 1to 7 Common order
6A 3214 & 3215/07
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... OA 3205/01Pg. 1to 2
5. E.P./M.P. 224/01Pg. 1to 6
MP 226/01Pg. 1to 5
6. R.A./C.P. 14.2.01Pg. 1to 16
7. W.S.....Pg. 1to 19
8. Rejoinder.....Pg. 1to 3
Rejoinder to the CP 42/01Pg. 1to 5
9. Reply.....Pg.to
10. Any other Papers.....Pg.to
11. Memo of Appearance.....
12. Additional Affidavit tr. CP 42/01Pg. 1to 5 RM-2 page-1 to 5
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

8/12/17

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

APPLICATION NO.

345 / 2001

Applicant (s) Sri P. Das.

Respondant(s) V.O. I & Co

Advocate for the Applicant: Mr. D.R. Gogoi
Mr. P. Bhowmik

Advocate for the Respondant:

K.V. S.

Notes of the Registry

X - Date

Order of the Tribunal

29.9.01

Heard Mr. D.R. Gogoi, learned counsel for the applicant and also Mr. S. Sarma, learned counsel for the Caveater (respondents.).

Issue notice as to why the application shall not be admitted.

Also issue notices as to why the interim as prayed for shall not be granted suspending the order no. F. 10-4-2001/KVS/GR/5138-42 dated 20.8.2001 so far transferring the applicant Sri D. Das, Chabua to Tengavalley. Returnable by 2 week

Mr. S. Sarma, learned counsel, accepts notice on behalf of the respondents.

The operation of the aforesaid order shall remain suspended till the returnable day.

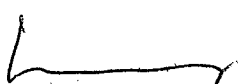
List on 19/9/01 for admission.


Vice-Chairman

mb

19.9.01

Three weeks time is allowed to the respondents for filing of written statement. List the matter on 17.10.2001 for written statement and further orders.


Vice-Chairman

trd

This application is in form
but not in the Corporation
Petition as required vide
M.P. No. X & C.F.
for Rs. 54,8923 deposited vide
IPO/BE No 54,8923...

Dated 28.8.2001

D. Registrar, 29/9/01

Notice prepared and sent
to DLS for trans the
Respondent No 1 to 5 by
Regd. Ad. vide D.No
3338W/42/old 3/9/01

30/8/01

Respondent No 1 & 5, Notice
Unreserved due to incomplete
address

15/10/01

17.10.01

None present for the applicant.
List on 21.11.01 for admission.

filing w.s.

Member

pg

21.11.2001

Two weeks time allowed to the respondents to file written statement. List for orders on 7.12.01. The interim order dated 29.8.2001 shall continue.

Vice-Chairman

nkm

7.12.01

Heard Mr. P. Bhowmik, learned counsel for the applicant and also Mr. S. Sarma, learned counsel for the respondents.

The respondents are yet to file written statement. Two weeks time is allowed to the respondents to file written statement

List on 21.12.01 for admission.

Interim order dated 29.8.01 shall continue.

Member (J)

Member (A)

mb

21.12.01

Heard Mr. P. Bhowmik, learned counsel for the applicant and also Mr. S. Sarma, learned counsel for the respondents.

No written statement has been filed.

List on 23.1.2002 for final hearing.

Respondents may file written statement within three weeks from today.

Meanwhile, interim order dated 29.8.2001 shall continue.

Member

mb

23.1.2002

Heard Mr. P. A. Gogoi, learned counsel for the applicant & Mr. S. Sarma, learned counsel for the respondent.

Hearing concluded,
Judgment reserved.

A.K. 72

Order dtd. 21/11/07

Communicated to the parties

Cmmb.

No written statement
has been filed.

3/12/01

No written statement
has been filed.

3/12/01

Order dtd. 21/12/01 Communicated to the parties

N/S has been filed on behalf of the respondents nos. 2, 3 & 4 at p-22-40

N/S 10/01/02

23.1.2002

A Response filed by the applicant against the N/S filed by the respondent no. 2, 3 & 4.

Notes of the Registry	Date	Order of the Tribunal
<p>21.2.2002</p> <p>Cep7 of the Indict has been sent to the officer. For long the time to the applicant as well as to the L/Adm for Regg</p> <p>45</p>	<p>30.1.02</p> <p>in</p>	<p>Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No costs.</p> <p>11/1/02 Member</p>

CENTRAL-ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 344 of 2001 and O.A.No.345 of 2001.

Date of Order: This the 30th Day of January, 2002.

HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Shri Putul Chetia (O.A.NO.344 of 2001)
Son of Late Girindra Nath Chetia
Socially Useful Productive Teacher, Kendriya
Vidyalaya, Air Force Station, Chabua,
District Dibrugarh, Assam. Applicant.
2. Shri Durgeshwar Das, (O.A.No.345 of 2001)
Son of Late Hiteswar Das,
Drawing Teacher, Kendriya Vidyalaya
Air Force Station, Chabua,
District Dibrugarh, Assam. ...Applicant.

By Advocate Mr.P.R.Gosoi, Mr.P.Bhowmick.

-Vs-

1. Union of India
Represented by the Secretary
Ministry of Human Resources Department
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
Sahid Jeet Singh Marg,
New Delhi.
3. Shri D.K.Saini
Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Maligaon Charali,
Guwahati-12.
4. Principal
Kendriya Vidyalaya, Airforce Station,
Chabua,
Dist.Dibrugarh, Assam
Pin-786182.
5. Shri P.N.Singh
Trained Graduate Teacher(Mathematics)
Kendriya Vidyalaya,
Air Force Station.
P.O.Air Field, Chabua,
District Dibrugarh, Assam. ... Respondents.

By Advocate Mr.S.Sarma,

O R D E R.

K.K.SHARMA, MEMBER(ADMN):

Both these applications are taken up together
as the issue involved in the two applications is common.
The two applicants have challenged the order No.10-4/2001/

contd/-

/KVS(GR)/15138-42 dated 20th August 2001(Annexure V) to the O.A. By the impugned order the applicant in O.A.No. 344 of 2001 has been transferred from Chabua to Pasighat and the applicant in O.A.No.345 of 2001 from Chabua to Tengavalley. The transfer order has been challenged on the ground of malafide and as violative of Article 14 and 16(4) of the Constitution of India.

2. The applicants before the impugned order of transfer were working as teachers in Kendriya Vidyalaya , Chabua. Before the impugned transfer order certain incident took place which appears to have resulted ⁱⁿ the transfer of the applicants. On 19.3.2001 the Principal, Kendriya Vidyalaya Chabua issued memorandum to both the applicants based on written complaint of Shri P.N.Singh, T.G.T(Match), that the Shri P.Chetia applicant had allegedly threatened P.N. Singh while he was conducting the examination in hall (Room No.3). The applicant No.1 Shri Putul Chetia entered the examination hall and when the respondent No.5 objected to entry Shri Chetia suddenly threatened him to kidnap and kill him. Shri D.Das applicant in O.A.No.345 of 2001 physically assaulted respondent No.5. The Principal asked the applicants to explain their conduct. The applicants replied by a letter dated 21.3.2001 Shri Putul Chetia replied that he had entered the room No.3 on reliever duty with due permission from invigillator Mr.I.D.Ram PGT English and he had not threatened to kidnap Respondent No.5. The applicant in O.A No.345 of 2001 replied that he had not threatened nor did he give any kick on the head of Mr.P.N.Singh. By letter dated 19.4.2001(Annexure III to the application) the applicants were directed to remain present in the Vidyalaya on 21st April 2001 before the Enquiry Officer in connection with the preliminary enquiry. The Principal, Kendriya Vidyalaya Narangi held the inquiry on 21st April 2001. Before the Enquiry Officer

K. Chetia

the applicant) denied the allegations against them. It was stated that when Mr. ^{Chetia} ~~2~~ entered the room No.3 of the examination centre with due permission from invigilator Mr. I.D. Ram to ask for his help to conduct the examination. ~~But~~ suddenly the other invigilator, the Respondent No.5 Mr. P.N. Singh shouted and asked him ^{to} get out of the room. The transfer order dated 20.8.2001 was the result of incident ^{that} occurred on 17.3.2001 and as such the transfer order was issued in a malafide manner on the basis of some concocted stories made out by the Respondent No.5 in order to facilitate his own transfer to his native state of Bihar. The Respondent No.5 prevailed upon the Respondent No.3 to issue the impugned order. It is stated that the applicants have completed the tenure in Chabua and they are entitled to their choice posting which has been ignored.

3. Shri P.R. Gogoi the learned counsel appearing for the applicants reiterated the pleading made in the application. He referred to the letter dated 18.4.2001 of Principal, Kendriya Vidyalaya Chabua to the Assistant Commissioner, Guwahati and submitted that the Principal had reported ~~that~~ that Mr. P.N. Singh Respondent No.5 had made hue and cry to disturb the peace of the place. The learned counsel referred to the fact that the Respondent No.5 had left the Station without prior information neglecting his duty and without sanction of proper leave. The Principal had also stated in the letter dated 18.4.01 ^{to U} there was no reason for Mr. Singh ^{to} feel insecure. It was argued that the applicant's explanation was not taken note of by the Enquiry Officer. He had also made allegations against the Respondent No.5. The learned counsel for the applicants referred to the Supreme Court Judgment (1997) 1 532, Na Jamal Hussain Mehadi, Vs. State of Maharashtra and Others

contd/-

The respondent have filed their written statement. It is stated therein that the transfer has been made as per Clause 3 of transfer guidelines which ^{is} reproduced below:-

"In terms of their all India Transfer liability all the employees of the KVS are liable to be transferred at any time depending upon the administrative exigencies/grounds, Organisational reasons or on request as provided in these guidelines. The dominant consideration in effecting transfers will be administrative exigencies/grounds and organisational reasons including the need to maintain continuity, uninterrupted academic schedule and quality of teaching and to that extent the individual interest/request shall be subservient. These are mere guidelines to facilitate the realization of objectives as spelt out earlier. Transfers cannot be claimed as of right by those making requests nor to these guidelines intend to confer any such right."

