

50/100

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

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 130/02

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

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

ORDER SHEET

Original No. 130/2002  
Misc. Petition No.             
Contempt Petition No.             
Review Application No.           

Applicant(s) Haren ch. Das

Respondent(s) H.O.I Gorn

Advocate for Applicant(s) B.K. Sharma, S.S. Sarma

Miss U.D.W

Advocate for Respondent(s) Case

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
<p>7th ... to form C.F. ... disposed vide ... 79.549.438 Dated ... 23.4.02 ... Dy. Registrar</p> <p>Slips along with envelops taken.</p> <p>Notice received and sent to Dls for my the respon- dent No. 1 to 4 by Regd No J/No 130 &amp; 131 Dtd 6/5/02</p> <p>① Service report are still awaited</p> <p><u>23.5.02</u></p>	<p>24.4.02</p> <p>mb</p> <p>24.5.02</p> <p>mb</p>	<p>Heard Mr. P.K. Tiwari, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 24/5/2002 for admission.</p> <p>Vice-Chairman</p> <p>Heard Mr. P.K. Tiwari, learned counsel for the applicant.</p> <p>List on 7.6.2002 for orders.</p> <p>Vice-Chairman</p>

Notice in k/o of  
Respondent No 1.  
Returned due to  
incomplete address.

4/6/02

① Service report were  
still awaited.

30  
6.6.02

Sent vide DINo 13285

31 dtd. 6/5/02

in

7.6.2002

Heard Mr.P.K.Tiwari, learned  
counsel for the applicant. None is  
present for the respondents.

The application is admitted,  
call for the records.

List the case for order on  
5.8.2002.

K. L. Sharma  
Member

bb

5.7. Due to court sitting at  
Agartala, the case is adjourned  
to 19.7.2002.

No  
A.K. Tiwari

19.7.02

None is present for the  
respondents. List on 2.8.02 for  
orders.

K. L. Sharma  
Member

lm

2/8. Due to absence of the lawyers, the cases  
adjourned to 9/8/2002

No  
A.K. Tiwari  
2/8.

No written statement  
has been filed.

9.8.02

No written statement so far filed.  
Three weeks time is allowed to the Respondent  
to file written statement. List on 30.8.02  
for orders.

30  
29.8.02.

K. L. Sharma  
Member

mb

30.8.02

Service is completed long back save  
and except Respondent No.1. Mr. M.K. Mazum-  
dar, learned Standing counsel for the  
Respondents again prayed for time for filing  
written statement. Instead of giving time  
to file written statement, the matter is  
listed for hearing on 27.9.2002. The  
Respondents may file written statement, if  
any, within three weeks from today.

Vice-Chairman

3

y

Notes of the Registry	Date	Order of the Tribunal
No. 1015 has been filed <u>30</u> 8.10.02	27.9.02  lm	Heard Mr.S.Sarma learned counsel for the applicant and Mr.M.K.Mazumdar learned counsel for the respondents. At the request of Mr.S.Sarma learned counsel case is adjourned to 9.10.02 for hearing.  K. L. Sharma Member
No. 1015 has been filed <u>30</u> 12.12.02	9.10.2002  bb 8.11.02	Let the matter come up on 8.11.2002 for hearing. In the meantime, Mr.M.K. Mazumdar, learned Standing counsel for the KVS, is directed to obtain necessary instruction on the matter.  Vice-Chairman
No written Statement has been filed. <u>30</u> 18.12.02	mb 13.12.2002	On the prayer of Mr. S.Sarma, learned counsel for the applicant, the case is adjourned. List again on 13.12.2002 for hearing.  Vice-Chairman
27.12.2002 Copy of the Judgment has been sent to the Office for issuing the same to the applicant as well as to the L/Ad. for the Respondent	nkm 19.12.02  pg	Put up this matter on 19.12.02 for hearing. In the meantime, the respondents may file their written statement.  Vice-Chairman  Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is disposed of in terms of the order. No order as to costs  Vice-Chairman

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Notes of the Registry	Date	Order of the Tribunal
<p>1. The first meeting of the Tribunal was held on 12th March 1945 at 10.15 AM in the Court Room of the High Court of Justice, London.</p> <p>2. The Tribunal was composed of the following members:</p> <p>3. The first case was heard on 14th March 1945.</p> <p>4. The Tribunal was adjourned on 15th March 1945.</p>	<p>12th March 1945</p> <p>14th March 1945</p> <p>15th March 1945</p>	<p>1. The Tribunal was constituted by Order of the Lord Chancellor.</p> <p>2. The Tribunal was empowered to hear and determine any case referred to it by the Lord Chancellor.</p> <p>3. The Tribunal was to sit in public unless otherwise ordered.</p>
<p>5. The Tribunal was adjourned on 16th March 1945.</p> <p>6. The Tribunal was adjourned on 17th March 1945.</p> <p>7. The Tribunal was adjourned on 18th March 1945.</p> <p>8. The Tribunal was adjourned on 19th March 1945.</p> <p>9. The Tribunal was adjourned on 20th March 1945.</p>	<p>16th March 1945</p> <p>17th March 1945</p> <p>18th March 1945</p> <p>19th March 1945</p> <p>20th March 1945</p>	<p>1. The Tribunal was adjourned on 21st March 1945.</p> <p>2. The Tribunal was adjourned on 22nd March 1945.</p> <p>3. The Tribunal was adjourned on 23rd March 1945.</p> <p>4. The Tribunal was adjourned on 24th March 1945.</p> <p>5. The Tribunal was adjourned on 25th March 1945.</p>
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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. / ~~R.A.~~ No. . 130 . . . of 2002.

19-12-2002.  
DATE OF DECISION .....

... Sri. Haren Ch. Das. . . . . APPLICANT(S).

... Sri s. Sarma. . . . . ADVOCATE FOR THE  
APPLICANT(S).

- VERSUS -

... Union of India & Ors. . . . . RESPONDENT(S).


... Sri M.K. Mazumdar . . . . . ADVOCATE FOR THE  
RESPONDENT(S).

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

THE HON'BLE

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

Judgment delivered by Ho'ble Vice-Chairman



4X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 130 of 2002.

Date of Order : This the 19th Day of December, 2002.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

Sri Haren Ch. Das,  
resident of Sadilapur, Pandu,  
Guwahati - 12.

...Applicant

By Advocate Sri S.Sarma.

- Versus -

1. Union of India,  
represented by the Secretary to the  
Government of India, Ministry of  
Human Resource Development,  
New Delhi-1.

2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 Industrial Area,  
Sahid Jeet Singh Marg,  
New Delhi-16.

