

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

6

✓ (DESTRUCTION OF RECORD RULES, 1990)

C.P. 23/01 order page 1 to 3 C.P. closed 28.1.2002

INDEX

O.A./T.A No. 167/01.....
R.A/C.P No. 23/01.....
E.P/M.A No. 19/02.....

1. Orders Sheet..... O.A.Pg. 1.....to 3
MP 19/02 orderPg. 1.....to 3 *71.8/02 28.1.02*
2. Judgment/Order dtd. 28.1.2002.....Pg. 1.....to 4 *dismissed*
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 167/01Pg. 1.....to 40
5. E.P/M.P. 19/02.....Pg. 1.....to 7
6. R.A/C.P. 23/01.....Pg. 1.....to 9
- ✓ 7. W.S.....Pg. 1.....to 17
8. Rejoinder *to the C.P. 23/01*Pg. 1.....to 3
end. Rejoinder to the C.P. 23/01Pg. 1.....to 3
9. Reply/*in* Affidavit *to the C.P. 23/02*Pg. 1.....to 4
R/o-1Pg. 1.....to 4
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Salit
86/12/17

unitrecoo

FORM NO.4
(See Rule 42)

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

ORDER SHEET

ORIGINAL APPLICATION NO.167....OF 2001.

Applicant (S) Suresh Baruah

Respondent (S) V.O.I. Farm

Advocate for Applicants (s) M. Chanda, Ms. N.D. Goswami

Advocate for Respondent (s) CAC

Notes of the Registry	Date	Order of the Tribunal
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Application is in form
for the purpose of
Petition for the purpose of
M.P. for the purpose of
IPO/1635/1638
Date 30-4-2001

9.5.01

The application is admitted. Call for the records. Issue notice to show cause as to why an interim order shall not be granted as prayed for. Returnable by three weeks.

List on 1.6.2001 for orders. In the meantime Order dated 18.4.2001 shall remain suspended so far the applicant Sri Suresh Baruah is concerned.

Vice-Chairman

14-5-2001

Notice is prepared and sent to Despatch Section for issuing to the R-1 to 4.

bb

1.6.2001

No return so far filed. List is on 14-6-2001 for orders.

In the meantime the interim order dated 9-5-2001 shall continue.

Vice-Chairman

Vide D/No. 1635/1638 dtd. 14/5/01. 14/5/2001

bb

14.6.01

Order dtd 1/6/01 Communicated to the Petitioner's Counsel.

Mr. S. Sarma, learned counsel, appearing on behalf of the respondents no. 2-4, prays for and granted 4 week and no more time to file counter affidavit.

contd/-

Order dated 14/6/07
Communicated to the
Parties Counsel vide
Memo No. 2173 & 2174

dated 20/6/07

14/6/07

14.6.01

The applicant may file rejoinder, if any within 2 weeks thereafter. In the meantime, the interim order dated 9.5.01 shall continue.

✓ List on 16/8/2001

IC Usha

Member

IC Usha

Vice-Chairman

bb

17.7.01

List on 16-8-2001 for further order

IC Usha

Member

IC Usha

Vice-Chairman

bb

16.8.01

List on 3/9/01 alongwith C.P. 23/01 for order.

IC Usha

Member

IC Usha

Vice-Chairman

mb

3.9.01

List on 27/9/01 alongwith C.P. 23/01 for hearing.

IC Usha

Member

mb

27.9.01

List on 5.10.01 alongwith C.P. No.23 of 01 for hearing.

IC Usha

Member

IC Usha

Vice-Chairman

lm

5.10.01

List on 28.11.01 alongwith C.P. No.23 of 01 for hearing.

IC Usha

Member

lm

28.11.01

List on 6.12.01 for hearing alongwith C.P.No.23 of 01

IC Usha

Member

IC Usha

Vice-Chairman

lm

6.12.01 on the prayer of the learned counsel for applicant the case is adjourned to 20.12.2001 Mo.A. No. 612

(3)
OA 167/2001

3

Notes of the Registry	Date	Order of the Tribunal
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6.12

on the prayer of the learned Counsel for the applicant, the case is adjourned to 24.12.2001.

M/S
A.K. Jey
6.12

24.12.01

List again on 10.1.2002 for hearing as prayed for by the learned counsel for the respondents.

K. Usha
Member

[Signature]
Vice-Chairman

pg

lots has been filed.

10.1.02

List against on 18.1.2002 for hearing.

K. Usha
Member

[Signature]
Vice-Chairman

pg

Written Statement filed on behalf of R.No-2, 3, and 4.

18.1.

Heard in Part.
Wpt again on 28.1.2002 for further hearing. In the meantime, M/S soon, learned counsel appearing on behalf of the respondents would obtain necessary instructions on the matter.

M/S
A.K. Jey
18.1.

28.1.2002

Heard counsel for the parties. Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.

K. Usha
Member

[Signature]
Vice-Chairman

bb

Received
Shyama
for KVS
5/2/02

13.2.2002
Copy of the Judgment has been sent to the office for issuing in due to its applicant by post.

Notes of the Registry	Date	Order of the Tribunal
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Notes of the Registry Date Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 167 of 2001.

Date of Decision..28-1-2002..

Sri Suresh Baruah.

Petitioner(S)

Mr. M.Chanda & Mrs. N.D.Goswami

Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

Respondent(-)

Dr. B.P.Todi & Mr. S.Sarma

Advocate for the
Respondent(s)

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

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

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.

4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.167 of 2001

Date of Order : This the 28th Day of January, 2002.

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

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

Sri Suresh Baruah

Primary Teacher (PRT)

Kendriya Vidyalaya, Borjhar

(under Kendriya Vidyalaya Sangathan)

P.O: Borjhar, Dist : Kamrup (Assam) . . . Applicant.

By Advocate Mr.M.Chanda & Mrs.N.D.Goswami.

- Versus -

1. The Union of India
Through the Secretary to the
Government of India
Ministry of Human Resources
New Delhi.
2. Chairman
Kendriya Vidyalaya Sangathan
New Delhi.
3. Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, Chayaram Bhawan
Maligaon Chariali
Guwahati-781 012.
4. The Principal
Kendriya Vidyalaya, Borjhar
P.O: Borjhar, Dist : Kamrup (Assam)... Respondents.

By Advocate Dr.B.P.Todi & Mr.S.Sarma.

O R D E R

CHOWDHURY.J.(V.C.):

This application under section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the order dated 18.4.2001. By the said applicant order, the / alongwith thirteen others were redeployed in the Kendriya Vidyalaya cited in the order in the / institutions respective

due to fixation of staff strength. In view of the excess of the sanctioned strength those persons including the applicant were redeployed on the ground of surplus. The applicant assailed the said decision making process as arbitrary and malafide.

2. The respondents contested the claim of the applicant and filed the written statement. In the written statement it was stated that the applicant was transferred on being found surplus as a result of reduction of sections due to less number of students. Since the applicant was the senior most primary teacher in the Kendriya Vidyalaya, Borjhar, he was moved out in terms of the policy guidelines.

3. Mr..Chanda, learned counsel for the applicant, submitted that the impugned order redeploying the applicant on surplus ground is obviously malafide so much so that the order of transfer was made with improper motive. Though the impugned order showed the applicant as a surplus primary teacher, factually the order was passed as a punitive measure.

4. On consideration of the materials on record, we do not find any impropriety and malafide in the impugned order. The order was made purely on surplus ground. Mr.M.Chanda submitted that as per the policy decision the surplus staff was to be transferred against nearest available vacancy within the region. Instead the applicant was infact transferred to

Itanagar.

5. We have also heard Mr.S.Sarma, learned counsel appearing for the respondents. In our view also it appears that the respondents authority assiduously adhered to the guidelines as per as practicable as is evident from the order of transfer and posting. The order was made as a measure to redploy when the staff were found in the excess of the sanctioned strength. The applicant as an old staff naturally posted out from the earlier place of posting on surplus ground. No infirmity as such discernible.

Under the facts and circumstances stated above, we do not find any infirmity in the impugned order. The application is accordingly dismissed. The dismissal of the application shall not, however, preclude the respondents for considering the case of the applicant for transferring him in near future against the nearest available vacancy. Before parting with, we express our dissatisfaction in the conduct of the respondents for not paying the salary of the applicant during the period as was mentioned in the Misc. Petition No.19 of 2001. The order dated 18.4.2001 transferring the applicant out from Borjhar to Itanagar was suspended by our order dated 9.5.2001. There is no justification for not releasing the salary of the applicant by the respondents. The respondents are now directed to

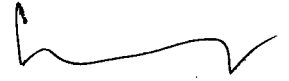
release the salary of the applicant forthwith.

The interim order dated 9.5.2001 stands vacated.

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



(K.K.SHARMA)
ADMINISTRATIVE MEMBER



(D.N.CHOWDHURY)
VICE CHAIRMAN

bb

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Central Administrative Tribunal
8 MAY 2001
গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

(An Application under Section 19 of the Administrative Tribunals Act, 1985)
Title of the Case : O.A. No.162..../2001
Shri Suresh Baruah : Applicant
-Versus-
Union of India & Others : Respondents

Filed by me applicant
Shri Suresh Baruah
Advocate
8.5.2001

INDEX

Sl. No.	Annexure	Particulars	Page No.
1	-	Application	1-18
2	-	Verification	19
3	1	Copy of the impugned order dated 11.8.99	20-21
4	2	Copy of an application dated 18.8.99 submitted by the applicant	22
5	3	Copy of the leave application dated 18.8.99	23
6	4	Copy of the Medical Certificate dated 18.8.99	24
7	5	Copy of the O.M. dated 12.6.97	25-26
8	6	Transfer Order dated 26.9.2000	27-29
9	7	Cancellation of Transfer Order dated 05.01.2001	30
10	8	Hon'ble Tribunal's Order passed in MP 259/2000 dated 29.1.2001	31-32
11	9	Representation dated 8.2.2001	33
12	10	Office order dated 15/16.2.2001	34
13	11	Transfer order dated 18.4.2001	35
14	12	Transfer Policy dated 23.7.1996	36
15	13	Impugned letter dated 31.3.1998	37
13	14(Series)	Hon'ble Tribunal's order dt. 25.4.2001 And 4.5.2001.	38-40

Date

Filed by

Advocate

Suresh Baruah

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

O.A. No...../2001

BETWEEN :

1. Sri Suresh Baruah,
Primary Teacher (PRT),
Kendriya Vidyalaya, Borjhar,
(under Kendriya Vidyalaya Sangathan),
P.O. Borjhar, Dist. Kamrup(Assam).

.....Applicant

-AND -

1. The Union of India,
Through the Secretary to the
Government of India,
Ministry of Human Resources,
New Delhi.

Suresh Baruah

2. Chairman,
Kendriya Vidyalaya Sangathan,
New Delhi.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Chayaram Bhawan,
Maligaon Chariali,
Guwahati – 781 012.
4. The Principal,
Kendriya Vidyalaya, Borjhar,
P.O. Borjhar, Dist. Kamrup (Assam).

