

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

✓ (DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 166/121.....

R.A./C.P No.....

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SECTION OFFICER (Judl.)

*Bahita*  
*6.12.17*

FORM NO.4  
(See Rule 42 )

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :::::::::: GUWAHATI

ORDER SHEET

Original APPLICATION NO ...166...OF 2001.

Applicant (S) Tapan Kr. Chakravarty

Respondent (S) V. O. I. Form

Advocate for Applicants (s) B.C. Das, S. Dutta, Miss V. Dutta

Advocate for Respondent (s) case.

Notes of the Registry

Date

Order of the Tribunal

This application is in form  
but not in time Condonation  
Petition is filed but filed vide  
M. P. No. .... C. F.  
for Rs 50/- deposited vide  
IPO/BD No. 66771772  
Dated 27.12.2001

9.5.01

Heard Mr. B.C. Das learned counsel  
for the applicant.

The application is admitted. Call  
for the records.

List on 13.6.2001 for orders.

Vice-Chairman

Dy. Registrar.

bb

22/5/01

13.6.01

Notice prepared and sent to S/sec.  
for copy the Respondent No 1 to 6  
by Regd. A.D. vide D/No 1868 & 1873  
dtd 23/5/01 but Enclchs are not  
Supplied by the Applicant Advocate.

Written statement has been  
filed. Ms.N.D.Goswami learned counsel  
appearing on behalf of Mr.S.Dutta  
learned counsel for the applicant and  
prays for time to file rejoinder.  
Prayer is allowed. List on  
6.7.01 for orders.

Member

The learned Counsel  
for the respondent  
has not yet filed  
the written statement.

1m

7.2001

Seen the office note dated  
15.6.2001. Mr S. Sarma, learned  
counsel for the respondents also  
stated that so far the respondents  
have not filed any written

By  
5.6.01

6.7.2001

No written statement  
has been filed.

3  
9.8.01

statement and the order dated 13.6.2001 was made due to the inadvertant statement made by the learned counsel for the respondents. Mr Sarma stated that the respondents are filing the written statement within four weeks from today. Prayer allowed. List for orders on 10.8.01.

Vice-Chairman

nkm

10.8.01

Mr.S.Sarma, learned counsel for the respondents prays for time to file written statement.

List on 5/9/01 for order.

Member

6.9.01

Mr.S.Sarma, appearing for the respondents seeks time to file written statement. Four weeks time is allowed for the same.

List on 3/10/01 for order.

Member

No written statement  
has been filed.

3.10.2001

List the matter on 21.11.2001 to enable the respondents for filing of written statement.

Vice-Chairman

bb

No written statement  
has been filed.

20  
6.12.01

Ten days time is granted to enable the respondents for filing of written statement. List the case on 7.12.2001 for written statement and further orders.

Vice-Chairman

trd

3  
3  
O.A. 166/2001

Notes of the Registry

Date

Order of the Tribunal

7.12.01

At the request of Mr.S.Sarma, learned counsel for the respondents 4 weeks time is allowed to the respondents to file written statement.

List on 4.1.02 for order.

Member (J)

Member (A)

mb  
4.1.02

Written statement has been filed. The case may now be listed for hearing. The applicant may file rejoinder, if any, within 2 weeks from today.

List on 8.2.2002 for hearing.

Vice-Chairman

mb  
8.2.02

Prayer has made on behalf of Respondent for adjournment. Mr.M.Chanda learned counsel for the applicant has no objection. List on 13.3.02 for hearing.

lm  
13.3.02

Mr.S.Dutta learned counsel for the applicant prays for adjournment on the ground that he will file rejoinder to-day. Mr.S.Sarma learned counsel for the respondents has no objection. List on 20.3.02 for hearing.

lm  
20.3.02

Mrs. N.D.Goswami, learned counsel appearing on behalf of Mr.S.Dutta learned counsel for the applicant states that he is unable to attend the court to-day due to his personal difficulty. Mr.S.Sarma learned counsel for the respondents has no objection. List on 5.4.02 for hearing.

Member

26-12-2001

W/S submitted by the Respondents Nos 2 to 6.

No rejoinder has been filed.

30/7/2002

Affidavit in reply of the applicant to the W/S submitted by the respondents 2-6.

NB  
14/3/02

Notes of the Registry

Date

Order of the Tribunal

5.4.1

There was no evidence.  
The case is adjourned to 1/5/02.

Mr  
A/k  
Fl.

1.5.2002

Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No order as to costs.

Vice-Chairman

bb

Reminded by  
S. J. S. 13/5/01

The Memo No. HC, XXI- 17,652-53/RM Dtd.  
21.8.06 received from The Assn. Registrar  
Gauhati High Court, Gauhati 6

The judgment and order Dtd 8.8.06  
passed by the Hon'ble High Court, Gauhati  
in W.P(c) No. 5888/02 arising out of  
judgment and order Dtd 1.5.02 passed in  
OA 166/01 may kindly be seen at  
flag 'A'.

The above mentioned W.P(c) has  
been filed by the Union of India.  
The Hon'ble Gauhati High Court is  
pleased to set aside the judgment  
Dtd 1.5.02 of this Hon'ble Tribunal.

Submitted for favour of kind  
perusal.

Kh  
14/9

14.9.06  
SO (1)

15/9/06  
Hon V

Dep. Registrar

14/9/06

IN THE GAUHATI HIGH COURT  
(The High Court of Assam, Nagaland, Manipur, Tripura,  
Meghalaya, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT: GUWAHATI

WRIT PETITION(C) NO.5888 OF 2002

1. Union of India  
through the Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Silchar Regional Office,  
Hospital Road, Silchar-5.

... Petitioner

-VRS-

1. Shri Tapan Kumar Chakraborty,  
S/o late Motilal Chakraborty,  
of Lanakpur Part II,  
Silchar 5, Distt. Cachar.

2. The Central Administrative Tribunal,  
Gauhati Bench, Guwahati.

.... Respondents.

BEFORE

HON'BLE THE CHIEF JUSTICE MR.B.S. REDY

HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the petitioner :: Mr.J. Singh,  
Mr.S.C. Biswas,  
Mr.I.A. Talukda  
Advocates

For the Respondent :: Mr.S. Dutta  
Sr.Advocate

Date of hearing :: 31.07.2006

Date of judgment and order :: 8.8.2006

**JUDGMENT AND ORDER****Nandakumar, J**

1. In the present writ petition filed by the Union of India/ respondent no.1 in O A. No.166 of 2001 of the Central Administrative Tribunal, Guwahati Bench, the relief sought for is for quashing the judgment and order of the Administrative Tribunal dated 1.5.2002 allowing the O.A. No.166 of 2001 filed by the present respondent no.1 challenging the order of the Deputy Commissioner(Finance), Kendriya Vidyalaya Sangathan dated 29.1.2001 denying the claim of the respondent no.1 (i.e. applicant of the O.A. No.166 of 2001) for double H.R.A.( House Rent Allowance) under Appendix -24 of the Accounts Code for the Kendriya Vidyalayas .

2. Heard Mr. J. Singh, learned Sr. counsel assisted by Mr. S.C. Biswas, learned counsel for the petitioner as well as Mr. S. Dutta, learned counsel for the respondent/applicant of the O.A. No.166 of 2001 of the Central Administrative Tribunal, Guwahati Bench.

3. The seed of the present case having a chequered history is the transfer and posting order issued by the competent authority dated 5.1.1990 transferring the respondent/applicant of O.A. No.166 of 2001 from Calcutta to Patna and writ petition challenging the transfer order dated 5.1.1990 could have been nibbed in bud , had the accepted principle of law on the power of judicial review of



the transfer and posting order of the competent authority been taken into consideration in the right perspective at the very beginning.

4. Neglecting all the details but the precise facts which culminates to the filing of A.O. No.166 of 2001 is that the respondent/applicant of O.A. No.166 of 2001 was initially appointed as a Lower Division Clerk (i.e. for short LDC) in Kendriya Vidyalaya Sangathan (for short 'KVS') and posted at Calcutta Regional Office of the KVS. By an order dated 5.1.1990 of the competent authority the respondent/applicant of the O.A.No.166 of 2001 was transferred to Patna R.O. of the KVS. Admittedly the respondent/applicant was not transferred under the said order of the competent authority dated 5.1.1990 to a lower post and it was not absolutely in violation of the service rules governing the respondent/applicant.

5. The Apex Court in a catena of cases had discussed the power of judicial review of the order of the competent authority for transferring the employee holding the transferable post.

(a) The Apex court (C/B), in a landmark decision, in **E.P. Royappa -vrs - State of Tamil Nadu & Ors, reported in 1974 (1) SLR 497, (1974 ) 4 SCC 3** held that the government has, in view of the larger interest of administration, to make best possible choice to find out suitable officers/employees for transfer for exigency of administration. The Apex Court (C/B) in the case of E.P.

Royappa (supra), further, held that it is always a difficult problem for the government to find out suitable officers for the specialized post. There are not ordinarily many officers who answers the requirement of such specialized post. When in exercise of this choice, the government transfers an officer from one post to another, the officer may feel unhappy because the new post does not give him the same amplitude of powers which he had when he had holding the old post. But that does not make the transfer arbitrary so long as the transfer is made on account of the exigency of administration and is not from higher post to a lower post with discriminatory preference of a junior for the higher post, which will be valid and not open to attack under Article 14 and 16 of the constitution of India. The Apex Court in E.P. Royappa (supra) further held that the burden of establishing mala fides in issuing the transfer and posting order issued by the competent authority is on the person who alleges the court would be slow to draw inference from incomplete facts particularly when imputations are made against a person having high responsibilities.

(b) The apex Court in **B. Varadha Rao -vrs - State of Karnataka & Ors: (1986) 4 SCC 131** held that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service. No government servant can claim to retain to a particular post or in a particular place of posting unless his appointment itself is

to a specified, non-transferable post. Therefore, a transfer order per se made in the exigency of service does not result any alteration of any of the condition of service, express or implied, to the disadvantage of the concerned government servant. Further, a transfer order which is a mala fide and not made in public interest but made for collateral purpose with oblique motive and in colorable exercise of powers is vitiated by abuse power and is open to challenge before court being wholly illegal and void.

(c) The Apex Court in **State Bank of India –vrs – Anjan Sanyal & Ors: (2001) 5 SCC 508** held that an order of transfer of an employee is a part of the service condition and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rule prohibits such transfer or that the authorities, who issue the order, had not the competence to pass the order.

6. It is, now, fairly well settled that the judicial review of the transfer order is circumscribed. The circumstances under which the power of judicial review of the transfer order of a government employee holding the transferable post could be exercised are broadly summed up as follows:

- (i) the transfer order is from a higher post to a lower post with discretionary

preference of a junior for the higher post;

- (ii) transfer order adversely affects the service prospect of the employee in his/her service career;
- (iii) transfer order is mala fide;
- (iv) service rules prohibit the transfer order;
- (v) authorities who issued the transfer order had not the competence to pass the transfer order;
- (vi) transfer order is not issued in the public interest but it was issued for an alien purpose, such as for accommodating an employee of the choice of the authority to a particular post for an unholy purpose, as a punishment of the employee, repeatedly transfer on political influence or/ on the instigation of a higher authority not concerned with the transfer order of the concerned employee.

7. As stated above, the root cause of the present case is the transfer order dated 5.1.1990 transferring the respondent/applicant in O.A. No.166 of 2001 from Calcutta Regional Office of the KVS to the Regional Office of the KVS, Patna.

8. The said transfer order dated 5.1.1990 was challenged by the respondent by filing a writ petition being

C.O. No.2687(W) 1990 before the Calcutta High Court. The Hon'ble Calcutta High Court by an order dated 15.3.1990 disposed of the C.O. No.2687(W) 1990 with the direction that the respondent would file representation before the authorities and authorities would pass reasoned orders upon sympathetic consideration of the same and until such disposal, the transfer order would remain in abeyance.

9. As the authority did not accept the joining report of the respondent to his office at Calcutta after the Calcutta High Court passed the said order dated 15.3.1990, the respondent filed a contempt petition along with an application for modification of the earlier order of the Calcutta High Court dated 15.3.1990 passed in C.O. No.2687(W) 1990 before the Hon'ble Calcutta High Court. The Calcutta High Court by passing the final order dated 12.7.1995 had dismissed the contempt petition with the observation that

***"affidavit-in-opposition has been filed on behalf of the alleged contemners, explaining the grounds on which petitioner (present respondent) had been transferred and the alleged contemner was the appropriate authority to pass such order of transfer. Whether such authority transferred the petitioner (present respondent) or whether, instead***

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***of transfer, terminated him was his discretion and the court cannot interfere with that. The application is dismissed."***

10. After the writ petition C.O. No.2687/W/90 challenging the transfer order dated 5.1.1990 and also the contempt petition had been rejected by the Calcutta High Court under the order dated 12.7.1995, the respondent approached the concerned authority for allowing him to join the post of Assistant to which he was promoted under an order dated 15.9.1995 and posted at R.O. KVA, Silchar. As the respondent had already been transferred to R.O., KVS, Patna, he could not be released by the authorities from the R.O., KVS, Calcutta; and for joining on his promotion to the post of Assistant of R.O., KVS, Silchar, he was to be released from R.O., KVS, Patna. Accordingly, the Assistant Commissioner(OFFG), Kendriya Vidyalaya Sangathan, Calcutta issued a memorandum dated 29.9.1995 to the effect that the respondent had to join the Regional Office, Kendriya Vidyalaya Sangathan, Patna for releasing him to join the Regional Office, Kendriya Vidyalaya Sangathan, Silchar. Accordingly the respondent joined the Regional Office, Kendriya Vidyalaya Sangathan, Patna on 5.10.1995 and after 20(twenty) days he had been released from Regional Office, Kendriya Vidyalaya Sangathan, Patna to join the Regional Office, Kendriya Vidyalaya Sangathan, Silchar. Admittedly, the last posting of the respondent before joining to his new posting at

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Regional Office, Kendriya Vidyalaya Sangathan, Silchar was the Regional Office, Kendriya Vidyalaya Sangathan, Patna. It is also an admitted fact that the respondent never shifted his family from Regional Office, Kendriya Vidyalaya Sangathan, Calcutta to Regional Office, Kendriya Vidyalaya Sangathan, Patna from where he had been released to join his posting at Regional Office, Kendriya Vidyalaya Sangathan, Silchar.