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

4. The Principal,  
Kendriya Vidyalaya,  
Tengavelly, Arunachal Pradesh.

...Respondents

By Advocate Sri M.K.Mazumdar.

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 5.3.2002 transferring the applicant as an UDC, Kendriya Vidyalaya, Tengavelly to Kendriya Vidyalaya Tawang as well as the order dated 9.4.2002 declining to modify the order of transfer dated 5.3.2002. The applicant was serving as UDC and posted at

contd..2

KV, Tengavalley. By order dated 2.2.99 the applicant was dismissed from service in aid of Rule 19(ii) of the CCS(CC&A) Rules 1965. The applicant assailed the order of dismissal and by judgment and order dated 26.2.2001 passed in O.A.390/99 the Tribunal set aside the order of dismissal and directed for reinstatement of his service. By order dated 19.9.2001 the applicant was reinstated as UDC and vide order dated 5.3.2002 the applicant was transferred to Tengavalley in public interest. The legitimacy of the order of transfer and posting is challenged as arbitrary and discriminatory. The applicant thereafter also submitted representation before the authority for modification of the order which was also finally turned down by the order dated 9.4.2002. Hence this application assailing the legitimacy of the order of transfer.

2. The respondents contested the claim of the applicant and submitted its written statement. In the written statement the respondents stated that the transfer order was passed in public interest. The respondents also stated the reason as to why the applicant could not be posted at Tengavalley. In terms of order passed by the Tribunal Sri Jaydev Barman was allowed to re-join at KV, Tengavalley as UDC and the applicant was transferred to Tawang as UDC.

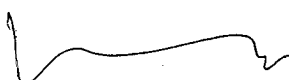
3. I have heard Mr S.Sarma, learned counsel for the applicant and Mr M.K.Mazumdar, learned counsel for the respondents at length. Mr Sarma submitted that the

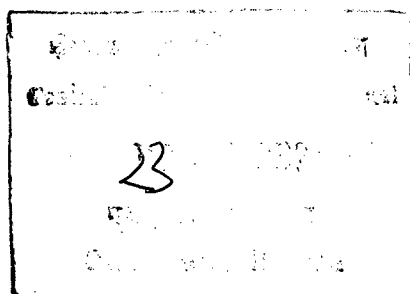


applicant was suffering from various ailment and his health does not permit him to work in a high altitude area like Tawang. Mr Sarma also submitted that the representation filed by the applicant was not considered fairly. Mr M.K.Mazumdar, learned counsel for the respondents on the other hand submitted that the applicant was transferred within the North Eastern Region itself keeping in view of the exigency of services. There is no violation of any transfer guidelines. Mr Mazumdar further submitted that if he had made representation in terms of the policy of annual transfer that representation would be considered in accordance with law.

4. On consideration of the materials on record I do not find any justification for interference with the order of transfer at this stage. Mr Sarma has pointed out that the applicant has already submitted his application requesting for annual transfer. He also submitted that the wife of the applicant is working in a State provincialised school at Guwahati and therefore he may be posted in an around Guwahati as per his choice. Since the matter is under consideration I am not inclined to pass any order at this stage, leaving the respondents to have a free hand for posting the applicant in a place of his choice. The respondents are accordingly directed to consider the case of the applicant fairly by taking care of the situation.

With the observations the application stands disposed of. There shall, however, be no order as to costs.

  
( D.N.CHOWDHURY )  
VICE CHAIRMAN



THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH  
GUWAHATI

O.A. No. 130 of 2002

Shri Haren Ch. Das

... Applicant

- Versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by :

*Alsha D*

Advocate

THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH  
GUWAHATI

(Application under Section 19 of the Central  
Administration Tribunal Act, 1985)

O.A. No. 130 of 2002

BETWEEN

Sri Haren Ch. Das,  
resident of Sadilapur, Pandu,  
Guwahati-12.

... Applicant

- AND -

1. The Union of India, represented by  
the Secretary to the Government of  
India. Ministry of Human Resource  
Development New Delhi-1,
2. The Commissioner, Kendriya Vidyalaya  
Sangathan, 18th Industrial Area,  
Shahid Jeet Singh Marg. New Delhi-16.
3. The Assistant Commissioner, Kendriya  
Vidyalaya Sangathan, Regional Office,  
Maligaon, Guwahati-12.
4. The Principal, Kendriya Vidyalaya,  
Tengavelly, Arunachal Pradesh.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE  
APPLICATION IS MADE :

The application is directed against the order  
dated 5.3.2002 and 19.3.2002 issued by the Respondents  
by which the present Applicant has been relieved from  
Kendriya Vidyalaya, Tengavelly with a direction to  
report Kendriya Vidyalaya, Tawang. This application is  
also directed against the order dated 9.4.2002 by which

Filed by  
the applicant through  
Alsha Das  
Advocate

HAAS

his representation has been disposed of rejecting his prayer for modification of the order dated 19.3.2002.

2. LIMITATION :

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

3. JURISDICTION OF THE TRIBUNAL :

The applicant further declares that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

4. FACTS OF THE CASE :

4.1 That the Applicant is presently holding the post of UDC and posted at Kendriya Vidyalaya, Tengavelly. By an order dated 2.2.99 issued by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, he was dismissed from his service and the said order was issued to him invoking Rule 19(II) of CCS (CCA) Rules, 1965. Against the said order of dismissal applicant preferred OA No. 47/99 and vide order dated 28.5.99 the Hon'ble Tribunal was pleased to dispose of the said Original Application directing the Respondents to dispose of the appeal preferred by the Applicant. Thereafter the Deputy Commissioner, Kendriya Vidyalaya Sangathan, vide order dated 16.8.99 rejected the appeal preferred by the Applicant. Situated thus, Applicant preferred OA No. 390/99 before this Hon'ble Tribunal

Handwritten signature/initials.

making a challenge to both the orders dated 2.2.99 and 16.8.99. The Hon'ble Tribunal vide its judgment dated 26.2.2001 allowed the said OA setting aside both the orders dated 2.2.99 and 16.8.99 directing the Respondents to reinstate the Applicant with full backwages. Against the aforesaid judgment dated 26.2.2001, the Respondents preferred writ petition bearing No. 6071/2001 before the Hon'ble Gauhati High Court. The said writ petition was dismissed by the Hon'ble High Court vide its judgment and order dated 29.8.2001, upholding the judgment passed by this Hon'ble Tribunal. Complying with the said judgment, the Respondents issued an order dated 19.9.2001 by which Applicant was reinstated as UDC, however, the Respondents posted him at Kendriya Vidyalaya, Tengavelly, instead of Kendriya Vidyalaya, Borjhar. Surprising the Respondents have issued an order dated 5.3.2002 by which he has been transferred to Tawang. The said order was followed by another order dated 19.3.2002 by which present Applicant has been directed to report Kendriya Vidyalaya, Tawang. Having no other alternative Applicant preferred representation for modification of the aforesaid order dated 19.9.2001, but the Respondents vide order dated 9.4.2002 rejected his claim. Hence this application.