.....Respondents

DETAILS OF THE APPLICATION

1. Particulars of orders against which this application is made.

This application is made against the impugned transfer order issued under letter No.10-2/2001 KVS (GR)/II 282 dated 18.04.2001 whereby the applicant is sought to be transferred from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya, Itanagar No.2 on the alleged ground that the post holding by the applicant in Kendriya Vidyalaya, Borjhar is declared excess due to fixation of staff strength in Kendriya Vidyalaya for the year 2001-2002 whereas the applicant was earlier also transferred and posted from Borjhar to upper Shillong following Office order dated 11.08.1999 on the alleged ground that the post holding by the applicant is declared surplus but the applicant is adjusted against an existing vacancy at Kendriya Vidyalaya, Borjhar following the spouse

scheme and also in the light of the order passed by the Hon'ble Tribunal on 29.01.2001 in OA 270/99 (S. Baruah Vs. Union of India & Others) in a vacant post of P.R.T. by the order of the Assistant Commissioner, Guwahati Region, Maligaon, Guwahati bearing letter dated 15.02.2001 but surprisingly the applicant again declared surplus in to violation of Snagathan Policy for posting of husband and wife in the same station as the wife of the applicant is also a Teacher serving in the Kendriya Vidyalaya, Borjhar and also in terms of the impugned transfer policy of surplus teacher and praying for a direction upon the respondents to allow the applicant to continue in the present place of posting in the light of the Office Memorandum issued by the Govt. of India, dated 12.6.97 as one of the minor son of the applicant is below ten years of age.

2. Jurisdiction of the Tribunal

The applicants declare that the subject matter of his application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declare that this application is filed within the limitation prescribed under section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case

4.1 That the applicants^{is a} are citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant initially joined Kendriya Vidyalaya Sangathan as Primary Teacher in the year 1978 and was posted at Kendriya Vidyalaya, Digaru. However, in the year 1980 he was transferred to
Sukern Baruah

Kendriya Vidyalaya, Borjhar and since then he is serving at Kendriya Vidyalaya, Borjhar. It is pertinent to mention here that his wife Smti. Chandrama Baruah is also working in Kendriya Vidyalaya, Borjhar, as Music Teacher.

- 4.2 That the applicant states that suddenly on 11.8.99, the respondent No.3 issued an order declaring the applicant as surplus and thereby transferring him from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya, Upper Shillong, although his juniors have been retained.

A copy of the impugned order dated 11.8.99 is annexed as Annexure-1.

- 4.3 That the applicant states that he was the senior most primary teacher in Kendriya Vidyalaya, Borjhar. As stated earlier, his wife is also working in the same school as Music Teacher, Besides, his two minor children namely, Shri Suranjan Baruha (aged about 14 years and Sri Gitantha Ranjan Baruah aged about 8 years are studying in the same school in class IX and II respectively. Situated thus, the applicant after receipt of the impugned order dated 11.8.99 submitted an application to the respondent No.3 on 18.8.99 drawing the letters attention to the aforesaid facts and prayed for favourable consideration of his case, but in vein. The applicant, on the same day also submitted leave application to the respondent annexing therewith a medical certificate dated 18.8.99 for grant of medical leave as he was suffering from acute Respiratory Tract Infection & P.U.S. and Intestinal Helminthosis and advised rest by the doctor.

Copies of the aforesaid application dated 18.8.99, medical leave application dated 18.8.99 and medical certificate dated 18.8.99 are annexed herewith as Annexures-2,3 and 4 respectively.

Suren Baruah

4.4 That as stated earlier, juniors to the present applicant have been retained by the respondents and they are still serving in the same cadre as well as in the same school and same station. In this regard mention may be made of (i) Ms. Madina Sultana (ii) Ms Sarupa Dey, (iii) Mrs. Basanti Phukan (iv) Mrs. Rupa Borgohain (v) Mrs. Kalpana Adhikari and (vi) Mrs. Usha Chhsbrs. It is stated that the instant case, action of the respondents in declaring the applicant surplus and transferring him on that ground is violatiive of the policy of declaration of surplus and redeployment. It is a settled position of law that the cases of surplus and redeployment the rule of ' last come first go, would apply and thus seniors cannot be declared surplus retaining juniors in the same cadre. The impugned order thus cannot be allowed to stand the same is liable to be set aside.

4.5 That your applicant further begs to sate that the Kendriya Vidyalaya Sangathan has adopted all the rules and regulations of the Central Government, therefore, redeployment of surplus staff rules issued by the Government of India department of personnel and training are applicable in – Kendriya Vidyalaya Sangathan. It would be evident in para 4.0 identification of surplus staff laid down in chapter 4 of revised scheme for the disposal of personnel rendered surplus due to reduction of establishment in Central Government departments/offices. In terms of the above, it is quite clear that senior employee cannot be declared surplus retaining the juniors of the same cadre. Even assuming but not admitting that aforesaid rule if not applicable in the Kendriya Vidyalaya Sangathan but Sangathan cannot make a departure from the settled position of law in the matter of declaration of surplus. Therefore on that score alone the impugned order dated 11.8.99 is liable to be set aside and quashed.

Suresh K. Rana

4.6 That the Govt. of India, Ministry of Personnel, Public Grievances and Pension has been seized with the subject of posting husband and wife at the same station for quite a long time and upon reasonable consideration of the matter issued guidelines vide O.M. dated 3.4.86 directing all the departments to ensure posting of husband and wife at the same station while deciding the requests for such posting. Upon consideration of the matter afresh consequent to the recommendations of 5th Central Pay Commission, the Govt. of India vide O.M. dated 12.6.97 reiterated the guidelines as provided in O.M. dated 3/4/86 and in addition has also recommended that the husband and wife may invariably be posted at the same station in order to enable them to lead a normal family life and look after the welfare of the children. The applicant states that the Kendriya Vidyalaya Sangathan adopted all the Rules and Regulations of the Central Government and as such the O.M. dated 12.6.97 is applicable to it and the applicant therefore entitled to continue in his present place of posting.

A copy of the O.M. dated 12.6.97 is annexed herewith and the same is marked as Annexure-5.

4.7 That your applicant being highly aggrieved with the transfer and posting order dated 11.8.99 approached the Hon'ble Tribunal through O.A. No. 270 of 1999 and the Hon'ble Tribunal vide its order dated 18.8.99 was pleased to stay the operation of the order of transfer dated 11.8.99 so far as the applicant is concerned. However, during the pendency of the original application one post of primary teacher fall vacant in the Borjhar Kendriya Vidyalaya. In the said post one Smti Geetanjali Das is sought to be transferred and posted from Kendriya Vidyalaya Shillong to Kendriya Vidyalaya Borjhar vide transfer No. F-1-1-/2000 KVS (S.IV) dated 26.9.2000 but Smti Geetanjali Das made a

Smti Geetanjali Das

representation to the Sangathan office in New Delhi praying for her retention at Shillong Kendriya Vidyalaya Sangathan due to her personal problem and ultimately the posting order of Smti Geetanjali Das was cancelled by the respondents after consideration of the representation and as a result one post of primary teacher remain vacant in the Kendriya Vidyalaya, Borjhar. The applicant in the month of November 2000 submitted a Misc. Petition before the Hon'ble Tribunal praying inter alia for a direction upon the respondents to accommodate the applicant in the vacant post of primary teacher in Kendriya Vidyalaya, Borjhar against the aforesaid vacancy. During the pendency of the Misc. Petition the respondents was pleased to cancel the order of posting of Smti Geetanjali Das at Borjhar Kendriya Vidyalaya Sangathan issued earlier vide letter dated 26.7.2000. The matter finally came up before the Hon'ble Tribunal on 29.1.2001. The Hon'ble Tribunal was pleased to dispose of the Misc. Petition No. 259 of 2000 in O.A. No. 270/99 with the direction to consider the case of retention of the applicant in the Kendriya Vidyalaya, Borjhar by way of adjustment in the vacant post of primary teacher due to non-joining of Smti Geetanjali Das, Primary Teacher, Kendriya Vidyalaya, Upper Shillong in terms of the existing scale for the posting of husband and wife in the same station. It is relevant to mention here that the O.A. was also disposed of on the same day on 29.1.2001 in view of the order passed by the Hon'ble Tribunal in Misc. Petition No. 259/200.

Copy of the order of transfer and posting dated 26.9.2000 and cancellation order dated 5.1.2001, Hon'ble Tribunal's order dated 29.1.2000 passed in M.P. No. 259/2000 as annexed as Annexures-6, 7 and 8 respectively.

Suresh Kumar

4.8 That your applicant immediately after receipt of the Hon'ble Tribunal's order dated 29.1.2001 submitted a representation before the Assistant Commissioner, Maligaon on 8.3.2001 as per direction contained in the Hon'ble Tribunal's order dated 29.1.2001. In the said representation the applicant prayed for his retention by way of adjustment in the Kendriya Vidyalaya, Borjhar in the light of the scheme for posting of husband and wife in the same station to lead a normal life i.e. at Kendriya Vidyalaya, Borjhar. The Assistant Commissioner on receipt of the said representation carefully considered the case of the applicant for posting of the applicant at Borjhar in the light of the existing Rule/Policy and was pleased to adjust the applicant in the vacant post of Primary Teacher at Kendriya Vidyalaya, Borjhar vide order issued under letter No. 10-4/99-KVS(GR)/8655-57 dated 15/16.2.2001.

Copy of the representation dated 8.2.2001, and order dated 15/16.2.2001 is annexed hereto and the same is marked as Annexure-9 and 10 respectively.

4.9 That most surprisingly the assistant Commissioner, Guwahati Region again issued the impugned order of transfer and posting under letter bearing No. F. : 10-2/2001/KVS(GR)/11282 dated 18.04.2001 whereby the applicant is now sought to be transferred from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya, Itanagar No.2. In the said impugned order it is stated that due to the fixation of staff strength in Kendriya Vidyalaya s for the year 2001-2002 the staff, in excess of the sanctioned strength in certain Vidyalayas is required to be redeployed against the existing vacancies in other Kendriya Vidyalaya and accordingly the impugned transfer order has been issued in respect of the applicant. It has relevant to mention here that the applicant has been adjusted against an existing vacancy of Primary Teacher just before a

Sukesh Kumar

month that too following an order of this Hon'ble Tribunal passed in Misc. Case No. 259/2000 on 29.1.2001 and also in the light of the scheme issued by the Govt. of India for posting of husband and wife in a same station but surprisingly the same Assistant Commissioner, Guwahati region, Maligaon issued the impugned order of transfer and posting dated 18.4.2001 whereby the applicant is sought to be transferred from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya No.2 Itanagar in total violation of direction contained in the Hon'ble Tribunal's order dated 29.1.2001 and also in total violation of Assistant Commissioner's own order issued under letter No.10-4/99-KVS(GR)/865557 dated 15/16.2.2001 and also in violation of the instructions contained in the Government of India Office Memorandum dated 12.6.1997.

In view of the aforesaid factual position the impugned order of transfer and posting dated 18.4.2001 is liable to be set aside and quashed so far as the applicant is concerned.

A copy of the impugned order dated 18.4.2001 and Transfer Policy dated 23.7.1996 and ~~impugned letter dated 31.3.1998~~ are annexed as Annexure-11 and 12 respectively. AD

- 4.10 That it is stated that the Hon'ble Tribunal's order dated 29.1.2001 passed in M.P. No. 259/2000 the same Assistant Commissioner Shri D.K.Saini issued the Office Order under letter bearing No. 10-4-KVS(GR)/8655-57 dated 15/16.2.2001 whereby it is stated that in compliance of the order of the Hon'ble Tribunal's dated 29.1.2001 transfer of the applicant from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya, Upper Shillong ordered vide this office transfer order No. 10-4/99-KVS(GR), dated 11.8.1999 is hereby withdrawn.. But surprisingly just after a month the impugned order of transfer and posting dated 18.04.2001 has been issued and the name of the applicant is figured at serial No. 7 in the said

Sunder Babu

impugned list of transfer and posting on the alleged ground that due to fixation of staff strength in Kendriya Vidyalaya s for the year 2001 and 2002 the staff in excess of the sanctioned strength in certain Kendriya Vidyalayas is required to be redeployed against the existing vacancies in other Kendriya Vidyalayas and accordingly the impugned order of transfer and posting has been issued. Therefore the impugned order has been issued in total violation of the Hon'ble Tribunal's order dated 29.1.2001 and also in violation of the guidelines/instructions contained in the scheme issued by the Government of India dated 12.6.1997 for posting of husband and wife in a same station and on that score alone the Impugned order of transfer and posting dated 18.4.2001 is liable to be set aside and quashed so far as the applicant is concerned.