11. According to policy decision indicated in para 11 of Appendix-24 of the Accounts Code for the Kendriya Vidyalayas pertaining to special allowance and facilities for service in North Eastern Region, there is a provision for enjoyment of the benefits of double HRA( House Rent Allowance) of the Sangathan employees. Para-11 of the Appendix-24 reads as follows:

**"A. Benefit of double HRA**

***Sangathan employees posted to the specified States/Union Territories from outside the N.E. Region to another State/Union Territory of the N.E. Region, and who are keeping their families in rented houses or in their own houses at the last place of posting will be entitled to HRA admissible to them at the old station, and also at the rates admissible at the new place of posting in case they live in***

2/

*hired private accommodation irrespective of whether they have claimed transfer T.A. for family or not subject to the condition that hired private accommodation or owned house at the last station of posting in put to bonafide use of the members of the family. These concessions are admissible also to those posted to Andaman and Nicobar Islands.*

*Those employees who have not been posted to the N.E. Region from outside the N.E. Region are not entitled to this benefit.*

***B. Retention of allotment of alternate Government accommodation.***

*The facility of retention of government official accommodation will continue to be available. Licence Fee will be charged at normal rates if the accommodation is below the entitled type and at one and a half times the applicable normal rates if the entitled type is retained. The facility of retention will be admissible for three years*



***beyond the normal permissible period of retention.***

***Note:***

- i) The benefit will not be admissible to those employees who shift their families to a station other than last place of posting or bring their families to the place of their transfer/posting.***
- ii) The quantum of HRA at the last station where the family continues to stay will not change till the employees remains posted in that area and the family continues to stay at that station."***

12. From the bare perusal of para-11, i.e. benefit of double HRA, it is crystal clear that the Sangathan employees posted to the specified States/Union Territories from outside the N.E. Region to another State/Union Territory of the N.E. Region, and who are keeping their families in rented houses or in their own houses at the last place of posting will be entitled to HRA admissible to them at the old station and such benefit of double HRA will not be admissible to those employees who shift their families

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to a station other than the last place of posting or bring their families to the place of their transfer/posting. In the case of the respondent, as stated above, he never shifted his family from Regional Office, Kendriya Vidyalaya Sangathan, Calcutta to Regional Office, Kendriya Vidyalaya Sangathan, Patna after he had been transferred from Regional Office, Kendriya Vidyalaya Sangathan, Calcutta to Regional Office, Kendriya Vidyalaya Sangathan, Patna from where he had been released to join his new posting at Regional Office, Kendriya Vidyalaya Sangathan, Silchar. As the respondent is not entitled to get the benefit of double HRA under Appendix-24 of the Accounts Code for the Kendriya Vidyalayas, his representation dated 15.7.1997 for enjoyment of double HRA, after he joined Regional Office, Kendriya Vidyalaya Sangathan, Silchar, was rejected by issuing memorandum dated 29.1.2001 by the Deputy Commissioner(Finance), Kendriya Vidyalaya Sangathan, New Delhi. Ultimately, the respondent approached the Central Administrative Tribunal, Gauhati Bench by filing O.A. No.166 of 2001 against the present writ petitioner and others for quashing the said impugned memorandum dated 29.1.2001 rejecting the claim of the respondent for grant of double HRA and also for a direction to the present writ petitioner and others to pay the double HRA to the respondent/applicant with effect from October, 1995. The learned Central Administrative Tribunal by passing the final judgment and order dated 1.5.2002 allowed the O.A. No.166 of 2001. Under the said final order of the learned Tribunal dated 1.5.2002 passed in O.A.No.166 of 2001, the

learned Tribunal had not only quashed the said impugned memorandum dated 29.1.2001 and the impugned order dated 15.7.1997 for denying the double HRA to the respondent but also directed the present writ petitioner and others to give double HRA to the respondent w.e.f. October, 1995 with all arrears.

13. Writ petitioner filed the present writ petition challenging the said final judgment and order of the learned Tribunal dated 1.5.2002 passed in O.A.No.166 of 2001. It is so clear from Appendix-24 of the Accounts Code for the Kendriya Vidyalayas for payment of double HRA that the benefit of double HRA will not be admissible to those employees who shift their families to a station other than the last place of posting or bring their families to the place of their transfer and posting. It is clear from the admitted fact that the respondent had joined the Regional Office, Kendriya Vidyalaya Sangathan, Patna after his writ petition and contempt petition challenging the transfer order dated 5.10.1990 had been rejected by the Calcutta High Court by passing the final judgment and order dated 12.7.1995 and he stayed at Regional Office, Kendriya Vidyalaya Sangathan, Patna for 21 days and he never shifted his families to Regional Office, Kendriya Vidyalaya Sangathan, Patna from where he had been released to join his posting at Regional Office, Kendriya Vidyalaya Sangathan, Silchar. The learned Tribunal had lost sight of the admitted fact that the respondent joined the Regional Office, Kendriya Vidyalaya Sangathan, Patna after his writ

petition challenging the transfer order dated 5.1.1990 had been rejected by the Calcutta High Court and also he never shifted his families from Regional Office, Kendriya Vidyalaya Sangathan, Calcutta to Regional Office, Kendriya Vidyalaya Sangathan, Patna while passing the impugned judgment and order dated 1.5.2002 in O.A.No.166 of 2001. We may recall here the decision of the Apex Court in **Shiv Sagar Tiwari –vrs – Union of India & Ors: (1997) 1 SCC 444** that the trust which is reposed on the high public functionaries would be discharged only to advance the object of providing a suitable condition of work to the government employees so that the government is run on even keel and a specified bureaucracy is as much as necessary as good political leaderships to deliver the goods.

14. The respondent, as discussed above, had approached the court to get favourable verdict by taking recourse to objectionable means. The Apex Court in **Chandra Shashi –vrs – Anil Kumar Verma: (1995) 1 SCC 421** observed *that the increasing tendency of taking recourse to objectionable means to get a favourable verdict in the court has to be viewed gravely to deter the large number of persons approaching courts from doing so. Such a tendency is required to be curbed, which requires somewhat deterrent sentence.* The court also requires to see as to whether the applicant/petitioner approached the court with clean hand and also whether his conduct is blameworthy.

The Apex Court through Justice N. Venkatachala (as then he was) in **State of Maharashtra –vrs- Digambar : (1995) 4 SCC 683** observed that “ *Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person’s entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.*” The Apex Court is of the same view in **J.H. Patel –vrs – Subhan Khan : (1996) 5 SCC 312** that a party which does not come to court with clean hands cannot seek a remedy from the court.

15. For what have been discussed above, we are of the considered view that O.A.No.166 of 2001 filed by the respondent before the Central Administrative Tribunal, Gauhati Bench is fallacious, accordingly the impugned judgment and order of the learned Tribunal dated 1.5.2002 allowing the O.A.No.166 of 2001 is required to be interfered with. Hence, the impugned judgment and order

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dated 1.5.2002 of the learned Tribunal is set aside, writ petition is allowed.

16. Keeping in view of the ratio deci dendi in **State of Maharashtra-vrs-Digambar(supra), Chandra Shashi -vrs- Anil Kumar Verma (supra) and J.H. Patel -vrs - Subhan Khan (supra)**, it is further directed that the respondent shall refund the benefit of double HRA(house rent allowance) if he enjoyed under the impugned judgment and order of the learned Tribunal dated 1.5.2002 within 3(three) months from to-day.

17. Writ petition is allowed. Parties are to bear their own costs.

Sd/- T.N.K. Singh.  
JUDGE

Sd/- E.S. Reddy.  
CHIEF JUSTICE.

Memo No.HC.XXI.

17,652-53

/R.M. Ltd. 21.8.06

Copy forwarded for information and necessary action to:-

1. Shri Tapan Kumar Chakraborty, S/o Late Motilal Chakraborty, of Lanakpur Patt-II, Silchar 5, Dist. Cachar.
2. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Guwahati-5, Rajgarh Road, Bhangagarh, Guwahati- 781005.  
He is requested to acknowledge the receipt of the following records. This has a reference to his letter No.CAT/GHY/68/2001/ Judl/127 Date:- 06.02.2004.

Encls:-

1. O.A. 166/2001 -Part A  
with Original Judgement.

By order

Asstt.Registrar (I&E)  
Gauhati High Court, Guwahati.

17/8/06

By Special Messenger

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 166 of ~~188~~ 2001.

DATE OF DECISION..1.5.2002.....

!! Tapan Kumar Chakraborty (PETITIONER(S))

Mr.B.C.Das, Mr.s.Dutta & Ms.U.Dutta. ADVOCATE FOR THE  
PETITIONER(S)

VERSUS

Union of India & Others. RESPONDENT(S)


Mr.S.Sarma & Ms.Dipika Borgohain ADVOCATES FOR THE  
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.166 of 2001.

Date of Order : This the 1st Day of May, 2002.

THE HON'BLE MR JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

Tapan Kumar Chakraborty  
S/o Late Motilal Chakraborty  
Resident of Lanakpur Part-II  
Silchar-788 005.  
Dist : Cachar.

. . . Applicant.

By Advocates Mr.B.C.Das, Mr.S.Dutta & Smt.W.Dutta.

- Versus -

1. Union of India  
Through the Secretary to the  
Government of India  
Department of Education  
New Delhi - 110 001.
  2. The Commissioner  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sahid Jeet Singh Marg  
New Delhi - 16.
  3. The Chairman  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sahid Jeet Singh Marg  
New Delhi - 16.
  4. The Deputy Commissioner (Finance)  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sahid Jeet Singh Marg  
New Delhi - 16.
  5. The Joint Commissioner (Admn.)  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sahid Jeet Singh Marg  
New Delhi - 16.
  6. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Silchar Regional Office  
Hospital Road, Silchar - 5.
- . . . Respondents.

By Advocates Mr.S.Sarma & Ms.Dipika Borgohain.



O R D E R

CHOWDHURY J.(V.C.) :

The only controversy requires adjudication in this application is as to the entitlement of the benefit of double House Rent Allowance (HRA)<sup>a</sup>/special facility for service in the N.E.Region.

1. The applicant is presently working as an Assistant in the Silchar R.O. of KVS. He was initially appointed as a Lower Division Clerk and posted at Calcutta R.O. Before his posting at Silchar R.O. as Assistant, the applicant was serving as UDC in the R.O.Calcutta. It was stated that the applicant was transferred to Patna R.O. from Calcutta R.O. by order dated 5.1.90. The act of transferring the applicant was assailed before the Hon'ble Calcutta High Court by way of a Writ Petition which was numbered and registered as C.O.No. 2687/W/90. The said transfer order was stayed by the Hon'ble High Court. The Writ Petition was disposed on 15.3.90 with a direction to the applicant to submit a representation before the authority and the authority to pass a reasoned order upon sympathetic consideration. The order of transfer was kept in abeyance till disposal of the representation. It was stated that the applicant went to join his office at Calcutta and filed representations on 6.4.90, 6.9.90 and 2.5.90, but he was neither allowed to join nor his representations were disposed of. He preferred a Contempt Petition alongwith an application for modification of the order dated 15.3.90 passed in

CO.No.2687(W)/90. The Deputy Commissioner disposed the earlier representation dated 24.2.90 on 26.4.90. The Calcutta High Court accordingly disposed of the application for modification and the Contempt Petition vide order dated 30.4.90 with the observation that if the applicant was aggrieved by the disposal of the representation, he could move the appropriate forum. The applicant thereafter again filed an application before the Hon'ble High Court. According to the applicant, the Hon'ble High Court recalled its earlier order(s), revived the earlier Writ application granting stay of the impugned order dated 5.1.90 till further orders. The Calcutta High Court also ordered that the applicant would be entitled to receive the salaries vide order dated 10.8.90. On the strength of the said order the applicant continued to work in the R.O. Calcutta. The applicant also preferred another Writ Petition before the Hon'ble High Court which was numbered and registered as C.O.No.246(W)/94 praying for a direction on the respondents to promote him to the post of Assistant with posting at Calcutta. The Hon'ble Calcutta High Court issued notices upon the respondents. By order dated 15.9.95 the Joint Commissioner issued an order promoting and posting the applicant at R.O., Silchar as Assistant. According to the applicant, he fell ill and as such submitted leave applications on 12.7.95 and 19.7.95. On declared medically fit he resumed duties on 25.9.95 and

received the copy of the order dated 15.9.95. By letter dated 25.9.95 the applicant conveyed his acceptance and also submitted a representation to the Joint Commissioner (Admn.) for change of his place of posting. The applicant submitted an application to the Assistant Commissioner on 27.9.95 for grant of transfer T.A. etc. and also prayed for releasing his salary w.e.f. July '95. On the same day he also submitted a letter to the Joint Commissioner (Admn.) expressing his willingness to join Silchar pending consideration of his representation dated 25.9.95 for change of place of posting. The applicant was served with a memo on 29.9.95 enclosing therewith an attested copy of a corrigendum dated 25.9.95 issued by the Sr.Admn. Officer (Hqrs.) in relation to the offer of appointment dated 15.9.95. By the said memo the applicant was informed that according to the corrigendum dated 25.9.95 he was deemed to be borne on the strength of R.O.Patna. According to the applicant, he was not released to join at Silchar by the Calcutta Office on the plea that he was transferred to R.O. Patna and stated that he could only be released from R.O. Patna. The applicant stated that he joined at Patna on 5.10.95 and after 20 days he was released from Patna on 26.9.95 to join at Silchar. The applicant questions the legitimacy of the aforesaid action of the respondents.