4.2 That the present Applicant is a citizen of India and a permanent resident of Assam and as such he is entitled to all the rights privileges as guaranteed

H. D. S.

under the Constitution of India and laws framed thereunder.

4.3 That the Applicant is presently holding the post of UDC under the Respondents and at present posted at Kendriya Vidyalaya, Tengavelly. The Applicant while was working as UDC at Kendriya Vidyalaya, Borjhar, the Respondents issued an order dated 2.2.99 by which he was dismissed from his service. The said order dated 2.2.99 was issued by the Respondent No. 3 invoking Rule 19(II) of the CCS(CCA) Rule, 1965. The Applicant against the said order of dismissal preferred OA No. 47/99 before the Hon'ble Tribunal praying for setting aside of the said order and the Hon'ble Tribunal upon hearing the parties to the proceeding was pleased to dispose of the said OA directing the Respondents to dispose of his appeal. The Respondent No. 3 in complying with the said judgment and order dated 28.5.99, issued an order dated 16.8.99 by which appeal preferred by the Applicant was rejected.

The Applicant had to come before this Hon'ble Tribunal once again making a challenge against the order dated 2.2.99 and 16.8.99 by way of filing OA No. 190/99. The Hon'ble Tribunal vide its judgment and order dated 26.2.2001 allowed the aforesaid OA by setting aside the orders dated 2.2.99 and 16.8.99 with a further direction to the Respondents to reinstate him with full wages.

A copy of the aforesaid judgment and order dated

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26.2.2001 is annexed herewith and marked as Annexure-1.

4.4 That the Respondents against the aforesaid Annexure-1 judgment and order dated 26.2.2001 preferred writ petition before the Hon'ble Gauhati High Court vide WP(C) No. 6071/2001. The Hon'ble High Court vide its judgment and order dated 29.8.2001 dismissed the said writ petition upholding the judgment passed by this Hon'ble Tribunal.

A copy of the aforesaid judgment and order dated 29.8.2001 is annexed herewith as Annexure-2.

4.5 That after dismissal of the aforesaid writ petition, the Respondents issued an order dated 19.9.2001 by which complying with the judgment of the Hon'ble Tribunal by which Applicant was reinstated in his service and by the said order in his service and by the said order he was given posting as UDC at Kendriya Vidyalaya, Tengavelly. The Respondents instead of reinstating him as UDC at Kendriya Vidyalaya, Borjhar given him the posting at Kendriya Vidyalaya, Tengavelly with an ulterior motive.

A copy of the said posting order dated 19.9.2001 is annexed herewith and marked as Annexure-3.

4.6 That the Applicant complying with the said Annexure-3 order joined Kendriya Vidyalaya, Tengavelly as UDC. Surprising enough the Respondents thereafter

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issued a Memorandum dated 2.1.2001 by which he was asked to show cause as to why proceeding on some alleged charges of misbehavior should not be initiated. In fact, the charges contained in the aforesaid memo dated 2.1.2002 are same as contained in the order dated 2.2.99. The Applicant on receipt of the said Memorandum submitted his representation dated 15.1.2002 to the Assistant Commissioner, Kendriya Vidyalaya Sangathan denying those charges.

A copy of the aforesaid representation dated 15.1.2002 is annexed herewith and marked as Annexure-4.

4.7 That the Applicant begs to state that after the judgment and order dated 26.2.2001 the Respondents ought not to have reopened the matter once again as the matter was settled by the Hon'ble Tribunal. However, with an ulterior motive Respondents have reopened the matter to harass the Applicant. It is pertinent to mention here that the Respondents on receipt of the aforesaid representation dated 15.1.2002 however, have not intimated anything regarding the said proceeding. The Respondents ought not to have issued said memo dated 2.1.2002 to the present Applicant reopening the matter again. On receipt of the detailed representation dated 15.1.2002 (Annexure-4) the Respondents ought to have dropped the proceeding but till date nothing has been communicated to the present Applicant.

4.8 That in the midst of aforesaid series of

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harassment, the Respondents now have issued an order dated 5.3.2002 by which the Applicant who was posted at Kendriya Vidyalaya, Tengavelly was directed to report Kendriya Vidyalaya, Tawang on transfer. In the said transfer order in fact, no one has been posted in his present place of posting.

A copy of the said order dated 5.3.2002 is annexed herewith and marked as Annexure-5.

4.9 That the Applicant begs to state that the aforesaid order dated 5.3.2002 (Annexure-5) has been sent to him by Registrar post and same has been received by him on 18.3.2002. On the next day i.e. 19.3.2002 the Principal Kendriya Vidyalaya, Tengavelly issued an order dated 19.3.2002 by he has been relieved.

A copy of the said relieving order is annexed herewith and marked as Annexure-6.

4.10 That the Applicant thereafter preferred a representation dated 23/26.3.2002 to the Respondent No. 3 for modification of the orders dated 5.3.2002 and 19.3.2002. The Applicant in his representation highlighted the grievances and he made a specific prayer for his posting in an around Guwahati.

A copy of the said representation dated 23/26.3.2002 is annexed herewith and marked as Annexure-7. *won*

The Applicant instead of repeating the contentions

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made in the aforesaid representation begs to rely and refer upon the same at the time of hearing of the case and prays before this Hon'ble Tribunal to treat the same as a part of this application.

4.11 That on receipt of the aforesaid representation, the Respondent No. 3 issued an order dated 9.4.2002 by which his prayer for modification of transfer order dated 5.3.2002 has been rejected without assigning any reason.

A copy of the said order dated 9.4.2002 is annexed herewith and marked as Annexure-8.

4.12 That the Applicant begs to state that the Respondent No. 3 for the reasons best known to him has been harassing the Applicant and the aforesaid fact has been revealed from his action maintained above. As per the Annexure-1 judgment the Respondents ought to have reinstated him at Kendriya Vidyalaya, Borjhar but instead he was transferred to Kendriya Vidyalaya, Tengavelly which is a hard station. It is pertinent to mention here that after 52 months of service at Kendriya Vidyalaya, Tengavelly the Respondents have issued yet another order of transfer dated 5.3.2002 by which he has been again sought to be transferred to another hard station i.e. Kendriya Vidyalaya, Tawang. Presently, as per the transfer guideline issued by the Government of India an employee above 45 years should not be transferred to a hard station like Kendriya



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Vidyalaya, Tawang. The Applicant is now 48 years and he is suffering from hypertension, Bronchitis and Tonsillitis and as such posting at Tawang will be detrimental to his health condition. The medical documents annexed to his Annexure-7 representation reveals the fact of his ailment. That apart, the wife of the Applicant is working as an Assistant Teacher in a State Government provincialised school at Guwahati and taking into consideration the transfer guideline, the Applicant is required to be posted at nearby station at Guwahati.