4.11 That there was no scope to make any representation on the part of the applicant before the authorities as because the applicant is apprehending his release at any moment in view of the instructions contained in the order of transfer and posting itself. As such finding no other alternative the applicant approaching this Hon'ble Tribunal for protection of his legal and valuable right for an interim direction from this Hon'ble Tribunal staying the operation of the impugned order dated 18.4.2001 transferring the applicant from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya No. 2, Itanagar so far as the applicant is concerned. It is stated that the transfer policy on surplus ground is quite contrary to the Central Rule of retrenchment procedure and re-deployment of surplus employees policy's laid down by the Govt. of India, Department of Personnel and Administrative Reforms, Office Memo No. 28011/1/75- Estt (d) dated 28.8.1978 and also in terms of Govt. of India, Department of Personnel and Training Notification No. 1/14/89 -CS III, dated 28.2.1990 published as G.S.R. 99 (E) in the Gazette of India, Extraordinary Part II - Section 3 sub

Suresh Chandra

section (I) dated the 28th February, 1990 came into force on 28.2.1990. It would be evident from the Rule laid down by the Government of India in the matter of identification of surplus in Swamy's Complete Manual of Establishment and Administration for Central Government Offices , 3rd Edition as follows :

" 4.0 Identification of Surplus Staff

4.1

4.2

4.3

4.4 (a) Immediately after the surplus posts requiring abolition are determined, action shall be taken in hand to determine whether there is any surplus staff, and, if so, to identify them. Ordinarily, the junior most temporary persons should be surrendered against the reduced cadre strength, followed, if necessary by the junior most quasi permanent and the permanent staff. The rule of 'junior most' should be insisted upon and the Central Cells in the Department of Personnel and Training and the Directorate General of Employment and Training would have authority to see to the strict and prompt observance of this rule. There shall, however, be no bar to the persons higher in the seniority ladder volunteering for the purpose, particularly if they wish to avail of the voluntary retirement benefits available to the surplus employees.

(b) Where an organisation is being wound up in phases the surplus staff should be declared surplus not in the reverse order of the seniority, but strictly in accordance with the

Inter-Regional

regular seniority itself. In such a case, the seniors may, at their option, be allowed to stay back for being surrendered at a later stage and their juniors surrendered forthwith, making it specifically clear to them that by opting to stay back they would lose in point of seniority in the new offices where their juniors would be getting redeployed earlier.

©

(d)

(e)

(f) The decision of the Department of Personnel and Training on the question of eligibility of an employee for redeployment will be final."

It is quite clear from above that in the service jurisprudence when there is a question of Surplus arises due to abolition of post for whatsoever reason the junior most persons as a normal Rule is liable to be declared surplus and also liable to be retrenched as per seniority. But in the instant case of Kendriya Vidyalaya Sangathan which is an autonomous organisation under Government of India and runs with more than 50% of Government aid cannot frame a rule so far service conditions of the Kendriya Vidyalaya Sangathan are concerned contrary to the Rule of Central Government in violation of Rule 149 (4) of Sub section (iv) of Central Government General Financial Rule (in short G.F.R). The relevant portion of the rule is quoted below :

"that all autonomous bodies which receive more than 50% of their recurring expenditure in the form of grants-in-aid should formulate terms and conditions of service of their employees so that by and large, they are broadly comparable to those

Suresh Kumar

applicable to similar category of employees in Central Government."

In view of the above Rule the Kendriya Vidyalaya Sangathan cannot frame any Rule contrary to the Rule of the Central Government. It is relevant to mention here that the Rule of automatic surplus framed by the Sangathan and communicated under their policy dated 23.6.1996 which read as follows :

"Automatic surplus – Teachers who have been rendered surplus automatically due to the modification in staff strength are the ones referred to as automatic surplus. In such cases the teacher of the particular category who had the longest stay in the Vidyalayas should be moved out on transfer"

It is quite clear from above rule that the same is contrary to the rule laid down by the Government of India for Central Government Employees specially when the Sangathan receiving grant in aid more than 51% from the Central Government, therefore rule of transfer and adjournment on the surplus ground issued under impugned letter dated 23.7.96 and further confirm under KVS letter no. F.1-3/98 KVS (Estt.-III) dated 31.3.1993. It is ought to be mentioned here that a permanent employee acquires a more valuable and legal right in comparison to a temporary/quasi permanent K.V.S. employee. Therefore declaration of a senior permanent employee as surplus retaining the junior teachers is opposed to public policy and the said decision of K.V.S. suffers from arbitrariness. The category of permanent, quasi permanent and temporary teacher each group formed different class therefore unequal and on that ground alone the transfer policy of automatic surplus of the K.V.S. communicated vide letter dated 23.7.1996 and 31.3.1998 are liable to be set aside and quashed.

Suresh Kumar

In the present case the clarification is made for the purpose of declaring surplus of teacher on reduction of sanction strength of teachers has not been made in public interest but the same is made to grant exemptions in such a manner as it deems fit to a class of people. Since grant of exemptions to a junior section of teachers to a junior section of teachers, is alleged to have been made in public interest" therefore the nexus of this classification will have to be traced to public interest. Therefore this classification is quite unreasonable and it lacks a nexus to the object and violative of Article 14 of Constitution of India. Therefore in absence of challenge to this decision making process on facts it will not be open to this Hon'ble Tribunal to substitute its view in the matter to that of the opinion forms by the states.

In the facts and circumstances stated above the impugned transfer policy issued under letter dated 23.7.1996 and 31.3.1998 are violative of Article 14 and 16 of the Constitution of India and on that score alone the impugned transfer policy are liable to be set aside and quashed.

Copy of the letter dated 31.3.98 is annexed as Anneuxre- 13.

- 4.12 That it is stated that the applicant being highly aggrieved by the impugned order of transfer and posting dated 18.4.2001 approached this Hon'ble Tribunal through Original Application No. 155 of 2001 and the matter came up for consideration before the Hon'ble Tribunal on 25.4.2001 and the Hon'ble Tribunal on perusal of the records was pleased to issued notice and also as an interim measure suspended the operation of the impugned order dated 18.4.2001 so far the applicant is concerned. However, there were certain defects came to the notice of the applicant so far statement of facts are concerned and in the compelling circumstances the applicant on 4.5.2001 prayed for

Suresh Kumar

withdrawal of the aforesaid Original Application with liberty to approach the Hon'ble Tribunal again. The Hon'ble Tribunal was pleased to allow the prayer of the applicant accordingly the aforesaid O.A. was withdrawn on 4.5.2001.

Copy of the orders of the Hon'ble Tribunal passed in O.A. No. 155/2001 are annexed as Annexure-14 (series).

4.13 That this application is filed bona fide and for the cause of justice.

5. Grounds for relief(s) with legal provision(s).

5.1 For that the impugned order of transfer and posting dated 18.4.2001 has been issued in total violation of the Hon'ble Tribunal's order dated 29.1.2001 passed in M.P. No. 259/2000 and also the order of the Hon'ble Tribunal's in O.A. No. 270/99 and also in violation of the instructions contained in the O.M. dated 12.6.1997 issued by the Government of India, and the existing policy of transfer and posting of the Kendriya Vidyalaya for surplus teachers.

5.2 For that the impugned order has been passed by the respondents just after a lapse of two months from the order passed by the Assistant Commissioner dated 15/16.2.2001 following the order of the Hon'ble Tribunal passed in Misc. Case No. 259/2000 in O.A. No. 270/99 whereby the earlier impugned order of transfer and posting dated 11.8.1999 was withdrawn in the light of the direction passed by this Hon'ble Tribunal mentioned above and also in the light of the spouse scheme issued by the Government of India from time to time.

5.3 For that the wife of the applicant is also serving in the same school as Music Teacher and the youngest son of the applicant is below 10 years of age, as such it is mandatory on the part of the respondents to retain

Sunder Reddy

both the husband and wife in the same station as per the direction contained in Govt. of India's O.M. dated 12.6.1997.

5.4 For that the impugned transfer policy issued on automatic surplus by the Kendriya Vidyalaya Sangathan under letter dated 23.7.1996 and 31.3.1998 are contrary to the Rule laid down by the Government of India for Central Govt. employees and the same also violative of provision laid down in (iv) Section (4) of Rule 149 of Central Government General Financial Rule.

5.5 For that the policy of surplus issued by the Kendriya Vidyalaya Sangathan is violative of Article 14 and 16 of the Constitution of India.

5.6 For that the children of the applicant are studying in the same school at Borjhar.

5.7 For that, even otherwise, in view of the provisions laid down in O.M. dated 12.6.1997, the applicant is entitled to continue in his present place of posting.

5.8 For that, the action of the respondents are illegal, arbitrary and as violative of Article 14 and 16 of the Constitution of India as well as the Principles of Natural Justice.

5.9 For that, in any view of the matter the impugned order dated 18.4.2001 is bad in law and thus liable to be set aside and quashed.

6. Details of remedies exhausted.

The applicant states that he has no other alternative and other efficacious remedy than to file this application before this Hon'ble Tribunal. The applicant further states that he had to scope to file any representation before the competent authority as the applicant apprehending his order of release at any moment.

7. Matters not previously filed or pending

Sunder Narayan

The applicant further declares that he had filed an Original application before this Hon'ble Tribunal and the same was registered as O.A. No. 155/2001 and later on it was found that there were certain defects in the statement of facts, therefore the said O.A. was withdrawn with liberty to approach the Hon'ble again and the applicant further declares that no writ petition or suit regarding the matter in respect of which the instant application has been made is pending before any court or any other authority or any other Bench of the Tribunal.

8. Relief(s) sought for :

In view of the facts and circumstances stated in paragraph 4 of this application, the applicant prays for the following reliefs :

- 8.1 That this Hon'ble Tribunal be pleased to set aside the impugned order of transfer and posting issued under letter No. F: 10-2/2001/KVS(GR)/11282 dated 18.4.2001(Annexure-10) so far as the applicant is concerned whereby the applicant is transferred from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya No.2, Itanagar. And further be pleased to direct the respondents to allow the applicant to continue in his present place of posting at Kendriya Vidyalaya, Borjhar in the light of the O.M. dated 12.6.1997 issued by the Govt. of India.
 - 8.2 To set aside the impugned transfer policy dated 23.7.1996 and 31.3.98 (Annexure- 12 and 13)
 - 8.3 Costs of the Application.
 - 8.4 Any other relief or reliefs as the applicant is entitled to as deemed fit and proper by the Hon'ble Tribunal in the facts and circumstances in the application.
9. Interim Relief(s) prayed for :
- During the pendency of this application, the applicant prays for the following relief (s) :

Swarn Kumar

- 9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of transfer and posting dated 18.4.2001 (Annexure-10) so far as the applicant is concerned till disposal of this application.