4. Mr.S.Sarma learned counsel for the respondents submitted that para 3 of the transfer guidelines authorised transfer on administrative ground. The rule of choice posting is applicable to outsiders who had completed their tenure in the N.E. Region. As per Rule the applicant, are not entitled to their choice posting. Mr.Sharma referred to the para 5 of the written statement and stated that Shri Chetia the applicant had not been given any relieving duty in Room No.3 on 17.3.2001 and when he entered the room the invigilator Shri P.N.Singh objected to his entry. The applicant Shri D.Das in O.A.No. 345 of 2001 Drawing Teacher had beaten the Respondent No.5 The Enquiry officer conducted the preliminary enquiry and submitted the report on 23.4.2001. The Enquiry officer had suggested the transfer of the applicant, from Chabua. The Respondents were within their right to transfer the applicants in public interest on administrative ground. The matter was discussed at various levels and finally the concerned authority without going for any major punishment decided to place them in another school for their improvement. The enquiry was

contd/-

was not held behind the back of the applicants, the applicants were given opportunity of being heard. Lastly, Mr.S.Sarma learned counsel for the respondents referred to the Supreme Court Judgment Prabodh Sagar, Vs. Punjab State Electircity Board and others (2000) (5) ^{SCC} 630. In the submissions it was stated that there was no malafide in the transfer order.

5. I have heard the learned counsels for the parties at length and have also perused the documents filed with the applications. Mr.Sharma the learned counsel for the respondents also produced the report of the Enquiry Officer dated 23rd April 2001. The main objection of the applicants against the impugned transfer order is on the ground of malafide. On 17.3.2001, when the examination was being conducted, Shri P.Chetia one of the applicants entered the examination room No.3. The invigilator present in the room Shri P.N.Singh objected to his entry. It is admitted that Shri P.N.Singh asked the applicant to get out. The applicant was offended and the subsequent ^U of beating incident took place. Shri P.N. Singh Respondent No.5 alleged that he was beaten by D.Das applicant in O.A.No.345 of 2001. Shri P.Chetia on the other had alleged Shri P.N.Singh of using filthy language. The matter was investigated by an independent party viz Principal, Kendriya Vidyalaya, Narangi. The the Enquiry Officer took deposition of two applicants. The Enquiry Officer also took deposition of ^U one of the two witnesses Shri M.Paswan and Shri A.K.Sinha who were present when respondent No.5 was beaten on his head by one of the applicants Shri D.Das. The Enquiry Officer also found that the applicant Shri P.Chetia was on reliever duty of room No.1 and 2 while the incident took place. in room No.3. Thus from the report of the Enquiry Officer it is evident that the entry of the applicant

10/11/01
contd/

Shri P.Chetia in room No.3 was unauthorised. Shri P.Chetia applicant in O.A. No.344 of 200q has stated in his letter dated 17.3.2001 to the Principal, Kendriya Vidyalaya, Chabua that he entered room No.3 with due permission to invigilator Mr.I.D.Ram PGT(Eng). The Enquiry Officer has stated that when Shri P.Chetia entered into the Room No.3 during the time of examination, he had not taken any permission ^{from Mr. I.D.Ram} while entering into the room. The Enquiry Officer also stated that the Respondent No.5 was new to the school and he might not have been familiar with all the staff members and he might not have recognised Mr.P.Chetia. The findings of the Enquiry Officer against the applicants is reproduced below:-

"(iii) It seems the situation is blown beyond its proportion by Mr.P.Chetia, and provoked Mr.D.Das, Drawing teacher to beat Mr.P.N.Singh on his head brutally.

iv) It is also felt that Mr.P.N.Singh did not receive sympathy from the Principal which made him aloof and frightened to continue his stay at K.V. Chabua.

Suggestion :

- i) Mr.P.Chetia, SUPW teacher and Mr.D.Das, Dr.Teacher have completed their long tenure at K.V. Chabua and developed strong hold in the area being local standing. This kind of situation may be defused by shifting both the teachers in the best interest of the vidyalaya.
- ii) Immediate transfer of the above two teachers may control the entire situation and restore normalcy in the Vidyalaya."

Having gone through in details the facts and the findings of the Enquiry Officer I am of the opinion that the applicants have not conducted themselves with dignity which was expected from them. The applicants were holding responsible position of teacher. Their conduct is observed by hundreds of children in the school. During the working hours in the school, the applicants have physically assaulted one of the ^{a U} colleagues. ^{is U} ^U

10 Usha
contd/-

12

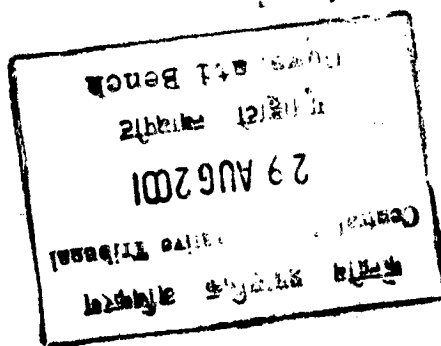
It can be inferred that the impugned order of transfer has been made on account of conduct of the applicants^U. The transfer of teachers who have not conducted themselves properly on administrative ground cannot be treated as mala-fide. Whether any order is mala-fide or not depends on the facts of the case. The facts have been verified by an independent authority, who was not connected with the school where the applicants were working. The finding of the enquiry has shown that one of the applicants entered and disturbed the conducting of examination. There is no malice or illegality in the consequential transfer of the applicants.^U No illegality is inferred in the impugned order dated 20.8.2001 and it calls for no interference.

^U
The application^U are dismissed. There shall however, be no order as to costs.

The interim orders dated 29.8.2001 are vacated.

Sd/MEMBER (ADMIN)

LM



13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH

O.A. NO. 345 OF 2001

Shri Durgeswar Das Applicant.

- Versus -

Union of India & Ors. Respondents.

I N D E X

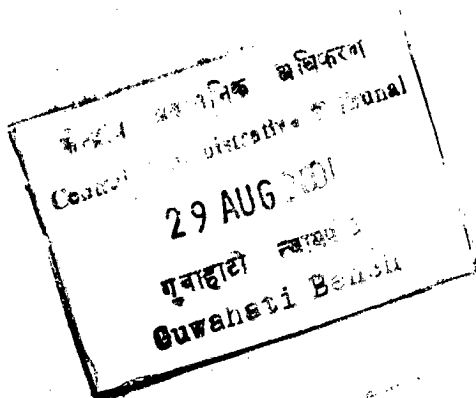
<u>Sl.No.</u>	<u>Description of documents relied on</u>	<u>Page No.</u>
1.	Original Application	1 to 15
2.	Annexure - I	16
3.	Annexure - II ✓	17
4.	Annexure - III	18
5.	Annexure - IV	19
6.	Annexure - V	20
7.	Annexure - VI	21

Filed by :

Pallabh Bhowmick

Pallabh Bhowmick.

Durgeswar Das.



14
Filed by the
applicant through
Sallykh Bhawanip
Advocate, 29.8.2001.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH AT GUWAHATI.

(An application under Section 19 of the
Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 345 OF 2001

1. Shri Durgeshwar Das
Son of Late Hiteswar Das,
Drawing Teacher,
Kendriya Vidyalaya,
Air Force Station, Chabua,
District Dibrugarh, Assam.
..... Applicant.

- Versus -

1. Union of India
Represented by the Secretary
Ministry of Human Resources Development
Department, New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
Sahid Jeet Singh Marg,
New Delhi.
3. Shir D.K. Saini
Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Maligaon Charali,
Guwahati-12.

Durgeshwar Das,

4. Principal,
Kendriya Vidyalaya, Air Force
Station, Chabua,
Dist. Dibrugarh, Assam.
Pin - 786182.

5. Shir P.N. Singh
Trained Graduate Teacher
(Mathematics)
Kendriya Vidyalaya,
Air Force Station,

P.O. Air Field, Chabua,
District Dibrugarh, Assam.

..... Respondents.

1. Particulars of the order against, which
application is made :

Impugned common transfer order No. 10-
4/2001/KVS (GR)/15138-42 dated 20.8.2001 issued by
Shir D.K. Saini, Assistant Commissioner, Kendriya
Vidyalaya Sangathan whereby the applicant had been
sought to be transferred from Kendriya Vidyalaya,
Chabua to Kendriya Vidyalaya, Tengavalley in a

Durgeswar Das

malafide manner at the behest of Shri P.N. Singh, Trained Graduate Teacher [Mathematics] (hereinafter referred to as T.G.T. [Maths]).

2. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is ~~neithen~~ the jurisdiction of this tribunal.

3. Limitation :

The applicant further declares that the application is ~~neithen~~ the limitation period prescribed under Section 21 of the Administration Tribunals Act of 1985.