2. The real question relates to granting of the benefit of double HRA. The applicant submitted

representation before the authority seeking for double HRA in terms of the policy indicated in Appendix 24 of the Accounts Code for the Kendriya Vidyalayas pertaining to special allowance and facilities for service in N.E.Region. With a view to attract and retain the services of teachers and officers for service in the N.E.Region comprising the states of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh, Sikkim and Mizoram the authority decided to provide improved allowances and facilities to the employees of the KVS serving in N.E.Region and Andaman & Nicobar Islands on the analogy of similar orders issued by the Government of India in respect of their civilian employees serving in that area. The orders came into force from 1.11.83 as extended from time to time. Amongst the facilities there is also the facilities like concession regarding grant of HRA. The full text of para 11 of the Appendix 24 is reproduced below :-

**"A. Benefit of double HRA**

Sangathan employees posted to the specified States/Union Territories from outside the N.E.Region to another State/Union Territory of the N.E.Region, and who are keeping their families in rented houses or in their own houses at the last place of posting will be entitled to HRA admissible to them at the old station, and also at the rates admissible at the new place of posting in case they live in hired private accommodation irrespective of whether they have claimed transfer T.A. for family or not subject to the condition that hired private accommodation or owned house at the last station of posting in put to bonafide use of the members of the family. These concessions are admissible

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also to those posted to Andaman and Nicobar Islands.

Those employees who have not been posted to the N.E. Region from outside the N.E. Region are not entitled to this benefit.

**B. Retention of a allotment of alternate Government accommodation**

The facility of retention of Government official accommodation will continue to be available. Licence Fee will be charged at normal rates if the accommodation is below the entitled type and at one and a half times the applicable normal rates if the entitled type is retained. The facility of retention will be admissible for three years beyond the normal permissible period of retention.

**Note:**

i) The benefit will not be admissible to those employees who shift their families to a station other than last place of posting or bring their families to the place of their transfer/posting.

ii) The quantum of HRA at the last station where the family continues to stay will not change till the employee remains posted in that area and the family continues to stay at that station."

Regarding the representation of the applicant demanding the double HRA, the authority referred to its communication dated 15.7.97 vide memo dated 29.1.2001. As per the said communication the applicant was not eligible to draw double HRA on the ground that his last place of posting was at Patna, whereas family was residing at Calcutta. Since the applicant did not fulfil the eligibility criteria prescribed the question of granting of HRA does not arise.

3. There is no dispute as to the provision of granting of double HRA to a person posted in N.E. Region and keeping his family in a rented house or in his own

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house at the last place of posting. According to the applicant, his last place of posting was at Calcutta R.O. as indicated in the order No.2-17/95-KVS(Estt.I) dated 15.9.95. The order itself mentioned that the applicant was serving as U.D.C., KVS, R.O., Calcutta. The respondents on the otherhand, referred to corrigendum dated 25.9.95 issued by the H.Q. which indicated that the applicant was deemed to have been borne in the strength of R.O.Patna and the applicant was released from R.O., Calcutta with instruction to join R.O., Patna vide memo dated 13.7.95.

4. There is no dispute that till the order of promotion dated 15.9.95 was issued the applicant was working as an U.D.C. in KVS R.O., Calcutta. But subsequently, a corrigendum was issued on 25.9.95 by the KVS, New Delhi transferring the applicant as as U.D.C. in the R.O., Patna. The only ground declining to the benefit to the applicant was that the applicant did not take his family to Patna from which he was released. It seems that the respondents authority gave much more importance on the bare technicalities. The applicant was althrough out in Calcutta R.O. on the strength of the order of the Hon'ble Calcutta High Court granting stay of the transfer order date 5.1.90. On the strength of the order dated 12.7.95 passed by the Calcutta High Court in disposing the Contempt matter the applicant was transferred on 13.7.95 directing him to join R.O.Patna on appropriate

date and on the own showing of the respondents the applicant joined R.O., Patna after 21 days. The applicant by order dated 25.9.95 was already posted at Silchar as an Assistant on promotion. In those circumstances the applicant did not take the family to Patna. It was known to all concerned that his transfer to Patna was only a stop-gap measure before he was posted at R.O., Silchar on promotion. The Note (ii) of Para 11 of the Appendix 24 therefore could not have prevented the applicant from getting the benefit of double HRA. The respondents while rejecting the claim of the applicant vide order dated 15.7.97 reiterated the stand in memo dated 29.1.2001 overlooking the relevant consideration. The family of the applicant continued to stay at Calcutta and the applicant was also posted at Silchar on promotion vide order dated 15.9.95. At the pretext of the corrigendum dated 25.9.95 the respondents could not have deprived the applicant from his legitimate claim for the benefit of double HRA a special facility for service in N.E.Region. For all purpose the family of the applicant continued to stay at Calcutta and the applicant was also posted at Calcutta prior to his posting at Silchar save and except for the brief period at Patna.

I have heard Mr.S.Dutta, learned counsel for the applicant and also Mr.S.Sarma, learned counsel appearing for the respondents at length. For the reasons stated above, the impugned order dated 15.7.97 reiterated in order dated 2.1.2001 is unsustainable in law and

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therefore, the same is set aside. The respondents are directed to give the applicant the double HRA with effect from October, 1995 with all arrears. The respondents are directed to pay the arrears within three months from the date of receipt of the order.

Subject to the observations made above, the application is allowed.

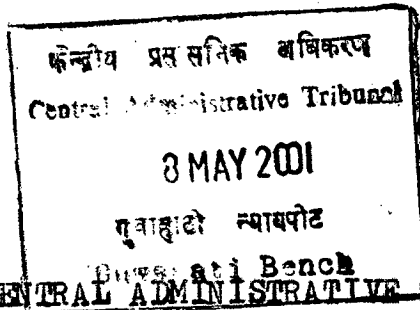
There shall, however, be no order as to costs.



( D.N.CHOWDHURY )  
VICE CHAIRMAN

BB





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::::: GUWAHATI.

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

Title of the Case : O.A. No. 166 /2001

Tapan Kumar Chakraborty : - Applicant.

- Vs -

Union of India & Ors. : Respondents.

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Filed by

Surajit Dutta  
(Surajit Dutta)  
Advocate.

Date : 7.5.2001

Tapan K. Chakraborty

Filed by :-  
The Applicant  
Through :-  
Suresh Chandra  
Advocate  
07.5.2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI

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

O.A. NO. \_\_\_\_\_/2001

BETWEEN

Shri Tapan Kumar Chakraborty  
Son of Late Motilal Chakraborty  
Resident of Kanakpur Part-II  
Silchar- 788005, Dist. Cachar.

..... Applicant

AND

1. Union of India  
Through the Secretary to the  
Government of India, Department of  
Education, New Delhi - 110 001.
2. The Commissioner  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sahid Jeet Singh Marg  
New Delhi - 16.
3. The Chairman  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sahid Jeet Singh Marg  
New Delhi -16.
4. The Deputy Commissioner (Finance)  
Kendriya Vidyalaya Sangathan  
18, Institutional Area,  
Sahid Jeet Singh Marg  
New Delhi - 16.

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5. The Joint Commissioner (Admn.)

Kendriya Vidyalaya Sangathan

18, Institutional Area

Sahid Jeet Singh Marg

New Delhi - 16

6. The Assistant Commissioner

Kendriya Vidyalaya Sangathan

Silchar Regional Office

Hospital Road, Silchar-5.

..... Respondents .

DETAILS OF APPLICATION :

1. Particulars of Order against which this application is made :

This application is made challenging the action of the respondents in issuing the impugned letter dated 29.1.2001 thereby rejecting the claim of the applicant for payment of Double House Rent Allowance ( for short DHRA ) as admissible to him under the existing rules governing the employees of Kendriya Vidyalaya Sangathan.

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of this application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :

The applicant further declares that the application is within the prescribed period of limitation as under Section 21 of the Administrative Tribunals Act, 1985.

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4. Facts of the Case :

4.1 That the applicant is a citizen of India and as such entitled to the rights and privileges guaranteed under the Constitution of India.

4.2 That the applicant joined in the Kendriya Vidyalaya Sangathan ( for short, KVS ) as a Lower Division Clerk and was posted at Calcutta Regional Office. He is at present working as an Assistant in the Silchar Regional Office of KVS. It is stated that the condition of the applicant is governed by the Education Code, Accounts Code and Administrative Circulars issued from time to time.

4.3 That prior to his posting at Silchar R.O. as Assistant, the applicant was serving as UDC in the R.O. , Calcutta. It was during the year 1988 that some of the junior colleagues of the applicant were given ad-hoc promotion to the post of Assistants and he was singled out and not given promotion due to the vindictive and oblique attitude of his superiors. During the year 1990-93, those ad-hoc promotions were confirmed and the vacancies were filled up denying the applicant his due promotion. Instead, he was transferred to Patna R.O. from Calcutta R.O. by order dated 5.1.90 with a malafide intention.

4.4 That the applicant challenged the aforesaid transfer order before the Hon'ble Calcutta High Court in C.O. No. 2687(W)/90 where upon the transfer order issued against him was stayed. However, the said case was disposed of on 15.3.90 with a direction that the applicant would file representations before the authorities and the authorities would pass reasoned order upon sympathetic consideration of the same and untill

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such disposal, the transfer order would remain in abeyance. It was also directed to release the salaries of the applicant from R.O., Calcutta.

4.5 That in pursuance of the said order of the Hon'ble Calcutta High Court, the applicant went to join his office at Calcutta and filed representations on 6.4.90, 6.9.90 and 2.5.90. But neither he was allowed to join nor his representations were disposed of. Under such circumstances, he filed a contempt petition alongwith an application for modification of the Order dated 15.3.90 passed in C.O. No. 2687(W)/90 before the Hon'ble Calcutta High Court whereupon the then Deputy Commissioner disposed of an earlier representation of the applicant dated 24.2.90 on 26.4.90, and submitted before the Court that his representation had already been disposed of. Thereupon, the Hon'ble Court disposed of the application for modification and the contempt petition vide Order dated 30.4.90 with the observation that if the applicant was aggrieved by the disposal of the representation, he could move the appropriate forum. However, subsequently it was pointed out by the applicant that the disposal was of an earlier representation thereupon the Hon'ble Court directed him to file an application for appropriate orders which on being filed, the Hon'ble Court recalled its earlier order(s), revived the earlier writ application granting stay of the impugned transfer order dated 5.1.90 till further orders and initiated a fresh affidavit. It was also ordered that the applicant would be entitled to receive the salaries in the meantime. The said order was passed on 10.8.90. By virtue of the aforesaid order dated 10.8.90, the applicant was continuing at R.O., Calcutta.

Talwar Mr. Bakshi

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4.6 That as stated above, the respondents were not considering the applicants promotion to the post of Assistant inspite of the fact that there were vacancies at Calcutta and moreover his juniors were promoted. The applicant, feeling aggrieved at such discriminatory treatment of the respondents due to sheer vindictiveness, again approached the Hon'ble Calcutta High Court in C.O. 246(W)/94 praying for a direction upon the respondents to promote him to the post of Assistant with posting at Calcutta. The Hon'ble Court considered the petition and issued notice upon the respondents. However, the applicant was continuing at Calcutta,

4.7. That subsequently the applicant fell ill and such as submitted leave applications on 12.7.95 and 19.7.95 to the Assistant Commissioner, Calcutta for grant of leave. It is pertinent to mention here that on 30.8.95, the applicant submitted a representation to the Chairman, KVS, ventilating his grievances regarding deprivation of due promotion etc. and requesting his intervention so as to give the applicant the due relief. The said representation did prompt work and on 15.9.95 the Joint Commissioner (Admn) issued an order vide Memorandum No. F.2-17/95(KVS)(Estt-I) promoting the applicant as Assistant but posting him to R.O., Silchar. The applicant, on being declared medically fit, resumed duties on 25.9.95 at Calcutta and received the copy of the memorandum dated 15.9.95 on the same day and accepted the offer without prejudice to his rights, and contentions made in C.O. 246(W)/94 pending before the Hon'ble Calcutta High Court. The applicant, while conveying his acceptance vide letter dated 25.9.95, also submitted a

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representation to the Joint Commissioner (Admn) through the Asstt. Commissioner, R.O. Calcutta, for change of his place of posting.

Copies of the aforesaid memorandum dated 15.9.95, joining report dated 25.9.95 and letter of acceptance dated 25.9.95 are annexed herewith as Annexure- 1, 2 and 3 respectively.