10

That this application has been filed through advocate.

11. Particulars of the I.P.O.

- i. I.P.O. No. : 66 792314
 ii. Date of Issue : 30/4/2007
 iii. Issued from : G.P.O., Guwahati.
 iv. Payable at : G.P.O., Guwahati

12. Details of enclosures.

As stated in the Index.

(35)

~~Seta~~
(35)

OA 220/1995 - 298 of
MP 255/2000 -

OA 155/2000 - defective - withdrawn

11.8.99 Transferred from Borighat to Shilong

M.P. 270/99 - - adjusted at Borighat - on account

(34) of cancellation of order of Gitanjali Das
 18.4.01 - Trsf. to Manohar (35)

SS
 working since 1980 at Borighat - Interim order vacated
 (38)

19.4.01 - Relieved
 surplus

Suresh Baruah

VERIFICATION

I, Sri Suresh Baruah, son of Sri P.R. Baruah, aged about 50 years, resident of Azara, P.O. and P.S. Azra, Guwahati, in the district of Kamrup, Assam, under Kendriya Vidyalaya Sangatha, Borjhar, Guwahati 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 the 23rd day of April, 2001.



Annexure-1

Kendriya Vidyalaya Sangathan

Regional Office : Guwahati.

No. F.10-4/99-KVS(GR)/5446-8L

Dated 11.8.1999

OFFICE ORDER

The transfer of the following surplus staff are hereby ordered with immediate effect on public interest.

Sl. No	Name of the teacher with designation	From	Transfer red	To
01	Sh J.N. Ram, PGT (Eng)	Borjhar		Maligaon
02	Smt M. Pandey, TGT, (Hindi)	Borjhar		Tezpur-II
03	Sri V.K. Shasi, TGT (SST)	Itanagr-I		Tezpur-II
04	Sri M. Panedy, TGT(SST)	Chabua		AFS Jorhat
05	Smt Kamala Pal, TGT(Maths)	Itanagar-I		Tezpur-I
06	Smt L. Deka, PRT	Narengi		Maligaon
07	Sri S. Baruah, PRT	Borjhar		Upper Shillong
08	Sh S. Nath PRT	Borjhar		Upper Shillong
09	Mrs Dipti Sinha, PrT	CRPF, Ghy		NEHU Shillong
10	Mrs C.C.Mahanta, PRT	CRPF, Ghy		NEHU Shillong
11	Md S. Zaman, PRT	BRP, Bongaigaon		Kokrajhar
12	Mrs S. Talukdar, PRT	CRPF, Ghy		Upper Shillong
13	Mrs. D.Sharma, PRT	CRPF, Ghy		Upper Shillong
14	V.L.Sharma, PRT	CRPF, Ghy		Tezpur-I

Attestd
Ad.
Ad.

15	Mrs A Goswami, PRT	CRPF, Ghy		Laitkor Peak
16	Mrs M. Chakraborty, PRT	Jagi Road		Laitkor Peak
17	Mr Ranjeet Singh, PRT	CRPF, Ghy		Laitkor Peak
18	Mr S. Bora, Group 'D'	Maligaon	Nagaon	

Sd/-
(Dr. Lalit Kishore)
Assistant Commissioner
11/8

Copy to :-

1. Individual concerned with the direction to get himself/herself relieved immediately.
2. The Principal, KV, where teacher is presently working with the direction to relieve the concerned teacher immediately under intimation to this office. The incumbent is eligible to draw TA/DA as per KVS rules. In case teachers on leave/absent he/she should be relieved in absentia with immediate effect. On no account his/her relieving should be delayed. No pay and allowances should be drawn in respect of the transferred teacher with effect from the date he is relieved/deemed to have been relieved.
3. The Principal, KV, where teacher has been posted on transfer with the direction to intimate the date of joining in respect of the teacher concerned to the undersigned immediately.
4. Dy. Commissioner(Admn) KVS(Hqrs) New Delhi w.r.t. his letter No. 1-3/99-KVS(Estt.III) dated 4.8.99 for information. The details of surplus teachers who could not be adjusted within the region is being sent separately.

Attested
Adm.

To
The Assistant Commissioner,
Kendriya Vidyalaya Sangathan
Guwahati Region
Maligaon Chariali
Guwahati-12.

Sub: (Application for consideration of my transfer from Borjhar to Upper Shillong vide Order No. F. 10-4/99-KVS(GR)/5446-8L dated 11.8.99).

Respected Sir,

I have the honour to state that I am a senior PRT teacher of K.V. Borjhar, Guwahati -17. I am residing at with my wife and two minor school going children, elder son reading in class-VIII and younger son residing in class-II at K.V. Borjhar, Guwahati -17.

That Sir firstly for your kind consideration, I inform you that my wife is doing as teacher with me as at the same school K.V. Borjhar, Guwahati-17.

That Sir, Secondly I am the only male member of my family to look after Family including my minor children.

Thirdly that Sir, I also suffering a high blood pressure patient.

Lastly, Sir there are most of the junior PRT teacher in this school.

Under this circumstances I humbly pray that Sir, kindly consider my transfer matter from Borjhar to Upper Shillong and allow me to remain in same school as a PRT (Senior) teacher for end of justice.

Thanking you,

Yours faithfully,
Sd/-

(Suresh Baruah)

To
The Principal
K.V. Borjhar,
Guwahati-17

Sub : Bed rest on Medical Leave.

Sir,

Most humbly and respectfully I beg to state that, I have been suffering from Acute Respiratory Tract Infection & P.U.S. & Intestinal Helminthiasis and advise me to take rest from 18.8.99 to 1.9.99. Still then due to Regional Science Exhibition and arranging for the participant I am compelled to allow the school only for the benefit for the school.

I hereby enclosed Medical certificate for your necessary action and obliged.

Thanking you Sir,

Yours faithfully

Sd/-

(Suresh Baruah)

PRT. 18.8.

Annexure-4

MEDICAL CERTIFICATE

No. 4033/99

Date 18.8.99

This is to certify that Mr. SURESH BARUAH, AG 48 YEARS, SON OF Late P.R. Baruah, is suffering from Acute Respiratory Tract Infection, EPUS & Intestinal Helminthiasis and is/was advised rest from 18.8.99 to 1.9.99. He /she is medically fit to resume from 2.9.99.

Sd/- Illegible 18.8.99

Signature

No. 28034/2/97-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, the 12th June, 1997

OFFICE MEMORANDUM

Sub : Posting of husband and wife at the same Station.

The undersigned is directed to say that on the subject mentioned above, Government has issued detailed guidelines vide O.M. No. 28034/7/86-Estt.(A) dated 3.4.1986. The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organization at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

2. The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt.(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence.

3. It is further clarified that even cases where only the wife is a government servant, the concession elaborated in para 2 of this O.M. would be admissible to the government servant.

37

4. These instructions would be applicable only to posts within the same department and would not apply on appointment under the Central Staffing Scheme.

5. A copy of this Department's OM No. 28034/7/86-Estt.(A) dated 3.4.86 is enclosed for ready reference and guidance.

6. Hindi version of the OM is enclosed.

Sd/- Illegible
(Harinder Singh)
Joint Secretary to the Govt. of India
Tel. No. 301 1276

To

1. All Ministries/Departments of the Government of India.
2. Department of Women & Child Development.
3. The National Commission for Women, 4, Deendayal Upadhyay Marg, ITO, New Delhi.

Annexure-6

**KENDRIYA VIDYALAYA SANGATHAN
(ESTT. IV SECTION)
18, Institutional Area,
Shaheed Jeet Singh Marg,
New delh110016**

No. F-1-1/2000-KVS(E.IV)

Dated 26.9.2000

TRANSFER ORDER

The transfer of the following Primary Teachers are hereby ordered on request :

Sl.No.	Name of PRT	KV where working	KV where posted
	Mr/Mrs/Ms		
1	Lakshmi Naidy	Bheemuni Patnam	No. 2 Port Blair
2	Sannala Indira	No. 3 Cochin	Bheemuni Patnam
3	Rupinder Preet	No. 4 Cochin	No.3 Cochin
4	S.P. Saxena	Khaprail	No.4 Cochin
5	Shailendra Kumar	Umroi Cantt.	Khaprali
6	Paul A.M.	Ottapalem	No. 1 PORT Blair
7	Chitra Devi R Warriar	Manmad	Ottapalem
8	Meena Ashok Thakur	Jhagrakhand SECL	Manmad
9	Ramprasad Ram	Ojhar AFS	Jhagrakhand SECL
10	Sowmya Ganesh	Missamari	Ojhar AFS
11	John NG	Lokra	Missamari
12	Deepa Deo Barman	Chabua AFS	Lokra
13	Sophia Nair	Aravankadu	No.1 Port Blair
14	K. Madhu	Mandovi INS	Aravakadu
15	Huma Kousar	No. 1 Itarsi	Mandovi INS
16	Shobhana Mishra	No. 2 Itarsi	No.1 Itarsi
17	Priyadarshini Dubey	No.1 Itarsi	No. 2 Itarsi
18	Dr. Jayaprakash Jaiswal	No 2 Itarsi	No.1 Itarsi
19	SK Sharma	Hoshangabad	No. 2 Itarsi
20	Krishna Sharma	Nepa Nagar	Hoshangabad
21	A Swathy Rajappan	Aravankadu	No.2 Port Blair
22	Sarah Sheila Anthony	Sulur	Aravankadu
23	TK Dakshayani	Coimbatore	Sulur
24	K Prema	Avadi AFS	Coimbatore
25	BC Usha	No.1 Tambaram	CLRI Chennai
26	PT Balaji	AFS Avadi	No.1 Tambaram
27	Ravi Mahadevan	Donimelai	AFS Avadi
28	Jasmal Kaur	No.2 Ferozepur	AFS Ojhar
29	Sushma K.A.	Porbandar	AFS Samana
30	Sunita Gill	Lalgarh Jattan	NAD Karanja
31	Kanan C	No.2 Pandiherry	AFS Avadi
32	Vijay Laxmi Hebbal	IISc Bangalore	No. 2 Pondicherry
33	Honamma SK	CRPF Yehlanka	IISc Bangalore
34	Lucy Paul	Ernakulam	CRPF Yehlanka
35	Leithika Santosh	No.4 Cochin	Ernakulam
36	Valsama Joseph	Jagi Road	No. 4 Cochin
37	Manisha Chakravarty	Panbari	Jagi Road
38	SP Basu Matary	Umroi cantt.	Panbari
39	Geetanjali Das	Shillong	Borjhar
40	Sumathy Sudershni Christy	CRPF Avadi	CLRI Chennai
41	Ramesh Kumar Sudha	No.2 Port Blair	CRPF Avadi
42	Vaze Ravindra	Donomalai NDMC	Sambra AFS
43	BS Lakshmi	Missamari	Donimalai
44	K. Valsala Kumari	No. 3 Colaba	Keltron Nagar (Cannanore No. 2)
45	Mrs. Gouri Singh	Karanja NAD	No. 3 Colaba
46	Shushma Gupta	No. 3 Colaba	Karanja NAD