4. Facts of the Case :

i) That the applicant who belongs to S.C. Community is a diploma holder in Fine Arts and is presently serving as Drawing Teacher in the Kendriya Vidyalaya, Chabua. The petitioner was appointed to the said post on 14.7.95. He is serving at the said post with honesty and sincerity and there is no blemish of any kind in his service career till date.

Surgesan Kan.

ii) That the applicant states that he was shocked and surprised to receive memorandum dated 19.3.2001 issued vide Reference No.F PF(DD)/KVCHB/2000-2001/810 dated 19.3.2001 whereby the Principal Kendriya Vidyalaya, Air Force Station, Chabua was pleased to inform the applicant that as per written complain received from Shri P.N. Singh T.G.T.(Maths), the applicant has allegedly given Mr. Singh a kick(boxed by closed hand) on his head in the staff room on 19.3.2001 while being accompanied by Shri Pratul Chetia, SUPW Teacher. The applicant was therefore requested to explain the reason of his misconduct in writing within three days from the date of receipt of the memorandum dated 19.3.2001.

A copy of the aforesaid memorandum dated 19.3.2001 is annexed and marked as Annexure-I.

iii) That the applicant states that on receipt of the aforesaid memorandum dated 19.3.2001 he submitted his explanation on 21.3.2001 wherein he stated that on 19.3.2001 the applicant was assigned examination relieving duty on Room No.4 in place of Mr. G.N. Khan P.G.T.(Maths) as such the applicant engaged himself in that room until examinations were over and he had not accompanied Shri Putul

Durgesaran San,

Chetia, S.U.P.W. teacher anywhere on 17.3.2001. That apart he did not give any kick on the head of Shri P.N. Singh, as he was busy with examination duty in Room No.4. The applicant also stated in his application dated 21.3.2001 that in his six(6) years of service in the Vidyalaya he has neither committed any misconduct nor he has misbehaved with anybody. The complain lodged by Shri P.N.Singh against him is totally false, baseless and fabricated.

A copy of the explanation dated 21.3.2001 is annexed herewith and marked as Annexure-II.

iv) That the applicant states that on 19.4.2001 he was served with a copy of an office order issued under reference No. F13/KVCHB/2001-2002/32 by the respondent No.4 whereby the applicant was directed to remain present in the Vidyalaya on 21.4.2001 before the Enquiry Officer in connection with the Preliminary Enquiry on the basis of the complain received.

A copy of the Office order dated 19.4.2001 is annexed herewith and marked as Annexure-III.

Largesaran Das.

v) That the applicant accordingly appeared before the Enquiry Officer on 21.4.2001 and deposed before him. In his deposition the applicant denied the allegations levelled against him and stated that the same is false because on 17.3.2001 he was busy with his examination duties on Room No.4 to which he was assigned. The applicant also stated in his deposition that there was a reasonable apprehension in his mind that the complaint lodged by the respondent No.5 was his own creation because he had been transferred from his native state of Bihar only a few days back and somehow wanted to create a situation at Chabua, whereby he would be successful in creating an impression before the authorities that he was not safe at Chabua so that he would be sent back to his home state.

A copy of the deposition of the petitioner before the Enquiry Officer is annexed herewith and marked as Annexure-IV.

vi) That the applicant states that thereafter he was shocked and surprised to receive transfer order No. F : 10-4/ 2001/ KVS(GR)/ 15138-42 dated 20.8.2001 which he received on 24.8.2001 whereby he has been sought to be transferred from Kendriya Vidyalaya, Chabua to Kendriya Vidyalaya, Tengavalley allegedly in public interest.

Jurgesam Das.

A copy of the aforesaid transfer order dated 20.8.2001 is annexed hereto and marked as Annexure-V.

vii) That the applicant states that on receipt of the transfer order dated 20.8.2001 on 24.8.2001, he immediately sent a representation to respondent No.3 and prayed for cancellation of the same as the said transfer order has been issued in a malafide manner on the basis of some concocted stories created by the respondent No.5 in order to facilitate his own transfer to his native state of Bihar.

A copy of the aforesaid representation hereto and marked as Annexure-VI.

viii) That the applicant states that the aforesaid transfer order dated 20.8.2001 has been engineered by the respondent No.5 who had prevailed upon the respondent No.3 to issue the same, thereby creating an impression before the authorities that it is not safe for the respondent No.5 to serve at Chabua so that he would also manage to be transferred back to his home state of Bihar. In this connection it would be pertinent to mention that the, respondent No.5 had not attended school since the date of his lodging of the alleged complaint on 17.3.2001.

Singhwaran San.

ix) That the applicant states that it is indeed very unfortunate on the part of the respondent No.3 to have issued the impugned order of transfer dated 20.8.2001 solely on the basis of the complaint lodged by the respondent No.5 disregarding the explanation put forward by the applicant and after ignoring his testimony before the Enquiry Officer. In this connection it would be pertinent to mention that the statement of respondent No.4 was also recorded in the preliminary Enquiry on 21.4.2001 wherein the respondent No.4 categorically stated in the Enquiry that no untoward incident took place in the Vidyalaya on 17.3.2001. As such the only inference that can be drawn in the facts and circumstances of the case is that the respondent No.5 had prevailed upon the respondent No.3 to have issued the impugned order of transfer in a malafide manner. In this connection the applicant begs to state that though he had been sought to be transferred by the order dated 20.8.2001 which was received by him on 24.8.2001 he has not been released from K.V. A.F.S., Chabua, till date and for all practical purposes he is on the rolls of the K.V., A.F.S., Chabua. That apart as per the transfer/policy inforce the applicant has completed his tenure at K.V. A.F.S., Chabua and is entitled to choice posting as per the said policy. Accordingly he has exercised his option to be

Durgawar Das.

posted at K.V. Duliajan, no reason has been cited in the impugned transfer order as to why this transfer policy in question has not been taken into consideration while transferring the applicant to K.V. Tengavalley. The records of the Preliminary Enquiry if call for by the Hon'ble Tribunal would substantiate the truth of the statements made here in.

The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the said transfer policy at the time of hearing.

5. Grounds for relief alongwith legal provisions :

i) For that from the facts and circumstances of the case it is quite aparent on the face of the records that the transfer order dated 20.8.2001 has been issued by the respondent No.3 in a malafide manner just to serve the cause of respondent No.5 due to reasons best known to him. It is clear instance of colourable exercise of power by respondent No.3 to grant undue prevælzège to the respondent no.5 in order to achieve collateral gain. As such the impugned transfer order dated 20.8.2001 is liable to be set aside and quashed.

ii) For that the applicant states that it is unfair on the part of the respondent No.3 to have

Jugesar Sen.

issued the impugned order of transfer dated 20.8.2001 ignoring the testimony of the respondent No.4 who clearly deposed before the Enquiry Officer in clear and unequivocal terms that no untoward incident took place in the Vidyalaya on 17.3.2001 as alleged by the respondent No.5. It is, therefore clear that consideration other than just and bonafide has prevailed upon the respondent No.3, as because there is no justifiable reason on the part of the respondent No.3 to have ignored the testimony of the respondent No.4 in the preliminary enquiry. It is, therefore, clear that the impugned order dated 20.8.2001 has been issued in a malafide manner by the respondent No.3 as such it is preeminently a fit case wherein this Hon'ble Tribunal would be pleased to set aside and quash the impugned order of transfer dated 20.8.2001.

iii) For that the applicant states that because the impugned order dated 20.8.2001 is highly arbitrary it amounts to denial of equality and is therefore, in violation of Article 14 of the Constitution of India, as such it is liable to be set aside and quashed forthwith.

iv) For that the arbitrary action of the respondent no.3 in issuing the transfer order dated 20.8.2001 amounts to denial of equality of

Jungeswar Das

opportunity in matters relating to public employment and is therefore, violative of Article 16(4) of the Constitution of India and, as such, the impugned order dated 20.8.2001 is liable to be set aside and quashed.

v) For that the transfer policy in question governing the service of the applicant has been violated with all impunity by the respondents in, as much as, the transfer policy clearly stipulates that on completion of a tenure of five years where the incumbent has been posted by the authorities, he is entitled to choice posting. Accordingly options were called for from the applicant, but all on a sudden the applicants choice has been ignored and he has been transferred to Tengavalley in a malafide manner.

vi) For that the impugned order ~~shows~~ malice in as much as, that both your applicant and Shri Putul Chetia who was alleged to be the accomplice as per allegation set out in the memorandum dated 19.3.2001 has also been transferred to Pasighat despite the fact that Shri. Putul Chetia gave his option to be transferred to Tinsukia on expiry of his tenure at K.V. A.F.S., Chabua. The impugned order being not a regular transfer which had been done by way of punishment the same is illegal,

Singaraman Sin.

arbitrary and as such the same is liable to be set aside and quashed.

vii) For that in any view of the matter the action of the respondent No.3. in transferring the applicant from K.V., Chabua, to K.V., Tengavalley is bad in law and liable to be set aside and quashed.

6. Details of remedies exhausted :

i) That the applicant have submitted representation before the respondent No.3 on 24.8.2001 and the same has not been considered till date.

7. Matters not previously filed or pending in any Court :

i) That the applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief Sought :

It is, therefore, prayed that this Hon'ble Tribunal would be pleased to admit this application

Singhania Las.

call for the records of the case and direct the respondents to show cause as to why the impugned order of transfer No. F :- 10-4/2001/KVS(GR)/15138-42 dated 20.8.2001 issued by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati should not be set aside and quashed and upon such cause or causes that may be shown and upon hearing the parties may be pleased to set aside and quash the impugned transfer order dated 20.8.2001 and/or pass such further order or other orders as may be deemed fit and proper.