4.8. That after resuming duties at Calcutta, the applicant continued there and on 27.9.95 he applied to the then Assistant Commissioner, R.O., Calcutta for grant of transfer T.A. etc. and also prayed for releasing his salary w.e.f. July '95. On the same day, the applicant also submitted a letter to the Joint Commissioner (Admn) through Asstt. Commissioner, Calcutta, expressing his willingness to join Silchar pending consideration of his representation dated 25.9.95 for change of place of posting.

Copies of the aforesaid application and letter dated 27.7.95 are annexed herewith as Annexure - 4 and 5 respectively.

4.9 That suddenly on 29.9.95, the then Asstt. Commissioner (Offg) Calcutta, issued a memorandum to the applicant enclosing therewith an attested copy of a corrigendum dated 25.9.95 purported to have been issued by the Sr. Admn. Officer (Hrs.) in relation to the offer of promotion dated 15.9.95 issued by the Joint Commissioner (Admn). ~~But quite surprisingly, the said~~ By the said memorandum dated 29.9.95, the applicant was informed that according to the corrigendum dated (25.9.95), he was deemed to be borne on the strength of R.O. Patna. But quite surprisingly, the said corrigendum dated 25.9.95 did not contain any such information. The corrigendum dated 25.9.95, as it appears, was issued to the effect that

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the then present place of posting of the applicant as mentioned in the memorandum dated 15.9.95 might be read as R.O., Patna instead of R.O., Calcutta . However, in any event the memorandum dated 15.9.95 was neither withdrawn nor cancelled. It is pertinent to mention that neither the copies of the said memorandum nor the copies of the said corrigendum were issued any of the concerned ~~offices~~ offices.

Copies of the said memorandum dated 29.9.95 and corrigendum dated 25.9.95 are annexed herewith as Annexures - 6 and 7 respectively.

4.10            That the applicant states that by undertaking the above exercise, the then Asstt. Commissioner ( Offg ) R.O. Calcutta in connivance with the Sr. Admn. Officer (Hqrs). out of his ~~personal~~ personal grudge attempted to impede the applicants joining at Silchar from Calcutta. This was done with a vindictive attitude only to harass the applicant and make him suffer. In the result, the then Asstt. Commissioner ( Offg. ) declined to release the applicant from Calcutta on the plea that since he was borne on the strength of R.O., Patna, he would be relieved only from Patna and thus compelled the applicant to go to Patna.

4.11            That in the above circumstances, the then Asstt. Commissioner (Offg.) at Calcutta forced the applicant to go to Patna, apparently on the strength of the corrigendum dated 25.9.95 so as to make him join at Silchar from Patna. The applicant was relieved from Calcutta R.O. on 29.9.95 and was paid transfer T.A. for Patna instead of Silchar. The applicant was therefore compelled to join at Patna on 5.10.95 only to be relieved within 20 days (relieved on 26.10.95) to join at Silchar. It is pertinent to mention here that the applicant subsequently came

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to know from the office that on 18.9.95 another memorandum was issued whereby he was promoted to the post of Assistant and was transferred from R.O., Calcutta to R.O., Silchar. However, the Sr. Admn. Officer (Hqrs.) issued a corrigendum on 25.9.95 thereby treating the then present place of posting of the applicant as R.O., Patna instead of R.O., Calcutta. The said corrigendum dated 25.9.95 issued in respect of Memorandum dated 18.9.95 was received in the R.O., Calcutta on 09.10.95. But, the then Asstt. Commissioner (Offg.) at R.O., Calcutta quite illegally and out of his personal grudge relieved the applicant from R.O., Calcutta on 29.9.95. It is categorically stated that the applicant had never received any such memorandum dated 18.9.95.

The applicant has obtained a copy of the said memorandum dated 18.9.95 and the corrigendum dated 25.9.95 and begs to annex the same as Annexure - 8 and 9 respectively.

4.12            That the applicant states that although the memorandum dated 15.9.95 and 18.9.95 were issued by the Joint Commissioner (Admn), the corrigendum in relation to those were issued by the Admn. Officer (Hqrs) who is a person much below the Joint Commissioner in hierarchy. It is stated that those corrigenda were issued illegally by the Sr. Admn. Officer without any authority whatsoever with a mala fide intention just to cause unnecessary harassment to the applicant.

4.13            That the applicant states that he felt aggrieved at such undue harassment meted out to him. However, he joined at Silchar on 30.10.95 as Assistant in pursuance to the memorandum dated 15.9.95. It is stated that the corrigendum dated 25.9.95 was not issued by the competent authority. The Assistant

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Commissioner is the head of office of R.O. and having higher status/position is heirarchy then the Admn Officer has no locus standi/authority to issue orders on their own for implementation by his superior authority viz, the Assistant Commissioner, as has been done in the instant case. It is reiterated that the corrigendum dated 18.9.95 and the same was received at Calcutta on ~~09.10.95~~ 09.10.95, but surreptitiously the applicant was released on 29.9.95 on the strength of a corrigendum dated 25.9.95 issued and prepared by the then Asstt. Commissioner (Offg), Calcutta. All these illegal and irregular activities were done by the higher offices of the Regional Office and Headquarters with the sole intention to harass the applicant.

4.14 That the applicant states that the Accounts code and the Education Code of KVS have made provisions for drawal of Double House Rent Allowance ( for short DHRA ) by the employees of KVS. The Rule 11 under Appendix 24 of the Accounts Code provides, inter alia, as :-

Rule 11 (a) Kendriya vidyalaya Sangathan employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States/Union Territories mentioned above may be allowed to draw HRA admissible to them at that station.

(b) Such Sangathan employees may also be allowed to draw, in addition to (a) above, HRA at the rates admissible at the new place of posting in the aforesaid States/Union Territories in case they live in hired private accommodation.

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(c) The benefit mentioned in (a) & (b), above will also be admissible to Sangathan employees who get transferred from one station of a State Union Territories of the North Eastern Region to another State/ Union Territories of the North Eastern Region mentioned above.

4.15 That in view of the above provision, the applicant became entitled to draw DHRA. He, therefore, applied for grant of DHRA to him as provided under the rules. But, surprisingly enough his prayer was turned down vide letter no. F. No. 8-3/97/KVS/Audit/372 dated 15.7.97 on the ground that since he was posted at Patna, the conditions laid down in the rules had not been fulfilled and as such he was not eligible to draw DHRA.

A copy of the letter dated 15.7.97 is annexed herewith as Annexure - 10.

4.16 That thereafter the applicant filed another representation on the matter detailing the relevant provision and his admissibility thereunder. But the respondents took no initiative to attend to the grievances of the applicant. Finding no alternative, he took up the matter with the Director & Chief Welfare Officer, Ministry of Personnel & Administrative Reforms through his representation dated 14.6.2000 and 21.6.2000 whereupon the Ministry of Personnel etc. took up the matter with the respondent no.2 vide their letter dated 14.7.2000 requesting immediate action.

Copies of the said representation dated 14.6.2000 and the letter dated 14.7.2000 are annexed herewith as Annexure - 11 and 12 respectively.

*Tapau K. Chakraborty*

4.17 That the applicant states that even thereafter nothing was done and in that circumstance he again submitted representations to the respondent no.2 and the Vice Chairman, KVS on 17.11.2000 and 21.11.2000 praying, inter alia, for grant of DHRA to him with effect from October 1995, i.e. the date of his joining at Silchar. However, on 29.1.2001, the Deputy Commissioner (Finance) has issued the impugned order rejecting the claim of the applicant on the plea that the decision regarding non payment of DHRA had already been, communicated vide letter dated 15.7.97.

A copy of the impugned letter dated 29.1.2001 is annexed herewith as Annexure - 13.

4.18 That this application is filed bonafide and in the interest of justice.

5. Grounds for Relief with Legal Provisions.

25 5.1 For that, the impugned order dated 29.1.2001  
30 rejecting the claim of the applicant is bad in law and liable to be set aside.

5.2 For that, the impugned order dated 29.1.2001 as well as the letter dated 15.7.97 has been passed without any application of mind.

5.3 For that, the applicant having been transferred by virtue of memorandum dated 15.9.95 is entitled to draw DHRA.

£.@ For that, the memorandum dated 15.9.95 issued by the Joint Commissioner not having been withdrawn ~~stand~~ stands valid and in force and the subsequent

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corrigendum dated issued by the Sr. Admn. Officer on 25.9.95 can not alter the same.

5.5 ~~That~~ For that, the corrigendum dated 25.9.95 issued by the Sr. Admn. Officer (Headquarters) is without any authority of law and the same had been issued with an ulterior motive only to harass the applicant.

5.6 ~~That~~ For that, the Sr. Admn. Officer being a person ranking much below the Joint Commissioner in hierarchy, cannot issue corrigendum of his own to the orders passed by the Joint Commissioner and therefore, the corrigendum being illegal can not be acted upon.

5.7 For that, the applicant being on the roll of R.O., Calcutta till 27.9.95 was entitled to Join R.O., Silchar & straight way but for the corrigendum dated 25.9.95, he was made to go to Patna which is not only illegal but also ill motivated.

5.8 For that, the applicant was continuing at Calcutta, R.O. and for that matter was rightly treated as UDC, Calcutta in the memorandum dated 15.9.95 and therefore, the action of the respondents to treat him as UDC, Patna by issuing corrigendum dated 25.9.95 is highly arbitrary, unfair and malafide.

5.9 For that, the corrigendum dated 25.9.95 issued from Headquarters was received at Calcutta on 9.10.95 and in this view of the matter it is aparent that release of the applicant before receipt of the corrigendum was illegal and arbitrary.

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- 5.10 For that, the corrigendum dated 25.9.95 issued from Headquarters was in relation to a memorandum dated 18.9.95 whereas no such memorandum was ever issued to the applicant .
- 5.11 For that, for appointment to a one post has offer of appointment ~~thereof~~ can not be issued and in this view of the matter, the memorandum dated 18.9.95 not being passed in supercession of memorandum dated 15.9.95, attains not validity and is liable to be declared void-ab-initio.
- 5.12 For that, in any view of the matter, the impugned order dated 29.1.2001 is bad in law and liable to be set aside.

6. Matter not previously filed or pending before any Other Court/Tribunal.

The applicant declares that he has not previously filed any case involving the matter of the instant application and as such no case involving the present matter in dispute is pending before any other Court/Tribunal.

7. Details of Remedies Exhausted :

The applicant states that he had represented to the respondents on the present matter in dispute seeking grant of DHRA, but the same has been turned down by the impugned order dated 29.1.2001.

8. Reliefs Prayed For :

Under the facts and circumstances of the case the applicant prays for the following reliefs :

- 8.1 That the impugned order dated 29.1.2001 rejecting

Tajam Mr. Chakraborty

the claim of the applicant for grant of  $\text{N DHRA}$  be at set aside.

- 8.2 That the respondents be directed to pay the applicant his due DHRA with effect from October, 1995.
- 8.3 That the respondents be directed to pay interest @12% per annum on the arrear amount of DHRA.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicant is entitled under  $\text{law and equity}$ .

9. Interim Relief Prayed For :

The applicant does not pray for any interim relief in this case, He, however, prays for early hearing of the same.

10. This application is filed through an Advocate.

11. Particulars of I.P.O.

Date and No. of I.P.O. : 6G 771772 dated 27.12.2000

Place of Issue : G.P.O., Guwahati.

Payable at : G.P.O., Guwahati.

12. List of Enclosures :-

As per Index.

Verification.....

Tapau K. Chakraborty

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

I, Shri Tapan Kumar Chakraborty, son of late Motilal Chakraborty, aged about 45 years, resident of Kanakpur Part-II, Silchar, Dist. Cachar, do hereby verify and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this    th day of May, 2001.

*Tapan K. Chakraborty.*

Signature.



-16-

KENDRIYA VIDYALAYA SANGATHAN  
18, Institutional Area  
Shahid Jeeb Singh Marg  
New Delhi - 110 016

No.F. 2-17/95- -KVS (Estt.I)Dated : 15/9/95M E M O R A N D U MSUBJECT : OFFER OF APPOINTMENT TO THE POST OF ASSISTANT.

With reference to his ~~XXXXXXXXXXXX~~ performance in Departmental Examination for the post mentioned above. Sh Tapan Kumar Chakraverty, U.D.C. is hereby informed, that he/~~she~~ has been selected for apptt. against a temporary post of Assistant in the pay scale of Rs. 1400-40-1600-50-2200- ~~Rs. 60-2600/-~~. His/~~her~~ initial pay will be fixed as admissible under the KVS Rules. Besides pay, he/she will be entitled to draw allowances as admissible from time to time. The other terms and conditions of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time. He/She is initially posted as Kendriya Vidyalaya Sangathan R.O. Silchar.

2. He/She will be on probation for a period of two years which may be extended by another one year by the competent authority for the reasons to be recorded in writing.
3. The Courts at Delhi alone have the jurisdiction to decide any dispute or claim arising out or in respect of the service or pay/other contract arising out of this offer of appointment.
4. If Sh Tapan Kumar Chakraverty, UDC accept the offer on the terms and conditions stipulated he/she should send his/her acceptance immediately on receipt of this memorandum and join the aforesaid office. Acceptance should reach the undersigned in any case by 04-10-95. If the offer is not accepted by the said date or after acceptance if the appointee does not report for duty at the KVS, R.O. Silchar by 09-10-95 this offer will be automatically treated as withdrawn and no further correspondence will be entertained.