4.13 That the Applicant begs to state that at present 2 posts of UDC are lying vacant in the Regional Office, Guwahati and he can very well be posted at Guwahati itself, if not in any nearby station. It is pertinent to mention here that posting at Kendriya Vidyalaya, Tengavelly itself is a hard station and as per the transfer guideline Applicant is required to be posted in a softer station.

4.14 That the Applicant begs to state that the aforesaid action on the part of the Respondent No. 3 clearly indicates his intention and on the face of it issuance of the impugned orders are per-se illegal, arbitrary and violative of various guidelines issued from time to time. Under the facts and circumstances stated above the Applicant prays for an interim order directing the Respondents not to disturb the Applicant from his present place of posting till finalisation of this OA.

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4.15 That this application has been filed bonafide and to secure the ends of justice.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the Respondents have acted illegally in issuing the impugned orders dated 5.3.2002, 19.3.2002 and 9.4.2002 and hence same are liable to be set aside and quashed.

5.2 For that the Respondents as per Annexure-1 judgment ought to have posted the Applicant at Kendriya Vidyalaya, Borjhar in accordance with the said judgment and having not done so the Respondents have violated the direction given by the Hon'ble Tribunal.

5.3 For that the Respondents have acted illegally in issuing the order dated 5.3.2002 only after completion of 52 months in his present place of posting. The Respondents now sought to transfer him to Kendriya Vidyalaya, Tawang which is also a hard station. As per the police guideline the Respondents ought to have post the Applicant to soft station i.e. nearby Guwahati.

5.4 For that there being number of vacancies in Regional Office Guwahati, the Respondents ought to have given him the post at Regional Office, Guwahati, instead of Tawang taking into consideration his representation.

5.5 For that in any view of the matter the impugned

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action/inaction on the part of the Respondents are liable to be set aside and quashed.

The applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that they have no other alternative and efficacious remedy except by way of filing this application. They are seeking urgent and immediate relief.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The applicant further declare that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the applicants pray that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

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- 12 -

B.1 To set aside and quash the impugned orders dated 5.3.2002, 19.3.2002 and 9.4.2002 and to direct the Respondents to post the Applicant in Regional Office, Guwahati or any nearby station.

B.2 Cost of the application.

B.3 Any other relief/reliefs to which the applicant is entitled to and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

During the pendency of the OA the Applicant prays for an interim order directing the Respondents not to disturb him from his present place of posting by suspending the operation of the impugned order dated 5.3.2002, 19.3.2002 and 9.4.2002.

10. ....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. :
- ii) Date :
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

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VERIFICATION

I, Shri Haren Ch. Das, aged about 48 years, resident of Sadilapur, Pandu, Guwahati, do hereby solemnly affirm and verify that conversant with the facts and circumstances of the case. I am competent to verify this case and the statements made in paragraphs 2,3,4,2,4,12 to 4,15 are true to my knowledge ; those made in paragraphs 1,4,1,4,3 to 4,11 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 23 <sup>rd</sup> day of April, 2002.

Haren Ch. Das.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 390 of 1999.

Date of Order : This the 26th Day of February, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

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

Shri Haron Chandra Das,  
 Assistant Secretary, P.W.D.  
 P.W.D. Pandu, Guwahati 12,  
 Dist. Kamrup (Assam)

. . . Applicant.

By Advocate Shri P.K.Tiwari.

- Versus -

1. Union of India  
 through the Secretary to the  
 Government of India,  
 Ministry of Human Resource Development,  
 Government of India,  
 New Delhi.
2. The Commissioner,  
 Kendriya Vidyalaya Sangathan,  
 18 Institutional Area,  
 Shaheed Jeet Singh Marg,  
 New Delhi-16.
3. The Deputy Commissioner (Admn.)  
 Kendriya Vidyalaya Sangathan,  
 18 Institutional Area,  
 Shaheed Jeet Singh Marg,  
 New Delhi-16.
4. The Assistant Commissioner,  
 Kendriya Vidyalaya Sangathan,  
 Regional Office, Chayaram Bhawan,  
 Maligaon Chariali,  
 Guwahati-12.

. . . Respondents.

By Dr B.P.Todi, Standing counsel for KVS.

ORDERCHOWDHURY J.(V.C)

This application under Section 19 of the Administrative Tribunals Act 1985 has arisen and is directed against the order dated 2.2.99 passed by the Assistant Commissioner, KVS, respondent No.4 dismissing the applicant from service in exercise of powers under proviso of Rule 19(11) of Central

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Attested

Advocate



Civil Services (Classification Control and Appeal) Rules 1965 as well as the order dated 16.8.99 passed by the Deputy Commissioner, Administration, Kendriya Vidyalaya Sangathan, respondent No.3 dismissing the appeal of the applicant and upholding the order dated 2.2.99 in the following circumstances.

2. The applicant at the relevant time was holding the post of Upper Division Clerk under the respondents. The applicant joined the service on Kendriya Vidyalaya Sangathan on 9.7.73 as a Group D employee. He was thereafter promoted to the post of LDC in the year 1980 and appointed as UDC in the year 1988. He was actively involved in the Union activities and he was the Regional Secretary of Kendriya Vidyalaya Non-Teaching Staff Association from 1985 to 1990. He was also elected as Joint Secretary of the said association from 1990 to 1993. He was again elected as Joint Secretary and holding the post from 1993 to the date of filing this application. According to the applicant the Commissioner of the Kendriya Vidyalaya Sangathan, respondent No.2, visited the Kendriya Vidyalaya during the year 1999, the applicant alongwith other office bearers of the Association wanted to meet respondent No.2 for the purpose of submitting a memorandum to him comprising of certain demands of the employees and also for felicitating him. The respondent No.2 visited Kendriya Vidyalaya, Maligaon on 15.1.99 and the applicant alongwith other office bearers wanted to meet the respondent No.2 and sought for permission from the Principal, KV, Maligaon. However, the Principal, KV, Maligaon, refused to do so. When the situation became fervid, the respondent No.2 who was at the relevant time inside the room came out and called the applicant and his colleagues inside the room. The applicant and his colleagues thereafter felicitated the Commissioner and also submitted a memorandum

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Advocate.