9. Interim Order, if any, prayed :

To direct the respondents to keep in abeyance the operation of transfer order no. F :- 10-4/2001/KVS(GR)/15138-42 dated 20.8.2001 issued by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati.

10. This application is filed through Advocates.

11. Particulars of postal orders in respect of the application filed.

Suresh Das

I.P.O. No. 46 548923
 Dated 28.8.2004,
 Issued by G.P.O. Guwahati.
 Payable at Guwahati.

12. List of enclosers :

As stated in the index.

..... Verification....

Gungeswar Das.

V E R I F I C A T I O N

I, Sri Durgaswar Das, son of Late Hiteswar Das, aged about 36 years, presently serving at Drawing Teacher, at K.V., A.F.S., Chabua, do hereby verify that the contents of the paragraphs 1, 2, 3, 4, 6, 7, 10, 11 & 12 are true to my personal knowledge and those made in paragraphs 5, 8 & 9 are believe to be true on legal advise and I have not suppressed any material fact.

Date : 29.8.2007

Durgaswar Das.

Signature of the applicant.

Place : Guwahati

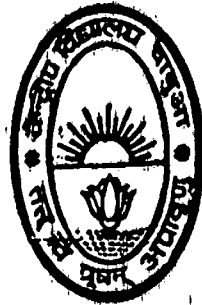
-16-

ANNEXURE - I

29

PHONE : 87509

केन्द्रीय
KENDRIYA



विद्यालय
VIDYALAYA

चाबुआ

पो० चाबुआ एयर फ़िल्ड

डि० डिब्रुगढ़ (असम)

पिनकोड : 786 102

CHABUA

Chabua Air Field

Dist. : Dibrugarh (Assam)

PIN : 786 102

पत्रांक / Ref. No. F. P. / 2000-2001 / 810 दिनांक / Date 19-03-2001

M E M O R A N D U M

As per the written complain received from Sri P.N. Singh, TGT (Maths) Sri D. Das drawing teacher is hereby informed that he being accompanied by Sri Putul Chetia SUPW Teacher gave Mr Singh a kick (box by closed hand) on his head in the staff room on 17-03-2001.

Sri Das is therefore requested to explain the reasons of his misconduct in writing within three days from the receipt of this letter for further action at this end.

To

Sri D. Das Drg. Teacher,
Kendriya Vidyalaya AFS, Chabua,
P.O. Chabua A/F. Dibrugarh (Assam)

(S. K. CHOPRA)
PRINCIPAL

Principal/PRINCIPAL

केन्द्रीय विद्यालय आर्य समाज
Chabua Air Field, AFS Chabua
Dist. Dibrugarh
ASSAM-786102

Attested
P. Bhattacharya
Associate
29.6.2001

Annexure - II.

To

The Principal
K.V., Chabua.Date: Chabua, 21.3.2001

Sir,

I am to refer your letter No. F.PF(D.D.)/KVCHB/2000-2001/810/dated 19.3.2001 and to submit you humbly the following few points for your kind perusal.

i) That Sir, I was assigned to Exam. relieving duty in the room No.4 in place of Mr. G.N. Khan P.G.T.(Math). I was engaged myself in that room untill the exam. is over.

ii) That Sir, I was not accompanied by Putul Chetia (S.U.P.W. Teacher) on 17.3.2001.

iii) I did not give any kick on the head of Mr. P.N. Singh as I was on my Exam duty in the room No.4. It is unfortunate matter.

Sir, I have been working in this Vidyalaya for about 6(six) years. During this period I have never done any misconduct or misbehaved to some one. Therefore the complain raised by Mr. Singh is totally false, baseless and fabricated.

Thanking you,

Your's faithfully,
Sd/- Illegible
(D.Das)

K.V., Chabua, Drawing Teacher.

Attested
P. Bhawanishri
Ashwanti
29.3.2001,

ANNEXURE - III

केन्द्रीय
KENDRIYA



विद्यालय
VIDYALAYA

PHONE : 87509

चाबुआ
पो० चाबुआ एयर फ़िल्ड
बि० डिब्रुगढ़ (असम)
पिनकोड : 786 102

CHABUA
Chabua Air Field
Dist. : Dibrugarh (Assam)
PIN : 786 102

पत्रांक / Ref. No. F.13/KVCHB/2001-02/32

दिनांक / Date 9-4-2001

OFFICE ORDER

श्री D. Das Dr. Teacher is hereby directed to remain present in the vidyalaya on 21st April 2001 before the Inquiry Officer related to the preliminary enquiry on complains received.

To
श्री D. Das Dr. Teacher
K V Chabua

Principal
PRINCIPAL
विद्यालय चाबुआ
Chabua Vidyalaya
Dist. Dibrugarh
ASSAM-786102

Attested
P. Bhattacharya
Principal
29.4.2001

Annexure - IV.

To

The Enquiry Officer

Sir,

All the allegation given to me are false because on 17.3.2001 there is Exam. I am on engaged in my assiend duty on Room No.4.

Sir, I think Mr. P.N. Singh want to go posting to his own place. Why he want to take create a unbalance situation.

Thanking you,

Your's faithfully,

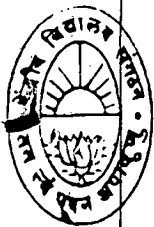
Sd/- Illegible,

(D.DAS)

K.V., Chabua, (Drawing).

Original copy received on
21.4.2001.

*Attested
P. Bhattacharya
Advocate
29.8.2001,*



दूरभाष / Phone : 571797, 571798
Fax : 571799

केन्द्रीय विद्यालय संगठन KENDRIYA VIDYALAYA SANGATHAN

ANNEXURE - 2

क्षेत्रीय कार्यालय Regional Office
मालीगाँव चारियाली Malligaon Charjali
गुवाहाटी : 781 012 Guwahati : 781 012

पत्रांक

No. F. 10-4/2001/KVS(GR)/ 15138-42

दिनांक

Dated : 20.08.2001

TRANSFER ORDER

The transfer of the under mentioned teachers are hereby ordered with immediate effect in Public interest.

Sl.No.	Name of the employee with designation.	Transferred	
		From.KV	To KV
01.	Mr. P. Chetia, SUPW Teacher.	Chabua	Pasighat.
02.	Mr. D. Das, Drawing Teacher.	Chabua	Tengavalley.

(D. K. SAINI)
ASSISTANT COMMISSIONER

DISTRIBUTION TO :-

1. Individual concerned.
2. The Principal, Kendriya Vidyalaya, Chabua alongwith copies of transfer orders in respect of above teachers with the direction to handover the copies to them and dated signature may please be obtained. They may immediately be relieved. Their date of relief should immediately be intimated to the undersigned.
3. The Principal, Kendriya Vidyalaya, Tengavalley
4. The Principal, Kendriya Vidyalaya, Pasighat.
5. The Dealing hand (K. Das) Kendriya Vidyalaya Sangathan, Regional office, Guwahati.

The date of joining of the above teachers may be intimated to the undersigned

ASSISTANT COMMISSIONER

Attested
P. Ramesh
Asst. Secy.
24.8.2001.

- 2/- 34

Annexure - VI.

To

Date : 24.8.2001.

The Assistant Commissioner
Kendrya Vidyalaya Sangathan,
Regional Office,
Maligaon Chariali,
Guwahati - 12.

Sub : Transfer order No.F:- 10-4/2001/ KVS(GR)/
15138-42 dated 20.8.2001.

Sir,

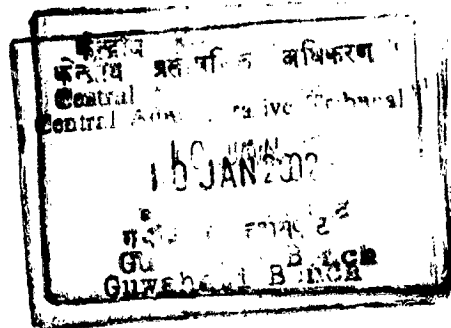
With view regards I beg to state that I am shocked and surprised to have been served with the aforesaid a transfer order which is not a rutin one.

There is a reasonable apprehension in my mind that the aforesaid a transfer order is a tunitive measure initiated against me on the basis of some false complaints lodged by Shri P.N. Singh, T.G.T. (Maths) to serve his own interest.

As such I prayed ^{that} at the aforesaid order of transfer be immediately cancelled as it is not possible on my part to leave for Tengavalley which is situated in a remote corner in the state of Arunachal pradesh with my 17 (seventeen) months old son alongwith my ailing aged parents.

Your's faithfully,
Sd/- D.Das
(Durgeswar Das)
Drawing Teacher,
K.V., A.F.S., Chabua,
Assam. Pin : 786102.

Attested
P. Bhattacharya
Adm. Officer
24.8.2001,



25
Filed by :-
Assistant Commissioner
Kendriya Vidyalaya Sangathan
Through :- Borgehain
Dipika Adhikari
10/1/2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI

AT GUWAHATI

Original Application No. 345/2001.

Sri Durgeswar Das

..... Applicant

-VERSUS-

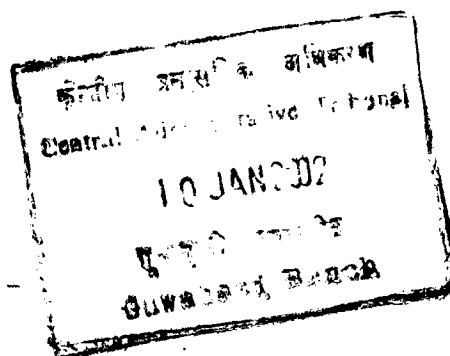
- Union of India and ors

..... Respondents.