(R.N.SHARMA)

Sr. Administrative Officer  
for Jt. Commissioner (Admn)

Shri Tapan Kumar Chakraverty,

U.D.C.,

KVS, R.O. Calcutta.

Copy to :-

1. The Asstt. Commissioner ~~XXXXXXXXXXXX~~ K.V.S., R.O. Calcutta.  
In case Sh Tapan Chakraverty, U.D.C. accepts the offer of appointment on the above terms and conditions, he/she should be relieved immediately to enable him/her to join his/her new posting.
2. The Asstt. Commissioner, KVS, R.O. Silchar.  
The date of joining of the appointee may be intimated to this office telegraphically. In case he/she does not report for duty by the stipulated date, this office should be informed.
3. RP-I Section (4) Cash Section (5) Personal file.

Sr. Administrative Officer

ANNEXURE-2

Dt. 25.09.95

To  
The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
P-161/1, V.I.P. Road  
Ultadanga, Calcutta- 700057

Sub : Resuming duties

Sir,

I was ill from 12.7.95 and now being declared medically fit on 23.9.95 ( Saturday) I resume my duty today for at KVS, R.O. Calcutta.

Medical certificates in original (illness and fitness certificates) are enclosed for sanction of commuted leave from 12.7.95 to 22.9.95.

You may kindly refer your copy of the Memorandum No. F.2-17/95-KVS (Estt.I) dated 15.9.95 issued by the Sr. Administrative Officer, KVS New Delhi.

You are requested to release the salary for the month of July, Aug and September '95 and other dues immediately as due to with holding of salary unreasonably I, alongwith the members of family, have been starting since July'95.

Enclo : As stated

Yours faithfully,

Sd/-

Tapan Kr. Chakraborty  
U.D.C.  
KVS R.O. Calcutta.

To

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office-Calcutta.

Subj: - Offer of appointment to the post of Assistant.

Ref: - F.2-17/95-KVS(Estt-I) dtd.15.9.95.

Sir,

I do hereby accept the offer of Assistant without prejudice to my rights and contentions made in the pending Writ Petitions No. C.O. 246(W)/94 before the Hon'ble High Court, Calcutta.

I am submitting herewith two copies of my representation addressed to the Joint Commissioner(Administration) for change of my place of posting as Assistant in KVS, R.O. Calcutta as well as benefit with retrospective effect.

You are requested to forward the representation at the earliest under intimation to me.

Yours faithfully,

*Tapan K*  
Tapan Kumar Chakraborty  
U. D. C.  
K.V.S. R.O. Calcutta.

Encl: - Two Copies.

Date: - 25.9.95.

Received

*B*  
25/9/95

Annexure -4

To  
The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan  
R.O. Calcutta.

Sub: Offer of posting as Assistant in KVS R.O.  
Silchar - Request for sanction of transfer  
Advance thereof.

Ref : Memorandum No. F.2-17/95-KVS(Estt-I)  
dated 15.9.95.

Sir,

I want to join as Assistant in KVS R.O. Silchar.  
I shall remain grateful if you please release my salary  
from July'95 to the date of my relieving and the transfer  
grant applied herein-below immediately to enable me to  
purchase the ticket for Silchar.

1.	Packaging allowance	-	Rs. 1000/-
2.	Disturbance -do-	-	Rs. 600/-
3.	Personal effects	-	Rs. 5700/-
4.	<del>xxxxx</del> Train fare Ist Class for 3 persons @ Rs. 1035/-	-	Rs. 3105/-
5.	Road mileage	-	Rs. 500/-
6.	D.A. for 3 persons Rs. 53/- X 3 X 2	-	Rs. 318/-

---

Rs. 11,223/-

Thanking you,

Yours faithfully,

Sd/-

Dt. 27.9.95

Tapan Kumar Chakraborty  
U.D.C. KVS R.O.  
Calcutta.

Annexure -5

To  
The Jt. Commissioner (Admn)  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
New Delhi -16.

(Through A.C. KVS, R.O. Calcutta )

Sub:- Offer of Assistant in KVS, R.O. Silchar.

Ref:- Memorandum No. F.2-17/95-KVS (Estt.I)  
dated 15.9.95.

Sir,

In continuation to my representations  
dated 25.9.95 I do hereby convey my consent to  
join in KVS, R.O. Silchar as Asstt. pending  
consideration of my representation ~~and~~ under  
reference. I shall report to R.O. Silchar subject  
to availability of reservation and receipt of  
transfer benefit from the A.C. KVS, R.O. Calcutta.

Thanking you,

Yours faithfully,

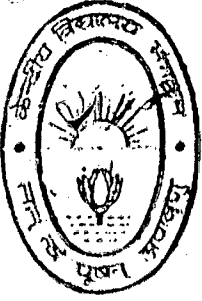
Dt. 27.9.95

Sd/-  
T.K. Chakraborty  
U.D.C. KVS, R.O.  
Calcutta.

Copy to :

The Assistant Commissioner,  
KVS, Silchar

- for kind information please



-21-

दूरभाष Telephone : 37-9335  
37-6998

केन्द्रीय विद्यालय संगठन (कलकत्ता सम्भाग)  
Kendriya Vidyalaya Sangathan (Calcutta Region)  
पी१६१/१, वी आई पी रोड, उल्तादांगा, कलकत्ता-७०००५४  
P161/1, V I P Road, Ultadanga, Calcutta-700 054

पत्रांक Ref. No. F.26-6/94-KVS(Cal)/ 1309

दिनांक Date 29/9/95

MEMORANDUM

A copy of the corrigendum issued by the KVS(HQ) vide its no.F.2-17/95-KVS(E-I) dated 25-9-95 is enclosed for information and further necessary action. According to this corrigendum Shri T.K. Chakraborty, UDC is deemed to have been borne in the strength of Regional Office, Patna. This office order of even no. dated 13-7-95 relieving him from this office with instruction to join Regional Office Patna refers in this connection (copy enclosed).

(A.B. Sarkar)

ASSISTANT COMMISSIONER(OFFG)

Shri T.K. Chakraborty,  
U.D.C.,  
Kendriya Vidyalaya Sangathan,  
Regional Office,  
Patna.

Received on  
29/9/95  
103145 PM MB

KENDRIYA VIDYALAYA SANGATHAN  
18, INSTITUTIONAL AREA  
SAHEED JEET SING MARG  
NEW DELHI : 110 016.

F.2-17/95-KVS(E-I)

25-09-95

CORRIGENDUM

In this Office memo of even no. dated 15-9-95 the present place of posting of Shri Tapan Kumar Chakraborty as UDC may be read as Regional Office Patna instead of Regional Office Regional Office Calcutta.

Sd/-  
(R.N. Sharma)  
SENIOR ADMINISTRATIVE OFFICER

Shri T.K. Chakraborty,  
U.D.C.,  
Kendriya Vidyalaya Sangathan,  
Regional Office,  
Patna.

*[Signature]*  
25/9/95  
प्रशासनिक अधिकारी/Administrative Officer  
केन्द्रीय विद्यालय संगठन  
Kendriya Vidyalaya Sangathan  
पी-१६१ १, वी.पी. रोड, अ.क.क.  
B-161/L, V.I.P. Road, Calcutta-700028

KENDRIYA VIDYALAYA SANGATHAN  
18, Institutional Area  
Shahid Jeet Singh Marg  
New Delhi - 110 016

ANNEXURE-8

NO.F. 17/93 -KVS (Estt.I)

Dated : 18/9/95

M E M O R A N D U M

SUBJECT : OFFER OF APPOINTMENT TO THE POST OF Assistant.

With reference to his/her application/performance in Departmental Examination for the post mentioned above. Sh Tapan Kumar Chakraverty, B.C.C. is hereby informed that he/she has been selected for apptt. against a temporary post of Assistant in the pay scale of Rs. 1400-1600-1800-2000-2200-2400-2600/-. His/Her initial pay will be fixed as admissible under the KVS Rules. Besides pay, he/she will be entitled to draw allowances as admissible from time to time. The other terms and conditions of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time. He/She is initially posted as Kendriya Vidyalaya Sangathan, N.O. Bikaner.

2. He/She will be on probation for a period of two years which may be extended by another one year by the competent authority for the reasons to be recorded in writing.

3. The Courts at Delhi alone have the jurisdiction to decide any dispute or claim arising out of or in respect of the service or pay/other contract arising out of this offer of appointment.

4. If Sh Tapan Kumar Chakraverty, B.C. accept the offer on the terms and conditions stipulated he/she should send his/her acceptance immediately on receipt of this memorandum and join the aforesaid office. Acceptance should reach the undersigned in any case by 04-10-95. If the offer is not accepted by the said date or after acceptance if the appointee does not report for duty at the KVS, N.O. Bikaner by 07-10-95 this offer will be automatically treated as withdrawn and no further correspondence will be entertained.

(R.N.SHARMA)  
Sr. Administrative Officer  
for Jt. Commissioner (Admn)

Copy to :-

1. The Asstt. Commissioner/Principal, K.V. N.O. Calcutta.  
In case Sh Tapan Kumar Chakraverty, B.C. accepts the offer of appointment on the above terms and conditions, he/she should be relieved immediately to enable him/her to join his/her new posting. N.O. Bikaner.

2. The Asstt. Commissioner, KVS,  
The date of joining of the appointee may be intimated to this office telegraphically. In case he/she does not report for duty by the stipulated date, this office should be informed.

RP-I Section

(4) Cash Section

(5) Personal file.



SHRIKANTA VIDYABAYA SARKATHAN  
11, Institutional Area  
Dr. J. K. Singh Marg  
New Delhi - 110 016

No. S. 2-17/95-KVS (Entt. I)

Dated : 25.9.95

CORRIGENDUM

In this office memorandum of even number dated 18.9.95, the present place of posting of Sh. Tapan Kumar Chakraborty, I.U.D.C. may be read as Regional Office, Patna instead of Regional Office, Calcutta.

(R.N. SARKAR)

Sr. Administrative Officer

Distribution :-

1. Sh. Tapan K. Chakraborty, UDC, KVS, R.O. Patna.
2. The Assistant Commissioner, KVS, R.O. Patna alongwith a copy of memorandum dated 18/9/95.
3. The Assistant Commissioner, KVS, R.O. Silchar.
4. The Assistant Commissioner, KVS, R.O. Calcutta.
5. AP-1 Section.
6. Personal file of the individual concerned.

Sd/-  
9/10/95

Annexure -19

KENDRIYA VIDYALAYA SANGATHAN  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi - 110016.

Fr. No. 8-3/97/KVS/Audit/372

Date : 15/7/99

To

The Asstt. Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office  
Silchar.

Sub: Clarification regarding admissibility of Double HRA.

Sir,

Please refer to your office letter No. F.PF/TKC/95-KVS/SR/13677 dated 18.2.97 on the subject noted above and to say that the issue of admissibility of double HRA in respect of Sh. Tapan Kumar Chakraborty, Asstt. has been examined in detail and it is observed that his last place of posting is Patna, whereas the family of Shri Chakraborty is residing in Calcutta. Since the condition laid down in the rules have not been fulfilled in this case so Shri Chakraborty is not eligible to draw DHRA. He may be informed accordingly. This issues with the approval of Deputy Commissioner ( Finance ).

Yours faithfully,

Sd/-

( J.S. TALWAR ) 11/7/97.  
SENIOR ACCOUNTS OFFICER

Date:- 14.06.2000.

To

Sri S. Gopal,  
Director & Chief Welfare Officer,  
Deptt. of Personnel & Administrative Reforms,  
Room No. 384,  
Lok Nayak Bhawan,  
New Delhi.

(Through proper channel)

Sir,

Subj:- Admissibility of D.H.R.A. in respect of Sri  
Tapan Kr. Chakraborty, Assistant, K.V.S. R.O.  
Silchar- Appeal for kind clarification thereof.  
and settlement of grievance.

With due deference and humble submission I beg to appeal to your kind honour to offer your kind clarification on the admissibility of D.H.R.A. which has been denied to me by K.V.S. Since, the issue in question is not a normal one and is most unusual in nature and ruling on specific isolated issue is silent, the clarification may please be issued on the basis of facts detailed here-in-below.

(1) That while work-ing as U.D.C. at K.V.S. R.O. Calcutta I was transferred to K.V.S. R.O. Patna on 05.1.90.

(2) That orders for transfer to R.O. Patna was stayed by the Hon'ble High Court, Calcutta. As per orders of the Hon'ble High Court I was on roll of R.O. Calcutta from 01.8.88 to 29.9.95 A/N.

(3) That on 03.8.95 I submitted re-presentation to the then Chairman, KVS requesting withdrawal of order dtd. 5.1.90 for transfer as UDC from R.O. Calcutta to R.O. Patna and release of order for my posting as Assistant on promotion/selection (Copy enclosed- Annexure-I ).

(4) That as per order of the Hon'ble Chairman offer of Assistant on promotion (selected through departmental examination) was issued to me on 15.09.95 with posting to R.O. Silchar treating me as U.D.C. of KVS R.O. Calcutta. (Copy enclosed- Annexure-II) thereby cancelled the transfer order dtd. 05.1.90.

(5) I was on leave from 12.7.95 to 22.9.95. On being declared medically fit I joined R.O. Calcutta on 25.9.95 and worked there till 29.9.95. My signature on Attendance register will reveal the truth.