47	Alpana Gupta	Karanja NAD	No. 3 Colaba
48	K.V Ratnamala	Mysore	Dherwad
49	CK Sharda	Bellary	Mysore
50	Sujata Parul Dev	Khanapara, Guwahati	No.1 Mangalore
51	Cheena Bose	Gandhidham Rly.	No. 3 Bikaner
52	Parul Dev	Khanapara, guwahati	No.1 Mangalore
53	Tripti Borgoham	IOC Guwahati	Khanapara, Guwahati
54	Jhara Chowdhury	Maligaon	IOC Guwahati
55	D. Seal	IOC Guwahati	Maligaon
56	Neelima Barua	Borjhar	IoC Guwahati
57	Sujata Unni Nair	No. 1 Hubli	No.2 Mangalore
58	Bharati Krishna Kamble	Sholapur	No. 1 Hubli
59	Sabina Sayeed S Hakim	NAD Karanja	Sholapur
60	Promila Bhattacharyya	IAT Girinagar	NAD Karanja
61	Nav Jyoti	Hissar Cantt.	IAT Girinagar
62	Vishnu dev Upadhya	Passighat	Hissar Cantt.
63	Rani BT	Bombolim Camp	Payannur
64	Santosh Kumar Yadav	Amla	Ponda
65	Imrat Bharti	No.3 Itarsi	Amla
66	Tripti Balaji	OF Bhandara	No.3 Itarsi
67	Surekha P Goge	No. 2 AFS devlali	OF Bhnadra
68	Champa D. Bhatia	AFS Ojhar	No.2 AFS Devlali
69	Nalini Mulmulay Raipur	Raipur	Ojhar AFS
70	Satguna Nayak	Bacheli	Raipur
71	Anjana Srivastava	ITI Rai Bareilly	Bacheli
72	Ahrora Falipo Das	Ponda	Bambolim Camp
73	Sujata Krishnan	No.1 Mangalore	No.1 Kasargod
74	Ranjana Gupra	Happy Valley, Shillong	Ahmadnagar No.1
75	Kamala Devi	Laitkor Peak, Shillong	Happy Valley, shillong
76	Sushma Sharma	No. 1 AFS Jodhpur	Laitkor Peak Shillong
77	Suman Sarel	Dabla	AFS No.1 Jodhpur
78	Dinesh Chandra Tiwari	Zakhma	Gangtok
79	Praveen Kaur Dhillong	No.1 Colaba	Jutogh
80	Madelie Vyas	No. 2 Colaba	No. 1 Colaba
81	Raj Kishori S. Singh	No.3 Colaba	No. 2 Colaba
82	GP Mahaviya	AFS Amla	No. 3 Colaba
83	Kusum Yadav	Aligarh	Kapurthala Cantt
84	Yash Pal Giri	Dharangdhara	Aligarh
85	Naresh Kumar Kalaq	Banswqure	Ranikhet
86	Elizabeth Heward	JNV, New Delhi	Banswara
87	Neelam Kshatriya	Shillong	JNU, New Delhi
88	Munna Lal Verma	New Tehri Town	Banbasa
89	Seema Gupta	Khapralli	New Tehri Town
90	Ratna Bhanja	Bagdogra	Khaprail
91	Ranu Ghosh	Kokrajhar	Bagdogra
92	SR Desu Malavia	Umroi cantt.	Kokrajhar
93	Sudhir Kumar Tiwari	Jhalawar	Leh
94	Darshan Kumari	Tibri cantt, Gurdaspur	Lakhanpur
95	Praveen Kumar	Srinagar No.1	Bokloh
96	Deepak Bhagal	No.2 Srinagar	Shikarpur
97	Kiran shashi Paul	BSF Dholchera	ONGC Dholchera
98	Mani Deepa Dass	Cacher, Panchgram	BSF Dholchera
99	Jaya Dev	Kumbhirgram, AFS Dholchera	Cacher, Panchgram
100	Brijesh Kumar Kairi	No.1 Agartala	Kumbhirgram, Dholch era
101	Sudib Roy	Panisagar BSF	Agartala No.1
102	Nibis Rani Bargolai	Dinjan No.1	Dumduma
103	Sujata Deshmukhya	Cacher Panchgram	Kumbhirgram
104	Madi lata Dass	Cachar Panchgram	Kumbhirgram AFS
105	Bina Lama	Bokajan CCI	Dimapur CRPF

106	Bina Mukesh Joshi	Sabarmati	Ahmedabad Cantt,
107	Senvati Sikar War	ONGC Baroda	Selamati
108	Jayanti Pareswar	Rajkot	OnGC Baroda
109	Purohit Hansa Magan Lal	Dharangdhara	Rajkot
110	Ajit Kumar	AFS Ojhar	Dharangdhara
111	Radha Krishna Dav	Gandhinagar CRPF	Naliya AFS
112	Shivangi Jain Bhekar	Chandkheda ONGC	Gandhinagar CRPF
113	Lily Yamma John	Mehsana	ONGC Chandkhoda
114	Arun Kumar	Lakwa	Meshrana
115	Arpana Gogoi	Dinjan No.2	Lakwa

(One Hundred fifteen cases only)

Sd/-

Copy to :

1. The individual concerned.
2. The Principal, of KV where the teacher under orders of transfer is currently posted. The employees concerned should be relieved from the Vidyalaya immediately but in any case not later than 15 days of issued of this order. In case he/she is not relieved by the stipulated date, he/she shall be deemed to have been relieved of his/her duties with effect from the above date and no pay and allowances shall be drawn. It is the personal responsibility of the Principal to inform the Sangathan immediately regarding relieving/joining of the candidate. Any lapse/failure on the part of the Principal in this regard would be viewed seriously.
3. The Principal, KV where the teacher is going to join on transfer for similar action. He is requested to intimate the date of joining of the transfer for similar action. He is requested to intimate the date of joining of the transferred employee in the Vidyalaya to this office.
4. The Asstt. Commissioner//AIO. All Regional Offices.
5. The General Secretaries of recognised service associations of KVS.
6. O.S.D.(H.R.N)
7. O.S.D.(H.R.N.)
8. O.S.L. (DEP)
9. All Dy. Commissioner/Astt. Commissioners/Sr. Admn./Audit Accounts Officers and Education officers of KVS(HQ).

Sd/- Illegible
(DR. E. PRABHAKAR)
EDUCATION OFFICER

Kendriya Vidyalaya Sangathan
(Estt. IV Section)

18, Institutional Area
Shaheed Jeet Singh Marg,
New Delhi- 110 016

No. F.2-1-1/2000-KVS(E.IV)

Dated : 5.1.2001

TRANSFER CANCELLATION ORDER

The transfer of the following Primary Teachers ordered vide office order of even No. dated 26.9.2000 is hereby cancelled.

Sl. No	Name of PRTs	From KV	To KV
1	Sri Yash Pal Giri	Dharangdhar	Aligarh
2	Ms. Mani Dipa Das	Cachar, Panchgram	BSF Dholchera
3	Sujata Deshmukhaya	Cachar, Pahchgram	Kumbhirgram
4	Madhabilata Das	Cachar Panchgram	AFS Kimbhirgram
5	Gitanjali Das	Shillong	Borjhar
6	Ranu Ghosh	Kokrajhar	AFS Bagdogra
7	S.I. Kiran Sashipaul	BSF Dholchera	ONGC Dholchera (Sonai Rd. ONGC Srikona)
8	Ms Bina Lama	CCI Bokajan	Dimapur CRPF

(Eight Cases only)

This issues with the approval of Commissioner, K.V.S.

Sd/- Illegible
(D.R. E. Pranhakar)
Education Officer

Copy to :

1. Individual concerned.
2. The Principal concerned.
3. The Asstt. Commissioner, KVS, RO concerned.
4. Guard File.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Misc. Applciation No. 259 of 2000

in

Original Application No. 270 of 1999

Sri Suresh Baruah

Vs.

Union of India & Ors.

For the applicant(s)

Mr. J.L.Sarkar
Mr. M. Chanda
Mr. G.N. Chakraborty

For the Respondents

Dr. B.P.Todi.

Notes of the Registry	Date	Order
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29.1.01

Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice Chairman.

Hon'ble Mr. K.K.Sharma, Administrative Member.

This is one of the issue pertaining to transfer and posting. By order dated 11.8.1999 the applicant Sri Suresh Baruah along with 17 others were transferred to respective places as surplus staff. The applicant who was at the relevant time at Borjhar was accordingly transferred to Upper Shillong. The legitimacy of the said order was assailed as arbitrary and discriminatory in O.A. 264/99 of this Bench, which is also a subject matter of this proceeding.

The respondents filed their written statement. It is stated in the written statement that as per the recommendation of the Academic Advisory Committee, the Staff strength of the KVS have to be frozen/reduced. Pursuant to the decision it was decided to declare Kendriya Vidyalaya Borjhar as a 3 Sections Vidyalaya on the basis of the students strength physical facilities/accommodation etc. As per the Kendriya Vidyalaya rules teachers who have the longest stay at a particular Vidyalaya declared surplus and had to be shifted to nearby Vidyalaya against existing vacancy. The applicant as a senior most PRT teacher was transferred to Upper Shillong. The order Of transfer of the applicant as kept in abeyance by the order dated 24.8.99 passed by this Tribunal in O.A. 270/99. During the pendency of the proceeding of O.A. 270 of 1999, the applicant stated by filing this Misc. Petition that one post of

Annexure-8(Contd.)

PRT in KV, Borjhar was likely to be vacant since Smt. Gitanjali Das who was earlier transferred from Shillong to Borjhar vide order dated 26.9.2000 submitted representation before the authority for cancellation of her transfer order from Shillong to Borjhar. The respondents in their reply admitted the fact that Smt. Gitanjali Das, PrT, KV, Upper Shillong had submitted a representation to the authority praying for cancellation of her transfer order but the request of Smt. Gitanjali Das was yet to be considered by the authority. Therefore, the respondents stated that there was no post clearly lying vacant at KV, Borjhar for consideration of the case of the applicant. The applicant however, today produced an Order No. F2-1-1/2000-KVS(E.IV) dated 5.1.2001 communicated by the Education Officer, Kendriya Vidyalaya Sangathan, New Delhi, whereby the competent authority cancelled the transfer order dated 26.9.2000 as regards eight applicants including that of Smt. Gitanjali Das. A copy of which produced before us in support of the contention about the existence of a clear vacancy at Borjhar.

In the facts and circumstances of the case and considering all the aspects of the matter we are of the view that ends of justice will be met if a direction is issued to the applicant to make an appropriate representation before the authority for consideration of his case by posting him at Borjhar against the vacancy that arose on cancellation of transfer of Smt. Gitanjali Das. The applicant is accordingly directed to make a representation before the competent authority within two weeks from today and if such representation before the competent authority within two weeks from today and if such representation is filed, the respondents shall consider the same as per law against the vacancy that arose due to the cancellation of the transfer of Smt. Gitanjali Das and pass necessary orders thereon. While disposing the representation, the respondents are directed to take note of the attending circumstances including the existing norms and pass a reasoned order thereon as expeditiously as possible preferably within a period of one month from the date of receipt of the representation. Till the aforesaid exercise is completed, the order of this Tribunal dated 24.8.99 passed in O.A. 270/99 shall remain operative. The O.A. thus stands disposed, so also the Misc. Petition stands disposed of. There shall however, be no order as to costs.

Sd/- Vice-Chairman

Sd/- Member

Annexure-9

To
The Asstt. Commissioner,
K.V. Sangathan
Maligaon

Sub : Representation in terms of judgment passed in O.A. for retention by way of adjustment in the vacant post of PRT teacher at K.V., Borjhar, as spouse scheme.