→The Respondent No.2, 3 and 4 above
named beg to file their Written
Statement as follows :

1. That all the averments made in the Original Application (hereinafter referred to in short as the application) are denied by the answering respondents save and except what has been specifically admitted herein and what appears from the records of the case.

2. That with regard to the statements made in paragraph 1 of the application the answering respondents denies the correctness of the same. The impugned common transfer Order No.10-4/2001/KVS(GR)/15/38-42 dated 20.8.2001 was served upon the applicant as per clause 3 of the transfer guidelines that provide for transfer of teachers in terms of all India transfer liability at any time depending upon the



- 2 -

administrative exigencies/administrative grounds. Based on the adverse enquiry report submitted by the enquiry officer, who was appointed by the competent authority to enquire into the alleged acts of misconduct indulged in by the applicant and one of his colleagues, the applicant was transferred on administrative ground in order to maintain a conducive atmosphere for teaching and learning process at KV AFS Chabua. Therefore, the transfer order of the applicant is very much in accordance with the law and not malafide as alleged by him.

A copy of the transfer guidelines is annexed herewith and marked as Annexure:- 1.

3. That with regard to the statement made in paragraphs 2,3 & 4.i the answering respondents has no comment.

4. That with regard to the statements made in paragraph 4.ii of the application the answering respondents begs to submit that as per the complaint received from Sri P.N. Singh, TGT (Maths) teacher on 17.3.2001 by the Principal, KV AFS Chabua the applicant was serve the memorandum dated 19.03.2001 asking for his explanation about the alleged act of misconduct indulged in by him on 17.3.2001. Opportunity as provided under the law has been offered to him as per Article 14 of the Constitution of India and laws framed thereunder.

A copy of the complaint dated 17.3.2001 is annexed herewith and marked as Annexure :- 2.

5. That with regard to the statements made in paragraph 4.iii of the application the answering respondents begs to submit as follows. As per eye witness accounts submitted in writing to the Principal of the school by Sri A.K.Sinha (PRT) and Sri M.Paswan, PGT (History) who were present in the staff room when the incident took place on 17.3.2001, the applicant along with Mr P.Chetia entered the staff and the applicant gave a blow on the head of Sri P.N.Singh. In any case these incidents has no nexus with the present case.

6. That with regard to the statements made in paragraph 4.iv of the application the answering respondents begs to submit that the preliminary fact finding enquiry was conducted as per the directive of the competent authority on 21.4.2001 and the applicant was directed to appear before the Enquiry Officer. The Assistant Commissioner, KV Guwahati Region vide office Order No. 13-2/2001-KVS(GR)/11090-91 dated 4.4.2001 ordered the conduct of a preliminary enquiry.

A copy of the Office Order No. 13-2/2001-KVS(GR)/11090-91 dated 4.4.2001 is annexed herewith and marked as Annexure:- 3.

7. That with regard to the statements made in paragraph 4.v of the application the answering respondents has no comments.

8. That with regard to the statements made in paragraph 4.vi of the application the answering respondents begs to submit as follows. The enquiry officer in his report dated 23.04.2001 submitted to the competent authority, i.e., the Assistant Commissioner, RO, Guwahati, observed that the applicant Shri P.Chetia, blew the situation out of proportion and also provoked the applicant to beat Sri P.N. Singh on his head. The Enquiry Officer also suggested the immediate transfer of the applicant from K.V A.F.S Chabua. Accordingly, the transfer order was served upon the applicant by the Assistant Commissioner, KVS, RO, Guwahati in public interest. If public interest has to be served the applicant's movement becomes necessary. the respondent organisation, i.e., KVS, RO, Guwahati has acted well within its rights to transfer an employee in public interest on administrative ground. The matter was discussed at various level to find out its solution and finally the concerned authority without going for any major punishment decided to place them in a other school for their improvement. This measure has been taken as a very special case taking into consideration the plight of the applicant.

9. That with regard to the statements made in paragraph 4.vii of the application the answering respondents begs to submit that no representation from the applicant was received by the respondent No.3. As already submitted in paragraph 2 of this Written Statement, the applicant was transferred as per clause 3 of the KVS transfer guidelines. Hence the allegation of the applicant that the transfer order has been issued in a malafide manner is baseless and incorrect.

10. That with regard to the statements made in paragraph 4.viii of the application the answering respondents begs to submit as follows. It is not correct to state that the respondent 5 prevailed upon respondent 3 to issue transfer order dated 20.08.2001 to the applicant. As per the account of respondent 5, he left Chabua fearing for his life. It is true that the respondent No. 5 has not been reporting for duty at KV AFS, Chabua since 24.3.2001 without prior permission from the authorities.

11. That with regard to the statements made in paragraph 4.ix of the application the answering respondents begs to repeat what has been submitted in the preceding paragraph that the respondent 5 did not prevail upon respondent 3 to serve the transfer order on the applicant.

- 27 -
AD

The answering respondents further begs to submit that the applicant was served with the transfer order dated 20.08.2001 on 24.08.2001 and he was relieved of his duties from KV AFS Chabua on the forenoon of 27.08.2001 vide relieving order No. 17/KV/CHB/2001-02/359-361. The said relieving order was sent to the applicant's quarter by hand through a messenger peon but he returned back stating that the quarter of D.Das was locked. The next day i.e. on 28.8.2001 the order was sent to the applicant by speed post.

It is further submitted that the policy of choice posting is applicable only to outsiders who have completed their tenure in the North Eastern Region, Sikkim, A & N Islands and listed hard stations taking into consideration the OM dated 14.12.83. This is very much clear from the definition of tenure provided in clause 2(viii) of the transfer guidelines. Therefore, as per rules the applicant is not entitled to a choice posting.

Copies of the relieving Order dated 27.08.2001 and Speed Post receipts are annexed herewith and marked as Annexure:- 4.

12. That with regard to the statements made in paragraph 5.i to 5.ii the answering respondents begs to repeat and reiterate what has been stated in the aforesaid paragraphs and state that the grounds are baseless and contrary

to law.

13. That with regard to the statements made in paragraph 6.i of the application the answering respondents begs to reiterate what has been already submitted in paragraph 9 of this Written Statement that no representation from the applicant has been received by the respondent No.3 on 24.8.2001.

14. That with regard to the statements made in paragraph 7.i of the application the applicant is put to the strictest proof of the correctness of the statements made therein.

15. That with regard to the statements made in paragraph 8 of the application, the answering respondents beg to state that taking into consideration the statements and submissions made by the applicant as well as various transfer guidelines and also taking into consideration the statements made by the respondents in the preceding paragraphs the present Original Application deserve to be dismissed with costs.

16. That with regard to statements made in paragraph 9 of the application, the answering respondents begs to state that in view of the factual and legal aspects involved in the present case, the interim order passed by this Hon'ble Tribunal dated 29.8.2001 is required to be modified/vacated.

- 29 - 42

- 8 -

*
V E R I F I C A T I O N

I, Sri Deo Kishan Saini, son of Sri C.L. Saini, aged about 53 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region do hereby verify that the statements made in paragraphs 3, 7, 9, 10, 12 & 16 are true to my knowledge and those made in paragraphs 2, 4, 5, 6, 8, 11 are based on records.

And I sign this verification on this the 10th day of January 2002 at Guwahati.

Place : Guwahati

Bhutanam
DEPONENT

Date : 10/1/2002

TRANSFER GUIDELINES

In supersession of existing guidelines/orders on the subject, it has been decided that transfers in the Kendriya Vidyalaya Sangathan will hereafter be made as far as practicable in accordance with the guidelines indicated below:

2. In these guidelines unless the context otherwise requires:

- i) "Commissioner" means Commissioner, Kendriya Vidyalaya Sangathan including any officer thereof who has been authorised or delegated to exercise all or any of the powers and functions of the Commissioner;
- ii) "Performance" means
 - a) Where the Annual Confidential Report(s) is/are available in the concerned Regional office, the assessment of teacher as reflected in his Annual Confidential Report for the last three years preceding the year in which transfers are taken up,
 - b) Where the Annual Confidential Report(s) for last three years or any of the last three years is/are not available in the concerned Regional Office for whatever reason, the assessment by the Assistant Commissioner of the Region from where transfer is being sought on the work and conduct of the teacher for the year(s) in respect of which the ACR(s) is/are not available
- iii) "Sangathan" means the Kendriya Vidyalaya Sangathan.
- iv) "Service" means the period during which a person has been holding charge of the post in the Sangathan on a regular basis.
- v) "Station" means any place or a group of places within an urban agglomeration
- vi) "Stay" means service at a station excluding the period or periods of continuous absence from duties exceeding 30 days (45 days in case of N.E. Region, Sikkim and A&N Islands) at a stretch other than on training or vacation.
- vii) "Teacher" means all categories of teachers in the employment of Sangathan and includes Vice-Principals and Principals but does not include Education Officers and above.
- viii) "Tenure" means a continuous stay of three years in North Eastern Region, Sikkim, A&N Islands and listed hard stations (Note: While calculating the aforesaid stay of three years, the period or periods of continuous absence from duties exceeding thirty days (45 days in case of N.E. Region, Sikkim and A&N Islands) at a stretch other than on maternity leave, training or vacation shall be excluded.