containing the grievances of the employees in regard to their pay scale. According to the applicant he left for New Delhi on 22.1.99 in response to a call letter dated 15.1.99 whereby he was requested to appear in a departmental examination for the post of Head Clerk to be held on 24.1.99. The applicant returned from Delhi and reported for duty on 30.1.99 since his leave was sanctioned upto 29.1.99. However, in the meantime he received an order No.F.14-2/99-KVS(GR)/11710-13 dated 25.1.99 passed by respondent No.4 placing him under suspension in contemplation of disciplinary proceeding. The applicant thereafter <sup>was</sup> served with Order No.F.14-2/99-KVS(GR)/11896-902 dated 2.2.99 passed by respondent No.4 dismissing the applicant from service in exercise of powers under the provision of Rule 19(11) of CCS (CCA) Rules 1965. The applicant preferred an appeal on 15.2.99 against the aforementioned order of dismissal. The applicant also moved this Tribunal assailing the legitimacy of the order dated 2.2.99 by an application which was numbered and registered as O.A.47/99. In the aforementioned O.A the respondents submitted its written statement and the applicant also submitted his rejoinder. The said O.A was finally disposed of directing the appellate authority to dispose of the appeal expeditiously after providing an opportunity of personal hearing to the applicant vide order dated 28.5.99. The respondent No.3 in due course disposed of the appeal vide order dated 16.8.99 dismissing the appeal and upholding the order of dismissal. Hence this application questioning the legality and correctness of the action of the respondents.

3. The respondents No.2 and 3 submitted their written statement denying and disputing the claim of the applicant. In the written statement the respondents stated that respondent No.2 paid his first visit to Guwahati on 15.1.99 to

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Advocate

discuss the problems of Kendriya Vidyalayas of Guwahati and to find out the ways and means of solving their problems. The respondents No.3 convened a meeting of the local members on 15.1.99 at Kendriya Vidyalaya, Maligaon which was attended by <sup>six</sup> ~~4~~ Principals/Incharge Principals, Education Officers and Administrative Officers of Guwahati Region. Before the meeting could start, the applicant forcibly entered into the room of the Principal, Kendriya Vidyalaya, Maligaon forcing him to arrange a meeting with the respondent No.2. It was also stated that the applicant did not take prior permission from the host Principal or from his Principal, i.e. Principal of K.V.Borjhar to meet respondent No.2. For this situation the applicant has been found guilty of grave indiscipline and insubordination by creating atmosphere of violence and placed under suspension on 25.1.99. The respondents in the written statement also justified the action for taking aid of Rule 19(11) of CCS(CCA) Rules at para 5 of the written statement, which shall be dealt in due course.

4. Mr P.K.Tiwari, learned counsel appearing for the applicant assailing the impugned order of dismissal in exercise of powers under Rule 19(11) of the CCS(CCA) Rules submitted that the aforementioned exercise of power in the facts and circumstances of the case amounted to an illegal exercise of discretion and an abuse of its power reposed on it. Mr Tiwari, the learned counsel submitted that power conferred under Rule 19 are exceptional power and those are to be exercised only in the circumstances as indicated in the rules. Referring to the order itself, the learned counsel submitted that the authority mechanically resorted to the provisions of Rule 19(11) in the instant case without applying its mind. The learned counsel submitted that the respondents authority

in the instant case in a most illegal fashion took aid of Rule 19 though the condition precedent prescribed in the rules were absent. The applicant was dismissed from service only on the sole consideration that it was not reasonable to hold an enquiry due to the alleged practice of intimidation threats and posture adopted by the applicant. In the absence of any ground to hold that it was not reasonable and practicable to hold the enquiry in the manner provided by Rule 14 to Rule 18, the impugned exercise of power under rule 19 in the setting was unwarranted and unauthorised, submitted Mr Tiwari, learned counsel for the applicant.

5. Dr B.P.Todi, learned counsel appearing for the respondents argued that the order of dismissal was made strictly in conformity with the rules and therefore question of interference in exercise of power under Rule 18 does not arise. Dr Todi submitted that the appellate order itself gave indication as to the circumstances under which the respondents had to resort to Rule 19 of the CCS Rules and submitted that the records of the proceeding would indicate the relevant circumstances under which the respondents authority took aid of Rule 19(11) and sought for time to produce the records. The records were produced before us to support the case of the respondents.

6. Rule 19 of the Rules contained the special procedure embodying three exceptional situations listed in clauses (i), (ii) and (iii) of the rule, dispensing with the enquiry in certain cases, the relevant provision of the rules are reproduced below :

"Notwithstanding anything contained in Rule 14 to Rule 18-

- 1) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

Advocate.

- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i);

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

The rule corresponds to the second proviso to Article 311 of the Constitution of India. The Rule 19 is a special procedure as indicated by the very rule itself. The procedure prescribed is an exception to the general procedure prescribed in Part VI of the Rules, for imposing penalties. As per the general procedure indicated in Rules 14 to 18 before imposing major penalties the authorities are required to provide a reasonable opportunity to the Government servant by holding a full fledged enquiry. Rule 19 (ii) is a procedure conferred on the authority to take aid of the same only when there exist a situation which make holding of an enquiry contemplated under Rule 14 to 18 "not reasonably practicable." Reasonable practicability is the test for exercising the power. It contemplates a situation where holding of an enquiry is not reasonably practicable in the opinion of a reasonable man on a judicious view of the surrounding situation. There may be cases where because of the use of threat and intimidation of witnesses by the Government servant or through his associate may likely to prevent the witnesses to give testimony before the enquiry

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25/10/19

against a Government servant for fear of reprisal. There may be also case where the Government officer either himself or through his associate put intimidation on a disciplinary authority or the members of his family so it affects the equanimity of the officer because of the act of commination of the charged officer to hold an enquiry. The grounds of intimidatory tactics or violence at the instance of the Government servant that may imperil equilibrium of the officer in holding a fair enquiry. There are only some of the instances cited by us. The situation is to be judged by the authority in exercising the power with care and caution. The power conferred is an exceptional power which is to be exercised only in the exceptional circumstances. It is not to be exercised lightly or casually. The impugned order dated 2.2.99 only indicated that the applicant allegedly created an unpleasant atmosphere of violence during a meeting on 15.1.99 by entering forcefully in the room where the meeting was being held. The aforesaid ground did not indicate any circumstances for not holding enquiry. It only indicate about the things that was happened on 15.1.99. The order itself indicated that because of prevailing abnormal atmosphere no witnesses will co-operate with any proceedings in accordance with the provisions of CCS(CCA) Rule 1965 and it was not reasonable to hold the enquiry due to the practice of intimidation, threats adopted by the said UDC. Conclusion reached by the Assistant Commissioner for not holding the enquiry was that it would not be reasonable to hold an enquiry due to the practice of intimidation. There was no whisper in the order to indicate that it was not reasonably practicable to hold the enquiry. The appellate authority in its order sought to improve the same by indicating at para 5 that it was not possible to hold an enquiry under

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Advocate.