Sir,

I like to kind your attention at the subject cited above and order beg to state that the undersigned posting from K.V. Borjhar (Mountain shadow) to K.V. Upper Shillong by the order No. F-10/4/99 KVS (GR)/55446-8L being on the ground of surplus being agreed with the aforesaid order and posting, I approach to Hon'ble Central Administrative Tribunal (CAT) Guwahati Bench, praying inter alia for setting aside the impugned order of my transfer for and posted dated 18.8.99 and also prayed for retention in the present place of posting during the pendency of Original Application. Smt. Gitanjali Das, PRT Teacher K.V. Upper Shillong as order for posting K.V. Borjhar by order dated 26.8.2000 against the vacant post at K.V. Borjhar, however, Smt. Gitanjali Das submitted a representation before the competent authority for cancellation over posting at KV Borjhar, However the posting order Smt. Gitanjali Das is now cancellation by the authority by No. F-2-1-1/2000-KVS(E-IV) dated 5.1.2001.

The undersigned brought the fact/deployment to the notice of the Tribunal by way of filing the Misc. Petition in O.A. No. 270/99, registered as M.P. No. 259/2000. But the matter was ultimately consideration before the Hon'ble Tribunal.

The Hon'ble Tribunal after came full consideration of the entire matter dispose of the Misc. Petition a well the original application direction the undersigned to submit a representation for accommodation me in the vacant post of PRT teacher at K.V. Borjhar (Mountainshadow) within a period of 2 (two) weeks, accordingly submission this representation praying for adjustment me the vacant post of PRT teacher at K.V. Borjhar. On this following grounds are :

1. Husband and wife are serving in the same School.
2. Therefore under the spouse scheme the undersigned entitled to retain in the present place of posting. Children aged about 12 years and 8 years and they are reading in Class IV & VIII respectively. Both the applicant and his wife are also serving in the same school and as such the applicant should invariably be posted in the same station i.e. at K.V. Borjhar, for smooth continuation of education of their children.

Yours faithfully
Sd/- Illegible
08.02.2000

Annexure-10

KENDRIYA VIDYALAYA SANGATHAN
Regional Office
Maligaon Chariali
Guwahati-78 012

No.F. 10-4/99-KVS(GR)/8655-57

Dated 15/16.02.2001

OFFICE ORDER

In compliance with the order of the Hon'ble CAT Guwahati Bench dated 29.01.2001 transfer of Mr. Suresh Baruah, PRT from Kendriya Vidyalaya, Borjhar to KV, Upper Shillong ordered vide this office transfer order NO. 10-4/99-KVS9GR)/, dated 11.8.1999 is hereby withdrawn.

Sd/- Illegible
(D.K. Saini)
Assistant Commissioner

Copy to :-

1. Mr. Suresh Baruah, PRT, Kendriya Vidyalaya, Borjhar.
2. The Principal, Kendriya Vidyalaya, Borjhar.
3. The Dealing hand (Court Case) KVS (GR). He is requested apprise Dr. Todi, KVS Counsel to inform the Hon'ble CAT.

Sd/-
Assistant Commissioner

Annexure-11

KENDRIYA VIDYALAYA SANGATHAN
Regional Office
Maligaon Chariali
Guwahati-78 012

No.10-2/2001/KVS(GR)/11282

Dated 18.4.2001

TRANSFER ORDER

Due to the fixation of staff strength in Kendriya Vidyalaya for the year 2001-2001, the staff, in excess of this sanctioned strength in certain Vidyalayas is required Kendriya Vidyalayas. Accordingly, the following teachers are redeployed in the Kendriya Vidyalayas shown against their names in public interest with immediate effect.

Sl. No.	Name of the Teacher	Designation	Transferred from KV	Transferred to KV
1	Mr. Jerald	PGT(Commerce)	Happy Valley	Laitkor Peak
2	Mr. Ramesh Chand	TGT (Hindi)	Jorhat No.1	Kokrajhar
3	Smt. Pratibha Brahma	TGT(CBZ)	Kokrajhar	Tezpur No.1
4	Sh. S.K.Singh	PT	Along	No.2 Tezpur
5	Sh. I.M. Koch	Drawing Tr.	Tura	Itanagar No. 2
6	Mrs. M. Borthakur	PRT	IOC, Noonmati	Maligaon
7	Mr. Suresh Baruah	PRT	Borjhar	Itanagar No.2
8	Mr. Upendra Saha	PRT	Along	Tezpur No.2
9	Mrs. A. Nag	PRT	Happy Valley	Laitkor Peak
10	Mrs. S.Paul	PRT	Happy Valley	Upper Shillong
11	Mrs. Shahi Agarwal	PRT	BRPL, Bongaigaon	New Bongagigaon
12	Mrs. P.D. Purkayastha	PRT	Happy Valley	Barapani
13	Sh. B.S. Yadav	Lab. Attendant	Tura	Kokrajhar
14	Sh M. Singh	Lab. Attendant	Misa Cantt.	Umroi Cantt.

Sd/- Illegible
Assistant Commissioner,
Regional Officer,
Guwahati,

Copy to :

1. Individual concerned with the direction to get himself/herself relieved immediately.
2. The Principal, K.V. where teacher is presently working with the direction to relieve the concerned teacher immediately under intimation to this office. The incumbent is eligible to draw TA/DA as per KVS rules. In case teachers on leave/absent he/she should be relieved in absentia with immediate effect. On no account his/her relieving should be delayed. No pay and allowances should be drawn in respect of the transferred teacher with effect from the date he is relieved/deemed to have been relieved.
3. The Principal, KV, where teacher has been posted on transfer with the direction to intimate the date of joining in respect of the teacher concerned to the undersigned immediately.
4. The deputy Commissioner(Admn.), KVS (Hqrs.), New Delhi with reference to his letter No. 1-1/2001/KVS (Estt.)/E.IV dated 11.4.2001.

Sd/- Illegible
Assistant Commissioner,
Regional Officer,
Guwahati,

Alles Fair
27/4/01
AO

SPEED POST

KENDRIYA VIDYALAYA SANGATHAN

18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-1100 16

No. F.1-1/96-KVS(Estt)-II

Dated 23.7.96

To

The Assistant Commissioner,
Kendriya Vidyalaya Sangathan
Regional Office
Silchar**Sub : Surplus appointment and transfers of staff within the region.**

Sir/Madam,

The proposals for adjustment of teachers within the region received in response to the telegram of even number dated 30.5.1996 have been examined in detail in this office. It is observed that in many cases delineation of persons who have been rendered surplus has not been done in accordance with the decision taken in the meeting of Assistant Commissioners held on 13.5.1996 to 15.5.96. According to the decision in the Assistant Commissioners meeting in the yardstick to be adopted for adjustment of surplus teachers were as enumerated below :

- A. **AUTOMATIC SURPLUS** : Teachers who have been rendered surplus automatically due to the modifications in staff strength are the ones referred to as automatic surplus. In such cases the teacher of the particular category who had the longest stay in the vidyalaya should move out on transfer.
 - B. **CREATED SURPLUS** : The term created surplus connotes posting of a teacher when no vacancy existed in that vidyalaya. In such cases adjustment by transfer should be resorted to only after obtaining the consent of one of the existing incumbents in the cadre.
2. Very genuine cases of inter regional transfers having been held back in view of the surplus postings as evident from the computerised priority lists. This is so because the Sangathan attaches a lot of importance for adjustment of surplus teachers within the region. Academic, Administrative and Financial implications of the existence of surplus teachers need not be emphasized. Concerned efforts by the assistant Commissioner are necessary to wipe out the surplus position so that it does not continue to be a drain on our financial resources. Same time to departure from the guidelines framed by the Board of Governors for request transfer in at all.
3. A of the surplus position and the intra regional transfers priority list shows that the teacher surplus

Sd/- Illegible

Annexure-13

Shaheed Jeet Singh Marg,
New Delhi-1100 16

Dated 31.3.1998

18, Institutional Area,

No. F.1-3/98-KVS(Estt-III)

To
The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
All Regional Offices.

Sir/Madam,

Sangathan has since issued a few orders of merger/closure of Kendriya Vidyalayas. These orders will require re-deployment of teachers. This process is required to be initiated And completed by the concerned Assistant Commissioners. It has been decided that the surplus staff may be transferred against nearest available vacancies within the region. Proposals for inter-regional transfer of surplus staff may be sent to this office wherever it is not possible to redeploy them within the region for want of vacancies.

An employee, who has the longest stay at the station in the combined unit will be identified as surplus in respect of mergers.

Yours faithfully,
Sd/- Illegible
(Dr. P.K. Tiwari)
Deputy Commissioner (Admn.)

FORM NO. 4
(See Rule 42)IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::::::::: GUWAHATI

ORDER SHEET

original APPLICATION NO ... 155 OF 2001.

Applicant (s) Suresh Boruah

Respondent (s) V O I Tom

Advocate for Applicants (s) M. Chanda Mrs. N.D. Goswami

Advocate for Respondent (s) C. N. Chakraverty
CGSC.

Notes of the Registry	Date	Order of the Tribunal
	25.4.2001	<p>Heard Mr M. Chanda, learned counsel for the applicant. The application is admitted. Issue notice as to why the impugned order dated 18.4.2001 transferring the applicant from Kendriya Vidyalaya, Borjhar to Kendriya Vidyalaya, Itanagar No.2 shall not be suspended returnable by three weeks. List it for orders on 18.5.01.</p> <p>Meanwhile the operation of the impugned order dated 18.4.2001 so far the applicant is concerned shall remain suspended.</p>



Sd/VICE CHAIRMAN

Certified to be true Copy
প্রমাণিত প্রতিলিপি

Section Officer (J)

জানুনাগ অধিকারী (ন্যাযিক শাখা)
Central Administrative Tribunalকেন্দ্রীয় প্রশাসনিক অধিকার
Guwahati Bench, Guwahati

কেন্দ্রীয় প্রশাসনিক অধিকারী

FORM NO.4
(See Rule 42)

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

ORDER SHEET

original APPLICATION NO ...155.....OF 2001.

Applicant (S) Swizeh Boruah

Respondent (S) V.O.I. Tom

Advocate for Applicants (s) M. Chanda Mrs. N.D. Soroani
C. N. Chakraverty

Advocate for Respondent (s). EGSC

Notes of the Registry	Date	Order of the Tribunal
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4.5.2001

Mr M. Chanda, learned counsel for the applicant submitted that in view of the formal defects in the application he may be allowed to withdraw the application with liberty to file the application afresh. The prayer is allowed. The interim order



Certified to be true Copy
प्रमाणित प्रतिलिपि

(Signature) 15/5/2001
Section Officer (A)
अनुसूचित अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी न्यायपीठ, गुवाहाटी

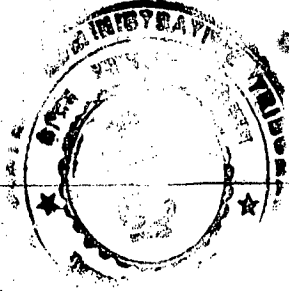
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O.A.No.155/2001

4.5.2001

dated 25.1.01 stands automatically vacated.

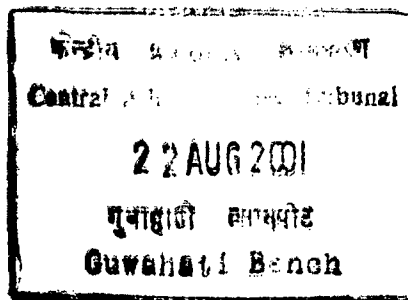
The application is accordingly dismissed on withdrawal.