(6) I submitted application for the post of Supdt. (Admn). against advertisement of KVS, on 25.9.95 to R.O. Calcutta which was forwarded from R.O. Calcutta to KVS subsequently.

(7) I accepted the offer of promotion and informed KVS about my joining as Assistant at R.O. Silchar on 27.9.95 and applied for Transfer T.A. (Copy enclosed- Annexure-III). From the endorsement of the Assistant Commissioner, Calcutta and A.O. on my application it is evident that intems of offer of Assistant issued by KVS on 15.9.95 treating me as U.D.C. of R.O. Calcutta I was on roll of KVS, Calcutta as on 27.9.95. Moreover, the representation submitted by me on 27.9.95, addressed to the J.C. (Admn) was forwarded by the A.C. Calcutta which was considered by Sr.A.O., KVS and extension of joining time was allowed. (Copy enclosed- Annexure-IV)

(8) On 28.9.95 a leave certificate was issued to me from R.O. Calcutta against my representation. (Copy enclosed- Annexure-V)

(9) On 25.9.95 an order was issued by Sr.A.O. stating present place of posting of mine to be read as PATNA instead of CALCUTTA (Copy enclosed- Annexure-VI). It is therefore evident that my place of posting, even after issuing offer of promotion on 15.9.95, was further changed as PATNA from Calcutta wef. 25.9.95. in the post of U.D.C.

contd. P/2

L In fact, no such memorandum dtd. 18.9.95 was ever issued from KVS and received by me yet. As such, corrigendum issued in reference to memorandum dtd. 18.9.95 stands void as it was done with a view to compelling me to go to Patna so that D.H.R.A. is denied to me at Silchar because it was obvious that no sensible person would shift family for such intermediary posting. Offer of promotion issued on 15.9.95 corroborates that posting as Assistant from R.O. Calcutta to R.O. Silchar was done and till date stands valid. (Annexure-II).

(10) On receipt of Order dtd. 25.9.95 I was relieved from R.O. Calcutta on 29.9.95 with the direction to report to R.O. Patna before joining as ~~Assistant~~ Assistant at R.O. Silchar. Transfer T.A. for Patna was paid from R.O. Calcutta on 29.9.95.

(11) In obedience to the orders of the A.C. Calcutta & Sr. A.O. of KVS (H.Qtrs) I joined R.O. Patna on 05.10.95. I was relieved from Patna on 26.10.95A/M to join at R.O. Silchar.

(12) On 30.10.95 P/M I joined R.O. Silchar as Assistant.

(13) I drew HRA at Calcutta & Patna during my stay. I had applied for D.H.R.A. admissible to the employees posted in N.E.R. from outside. The case was not considered by KVS on the ground that my last place of posting was PATNA (Copy enclosed-Annexure-VII).

In this connection this is pertinent to mention here that in the similar situation D.H.R.A. was sanctioned to S hri M.D. Joshi, Principal, K.V. Brikona (Copy enclosed-Annexure-VIII).

The instant case is quite different and not covered by extant rules of G.O.I. Because based on my representation to the Chairman the transfer order dated 05.1.90 was withdrawn and thereafter after treating me as UDC of R.O. Calcutta I was posted to R.O. Silchar on promotion, on 15.9.95. I received the offer of promotion on 22.9.95 at Calcutta. I resumed duty at Calcutta after leave on 25.9.95 P/M. After my acceptance to join at Silchar, I was relieved on 29.9.95 A/M to join at Patna again as UDC based on order issued by Sr.A.O..

In any social welfare state policy is formulated for the welfare of the employees and not to deprive the employees of the benefit admissible under rules and each and every matter is required to be decided based on its own merit. Had such order dtd. 25.9.95 not been issued from K.V.B. question of reporting to Patna at lower post, even after receiving the promotion in higher post, would not have arisen and I could join R.O. Silchar straightway and enjoy the benefit of D.H.R.A. admissible to the employees posted in NER from outside.

As a result of order dated 25.9.95 I was forced to join at Patna. In terms of rules shifting of family within six months is permissible. Having been aware of the fact at Calcutta itself that I would have to proceed to Silchar within a few days to join the post of Assistant and there was no govt. accommodation available at Patna, family could not be shifted from Calcutta. Due to such intermediary order changing place of posting issued on 25.9.95 no TRANSFER benefit in respect of the family was availed from Calcutta to PATNA and under compelling circumstances the family, perforce, was left in Calcutta at my own house. Till date the family has been staying at Calcutta SINCE October, 1995.

When in the interest of the department placements from Calcutta to Silchar (on promotion vide order dated 15.9.95) and further from Calcutta to Patna (vide order dated 25.9.95) were done by KVS in public interest, there can't be any cogent reason for non-payment of admissible D.H.R.A. to me because it is reasonably impractical to keep family at PATNA in complete uncertainty and uncared for condition under the circumstances stated above.

Services of the employees are attracted in NER and benefits are given to them with a view to lessening the hardship in NER. Denial of admissible benefit of D.H.R.A. on technical reason only, (though it is not applicable in this case) that too caused due to administrative decision for which the employee is in no way responsible, leads to deprivation which can't be the motto of the Government in Social Welfare State. As such, with greater and broader outlook rational view is required to be taken in deciding the issue.

Contd. P/2.

In view of the above, I appeal to your kind honour to consider the issue in right perspective and offer your valued clarification regarding admissibility of D.H.R.A. to me at the earliest as I have not been getting the benefit since October, 1995 and have been passing through severe financial hardship.

Yours faithfully,

(Tapan Kumar Chakraborty)  
Assistant  
Kendriya Vidyalaya Sangathan  
R.O. Silchar  
Hospital Road-788001  
District - Cachar, Assam.

Encls:- As stated.

Copy to:-

- 1) Shri Sumit Bose,  
Joint Secretary (P&G),  
Deptt. of Education,  
Min. of H.R.D.,  
Room No.117,  
C- Wing, Shastri Bhawan, New Delhi-1; -With the request to look into the matter personally and issue necessary orders for settlement of the issue favourably at the earliest.
- 2) Sri P. K. Tiwari,  
Central Grievance Officer,  
&  
Dy. Commissioner (Trg),  
Kendriya Vidyalaya Sangathan,  
New Delhi-16. -do-
- 3) The Dy. Commissioner (Finance),  
Kendriya Vidyalaya Sangathan,  
New Delhi-16. -do-
- 4) The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
R.O. Silchar. -do-

Advance copy is sent to the Director, CMO, DPAR and the Jt. Secy (P&G), MHRD directly to avoid delay.

(Tapan Kumar Chakraborty),  
Assistant.

भारतीय डाक



SILCHAR H.O (788001)  
RL B 5062  
Counter No:2, OP-Code:01  
To: S GOPAL,  
N DELHI-1

Wt: 75 grams,  
Ant: 26.00, 20/06/2000, 15:53  
YOU ARE ALWAYS WELCOME

No. 9/2/2000-Welfare

भारत सरकार  
GOVERNMENT OF INDIA  
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS  
कार्मिक और प्रशिक्षण विभाग  
DEPARTMENT OF PERSONNEL & TRAINING

ANNEXURE - 12

नई दिल्ली

NEW DELHI

To

The Commissioner  
(Kind A-ttn: Sh.H.M.Cairae)  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Mang,  
New Delhi-110 016.

Subject: (1) Redressal of public grievances pending for last  
twelve year at K.V.S. (H.Qtrs.)

(2) Admissibility of D.H.R.A. in respect of Sh. Tapan  
Kr. Chakraborty, Assistant, K.V.S., R.O., Silchar-  
Appeal for kind clarification thereof.

Sir,

I am directed to forward herewith a copy each of  
letters dt. 21.6.2000 and 14.6.2000 received from Shri Tapan Kr.  
Chakraborty, Asstt. KVS, RO, Silchar on the subjects noted  
above and to request to take appropriate action at your end  
under intimation to this Department.

Yours faithfully,

(J.S. BHATIA)

Under Secretary to the Govt. of India  
Phone 4698708

17 JUL 2000

✓ Copy forwarded for information to:

Sh. T.K. Chakraborty, Asstt. K.V. Sangathan, R.o., Silchar,  
Hospital Road, Disstt. C-achar, Assam. PIN-788 001.

KENDRIYA VIDYALAYA SANGATHAN  
18, INSTITUTIONAL AREA  
SHAHID JEET SINGH MARG  
NEW DELHI-110016

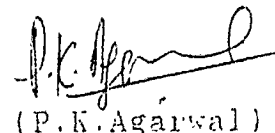
F.NO.6-20/84-KVS(Estt-1)

Dated: 29.01.2001

MEMORANDUM

The representation dated 21.11.2000 regarding appeal for modification of Transfer order No. 1.11-6/9)-KVS(Estt-1) dated 13.11.2000 and redressal of grievances regarding injustices done in the matter of non-payment of DHRA admissible under rules and Non-Payment of financial benefit for pay anomaly arisen due to supersession in promotion wef June 1998 of Shri Tapan Kumar Chakraborty, Assistant, KVS, RO, Silchar has been considered sympathetically by the competent authority and the decision arrived at is communicated to him as under :

- (1) He has been transferred from KVS,RO, Silchar to KVS,RO, Delhi in consideration of his request for transfer on completion of the prescribed tenure at KVS,RO, Silchar. His request for modification of his transfer from KVS, RO, Delhi to KVS ,RO, Calcutta could not be acceded to in view of the Para 18(d) of transfer guidelines.
- (2) Necessary decision regarding non-payment of DHRA has already been communicated to him vide letter number F.8-3/97-KVS/Audit/372 dated 15.7.97.
- (3) He has been extended the benefits of fixation of Pay as per rules and there is no anomaly in this case.



(P.K. Agarwal)  
Dy. Commissioner(Fin.)

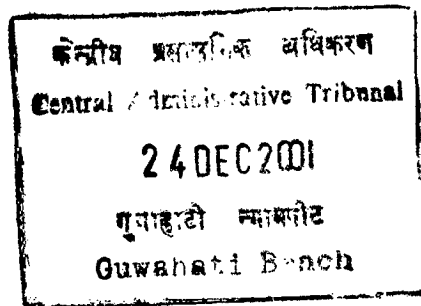
29/01/2001

Shri Tapan Kumar Chakraborty,  
Assistant,  
KVS,RO, Silchar.

Copy to: Assistant Commissioner, KVS(RO) Silchar.

Dy. Commissioner(Fin.)

Attested  
SD/ma  
Advocate  
07/5/2001



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH  
AT GUWAHATI

Original Application No. 166/2001

Relieving order 13.7.95 (SS) - Patup w.r.t. transfer order Dtd 5.1.90

Sri Tapan Chakraborty

..... Applicant

-Versus-

Union of India & Ors

..... Respondents

The Respondent Nos 2 to 6 above named beg to file  
their Written Statement as follows:-

1. That all the averments made in the Original Appli-  
cation ( hereinafter referred to in short as the applica-  
tion) 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 para-  
graphs 1, 2, 3, 4.1 and 4.2 of the application the answering  
respondents has no comments.

3. That with regard to the statements made in



paragraph 4.3 of the application the answering respondents begs to submit that the name of the applicant was considered for ad-hoc promotion in May, 1988 in order of existing recruitment rules, but, he could not be promoted at that point of time since there was no vacancy. It was decided that he might be given ad-hoc promotion as and when Sri K.K Sharma joins as Supdt. (Admn.). The name of the applicant was considered for regular promotion on the basis of seniority cum fitness by the Departmental Promotion Committee along with other candidates in the year 1993 and 1995 in its meetings held on 27.12.93 and 11.1.95 separately. On both the occasions the DPC did not find him fit for promotion and so he was not offered promotion. In the year 1992 limited Departmental Examination was conducted by KVS (Hqrs) on 11.7.92. On the basis of this competitive departmental examination the name of the applicant was placed at serial No.2 of the select panel. However, since a vigilance case was pending against him the issue of the offer of appointment to the post of Assistant was kept in abeyance.

On 28.8.95 it was decided that since no charge sheet was issued against the applicant he was entitled to get promotion like other candidates whose names were empanelled based on the results of the Departmental test held on 11.7.92 i.e, like the other two empanelled candidates for three vacancies of General Candidates.

The applicant was given offer of appointment to the post of Assistant in the year 1995 based on the select panel drawn on the basis of the result of the Departmental Examination held on 11.7.92. He was also given seniority benefit in the cadre of Assistant of KVS (Hqrs) and Regional Office as per select panel prepared in 1992.

Extracts of note sheets in support of the above submission is annexed herewith and marked as Annexure:-1.

4. That with regard to the statements made in paragraph 4.4 of the application the answering respondents has not comment.

5. That with regard to the statements made in paragraph 4.5 of the application the answering respondents begs to submit that the stay against the transfer order was vacated by the order dated 12.7.95 of the Hon'ble Calcutta High Court and accordingly the Assistant Commissioner, KVS, RO, Kolkata relieved the applicant vide his letter No.F26-6/94-KVS(Cal)/678 dated 13.7.95 with instruction to report to the Assistant Commissioner, KVS, R.O., Patna by 24.7.95.

55 A copy of the letter No. F.26-6/94-KVS(Cal)/675 dated 13.7.95 is annexed herewith and marked as Annexure:-2.

6. That with regard to the statements made in paragraph 4.6 of the application the answering respondents begs to reiterate what has been already submitted in paragraph 3 of this written statement.