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normal rules, since crucial and material evidence would not have been available because the witnesses would not even come forward at the risk of their life, it might be treated peripheral. Since the applicant had been associated with union activities in one capacity or the other he had a client (sic) which would not permit the enquiry to proceed and the conditions prevailing in this part of the land where a bogey of local vs outsider was sure to be raised and pressurisation/threats were sure to be employed by vested interests at the instance of Shri Das. Hence it was not reasonably practicable to hold an enquiry. The aforementioned grounds given by the appellate authority were based on assumptions and presumptions. The records those were produced before us did not indicate any such thing nor any rustle or murmur to that effect was discernible from the records. The reasonings cited by the Assistant Commissioner in his order at Note Sheet dated 28.1.99 are

re-produced below :

"Absence from school office during duty hours without the permission of the Principal, KV Borjhar and entry into the KV, Maligaon without permission of the Principal. It has been confirmed by the Principal, KV, Borjhar wherein Shri H.C. Das works in writing as well as Principal, KV, Maligaon through their written statements.

Intimidation of Shri Phoni Bora, Group 'D' of KV, Maligaon for sending the slip to Commissioner while the said meeting of the Principals was on.

Forced entry into the meeting room, picking up the slip from the Commissioner's table and shoving it in front of his face and using the foul language and tone for the venue Principal Shri J.P. Yadav when he objected to it.

Standing inside the meeting room while the meeting was on and had to be taken out by Commissioner as he stubbornly ignored all the procedure and by creating commotion and thus undermining the security cover provided to the Commissioner by the State Government.

The unbecoming behaviour took place in front of the appointing and Controlling Authority of Shri H.C. Das.

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L. Das  
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Unapologetic and non-repentant attitude when Commissioner met Shri H.C.Das after the meeting and giving him time to receive the representation he was carrying with him."

The reasonings cited in the appellate order does not find any support from the order cited above. The submission of Mr P.K. Tiwari, learned counsel for the applicant that the order passed by the appellate authority is only an improved version with a view to justify the order without support by any materials on record. The reasonings mentioned in the order dated 28.1.99 which the respondents authority came to a conclusion that it was not reasonably practicable to hold an enquiry due to the practice of intimidation threats adopted by the applicant was based only on the conclusion reached by the applicant on the basis of alleged act that took place on 15.1.99. There was no materials to show and establish that the Commissioner, KVS, six Principals, Education Officer and the Administrative Officers of Guwahati Region would not co-operate with any proceeding in accordance with the provisions of the CCS(CCA) Rules 1965 and that it was not reasonably practicable to hold the enquiry due to the practice of intimidation, threats and postures adopted by the applicant. The grounds mentioned in the order dated 28.1.99 was also cited in the para 5 of the written statement. There is no material to suggest that the threats, intimidation or atmosphere of violence or any of the indiscipline mentioned in the orders, written statement as well as in the appellate orders were subsisted at the time when disciplinary authority reached this conclusion on 28.1.99 or for that matter on 22.8.2000. The reasons indicated in the order lacks ostensible logic or comprehensible justification for avoiding the statutory enquiry as contemplated in Rule 14 of the rules. The reasons stated only lead to the inference of complete misapprehension of the powers and duties of the concerned authority.

Attested

*[Signature]*

Advocate.



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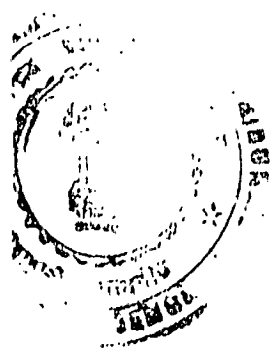
7. From the conspectus of the materials we are of the opinion that the respondents fell into serious error in its decision making process. According to Dr Todt it was a pure case of bonafide exercise of the discretionary power by the respondents reposed by the Statute. There is no dispute as to the nature of the discretionary power. Rule of law is the basic feature of the Indian Constitution. The constitutional philosophy does not countenance absolute or unfettered exercise of discretion. Statutory powers are reposed in the public authority for public purpose as a measure of trust. Such powers are to be used lawfully for achieving the purpose designed by the maker of the Statute. Unfettered discretion is an anathema to a public authority. Discretion of a Statutory body, in the words of Lord Denning in *Breen vs Amalgamated Engineering Union* reported in (1971) 2 QB 175 (190), "is never unfettered. It is a discretion which is to be exercised according to law. That means at least thus : the Statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield vs. Ministry of Agriculture, Fisheries & Food*, which is a land mark in modern administrative law.

Statutory discretion connetes good faith in public duty. There is always a perspective within which a statute is intended to operate - perceptible deviation from the statutory design is equally abhorrent, if not obnoxious as fraud or corruption. A primary aim of legal policy is to do justice and courts assume that laws are not made to do injustice.

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[Signature]  
Advocate

8. In the instant case the alleged events took place on 15th January 1999. The applicant was placed under suspension, ten days thereafter (on the 25th of January 1999) in contemplation of a departmental proceeding when the said order of suspension was passed on the 25.1.1999 in aid of Clause (a) of sub-rule (1) Rule 10 of the Rules, the officer was placed under suspension with the purpose coupled with the decisive intention to hold a disciplinary proceeding against the officer. It was a statutory decision presumed to have been taken after due application of mind on assessment of the surrounding circumstances and thought it conceivable to hold such enquiry. We fully agree with Dr Todt that the situation might not continue to be same- it could crumble, it could disintegrate. Such an environment might reach during the stage of enquiry, deterioration of the surroundings might take place after issuance of the order of suspension. No such materials were forthcoming to reasonably reach at such an inference. The alleged events/misconduct connecting applicant on 15.1.99 allegedly took place in presence of the Commissioner KVS, b) Assistant Commissioner KVS, KVS Region, c) Six principals, Incharge Principals, Education Officers and Administrative Officers of the Regions. All those persons mentioned above were high officials discharging higher responsibilities. Those officers were the crucial and material witnesses in whose presence the alleged occurrence were allegedly taken. Their evidence could not be said to of peripheral nature. Materials produced did not even embrace any trace or undertone to the effect those high officials were ever threatened/terrorised and/or overawed by the applicant or any of his associates on his behalf. A disciplinary authority is required to act with full responsibility. It is not expected to dispense with the disciplinary enquiry whimsically and/or arbitrarily or out of ulterior motives.



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Advocate.