Sd/VICE CHAIRMAN

Certified to be true Copy
प्रमाणित प्रतिलिपि

[Signature] 20/1
Section Officer (J)
प्रमुख अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी न्यायपीठ, गुवाहाटी



Filed by: Respondents
Through: Dipshikha Bar
Advocate.
21/08/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI

Original Application No. 167/2001

Sri Suresh Baruah

...Applicant

-Versus-

Union of India and ors

.....Respondents

The Respondent No 2³ and 4 above named
beg to file their Written Statements as follows :-

1. That all the averments made in the Original Application (hereinafter referred to in short as the application) are denied by the answering respondents save and except what has been specifically admitted herein and what appears from the records of the case.
2. That with regard to statements made in paragraph 4.1 of the application the answering respondents have no comments as they are matters of records.
3. That with regard to statements made in paragraph 4.2 of the application the answering respondents beg to state that the applicant was transferred on being found surplus as a result of reduction of sections due to less

number of students. Such surplus was made on the basis of staff sanction order for the year 1999-2000. This surplus better stated as excess teacher, was adjusted in some other Vidyalaya where there was justification of additional teacher.

4. That with regard to the statements made in paragraph 4.3 of the application it is agreed that the applicant ~~was the senior most Primary teacher in the Kendriya Vidyalaya, Borjhar.~~ was the senior most Primary teacher in the Kendriya Vidyalaya, Borjhar. It is also correct that his wife is working in the same Vidyalaya as Music Teacher. As per Kendriya Vidyalaya Sangathan (hereinafter referred to as KVS) guidelines the teacher having the longest stay in the Kendriya Vidyalaya should move out on transfer. Accordingly the applicant was transferred and relieved from Kendriya Vidyalaya Borjhar with a direction to report at Kendriya Vidyalaya, Upper Shillong vide transfer Order dated 11.8.99.

5. That with regard to the statements made in paragraph 4.4. of the application the answering respondents begs to repeat what has been stated in paragraph 4 of the Written Statement. That as per KVS guidelines the teacher having longest stay in the Vidyalaya should move out on transfer and accordingly the transfer of the applicant is in order. It is to be noted that the matter pertaining to declaring surplus and treating the senior most as surplus was the sub-

ject matter of O.A No. 170/2000 before the Central Administrative Tribunal, Calcutta bench. The said O.A No. 170/2000 was disposed of on 8.9.2000 dismissing the application by the said learned Tribunal. The order passed by the learned Tribunal in said O.A No. 170/2000 on 8.9.2000 clearly shows that the allegation of the applicant that the respondents in declaring the applicant surplus and transferring him on that ground is violative of the policy of declaration of surplus and redeployment, is baseless and not correct. Accordingly, the applicant's contention that it is a settled position of law that ⁱⁿ the cases of surplus and redeployment the rule of "last come ~~first~~ go" would apply and thus seniors cannot be declared surplus ~~retaining~~ juniors in the same cadre is also not correct.

A copy of the said order dated 8.9.2000 passed in O.A No. 170/2000 is annexed herewith and marked as Annexure:-1.

6. That with regard to the statements made in paragraph 4.5 of the application the answering respondents beg to state that in view of the above mentioned Order dated 8.9.2000 passed in O.A No. 170/2000 by the Central Administrative Tribunal, Calcutta bench the contentions put forward by the applicant does not hold any ground. This Order very much settles the position of law in the matter of declaration of surplus and the respondent Sangathan have not deviated from this settled position of law as alleged by the

54

applicant in this paragraph.

7. That with regard to the statements made by the applicant in paragraph 4.6 of the application the answering respondent begs to state that the applicant has interpreted the O.M dated 12.6.97 (Annexure 5 of the O.A No. 167/2001) according to his own convenience and flouting all norms of interpretation. Whereas the first and most basic principle of interpretation requires reading of a law as a whole, the applicant has very conveniently read only that part of the guidelines which favoured his case and omitted to read the other part.

Para 2 of the O.M dated 12.6.97 reads as follows:-

..... "Accordingly it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M No. 28034/7/86-Estt(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariable done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organisation at the same station and if no administrative problems are expected to result as a consequence". The applicant omitted to read the last part of the guideline i.e " if any posts at result as a consequence. The guidelines clearly says that spouses may be

posted at the same station on ~~their~~ request subject to availability of posts at the appropriate level in the organisation at the same station and if no administrative problems are expected to result as a consequence. It has been reiterated before that the applicant has been issued transfer order in accordance with the policy of the Sangathan to transfer surplus staff to another station where such staff is required. Now, the very fact that the applicant is sought to be transferred in accordance with this policy shows that due to non availability of posts at the appropriate level in the organisation at the same station, the applicant has been issued transfer orders. If the applicant is retained by the station under such circumstances obviously administrative problems are expected to result as a consequence.

8. That with regard to the statements made by the applicant in paragraph 4.7 of the application, the answering respondent begs to submit as follows. That as per staff strength sanctioned by the KVS headquarters in the year 1999-2000, Order dated 13.7.99, the petitioner was declared excess (surplus) in K.V Borjhar and was transferred to K.V Upper Shillong depending upon the needs and the interest of the organisation as per KVS policy.

Mrs Gitanjali Das, PRT, Upper Shillong was also transferred to K.V Borjhar vide transfer order dated 26.9.2000. On request, due to her personal problems, Mrs

Geetanjali Das requested for cancellation of her transfer Order. The KVS (Headquarter) has considered her request and cancelled her transfer order as mentioned in the application.

It is a fact that the petitioner was working in KV Borjhar by virtue of the interim order passed in O.A No. 270/99. The Hon'ble Tribunal has finally disposed of the M.P 259/2000 and O.A No. 270/99 vide order dated 29.1.2001. In compliance with the order of the Hon'ble Central Administrative Tribunal, the transfer order of the applicant was withdrawn vide this office order dated 15./16.2.2001 and he was adjusted against the vacant post at Kendriya Vidyalaya, Borjhar.

9. That with regard to the statements made in paragraph 4.8 of the application the answering respondents beg to submit that as against the administrative exigencies individual inconvenience have got very little importance. It is a fact that the applicant was adjusted against the vacant post of PRT, at Kendriya Vidyalaya, Borjhar which was only due to the cancellation of transfer order of Mrs Geetanjali Das.

10. That with regard to the statements made in paragraphs 4.9 and 4.10 of the application the answering respondent beg to submit as follows. That due to the fixation of staff strength in Kendriya Vidyalaya for the year 2001-2002

the staff in excess of the sanctioned strength in certain Kendriya Vidyalaya is required to be redeployed against the existing vacancies in other Kendriya Vidyalaya. Accordingly, the applicant has been transferred/redeployed in Kendriya Vidyalaya No.2 Itanagar vide transfer order dated 18.4.2001 as per KVS Policy. It is submitted that the Hon'ble Jodhpur Bench of this Tribunal while adjudicating a similar matter held that the guidelines pertaining to posting of husband and wife is not mandatory. It is further observed by the said Hon'ble Jodhpur bench in O.A 224/99 in its judgment that administrative exigencies are to be given priority then that of family problem. In the present case taking into consideration the administrative exigencies it was not possible to post the applicant along with his wife.

11. That with regard to statements made in paragraph 4.11 of the application the answering respondents beg to submit that the guidelines of the KVS in this respect have been fully and completely followed and there is no violation of the rules. The applicant being the longest stayee in the Vidyalaya has been transferred/redeployed in other Vidyalaya within the Guwahati region. As per KVS Policy " teachers who have been rendered surplus automatically due to the modification in staff strength are the ones referred to as automatic surplus. In such cases the teacher of the particular category who had the longest stay in the Vidyalaya should move out on transfer".

It is further stated that so far as surplus is concerned Central Government rules and policies are different from that of the surplus policy dated 23.6.96. In fact a Central Government employee on the event of he being declared surplus is declared as retrenched employee and his case is sent to the surplus cell for his further appointment. But, in the present case the person declared surplus invoking the policy dated 23.6.96 will be immediately transferred to another school where vacancy exists, question of retrenchment does not arise in the present case and the person gets his appointment/posting without any break in service. Taking into consideration the above fact it is clear that the Central Government policies declaring surplus has got no nexus with the policy impugned in the O.A 167/2001. Hence the entire statements made in paragraph 4.11 of the O.A is denied.

12. That with regard to the statements made in paragraph 4.12 of the application the answering respondent offers no comments.

13. That with regard to statements made in paragraph 4.13 of the application the answering respondents offer no comments.

14. That with regard to the statements made in paragraph 5.1 to 5.9, the answering respondent beg to submit

that the grounds made by the applicant in the said application are not tenable in the eye of law. As already stated in preceding para 4.1 to 4.13, the transfer/redeployment of the applicant was ordered as per KVS Policy/Service conditions and in accordance with the guidelines of KVS in this respect. There is no violation of the rules and no malafide intention/discrimination in this action. The transfer of the applicant is just and under law.

15. That with regard to the statements made in paragraphs 6 and 7 of the application, the answering respondents beg to state that the applicant is put to the strictest proof of the correctness of the statements made therein.

16. That under the facts and circumstance stated above, it is respectfully submitted that the challenge in the instant application is devoid of merit and as such is liable to be dismissed with cost.

17. That with regard to statements made in paragraph 8 of the application, the answering respondents beg to state that taking into consideration statement and submissions made by the applicant as well as various guidelines and also taking into consideration the statements made by the respondents in the preceding paragraphs the present Original Application deserves to be dismissed with costs. It is further stated that the impugned transfer policy dated 23.6.96 being a policy decision cannot be challenged unless

the same suffers from violation of constitutional mandates. In the instant case the applicant failed to establish the fact of any constitutional violation in implementing the said policy dated 23.6.96 and hence he is not entitled to any relief and accordingly the present Original Application is liable to be dismissed with costs.

18. That with regard to statements made in paragraph 9 of the application, the answering respondents beg to state that in view of the factual and legal aspects involved in the present case, the interim Order passed by the Hon'ble Tribunal dated 9.5.2001 is required to be modified/vacated.

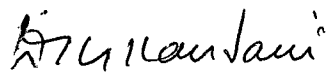
- V E R I F I C A T I O N -

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

And I sign this verification on this the 21st day of August , 2001 at Guwahati.

Place : Guwahati

Date : 21-8-01


DEPONENT

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 170/2000

PRESENT: Hon'ble Mr. Justice S. Narayan, Vice-Chairman.

Vice-Chairman: Hon'ble Mr. B.P. Singh, Administrative Member.

Ms. Indrani Nag, aged about 40 years,
Wife of Mr. Atindra Lal Nag, a resident
of ECTP Phase-III, B3/I, Kaaba Gol Park,
E.M. Bye Pass, Calcutta-700 078, now
working as Teacher (T.G.T. - S.S.T.)
Kendriya Vidyalaya, O.F. Dum Dum, Calcutta.

Union of India - v/s -
The Secretary to the Govt. of India,
Ministry of Human Resources Development,
New Delhi.

The Commissioner,
Kendriya Vidyalaya Sangathan,
18 Institutional Area, Saheed Jyoti
Singh Marg, New Delhi-110 016.

Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
EB Block, Sector-I
Calcutta-64.

The Principal, K.V.O.F.,
Dum Dum, Calcutta-700 028.

For the applicant

Mr. B.P. Saha, counsel.

For the respondents

Mr. P.C. Maiti, counsel

Mr. T.K. Biswas, counsel.

Heard on 1.9.2000

Order on 8-9-2000.