7. That with regard to the statements made in paragraphs 4.7 and 4.8 of the application the answering respondents has no comments.

8. That with regard to the statements made in paragraphs 4.9 and 4.10 of the application the answering respondents begs to submit that the applicant was relieved from R.O. Kolkata on 13.7.95 and the corrigendum was issued to rectify the typing error only.

9. That with regard to the statements made in paragraph 4.11 of the application the answering respondents begs to submit that the memorandum No. 26-694-KVS(Cal)/1309 dated 29.9.95 was issued with reference to the relieving order dated 13.7.1995.

10. That with regard to the statements made in para-

graph 4.12 of the application the answering respondents begs to submit that the Senior Admn. Officer issued the corrigendum only to rectify the typing error.

11. That with regard to the statements made in paragraph 4.13 of the application the answering respondents begs to submit that the corrigendum was issued to rectify the typing error.

12. That with regard to the statements made in paragraph 4.14 of the application the answering respondents begs to submit that they are incomplete and misleading. The note below Rule 11 under Appendix 24 of the Accounts Code<sup>(old)</sup> reads as follows :-

i) The benefit will not be admissible to those employees who shift their families to a station other than the last place of posting or bring their families to the place of transfer/posting.

ii) That HRA will be admissible to those employees who keep their families<sup>either in rented house or in their own house</sup> at the last place of posting and were in receipt of HRA at that place, in addition to the benefits available at the new place of posting in<sup>the</sup> area irrespective of whether they have claimed transfer TA for

family or not subject to the condition that accommodation at the last station of posting is put to bonafide use of members of the family.

iii) The quantum of HRA at the last station where the family continues to stay will not change till the employees remains posted in that area and the family continues to stay at that station.

A copy of the note below Rule 11 under Appendix 24 of the Accounts Code<sup>(old)</sup> is annexed herewith and marked as Annexure:-3.

13. That with regard to the statement made in paragraph 4.15 of the application the answering respondents begs to submit that the applicant had not shifted his family to his last place of posting i.e., Patna before joining Regional Office, Silchar. In term of Note (2) of Rule 11 stated in the preceding paragraph of this Written statement, the applicant is not entitled to DHRA.

14. That with regard to the statements made in paragraphs 4.16 and 4.17 of the application the answering respondents begs to submit that the case of the applicant was considered by the competent authority and accordingly the reply was given to him vide memorandum No. F No.6-20/84-KVS

37  
a  
b

-7-

(Estt-I) dated 29.1.2001 (Annexure:-13 of the Original Application).

15. That with regard to the statements made in paragraph 4.19 of the application the answering respondent begs to submit that this application is not maintainable and requires to be dismissed prime-facie due to the fact that the order under dispute and challenged by the applicant is legal, valid and correct in the eyes of law.

16. That with regard to the statements made in paragraph 5.1 to 5.12 of the application the answering respondents begs to submit that in view of the facts and circumstances stated above the applicant is not entitled to any of the reliefs sought by him.

17. That with regard to the statements made in paragraph 6 and 7 of the application the answering respondents has no comments.

18. That with regard to the statements made in paragraph 8 and 9 of the ~~application~~ the answering respondents beg to state that in view of the aforesaid fact and circumstances, the applicant is not entitled to any relief.

VERIFICATION

I, Shri Deo Kishan Saini, Son of Sri C. L. Saini, aged about 53 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon Chariali, Guwahati-12, do hereby verify that the statement made in paragraphs 1, 2, 4, 6, 7, 8, 10, 13, 15, 16, 17, 18, 11 are true to my knowledge and those made in paragraphs 3, 5, 9, 12, 14 are based on records.

And I sign this verification on this the 24<sup>th</sup> day of December, 2001 at Guwahati.

Place : Guwahati

Deo Kishan Saini  
DEPONENT

Date : 24-12-2001

Picnic - 1960

D. P. C. : me joined below (FIA - on  
 F. B) On both the occasions,  
 the D. P. C. did not find

lt. D-9.e. ch. 1  
 5. Trip to Kinner  
 formation to the post 7 Asst.

23. S. Tapin Kumar Chakraborty  
appeared in the Repl. Exam for Asslt-  
field on 11-7-92 and the man No.  
2 in the select panel. He was then  
offered appt. due to very loose contemplation  
against him.

against him.  
4 Since no charges sheet has  
been served upon, Sh. Tarpan Kumar  
Chakraborty, U.D.C., R.V. R.O. Calcutta.  
a per Vtg. Section Time at 23.6.75 on  
pre-post, there is to be offered appl.  
to the post-1. Asst. on the basis  
11.7.72

Rep. 11. Examination held on 11/11/11  
 and his seniority is the point  
 of view to be determined on the

28.8.95

30110101



37-9-1995

C. u. D. 1.

From pre-post

basis of Rank 12 obtained in  
examinationDirector being the  
authority for the post of Asst  
Mag. kindly see for approval

M

22/8/95

DCCP

Cm

22/8/95

J. C. (Admin)

Ref. above

In terms of the instructions issued by the Department of Personnel vide ON No. 22011/4/91-Estt. (A) dated 14-9-92, since no charge sheet was served on Sh. Tapan Kumar Chakraborty, he is entitled to get promotion like other candidates who are empanelled based on the results of the Departmental test held on July 1992 for the post of Assistant i.e. like the other two empanelled candidates for the 3 vacancies of General Candidates.

The promotion of Sh. Tapan Kumar Chakraborty is accordingly approved. He will not be asked to re-sit the test.

DCCP

Cm

26/8/95

S. A. G.

C. Dheemanna

28 August 1995

2326/5010

678/5010

RP E

30/10/01

Telephone : 37-9335  
37-6998

Encl-3

কেন্দ্রীয় বিদ্যালয় সংগঠন (কলকাতা অঞ্চল)  
Kendriya Vidyalaya Sangathan (Calcutta Region)  
১৫৫/১, এম এল বি রো, উল্টাঙ্গা, কলকাতা-৭০০০০৭  
P161/1, VLP Road, Ultadanga, Calcutta-700007

United Ref. No. F.80-4/72-1071(CO) 678

Register Date: 24/7/75

RECEIVED

OFFICE

NO 49(R)

CA

166

Life Section

In pursuance of the Transfer Order dated 12-7-75 (No. 1) dated 9-1-75, Mr. Kapan Kumar Chakrabarty, B.A. Office is hereby relieved of his duties with immediate effect with further direction to report to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Patna for further orders.

This is in compliance with the order dated 12-7-75 passed by His Lordship Hon'ble Chief Justice B.L.C. Chatterjee of High Court Calcutta in C.A. No. 2537 of 1975 directing the complete relief of Mr. Chakrabarty.

That Chakrabarty shall be entitled for relief as per rules.

1703 or 2

(A.D. Chatterjee)

ASSISTANT COMMISSIONER (OFFICE)

Mr. Kapan Kumar Chakrabarty,  
Off. Kendriya Vidyalaya Sangathan,  
Regional Office, Calcutta,  
C. Telephone No. 155, 156,  
Calcutta - 700 007.

Copy to 1. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office Patna for information and necessary action.

2. The Deputy (Admin), IAS to Calcutta.

3. The D.O., IAS, Andhra Pradesh, IAS to Calcutta. He is requested to report the pay & allowances of Mr. Chakrabarty upto 12-7-75 and also make necessary arrangement for payment of TA/DA advance and LRS to Mr. Chakrabarty immediately and deposit the amount to his Bank Account.

4. The Jt. Commissioner (Admin), IAS New Delhi for information. The copy against the direction given in respect of Mr. Chakrabarty has been forwarded by the order dated 12-7-75 of the Hon'ble Chief Justice of High Court and accordingly Mr. Chakrabarty has been relieved of his duties with immediate effect. To inform IAS, so that 22 is requested that the following points may be filled up as per:-

Supdt. (Admin) - Mr. - Vice Ch. A. C. Chatterjee, IAS  
Assistant - Mr. - Vice Ch. A. C. Chatterjee, IAS  
U.D.C. - Mr. - Vice Ch. A. C. Chatterjee, IAS

5. The Sr. Admin. Officer (Adm), IAS New Delhi for information. He is requested to take necessary action with regard to the departmental action being contemplated against Mr. Chakrabarty.

6. Mr. P. C. Mitter, Advocate, Calcutta High Court, Calcutta-1.

1305/620/12  
20/7/75

S/D/CSK

222/71 (Admin)

19/7

E.T.

24/7/75

Sh. NK

### 10. ~~Travel Allowance~~

In case of KVS employees proceeding on leave from a place of posting in North-Eastern Region, the period of travel in excess of two days from the station of posting to another station in that Region will be treated as joining time. The same concession will be admissible on return from leave.

### (9) Leave Travel Concession

KVS employee who leaves his family behind at the old ~~any~~ station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North-East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North-Eastern Region. In case the option is for the later alternative, the cost of travel for the initial distance (400 kms/150 kms) will not be borne by the officer.

Officers drawing pay of Rs. 5100/- or above, and their families, i.e. spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala/Aizawl/Lal Bari\* and Calcutta and vice-versa, between Port Blair\* and Calcutta\*/Madras\* and vice-versa in case of postings in A & N Islands and while performing journeys mentioned in the preceding paragraphs (\*from 1.12.88).

### (10) Children Education Allowance/Hostel Subsidy

Where the children do not accompany the KVS employee to the North-Eastern Region, Children Education Allowance upto Class XII will be admissible in respect of children studying at the last station of the posting of the employee concerned or any other station where the children reside, without any restriction of pay drawn by the KVS employee, if children studying in schools are put in hostels at the last station of posting or any other station. The Government servant concerned will be given hostel subsidy without other restrictions.

### (11) Concession Regarding Grant of House Rent Allowance

(a) Kendriya Vidyalaya Sangathan employees who were in occupation of hired private accommodation at the last station of posting before transfer to any of the States/Union Territories mentioned above may be allowed to draw HRA admissible to them at that station.

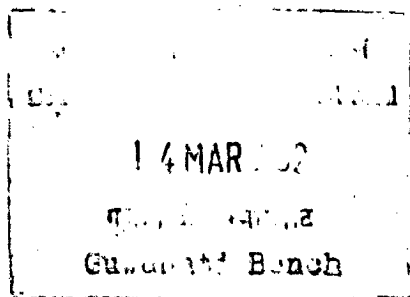
(b) Such Sangathan employees may also be allowed to draw, in addition to (a) above,

HRA at the rates admissible at the new place of posting in the aforesaid States/Union Territories in case they live in hired private accommodation.

(c) The benefit mentioned in (a) & (b), above will also be admissible to Sangathan employees who get transferred from one station of a State/Union Territories of the North Eastern Region to another State/Union Territories of the North-Eastern Region mentioned above.

12.

- 1) The benefit will not be admissible to those employees who shift their families to a station other than last place of posting or bring their families to the place of their transfer/posting.
- 2) The HRA will be admissible to those employees who keep their families either in rented house or in their own house at the last place of posting and were in receipt of HRA at that place, in addition to the benefits available at the new place of posting in the area irrespective of whether they have claimed transfer TA for family or not subject to the condition that accommodation at the last station of posting is put to bonafide use of the members of the family.
- 3) The quantum of HRA at the last station where the family continues to stay will not change till the employees remains posted in that area and the family continues to stay at that station.



Filed by:-  
Suryajit Datta  
Advocate  
08.03.02  
75

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI

O.A. No. 166 / 2001

Shri Tapan Kumar Chakraborty

.....Applicant

-VS-

Union of India and others

.....Respondents

IN THE MATTER OF :

Affidavit-in-reply of the applicant to the Written statement submitted by the respondent nos. 2 to 6;

AFFIDAVIT - IN - REPLY

I, Shri Tapan Kumar Chakraborty, son of late Motilal Chakraborty, aged about 46 years, resident of Kanakpur Part-II, Silchar -5, the applicant in this application, do hereby solemnly affirm and say as follows :

1. That I have received a copy of the written statement filed by the respondents above named. I have gone through the same and having understood the contents thereof, beg to submit my reply as hereunder contained.
2. That the contents of the written statement are generally denied save and except what have been specifically admitted in this rejoinder affidavit and those borne out by the records of the case.
3. That with regard to the statements made in paragraphs 1 and 2 of the written statement, I have no comment to make thereon.
4. That I dispute the correctness of the statement made in paragraph 3 of the written statement and beg to state as follows:-

Tapan Kumar Chakraborty

(a) That at the relevant time, there were 13 (thirteen) vacancies of Assistant which were to be filled by giving ad-hoc promotions in the year 1988. On 19.05.88, the following UDCs were considered for promotion on ad-hoc basis in order of seniority-cum-fitness:

1. Sri D. K. Tandon	- Regional Office, Lucknow	- General
2. Sri S. K. Sharma	- KVS (IIQ)	- do
3. Sri Dheer Singh	- do	- SC
4. Sri R. K. Rastogi	- Regional Office, Chandigarh	- General
5. Sri A. C. Thomas	- KVS (HQ)	- do
6. Smti P. Mathur	- do	- do
7. Sri R. S. Sharma	- do	- do
8. Sri A. K. Agarwal	- do	- do
9. Sri P. N. Kharak	- Regional Office, Bhopal	- SC
10. Sri L. T. Parmar	- do, Ahmedabad	- do
11. Sri S. Chakraborty	- do, Calcutta	- General - <u>Refused</u>
12. Sri Ram Prasad	- do, Jaipur	- do
13. Sri N. M. Rao	- do, Madras	- do - Not approved
14. Sri T. K. Chakraborty	- do, Calcutta	- do
15. Sri G. T. Baa	- do, Delhi	- ST

(b) The case of Sri N. M. Rao was not approved in file but all other cases were approved on 19.05.88 by the then D. C. (Admn.). It is stated that Sri S. Chakraborty at Sl. No. 11 was offered promotion but he refused. Due to rejection of Sl. No. 13 and non-acceptance of promotion by Sl. No. 11, I ought to have been offered promotion against available two vacancies but the same was denied and my junior Shri G. T. Baa was offered promotion who joined as Assistant on ad-hoc basis on 15.06.1988. Moreover, one Sri K. K. Sharma was promoted to the post of Superintendent (Admn.) in June, 1988 resulting into availability of two vacancies. But even then, I was not promoted with an oblique motive and instead, my junior Sri Balkishan was offered promotion who joined on 17.10.1988. In this context, I beg to say that since reservation rules do not apply for promotion on ad-hoc basis, there was no scope for super session. Besides, as per rules for promotion on regular basis, vacancies might be earmarked as 2 (two) for SC (being fifteen percent of 13 posts), 1 (one) for ST (being seven and half percent of 13 posts) and rest 10 (ten) posts for General. In view of the fact that there were already 3 (three) SC candidates in the list above, there was no scope for offering promotion to another SC candidate namely, Sri Balkishan whose name was not at all considered for promotion on 19.05.88. Hence, the plea that due to non-availability of vacancy the case of the applicant for promotion was not considered is a false statement.