(2)

ix) "Year" means a period of 12 months commencing on 1st April.

Unless the context otherwise indicates:

- a) words importing the singular number shall include plural number and vice-versa;
- b) words importing the masculine gender shall include the feminine gender.

3. In terms of their all India transfer liability, all the employees of the KVS are liable to be transferred at any time depending upon the administrative exigencies/grounds, organisational reasons or on request, as provided in these guidelines. The dominant consideration in effecting transfers will be administrative exigencies/grounds and organisational reasons including the need to maintain continuity, uninterrupted academic schedule and quality of teaching and to that extent the individual interest/request shall be subservient. These are mere guidelines to facilitate the realization of objectives as spelt out earlier. Transfers cannot be claimed as of right by those making requests nor do these guidelines intend to confer any such right.

4. The maximum period of service at a station shall generally not exceed three years in the case of Assistant Commissioners and five years in case of Principals/Education Officers. They are, however, liable to be transferred even before completion of the aforesaid period, depending upon organisational interest or administrative exigencies, etc. Principals with outstanding record in terms of their performance as reflected in ACRs and CBSE results may be retained in a Kendriya Vidyalaya even after completion of five years as aforesaid to promote excellence in the Vidyalaya.

5. Apart from others, the following would be administrative grounds for transfers.

- (i) A teacher is liable to be transferred on the recommendation of the Principal and the Chairman of the Vidyalaya Management Committee of the Kendriya Vidyalaya.
- (ii) Transfer of spouse of a Principal to a Kendriya Vidyalaya at the station where the Principal is working or nearby, but not the Vidyalaya where he is a Principal.

6. As far as possible, the annual transfers may be made during summer vacations. However, no transfers, except those on the following grounds shall be made after 31st August

- i. Organisational reasons, administrative grounds and cases covered by para 5;
- ii. Transfers on account of death of spouse or serious illness when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his/her spouse and son/daughter.

(3)

Mutual transfers as provided in para 12.

7. Priority for transfers on request shall follow the descending order of combined weightage to be calculated in terms of entitlement points for organisational reasons/interests as also the individual needs and request of the teachers seeking transfers in accordance with para 8 below.

Provided that transfers sought on account of death of spouse within a period of two years of death and medical grounds as per para 9 will be placed en bloc higher than others listed in para 8 of these Guidelines.

8. (i) Organisational reasons/interest shall be classified and assigned entitlement points as under:

(a) Transfer from places where tenure is involved (see para 2 (viii) of these Guidelines) 20

(b) Performance:

RATING OF PERFORMANCE	ENTITLEMENT POINTS
Outstanding	10 for each year
Very Good	6 for each year
Good	4 for each year
Average	0 for each year
Unsatisfactory	(-10 for each year

(ii) Needs denoted by the following reasons shall be assigned entitlement points as given against each.

S.No.	REASONS/GROUND	ENTITLEMENT POINTS
-------	----------------	--------------------

A. Blind and orthopedically handicapped persons. The standards of physical handicap will be the same as prescribed by the Govt. of India for sanction of Conveyance allowance. 15

B. SPOUSE CASES

(i) Where spouse is a Sangathan employee. 20

(11)

46

(ii)	Where spouse is a Central Government employee	18
(iii)	Where spouse is an employee of autonomous body or PSU under Central Government.	15
(iv)	Where spouse is an employee of State Government or its autonomous body or PSU	12
(v)	Other spouse cases	10

Note for 'Spouse Cases' :

The aforesaid points will be awarded only where the teacher seeks transfer to a station (a) other than the one where he/she is currently posted and (b) where his/her spouse is posted or nearby. This condition, i.e. (b) will, however, not apply in those cases where the spouse of the teacher is posted to a non-family station provided the transfer is sought to a place nearest to the station where his/her spouse is posted

C.	Unmarried/divorced/judicially separated/widowed ladies	12
D.	General Cases which are not covered by A-C above.	10
E.	Stay at the station from where the transfer is being sought;	1 for each year of stay exceeding three years subject to a maximum of 20 points

(OR)

Teachers who have less than 2 years to retire.	20
--	----

9. For the purpose of calculation of entitlement points in respect of medical grounds as mentioned in the Proviso to para 7 of these Guidelines, such illnesses of teacher himself/herself or his/her spouse and dependent son/daughter alone as may be prescribed by the Commissioner will be considered as medical ground for transfer

Note. A son will be deemed to be dependent till he starts earning or attains the age of 25 years, whichever is earlier or suffers from permanent disability of any kind (physical or mental) irrespective of age limit. A daughter will be deemed to be dependent till she starts earning or gets married irrespective of age limit

(5)
10(1) Where transfer is sought by a teacher under para 8 of the guidelines after continuous stay of 3 years in NE & hard stations and 5 years elsewhere at places which were not of his choice, or by teachers falling under the Proviso to para 7 of these Guidelines, or very hard cases involving human compassion, the vacancies shall be created to accommodate him by transferring teachers with longest period of stay at that station provided they have served for not less than five years at that station. Provided that Principals who have been retained under para 4 to promote excellence, would not be displaced under this clause.

(2) While transferring out such teachers, efforts will be made to accommodate lady teachers at nearby places / stations, to the extent possible and administratively desirable.

(3) In cases where a vacancy cannot be created at a station of choice of a teacher under this clause because no teacher at that station has the required length of stay, the exercise will be repeated for the station which is the next choice of the teacher seeking transfer.

Note: The transfers proposed under this rule shall be placed before a Committee consisting of Additional Secretary (Education) Chairman, Commissioner, Member and Joint Commissioner (Admn) KVS as the Member Secretary

11. In order to effect transfers in terms of para 8 and 10 of these Guidelines, two priority lists shall be prepared and operated as under:

(a) First priority list shall list all the applications received for transfer in terms of paras 7 and 8 showing the entitlement points against each applicant. This priority list shall be operated against the vacancies available during normal course for being filled up.

(b) Second priority list will be maintained in respect of cases of transfer in terms of para 10 of the guidelines listing all the applications as also the entitlement points of each applicant in terms of priorities given in para 8 of the guidelines. The applicants included in this priority list alone will be accommodated by transferring teachers with the longest period of stay at that station provided they have served for not less than 5 years from the date of joining at that station. For this purpose, a list of persons who have served for 5 years or more at the stations shall be prepared by the Assistant Commissioners of the respective regions and displayed.

12. Mutual transfer may be permitted on satisfaction of the Commissioner but such cases will be taken up on completion of annual transfers as per clause 8 and completed by 30th September

13. Intra and inter-regional transfers may, as far as practicable, be made simultaneously.

(6)

1 contd

14. Upon promotion or direct recruitment as Principals/ Education Officers/Assistant Commissioners, an officer shall necessarily be posted to a different State other than the one where he is posted or domiciled, as the case may be, subject to availability of vacancies. Subject to availability of vacancies and other administrative reasons those who are due to retire within next three years may not be posted outside their home state if their service at the same station prior to promotion does not exceed three years.

(iii)

15. A teacher on promotion shall necessarily be posted out of the Region where he is currently posted. However, a lady teacher may on promotion be posted within the same Region but a district or two away from the existing place of posting, subject to availability of vacancy.

(iv)

16. Transfer TA will be regulated as per orders of the Government of India on the subject

19. applic

17. Assistant Commissioner will be competent to change the headquarters of a teacher on administrative grounds to any place within the region as deemed fit and direct him to discharge his duties there. The Assistant Commissioners shall report forthwith the case with full facts to the Commissioner for confirmation or directions.

20.

21.

21. decid

18. Notwithstanding anything contained in these guidelines,

22.

(a) a teacher or an employee is liable to be transferred to any Kendriya Vidyalaya or office of the Sangathan at any time on short notice on grounds mentioned in clause 5 and 6 (i) of these guidelines.

(i)

(b) the Commissioner will be competent to make such departure from the guidelines as he may consider necessary with the prior approval of the Chairman;

(ii)

(c) the request of a teacher may be considered for transfer to a station in respect of which no other person has made a claim or request even if such teacher has not submitted the application in the prescribed proforma at the time of annual transfer or within the time limit prescribed for the purpose;

(d) Following cases will not be considered for transfer-

(i) cases of Education Officers/Assistant Commissioners for transfer without completing three years' stay at the place to which they were posted upon promotion.

(ii) cases where a teacher, Education Officer, or Assistant Commissioner was transferred on grounds mentioned in paras 5(i), 6 and 7 of these guidelines will not be considered for transfer without completing 5 years' stay at the station to which they were so posted.

(7)

- (iii) Principals, Education Officers and Assistant Commissioners will not be transferred back (to the same station from where they were transferred earlier on completion of period as specified in para 4 above) unless a period of three years has elapsed.
 - (iv) cases of fresh postings whether on direct recruitment or on promotion unless they complete three years of stay at the place of their posting except that, in case of women teachers, the request for posting to a place of choice can be considered after stay of one year. This will not, however, be applicable in cases covered by paras 5, 6, and 7(i) of these Guidelines.
19. These Guidelines shall mutatis mutandis apply to non-teaching staff to the extent applicable.
20. If any difficulty arises in giving effect to these guidelines, the Commissioner may pass such orders as appears to him to be necessary or expedient for the purpose of removing such difficulty.
21. If any question arises as to the interpretation of these guidelines, it shall be decided by the Commissioner.
22. The attention of all the employees is invited to Rule 55(27) of the Education Code and rule 20 of the CCS(Conduct) Rules which provide as under:
- (i) As per Rule 55(17) of Education Code:
"No teacher shall represent his grievance, if any, except through proper channel, nor will he compass any non-official or outside influence or support in respect of any matter pertaining to his service in the Vidyalaya."
 - (ii) As per Rule 20 of CCS(Conduct) Rules:
No Govt. servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under KVS.
If the above provisions as mentioned at (i) and (ii) above are contravened, the following actions shall follow:
 - (a) That the name of the applicant will be removed from the priority list and he/she will be debarred for three years from being considered for transfer without any further reference to the teacher
 - (b) That the teacher will be open to disciplinary proceedings as per rules.