O R D E R

B.P. Singh, AM

Smt. Indrani Nag, teacher (T.G.T. - S.S.T.) Kendriya Vidyalaya, O.F.
Dum Dum, Calcutta has filed this O.A. against her transfer and prayed
for the following reliefs:-



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"8.

- (a) The Hon'ble Central Administrative Tribunal be kind to set aside the impugned order of transfer dated 9.8.99 being Annexure-A to this O.A. so far the applicant is concerned, with further necessary direction on the respondent not to give effect and/or any further effect to any action taken by them by way of purported release of the applicant in absentia, from the K.V., O.F. Dum Dum in its order dated 17/18.8.99 (when the applicant was on leave) with effect from 17.8.99 A.M. (As annexed to the reply of the respondents to the Previous O.A. No. 1049/99) with all consequential benefits permitting the applicant to resume her duties in the K.V., O.F. Dum Dum immediately.
- (b) The Hon'ble Tribunal may kindly issue necessary order on the respondents to release the salary of the applicant from the month of Sept.99 onwards and also to direct the respondents to treat the entire period from the date of wrongful release with effect from 17.8.99 till she is allowed to resume her duties in her present post in K.V., O.F., Dum Dum as duty for all purpose.
- (c) The Hon'ble Tribunal may issue direction on the respondent to say the cost and expenses of the litigation forced on her unlawfully.
- (d) The Hon'ble Tribunal may issue any other or any further order orders, direction or directions as may be considered necessary for dispensation of Justice."

2. The fact of the case is that the applicant has been transferred from the Kendriya Vidyalaya (K.V.) O.F. Dum Dum to K.V. Raiganj in North Bengal vide Annexure-'A' dated 9.8.99 in violation of the approved guidelines of transfer enclosed as Annexure-B. The applicant made representation dated 12.8.99 against the order as the same was illegal, punitive and violative of the guidelines. On receiving no reply on the representation, she filed O.A. No. 1049/99. The Hon'ble Tribunal heard the O.A. No. 1049/99 on 21.12.99 and disposed of the same as per Annexure-D by directing the respondents to dispose of the representation within one month and maintaining status quo as on date till disposal of representation. The respondent No.3 disposed the representation of the applicant by speaking order dated 25.1.2000 (Annexure-E) by which her prayer for cancellation of transfer was not accepted to. She made further representation dated 3.2.2000 vide Annexure-F. Being aggrieved with the above order the applicant filed this O.A. & prayed for the reliefs cited above.

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3. We have heard the Id. counsel Sri B.P. Saha appearing for the applicant and the Id. counsel Sri P.C. Jaitly leading Sri L.K. Biswas for the respondents. We have also gone through the O.A. and reply to the O.A.

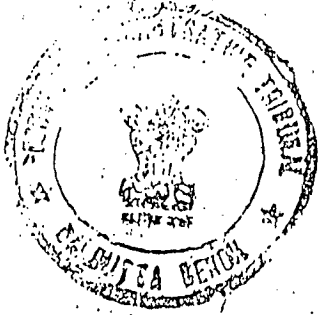
4. Sri B.P. Saha, Id. counsel for the applicant challenged the reasoned and speaking order and grounds stated therein for transfer. He submits that the stand taken by the respondent No.3 that the applicant has been transferred on account of having longest stay in the Vidyalaya in the circumstance, one post of TGT SST having been found surplus in the Vidyalaya as per staff sanction order for the session 1999-2000, is in direct contravention of the scheme for disposal of personnel rendered surplus due to reduction of Establishment as provided for in DOP&Trg. Memo No. 1-18/88-CS-III dated 1.4.89 which lays down that the juniormost should be surrendered in such cases. The fact is that the applicant was not the juniormost to be transferred and, therefore, the order is bad in law.

4.1. The Id. counsel has further submitted—that in the said order at Annexure-D it has not been stated clearly whether the present policy of transfer has the sanction of the Govt. of India or even the Board of Governors of the K.V.S. Moreover, the KVS cannot have a policy against Govt. of India guidelines/schemes, and, therefore, action taken under such policy is violative of GOI policy and law. This is also against the reply of the Minister of State P.P.G&P dated 9.12.99 to the Rajya Sabha Question No. 948, in which the Hon'ble Minister reiterated the Govt. policy of adjustment/redeployment of surplus employees according to Central Civil Services (Redeployment of Surplus Staff) Rules, 1990 and other various orders issued from time to time.

4.2. He further submitted that all the points raised by the applicant were not considered by the respondent No.3.

4.3. He again submitted that transfer is punitive as the same was resorted to in retaliation of the complaint of sexual harassment made by the applicant against the principal of the KV. The grounds of transfer stated

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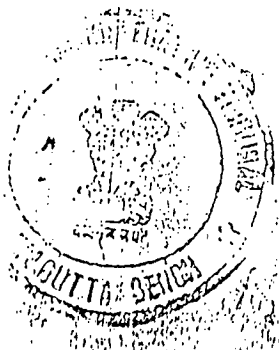
In Annexure-D are illegal and not tenable.

4.4. The transfer order at Annexure-A also suffers from the defect that there is no mention that the transfer was due to abolition of one post of TGT SST. The applicant has been wrongfully released from her present post when she was on medical leave on 17.8.99 (A/N).

4.5. The Id. counsel submitted that the transfer order is violative of guidelines and Arts. 14 & 16 of the Constitution. The same is discriminatory and illegal and violative of Art. 311(c) of the Constitution.

The Id. counsel also drew attention to the Hon'ble Apex Court's decision in the case of State of Bihar & Anr. Vs. Bal Mukund Sahi & Ors. (2000 SCC (L&S) 489) that no rule or law made by the delegatee can supersede or override the powers exercised or the law made by the delegator of power, the sovereign legislature and if it is made the same would be ultra vires. Therefore, the policy made by the respondents overriding the scheme made by the G.O.I. is ultra vires and the action taken in pursuance to that is illegal and should be quashed. The Id. counsel further submitted that the O.A. should be allowed granting the prayers made therein.

5. The Id. counsel Sri P.C. Maity leading Shri T.K. Biswas for the respondents contested the allegations and contentions made in the O.A. which are not supported by records. He submitted that K.V. are spread throughout the country. The policy of the Kendriya Vidyalaya Sangathan (KVS) are decided and laid down by the Board of Governors of KVS at the all India level. For implementation of the policies and administration of the K.V.S the country is divided into many regions. At the all India level the Commissioner and the Regional level, the Assistant Commissioner are the Executive Head of K.V.S. and Chief Administrator of K.V.S under their control. The Id. counsel further submitted that all the posts of teaching and non-teaching staff are transferable throughout the country and this is one of the important service conditions for the staff in KVS. Therefore, transfer is a condition of service for all staff under the K.V.S.



5.1 The Id. counsel submitted that the applicant submitted that the applicant was transferred on being found surplus on the post of Social Study Teacher (SST) as a result of reduction of sections due to less number of student. Such surplus was made on the basis of staff sanction order dated 24.6.1999 issued by the KVS, New Delhi. This surplus, better stated as excess, teacher was to be adjusted in some other school where there was justification of additional teacher. Thus it is a case of simple transfer from one KV to another K.V. Now the question arises as to which teacher from the K.V. having excess teacher should be transferred to the K.V. requiring additional teacher. The guidelines and rules as per Annexure-R/3 for transfer from one K.V. to another K.V. provide that the teacher having longest stay in the K.V. having excess teacher should move out on transfer. The applicant having the longest stay as TGT SST in the school was transferred according to the above guidelines and orders dated 17/18.8.99 (Annexure-R/2) was issued in reference to Annexure-A to the O.A.

5.2 The Id. counsel further submitted that the scheme of adjustment of surplus establishment as laid down in GOI, DOP&T Memo dated 1.4.80 is not applicable in the present case. The GOI Memo referred to above deals with surplus establishment in a department as a result of which services of a number of staff would not be required and they would be sent out of or retrenched from the Deptt. as there is no work for them. In such cases the junior most staff would be sent out/retrenched first and senior most would be the last to go. But in the present case it is not so. The post of the applicant was found in excess of the requirement in the concerned K.V. according to the yardsticks laid down by the respondents but the same was not found in excess of the requirement of the organisation namely K.V.S. In other words, there was need of the post in other KVs under the KVS and, therefore, the concerned establishment is not to be sent out or retrenched from the KVS. The post was to be adjusted from one KV to another KV from the KV where it was in excess of requirement to the KV where there was need of

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additional teacher. Thus it was a simple transfer for adjustment of excess staff from one KV to another KV and not transfer of surplus staff on retrenchment. In the case of transfer of excess staff the guidelines provided for transfer of the teacher having the longest stay in the school, whereas in the case of surplus staff it is the juniormost in the organisation who is to be axed first. The Id. counsel conceded that confusion has arisen due to loose ^{use} of the word 'surplus' in the communications. It would have been better if the loose use of the word surplus would have been avoided and the word excess been used instead by the respondents in their communications/orders. However, factual position is as stated above and, therefore, he submitted that the guidelines of GOI DOPT as stated above are not applicable in the case and hence the question of application of the Hon'ble Apex Court decision in the case cited by the Id. counsel for the applicant does not arise.

5.3. The Id. counsel further submitted that the guidelines of the K.V.S. in this respect have been fully and completely followed and there is no violation of the same. The applicant having the longest stay in the school has been transferred to a nearby place within Calcutta Region.

5.4. The Id. counsel further submitted that the complaint of the applicant against the principal has no relationship whatsoever with the transfer (Annexure-A to the O.A. & Annexure-R/2) as the transfer order has been issued by the Asstt. Commissioner, the respondent No.3 and not by the respondent No.4.

5.5. The Id. counsel also submitted that the reply to the Rajya Sabha Question No. 948 dated 9.12.1995 given by the Minister of State for Deptt. of P&T & Deptt. of P&PW in the Ministry of P&G&P relates to adjustment/retrenchment of the surplus employees being identified as surplus according to Central Civil Service (Regulation of Surplus Staff) Rules, 1990 and various orders of the Ministry of P&G&P from time to time and the same does not apply in the present case as submitted above.

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disallowed without granting the prayers made in the O.A.

6. From what has been discussed above it is clear to us that the applicant was working as a TGT SST in K.V. Dum Dum. The staff strength of the K.V. for the session 1999-2000 was reviewed according to the prescribed yardsticks. It was found that a post of TGT SST has become excess of requirement in the school which was loosely stated to be surplus. Therefore, the excess teacher was to be adjusted by transfer in some nearby K.V. where there was need of additional teacher. According to the KVS guidelines for such adjustment by transfer of excess teacher the teacher having the longest stay in the concerned Vidyalaya has to be transferred to the nearby Vidyalaya. The applicant was accordingly transferred in public interest from OF Dum Dum KV to KV Raiganj as a post of TGT SST was found in excess of requirement in Dum Dum K.V. and there was need of additional post in K.V. Raiganj and the applicant had the longest stay in Dum Dum K.V. amongst all the TGT SSTs. We do not find any irregularity in the transfer order violation of any guidelines etc. therein. We, therefore, dismiss the application and vacate stay order ^{if any} without any order as to cost. We would also like to direct the respondent authorities as a piece of advice that they should not ^{use} ~~use~~ the word 'surplus' loosely in their orders/communications and ensure that the words used by them convey the same meaning and sense which they have in their mind at the relevant time that there is no confusion in the import of concerned orders/communications.

Singh) D. 10.9.20
for (A)

(S. Narayan)
Vice-Chairman.

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