Tapan Kumar Chakraborty

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(c) I further beg to say that for regular promotion, DPC was held on 22.01.92, 07.01.93 and 27.12.93 but the promotion of the applicant was not considered without any cogent reason and his juniors were again allowed to be promoted. From 1988 to the date of release of promotion on 15.09.95, no memo or charge sheet was ever issued to the applicant as against any departmental proceeding and therefore the statement that "since a vigilance case was pending against him, the issue of offer of appointment was kept in abeyance" is not only misleading but also bereft of truth. I categorically say that out of malice and sheer vindictive attitude of the higher-ups in KVS (particularly, the then D.C. (Admn.) Sri Puran Chand), the applicant was denied promotion on ad-hoc basis w.e.f. 15.05.1988 as well as on regular basis w.e.f. 01/1992.

5. That with regard to the averments made in paragraphs 5, 6 and 8 of the written statement I beg to reiterate the contention raised in paragraphs 4.5 to 4.10 of the original application and further beg to say that the respondents have deliberately made a false statement with regard to my transfer from R.O., Calcutta to Patna. It is stated by an order-dated 05.01.1990, the applicant was sought to be transferred to R.O., Patna in violation of the then existing Rules. The said transfer order was challenged in the Hon'ble Calcutta High Court in C.O. No. 2687(W)/1990 whereupon the transfer order was stayed, however, the case was disposed of on 15.03.1990 with a direction that the applicant would file representations before the respondents and the same would be disposed of by a reasoned order and until such disposal, the transfer order would remain stayed. But, the respondents acted in utter violation of the stay order and as such a contempt proceeding was initiated. However, on 30.04.1990 the said contempt petition was wrongly disposed of by the High Court but subsequently on being pointed out by the applicant on 10.08.1990, the High Court recalled its earlier orders, revived the earlier writ petition in C.O. No. 2687(W)/1990 granting stay of the transfer order dated 05.01.1990 till further orders and initiated a fresh contempt vide order dated 10.08.1990. It is stated that on 12.07.1995 the Calcutta High Court only disposed of the contempt petition arising out of the order dated 10.08.1990 in C. O. NO. 2687 (W) /1990 without entering into the merit of the case. As such, the stay order dated 15.03.1990 was still in force on 13.07.1995 but the respondents misinterpreted the said order and quite illegally relieved the applicant from Calcutta w.e.f. 13.07.1995 in pursuance of the transfer order issued on 05.01.1990, which was under challenge before the High Court in the above, mentioned writ

Tajendra Kumar Chakraborty

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proceeding. I categorically say that the said writ petition is still pending before the Calcutta High Court with the order dated 15.03.1990 but however, has become infructuous. Nevertheless, the applicant continued at Calcutta and subsequently the Joint Commissioner (Admn) issued offer of promotion on 15.09.1995 to the post of Assistant and posted the applicant to R.O., Silchar from R.O., Calcutta. But at this stage, the respondents forced the applicant to join at Patna and stay there for barely three weeks to get his relieving order in order to join at Silchar. The applicant had to comply with such illegal order of the respondents under compelling circumstance.

The copies of the said orders dated 10.08.1990 and 12.07.1995 are annexed herewith as Annexure-R1 and R2 respectively.

6. That with regard to the statements made in paragraphs 8 of the written statement, I beg to state that flouting the order of the Hon'ble Calcutta High Court dated 15.03.1990 and 10.08.1990 in C. O. NO. 2687 (W) /1990, the relieving order dated 13.07.1995 was issued though the stay granted thereby was not vacated. I further say that the corrigendum issued by the A.O., Calcutta and Sr. A.O., KVS Hqrs. were fake and false in as much as in corrigendum issued by A.O., Calcutta the offer of appointment dated 15.09.1995 was referred whereas in the corrigendum issued by Sr. A.O., KVS Hqrs. the offer of appointment dated 18.09.1995 was referred. This apart, the contents and format of these corrigenda were different. The entire exercise was done out of connivance and in a pre-planned manner just to harass the applicant and make him suffer.

7. That with regard to the statements made in paragraphs 9 of the written statement, I beg to state that the relieving order dated 13.07.1995 issued by the A.C., Calcutta being ex-facie illegal was null and void. I categorically deny that the corrigendum dated 25.09.1995 (Annexure-7 to O.A.) was ever issued from KVS Hqrs. rather it was prepared by the then Sr. A.O., Calcutta on his own without any authority.

8. That I dispute the correctness of the statements made in paragraphs 10 and 11 of the written statement and beg to state that the two corrigenda referred to in the paragraphs under reply were issued without any authority and the same were issued out of ill motive of the respondents.

Tapau Kumar Ghosh

9. That with regard to the statements made in paragraphs 12 and 13 of the written statement, I beg to state that in view of the circumstances narrated in the original application as well as in this rejoinder affidavit, it is apparently clear that the release of the applicant from Calcutta to Patna was illegal and since it was known that the applicant would have to proceed to Silchar immediately after obtaining his relieve order from Patna, there was no scope to shift his family to Patna. I further say that in view of the rules of the Sangathan with regard to payment of DHRA as well as the clarification dated 26.06.2000 issued by the respondents on admissibility of DHRA to the employees posted to NE Region, I am entitled to draw double house rent allowance.

A copy of the clarification dated 26.06.2000 is annexed herewith as Annexure - R3.

10. That with regard to the statements made in paragraphs 14, 15, 16, 17 and 18 of the written statement, I beg to state that the contentions of the respondents have no force much less, any legal force in it and the same are liable to be rejected and the impugned order dated 29.01.01 is accordingly liable to be set aside. The Hon'ble Tribunal may, therefore, be pleased to grant the relief prayed for in the original application.

11. That the statements made in this rejoinder affidavit are true to my knowledge and the same is filed bona fide and in the interest of justice.

And I sign this on this 12th day of February 2002.

Identified by:

Swagat Datta  
Advocate

Tapas Kumar Bhakrabady  
DEPONENT

Solemnly affirmed by The Deponent  
before me on this 12th day of  
February 2002.

Manik Chandra  
Advocate



**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side  
The 10th day of August 1990**

**Present:  
The Hon'ble Sri S. Chatterjee  
One of the Judges of this Court**

**In the matter of an  
application for appropriate  
orders in Civil Order No.  
2687 W of 1990, issued by  
this Court;**

**And in the matter of Sri  
Tapan Kumar Chakraborty -  
VS- Union of India and  
others.**

**Advocate for the Petitioner : Sri P. K. Ghosh and Sri Sahidullah Munshi  
Advocate for the Respondents : Sri Ashim Ghosh**

**Being satisfied with the materials on record, order dated 30.04.90 was passed on erroneous appreciation of the letter dated 26.04.90. For effective adjudication of the matter, order dated 30.04.90 is recalled. The Court takes notices of the Contempt Application.**

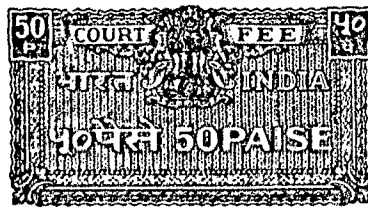
**But, instead of issuing any Contempt Rules, this Court proposes to proceed with the same in accordance with the law. The Contemner is directed to file an affidavit within a fortnight. The impugned order of transfer of the Petitioner will be kept in abeyance till further orders. Petitioner will be entitled to receive the salary in the meantime without prejudice.**

**Sd/- S. Chatterjee**

**Judge**



Dt. of appln	Date fixed for	Date of delivery	Date on which	Date of making over
for the copy	notifying the	of the requisite	the copy was	the copy to the
	requisite No.	stamps and	ready for	applicant.
	of stamps and	folios	delivery	
23.4.2001	19.5.2001	23.7.2001	19.6.2001	



In the High Court at Calcutta

Special Civil Jurisdiction

Appellate Side

The 12th Day of July, 1995

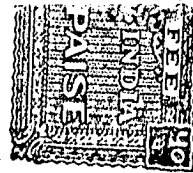
Present:

The Hon'ble Krishna Chandra Agarwal Chief Justice  
Civil Order No. 2687W of 1990, issued by this Court;

In the matter of an application for contempt  
of Court;

And in the matter of Deliberate and wilful  
violation by the Contemnors/Opposite parties of the  
judgment and order dated 15th March, 1990, passed  
by the Hon'ble Mr. Justice Susanta Chatterji, in  
Civil Order No. 2687(W) of 1990, in the following  
manner;

- (a) By refusing to allow the petitioner to  
rejoin his services as Upper Division Clerk in  
the Kendriya Vidyalaya Sangathan Regional Office  
at PL61/1, V.I.P. Road, Calcutta-54.
- (b) By not considering the petitioners represen-  
tation dated 6th April, 1990, made by the petitioner  
in terms of the judgment and order dated 15th March,



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1990, passed in Civil Order No. 2687(W) of 1990;

(c) By refusing to pay the petitioner's salary from the month of January, 1990;

And in the matter of Civil Order No. 2687(W) of 1990;

And in the matter of Tapan Kumar Chakraborty petr  
versus

The Union of India and ors. Respondents.

And in the matter of Tapan Kumar Chakraborty,  
son of late Matilal Chakraborty, of 22/1, Jagendra  
Nath Ghoshal Road, Calcutta-700057 petitioner  
versus

Shri M.L. Sapru (Retired Colonel), Assistant Commi-  
ssioner, Kendriya Vidyalaya Sangathan, P-161/1,  
V.I.P. Road, Ultadanga, Calcutta-700054-Contemnor/  
Opposite party

Re : Application for contempt filed on 24.4.90.

Mr. Asoke Banerjee,  
Mrs. Sukla Kabir,  
Mr. Sahidulla Munshi- for petitioner.

Mr. Parash Ch. Maity- for respondents

Heard the learned Advocate for the parties.

I am not satisfied that there is any ground  
for initiating any proceedings under Section 12 of



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of the contempts of courts Act. The conduct of the respondents is not such that it attracts the said provision. Affidavit-in-opposition has been filed on behalf of the alleged contemnors, explaining the grounds on which the petitioner had been transferred and the alleged contemner was the appropriate authority to pass such order of transfer. Whether such authority transferred the petitioner or whether, instead of transfer, terminated him was his discretion and the court cannot interfere with that. The application is dismissed.

The application for contempt is thus disposed of without costs.

It is recorded that I have not gone into the merits of the writ petition.

12.7.95.

K. C. Agarwal. C.J

akb

exam by

read by

*[Handwritten signature]*  
15/6/2001



Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Sheheed Jeeb Singh Marg  
New Delhi-110044

पत्रांक / No. 7.8-11/2000/KVS/Audit

Annexure - R3 84  
फोन / TEL : 610221

केन्द्रीय विद्यालय संगठन  
KENDRIYA VIDYALAYA SANGATHAN  
प्रशिक्षण केन्द्र / TRAINING CENTRE  
रीक्टर II रामकृष्ण पुरम / Sec II R.K. Puram  
नई दिल्ली 110 022 / New Delhi 110 022

दिनांक / Dated 26/6/2000

The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office,  
Silchar.

Sub:- Clarification regarding admissibility of double HRA to the employees posted to North Eastern Region.

Sir,

I am to refer to your office letter dated 5.6.2000 on the subject cited above and to clarify that the employee who was in occupation of Govt. accommodation at the last place of posting and was not drawing HRA in the last station of posting immediately before posting to NER will not be entitled to draw double HRA, even if the Govt. employee has kept his family members at a rented house at the last station of posting or any other place. All such claims may be decided accordingly.

This issues with the approval of the Dy. Commissioner(Fin.)

Yours faithfully,

Jatin Chel Singh  
23/6/2000

( J.S. TALWAR )  
SENIOR ACCOUNTS OFFICER

Copy to Supdt. of Accounts, KVS RO, Silchar for information and necessary action.

SENIOR ACCOUNTS OFFICER

DD  
circulate to KVS  
RAB  
3/7/2000