The Pump Co. 37.

10. V. chakko.

Adam. How do they

through R/Ser.

With due regard I want
 place before you the following facts for your
 kind consideration and favorable action.
 Sympathetic ^{as well as humanitarian} government.

1. Sir J. P. N. Singh was doing investigation duty on Room no 3.
2. At 9:25 AM. (17.3.2001) Mr. Chaitan Singh Teacher entered into room no 3. without any permission / prior information.
3. I being a new person in the campus couldn't recognise him and requested to go back from the class. As his intention was to help some one in exam, he became very angry. He threatened to see me often (like even to kill me if I did not kill).
4. As I could not know that he is a teacher, I started begging excuse for my act (As I had told him to leave the exam-hall) like anything.
5. Even though for when I went into the Staff room, he came with some teacher Mr. D. Das along with teacher and made a quarrel at the back of the building.

by it is hard on my head I rest after this

I am a friend of your mother's

On this subject I have been speaking to
I want to request you to do what
and please, and to do our Phil. 2. 14-16

C.T.C.

दूरभाष / Phone : 571797, 571798
Fax : 571799



केन्द्रीय विद्यालय संगठन KENDRIYA VIDYALAYA SANGATHAN

क्षेत्रीय कार्यालय Regional Office
मालीगौव चारियाली Maligaon Chariali
गुवाहाटी : 781 012 Guwahati : 781 012

पत्रांक :
No. F. : 13-2/2001-KVS(GR)/11090-91

दिनांक :
Dated 4.4.2001

OFFICE ORDER

This office has received the following complaint/papers against the concerned employees of Kendriya Vidyalaya, Chabua regarding indiscipline caused by them.

With a view to finding the facts in-to the matter Shri G.S.C. Bose babu, Principal Kendriya Vidyalaya, Narangi is here by detailed to conduct the preliminary enquiry in this case and submit detailed report along with supporting evidences within 15 days.

To,
Shri G.S.C. Bose Babu,
Principal,
Kendriya Vidyalaya,
Narangi.

(D. K. SAINI)
ASSISTANT COMMISSIONER

Copy to :-

The Principal Kendriya Vidyalaya, Chabua
for information and necessary action.

CTC
N.M.
प्रधान/PRINCIPAL
केन्द्रीय विद्यालय बापु सेवा बापुदा
Kendriya Vidyalaya AFS Chabua
पो. वि. 18 Dist. Dibrugarh
ASSAM-786109

17/KVCHB/2001-02/ 356, 357, 358

27-08-2001

RELIEVING ORDER

With reference to the letter no.10-4/2001/KVS(CH)10138-42 dt.20-08-2001 Sri Durgeswar Das, Drawing teacher of the Vidyalaya is hereby relieved of his duties in the forenoon of 27-08-2001 with instruction to report to the Principal, K.V. Tengavelley without fail.

He is entitled to transfer T.A. as per KVS rules.

To,

Sri Durgeswar Das
Drawing teacher,
KV.AFS, Chabua.

N.M. Das
(N.M. VARADHARAJULU)
PRINCIPAL
KV.AFS, CHABUA

Copy to :-

1. The Principal, K.V. Tengavelley.
2. The Assistant Commissioner, KVS
Chandrad Region.

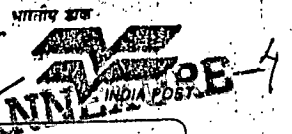
N.M. Das
PRINCIPAL

SMS SPEED POST

-19-

DEPARTMENT OF POSTS - INDIA
SPEED POST RECEIPT.

40-



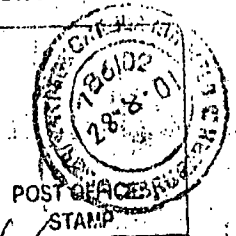
No.

ED840282125IN

DATE	28/8/01
TIME	1301
WEIGHT	201
CHARGE	151
SIGNATURE	[Signature]

HRS

GMS

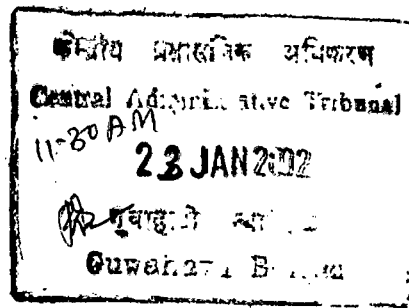


POST OFFICE RUMBA
STAMP

CUSTOMER COPY

TO	Sri D. Das Dig	
	SMS P/287/3	
	Chabua DT/12	
TEL.	[] [] [] [] [] [] [] []	PIN 786102
SENDER	K.V. Chabua DT/12	
	CTC N/A PRINCIPAL	
TEL.	[] [] [] [] [] [] [] []	PIN 786102

For enquiry, please contact your Speed Post Centre



Filed by the applicant
Shri Durgeswar Das
for the applicant
54
Pallab Bhattacharya
Advocate, 28.8.2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:

AT GUWAHATI

ORIGINAL APPLICATION NO. 345/2001

Shri Durgeswar Das... Applicant

-Versus-

Union of India & Ors.. Respondents

-AND-

IN THE MATTER OF:

A rejoinder filed on behalf of the applicant against the written statement filed by the Respondents No. 2, 3 & 4.

1. That all averments and submissions made in the written statements (hereinafter referred to as counter) is denied by the applicant save and except what has been specifically admitted herein and what appears from the records of the case.

2. That the applicant denies the correctness of the statements made in paragraph 1 of the counter and reiterates and reaffirms the statements made in paragraph 1 of the Original Application. The impugned transfer order dated 20.8.2001 is out and out a malafide

Contd...p/-

Durgeswar Das

order and the same has been passed at the behest of Shri P.N. Singh, Trained Graduate Teacher (Mathematics) (hereinafter referred to as T.G.T(Maths)). The applicant had been transferred on the basis of an enquiry report submitted by the Enquiry Officer who was appointed by the respondent No. 3 to enquire into the alleged acts of misconduct committed by the applicant. The said enquiry was ordered on the basis of the complain made by the respondent No. 5. Curiously enough, the said enquiry report has not been brought on record by the applicants. The respondent No.4 vide letter No.PF/KVCHB/2001-02/43 dated 18.4.2001 informed the respondent No. 3 about the alleged acts of misconduct by the applicant whereby the applicant has been stated to have threatened the respondent No. 5 inside the school campus. The respondent No.4 while forwarding the complain of the respondent No. 5 stated that not a single incident threatening the Security of staff member was ever heard and that the member of the staff co-exist peacefully at KV Chabua. On 17.3.2001 both the applicant and the respondent No. 5 has been stated to have made complains accusing each other. It has also been stated by respondent No. 4 in his letter dated 18.4.2001 that the respondent No. 5 left the Station without prior information neglecting his duty of evaluation and preparation of Annual Result.

A copy of the aforesaid letter dated 18.4.2001 is annexed herewith and marked as Annexure - VIII.

Contd...p/-

Suresh Chandra Singh

3. That as has been stated in paragraphs 4 of the counter on receipt of complain from respondent No. 5 on 17.3.2001 the applicant was served with Memorandum dated 19.3.2001 asking for his explanation for his alleged misconduct by the respondent No. 4. On receipt of which the applicant submitted his explanation on 21.3.2001 which has not been taken into consideration by the enquiry officer while submitting his report as has been stated in the preceeding ^{paragraph} in spite of such overwhelming evidence about the conduct of the applicant on 17.3.2001, it is not understood as to what prevailed upon the officer to submit an adverse report about the conduct of the applicant on 17.3.2001. The only inference that can be drawn in the facts and circumstances of the case is that the respondent No. 5 has prevailed upon the enquiry officer to submit an adverse report against the applicant ignoring the testimony of the respondent No. 4 and also upon the respondent No. 3 to post him at Kendriya Vidyalaya, Borjhor inspite of he being absent from duty from 24.3.2001 without obtaining any prior permission to leave his headquarter or without any kind of leave being sanctioned as has been intimated by the respondent No. 4 to respondent No.3 vide letter No.FRF/PNS/KVCHB/2001-02/10 dated 19.4.2001.

A copy of the aforesaid letter dated 19.4.2001 is annexed hereto as Annexure-IX.

Contd...p/-

Surgesan Jem

4. That the applicant denies the correctness of the statement made in paragraph 5 of the counter and reiterates and reaffirms all the averments made in paragraph 4 (iii) of the Original Application. It appears from the averments made in paragraph 5 of the counter that the respondents are approbating and repro-bating at the same time. On the one hand they say that the applicant had been transferred on the basis of the enquiry report submitted by the Enquiry Officer who was appointed to enquire into the alleged misconduct committed by the applicant against the respondent No.5, while on the other hand they say that the entry of the applicant into room No. 3 of the examination centre on 17.3.2001 wherefrom the alleged altercation between the applicant and the respondent No. 5 had originated has got no nexus with the present case. And that the applicant was not given any duty related to examination in room No. 3 on 17.3.2001. It is crystal clear from Memorandum No. PE(PNS/KVCBH)/2000-2001/818 dated 19.3.2001 that the applicant had entered room No. 3 as reliever on 17.3.2001 and it is the respondent No. 5 who had shouted at the applicant and asked him to get out of examination hall in presence of the examinees and thus, insulted him. The respondent No. 5 has also used unparliamentary language against the applicant and has *shouted at* him back in the verandah.