The assesment of the situation is/was to be made by the disciplinary authority taking a reasonable view of the situation like that of a reasonable man. In the case in hand the decision making process of the respondents were flawed on the ground of disregard of the relevant considerations as well as for taking into consideration irrelevant and extraneous consideration which affected the final outcome of the decision.

9. We have given our anxious consideration on the matter and considering all the aspects of the matter we do not find any valid reason for exercising the power conferred under Rule 19(11) of the CCS Rules. In the circumstances the impugned order dated 2.2.99 as well as the appellate order dated 16.8.99 are set aside and the respondents are directed to reinstate the applicant with full back wages.

The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Cop.

प्रमाणित प्रतिलिपि

11/12/2011

Beetle

प्रमुख अधिकारी, केंद्र प्रशासन

Central Admin. Officer

केंद्रीय प्रशासन, गुवाहाटी

Guwahati Bench, Guwahati

कागज की संख्या: 100/2011

Attested  
Advocate

अर्पण के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोटो की अपेक्षित संख्या सूचित करने की तिथित तारीख Date fixed for notifying the requisite number of stamps and photos.	अपेक्षित स्टाम्प और फोटो देने की तारीख Date of delivery of the requisite stamps and photos.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार की Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
13/9/2001	13/9/2001	13/9/2001	13/9/2001	13/9/2001

- 26 -

ANNEXURE - 2

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA  
MANIPUR : TRIPURA : MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION NO. 6071/2001

1. Kendriya Vidyalaya Sangathan,  
Represented by the Commissioner,  
18, Institutional Area,  
Saheed Jeet Singh Marg,  
New Delhi-16.

2. The Deputy Commissioner (Admin),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Saheed Jeet Singh Marg,  
New Delhi-16.

3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office,  
Chayaram Bhawan,  
Maligaon Chariali,  
Guwahati-12.

Petitioners.

-Versus-

Shri Haren Chandra Das,  
Resident of Sadilapur, Pandu,  
P.O. Pandu, Guwahati-12,  
District: Kamrup (Assam).

Respondent.

Attested  
Advocate.

PRESENT

THE HON'BLE MR JUSTICE D. BISWAS  
THE HON'BLE MR JUSTICE RANJAN GOGOI

For the petitioners : Dr BP Todi and  
Ms D. Das  
Advocates.  
For the respondent : Mr P.K. Tiwari.  
Advocate.  
Date of hearing & judgment : 29.8.2001.

JUDGMENT & ORDERS(ORAL)

Gogoi, J.

Heard Dr BP Todi, the learned counsel for the writ petitioners and Mr PK Tiwari, the learned counsel for the respondent.

2. The instant writ petition has been filed against the order dated 26<sup>th</sup> February, 2001 passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No.390/99. By the aforementioned judgment and order the learned Tribunal has allowed the Original Application filed by the <sup>respondent</sup> sole respondent against an order of dismissal from service by invoking the provisions of Rule 19(ii) of Central Civil Service (Classification, Control and Appeal) Rules, 1965.

3. We have perused the judgment and order of the learned Tribunal and also heard the submissions advanced by the learned counsel for the parties. The order by which the disciplinary enquiry was dispensed with by invoking the

Accused

Wam

Advocate.

... of grave nature and insubordination by creating an atmosphere of violence during a meeting which was being held at KV, Mahgaon on 15.1.99 at 3 P.M. under the Chairmanship of Commissioner, KVS.

AND WHEREAS the undersigned is further satisfied that Shri HC Das, UDC, KV, Borjhar has created an unpleasant scene by his unbecoming behaviour and insubordination by creating a violence scene by entering forcibly in the room where the meeting was being held.

AND WHEREAS the undersigned is satisfied that the prevailing atmosphere is so tense and abnormal that no witness will co-operate with any proceedings in accordance with the provisions of CCS(CCA) Rule, 1965 and that it is not reasonable to hold the enquiry due to the practice of intimidation, threats and posture adopted by the said UDC, Shri HC Das.

NOW, THEREFORE, in exercise of powers under provision of Rule 19(ii) of the CCS(CCA) Rule, 1965, the undersigned as the appointing and competent disciplinary authority do hereby dismiss Shri HC Das, UDC with immediate effect from the services of the Sangathan.

Sd/-

(Dr. Lalit Kishore)  
Assistant Commissioner.

4. The conclusion reached by the disciplinary authority is that on the facts recited in the order dated 2.2.99, it was not reasonable to hold the enquiry. The requirement of the Statute is a satisfaction to the effect that it is not reasonably practicable to hold the enquiry, which satisfaction is

2/2/99  
LH

UDC  
LH

conspicuously absent in the order dated 2.2.99. The appellate authority in its order dated 16.8.99 has tried to make amends to overcome the deficiency in the initial order dated 2.2.99, a course not permitted by law, and in any case unsupported by materials on record. The relevant part of the Note dated 28.1.99 which has ostensibly acted as a basis for the impugned satisfaction, has been extracted by the learned Tribunal in its judgment presently under challenge. The Tribunal has come to the conclusion that the events recited being in relation to the incident that occurred on 15.1.99, the same cannot form the basis for the requisite satisfaction in absence of any materials that very many highly placed officials of K.V.S., in whose presence the alleged incident took place on 15.1.99, would not cooperate in the enquiry against the delinquent. The learned Tribunal has also held that there is no materials on record to suggest that any threat, intimidation or atmosphere of violence existed at any point of time to justify the conclusion reached by the authority. On the said finding, the learned Tribunal has thought it proper to conclude that the power conferred by Rule 19(ii) of the Rules being an extra ordinary power to be exercised in exceptional cases, the facts and circumstances of the instant case do not justify resort to the power conferred by the Rule 19(ii) of the aforesaid rules.

5. We have given our anxious considerations to the submission advanced by the learned counsel for the respondents and the reasoning of the learned Tribunal. A perusal of the order dispensing with the inquiry extracted hereinabove would clearly show that the condition precedent for the exercise of powers of dismissal from service after dispensing with the inquiry are conspicuously absent. The resort to such power can only be made in an exceptional situation when it is not reasonably practicable to hold an inquiry. Having regard to the totality of the facts of the case as elaborately set out in the judgment of the learned Tribunal, we are unable to hold that the extra-ordinary power conferred by Rule

**Attested**

*[Signature]*

**Advocate.**

- 30 -

5

19(ii) of the Rules has been rightly exercised in the instant case. Therefore, in our considered view the impugned order of dismissal cannot be sustained and the conclusions reached by the learned Tribunal do not require any interference. We do not find any merit in the present petition and the same is hereby dismissed.