Contd...p/-

Singhauri San-

A copy of the aforesaid Memorandum dated 19.3.2001 is annexed hereto as Annexure-X.

5. That the applicant denies the correctness of the statement made in paragraph B of the counter and reiterates and reaffirm all the averments made in para 4(vi) of the application. In this connection the applicant begs to state that it is quite apparent that the transfer order of the applicant is punitive in nature. It is perhaps needless to point out that no public interest would be served to transfer the applicant from KV Chabua on the basis of the false and frivolous complaint lodged by the respondent No. 5. On the other hand it would have a detrimental effect on the moral of the applicant who is a sincere and hard working teacher, the respondent no. 5 on the other hand has been a premium as because he has been transferred from KV Chabua to KV Borjhar even though he has not attended school from 24.3.2001 as it is apparent from Annexure IX to this rejoinder. It is surprising ^{as} to why no disciplinary action has been initiated against that Respondent No. 5 even though he had abstained from duty since 24.3.2001. It is therefore clear that the respondent No. 3 has gone out of his way to grant undue privilege to the respondent No. 5 which is detrimental to the interest of the applicant without any rational basis or intelligible differentia. Therefore from the facts and

Contd...p/-

Suraj Kumar Jais.

[6]

circumstances of the case it can safely be inferred that considerations other than just and bonafide had prevailed upon the Respondent No. 3 in issuing the impugned order of transfer and, as such, the same is malafide in nature and is therefore liable to be set aside and quashed.

6. That the applicant denies the correctness of the statements made in para 9 of the counter and reiterates and reaffirm all the averments made in para 4(vii) of the application. As has been explained above the impugned order of transfer is malafide in nature and therefore the action of the respondent No. 3 can not be allowed to be justified by invoking clause 3 of the transfer guide lines.

7. That the applicant denies the correctness of the statement made in para 10 of the counter and reiterates and reaffirm all averments made in para 4 (viii) of the application . It is not understood why no disciplinary action has been initiated against the respondent No.5 who as per his own admission of the answering respondent has unauthorisely absented himself from duty since 24.3.2001 in spite of the clear and unequivocal ~~stand~~ of the respondent No. 4 that the life of the respondent No.5 has been never under threat at Chabua from any quarter. It is yet another instance of the malafide intent of the respondent No. 3 in issuing the impugned order of transfer.

Contd...p/-

Sunderan Das.

8. That the applicant denies the correctness of the statement made in para 11 of the counter and reiterates and reaffirm all averments made in para 4(ix) of the application. In this connection the applicant begs to state that after being served with a copy of the transfer order dated 20.8.2001 on 24.8.2001 he had applied for leave. As such he was not aware of the alleged relieving order dated 27.8.2001 which had been received by him by Speed Post on 3.9.2001. As such the alleged relieving order dated 27.8.2001 was not within the knowledge of the applicant while filing this application on 29.8.2001.

9. That the applicant denies the correctness of the statements made in paragraphs 12, 13, 14, and 15 of the application and reiterates and reaffirms all the averments made in paragraphs 5, 6, 7 and 8 of the application.

10. That under the facts and circumstances stated above it is respectfully submitted that it is quite apparent from what has been stated in the preceding paragraphs that the transfer order dated 20.8.2001 is out and out a malafide order and has been issued by the Respondent No. 3 to serve the interest of the Respondent No. 5 so as to get ^a same excuse in order to transfer him from KV Chabua to KV Porjhar which is definitely

Contd...p/-

Singhwaran Sen.

close to his native State of Bihar as well as to indicate the false and unsubstantiated allegation levelled by him against the applicant inspite of clear and overwhelming documentary evidence to the contrary. As such this Hon'ble Tribunal may please to set aside and quash the impugned order of transfer dated 20/8/2001.

Contd...p/-

Mungeswar Das.

VERIFICATION

I, Shri Durgeswar Das Son of *Late*
Dhireswar Das, aged about 36 years, presently serving
as Drawing Teacher at KV Chabua do hereby verified that
the contents of paragraphs 1,2,3,4,5,6,7,8, and 9 are
true to personal knowledge and that I am not suppressed
any material facts.

Place: Guwahati

Date: 23.01.2002

Durgeswar Das

- 49 -
b3

- 10 -

ANNEXURE - VIII

PF/KVCHE/2001-02/43

18.4.2001

To
The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Guwahati -12.

Sub: Forwarding of application i.r.o. Sri P.N. Singh
TGT(PCM).

Sir,

Forwarding herewith application in duplicate received from Sri P.N. Singh TGT(PCM) of this Vidyalaya along with the following remarks for your kind information and necessary action.

(1) That Sri Singh joined this Vidyalaya on 12.3.2001 on transfer from K.V. Mokamaghat vide letter No. F.7-1(1)/2000-KVS(East-III) dt. 16.2.2001 on public interest.

(2) On the incident of 17.3.2001 the undersigned received letters of complain from Sri P.N. Singh TGT(PCM) and Sri P.Chetia SUPW teacher accusing each other. The undersigned issued separate memorandums to both of them to know the facts, Sri D.Das (Dr. Teacher) was also asked to explain about the alleged misconduct.

(3) The statement that Sri Singh became unconscious (as stated in para 4) is not a fact. He was simply making a hue and cry to disturb the peace of the place. He was invited by the undersigned to Principal Chamber and assured him to look into the complain personally and to do justice. But Sri Singh was too adamant to listen. On three occasions Sri Singh was given time to be heard in person but of no avail.

Attested
P. Chandra
Adm. Officer
23.04.02

- 50 -
11-
64

(4) Finally he left the station without prior information neglecting his duty of evaluation and preparation of Annual result as a class teacher causing a lot of inconvenience to the Vidyalaya management. He even did not get any leave sanctioned before leaving. The same is being communicated to you vide letter No. PF/PNS/KVCHB/2001-2002 dtd. 9.4.2001 by regd post. The letters related to E.L. and station leaving permission attached with the complain are not submitted to me.

(5) Members of staff co-exist peacefully at this station the life of Sri Singh is insecure as stated by him is not a fact. Most of the staff members are staying outside Air Force Camp. and not a single incident threatening the security of staff member is over heard. The statement that on 20.3.2001 Sri Singh was threatened by two people of dire consequences was never brought to the notice of the undersigned. This seems to be a fabricated story to attract the attention of higher authorities.

(6) Sir on your visit to the Vidyalaya on 26.3.2001 the undersigned apprised you of the incident ; also all the papers related to the incident was submitted to you for your kind information and necessary action.

Thanking you sir,

Encl: as above

Yours faithfully
(S.K.CHOPDAR) PRINCIPAL,
Kendriya Vidyalaya, AFS Chabua
Dist. Dibrugarh, Assam-786102.

-12- } - 51-
65
ANNEXURE - IX

FRF/PNS/KVC/2001-02/10

9.4.2001

To
The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Guwahati - 12
Sub: Unauthorised absence of Sri P.N.Singh TGT(PCM).

Sir,

It is for your kind information that Sri P.N. Singh, TGT(PCM) of this Vidyalaya has not been reporting to duty since 24.3.2001 without getting any prior permission to leave the H.O. or sanction of any kind of leave. He being the class teacher and only TGT(PCM) in the Vidyalaya the Management faced a lot of inconvenience in preparing the Annual result.

Sri Singh joined this Vidyalaya on 12.3.2001 on transfer from K.V.Mokamaghat. The undersigned is unable to contact him officially as his service book has not yet been received nor he did leave any address for correspondence in this office.

This is for your necessary action please.

Thanking you sir,

Yours faithfully,

(S.K. CHOPDAR)

PRINCIPAL

Kendriya Vidyalaya AFS Chabua

Dist. Dibrugarh, Assam-786102

Attested
P. Bhawanishankar
Advocate
23.04.02

PF(PNS)/KVCHB/2000-2001/B18

19.03.2001

MEMORANDUM

Shri P.N.Singh TGT(Maths) is hereby informed that the undersigned has received a written complain from Sri Putul Chetia SUPW teacher alleging.

1. That on entering room No.3 as the reliver on 17.3.2001 Sri Singh shouted at him asking him to get out of the exam hall in the presence of examinees thus insulted the teacher.

2. That Sri Singh followed Sri Chetia out of the hall and remarked "KUTTA, CHALLA, LOG KAHAN SE ATTA HAI"

He also blowed him at the back in the veranda.

3. That Sri Singh has stated in his letter to the undersigned dated 17.3.2001 that Mr Chetia had entered the hall with an intention to help some one kindly justify the allegation.

4. Sri Singh is therefore requested to explain the reasons for his alleged misconduct in writing 3 days from the date of receipt of this letter for further action at this end.

To,

(S.K. CHOPDAR)

Shri P.N.Singh TGT(Maths)

PRINCIPAL

Kendriya Vidyalaya AFS, Chabua.

Detested
P. Bhunia
Adm into
23.4.02