Sd/- Ranjan Gogoi  
Judge

Sd/- D Biswas  
Judge

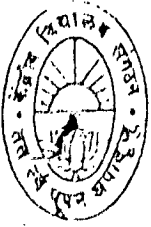
Pt No 163/77  
27/12/2009

<b>CERTIFIED TO BE TRUE COPY</b>
..... <i>Krishna Bank Shrivastava</i> .....
Date .....13 <sup>th</sup> Sept 2011.....
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act I, 1872

*27/12/2009*

Attested  
*U. M.*  
Advocate.





केन्द्रीय विद्यालय संगठन  
KENDRIYA VIDYALAYA SANGATHAN

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

पत्रांक :  
No. F : 10-6/2001-KVS(GR)/15983-86

दिनांक :  
Dated : 19.09.2001

REGISTERED POST

ORDER

Whereas Shri H.C. Das, UDC Kendriya Vidyalaya, Borjhar was dismissed from Kendriya Vidyalaya Service with effect from 02.02.1999 on the grounds of misconduct vide this office order No.14-2/99-KVS(GR)/11896, Dated 02.02.1999.

Whereas the said order has been set aside by Hon'ble CAT Guwahati and directed to reinstate Shri H.C. Das, UDC with full back wages.

Now in compliance with the order of the Hon'ble CAT Guwahati Bench Dated 26.02.2001 it has been decided by the competent authority Shri Das is reinstated in KVS Service to comply with the order dated 26.02.2001 of the Hon'ble Tribunal Guwahati Bench in OA No.390 of 1999 without prejudice to the right of KVS to take further action as per law.

Shri H.C. Das, UDC is therefore, hereby directed to report for duty at Kendriya Vidyalaya, Tengavalley immediately but in any case not later than 10 days from the date of issue of this order.

To,

Shri H.C. Das,  
Sadilapur Pandu,  
P.O. Pandu  
Guwahati : 12  
Kamrup Assam.

*W. H. Das*  
( D. P. DARE ) 19/9  
ASSISTANT COMMISSIONER

Copy to :-

1. The Principal, Kendriya Vidyalaya, Tengavalley.
2. The Joint Commissioner, KVS(Hqrs) New Delhi : 16.
3. Sealing Assistant of Court cases, KVS(RO) Guwahati.

ASSISTANT COMMISSIONER

\*\*\*\*\*

*W. H. Das*

Date : 15-1-2002

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From : H.C. Das, UDC,  
Kendriya Vidyalaya, Tenga Valley,

To : The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Maligaon Chariali, Guwahati-12.

In re : Memorandum No. F.14-2/99-KVS(GR)/300-01 dated 2.1.2002.

Sub : Written statement of defence against the memorandum  
under reference.

Sir,

In reference to the memorandum dated 2.1.2002  
containing four articles of charges, I submit my written  
statement of defence as follows :

Article-1 :

That I deny the article of charge No.1. It is stated  
that at the relevant point of time, I was holding a  
responsible position in the Union. For redressal of the  
grievances of the employees, it was necessary for me to meet  
Commissioner, Kendriya Vidyalaya Sangathan who at the  
relevant point of time was visiting the Maligaon Kendriya  
Vidyalaya. After duly intimating my controlling officer at  
Kendriya Vidyalaya, Borjhar, I came to Kendriya Vidyalaya,  
Maligaon alongwith my few colleagues for submitting a  
representation to the Commissioner, Kendriya Vidyalaya  
Sangathan. It is stated that the allegation made against me  
that I did not obtain prior permission of my controlling  
officer for coming to Maligaon Kendriya Vidyalaya is false.  
Be that as it may the allegation made against me in Article-  
I does not constitute a misconduct and the same does not  
fall within the ambit and scope of Rule 3(1) (i) (ii) and  
(iii) of CCS (Conduct) Rules, 1964.



Attested

H.C. Das  
Advocate.

15/1/2002

Advocate.

Article-II

That I deny the allegations made against me in Article-II of the charge sheet. It is denied that I forced my entry into the office of the Principal, Kendriya Vidyalaya, Maligaon on 15.1.99 at 3.00 P.M. It is denied that I forced the Principal, Kendriya Vidyalaya, Maligaon to arrange my meeting with the Commissioner immediately. It is reiterated that in my capacity of a Union leader, it was my duty to submit a representation to the Commissioner, Kendriya Vidyalaya Sangathan outlining the grievances of the employees. There was nothing wrong in my conduct. Senior officers are expected to know the grievances of their subordinates. Union activities are permitted in the Kendriya Vidyalaya Sangathan. My Union is a recognised Union. As a leader of the Union, I was well within my right to take a delegation to the Commissioner, Kendriya Vidyalaya Sangathan. In the presence of the Commissioner, Kendriya Vidyalaya Sangathan there was no untoward incident. The Commissioner was presented with a "Gamocha" and he was given the representation. The senior officers should not be hypersensitive and they should be sympathetic and understanding to the grievances of their subordinates. It is stated that the allegation made against me in Article II does not constitute a misconduct and the same was not violative of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-III

That the allegation made against me in Article-III of the charge sheet is denied. After presenting "Gamocha" and submitting the representation to the Commissioner, Kendriya Vidyalaya Sangathan, I left the premises of the Kendriya

Attested  
W.D.  
Advocate

Vidyalaya, Maligaon. As a Union leader, my only objective was to greet the Commissioner, Kendriya Vidyalaya Sangathan and to submit a representation to him. My objective having achieved, there was no reason for me to prolong my stay in the premises of Kendriya Vidyalaya, Maligaon. Nobody asked me to leave the premises. I on my own after submitting the representation to the Commissioner, left the premises with my colleagues. I have reasons to believe that the inflated egos of senior officers were badly hurt by this very action of a lowly Upper Division Clerk like me. To these senior officers, I was more a Clerk than a Union leader and they could not tolerate my conduct of entering the room and meeting the Commissioner. I reiterate that my action of meeting the Commissioner was bonafide and the same was for the purpose of redressal of grievances of the employees. It is reiterated that my aforesaid act cannot be construed as a misconduct and violative of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-IV

That I deny the Article-IV of the charge sheet. It is denied in categorical terms that I entered into a heated argument with J.P. Yadav, Kendriya Vidyalaya, Maligaon. It is true that Shri J.P. Yadav tried to prevent me from entering the meeting room, but I politely told him that in my capacity of Union leader, I am entitled to meet Commissioner, Kendriya Vidyalaya Sangathan. I had no bad intention in meeting the Commissioner. After meeting the Commissioner, I only presented a Gamocha to him and submitted the representation. There is no reason as to why senior officers should feel bad about such a thing. Whether

Attested

*W.A.*

Advocate

a given behaviour is arrogant or defiant may be dependent on one's perception. No reasonable man can treat my behaviour on the said date to be defiant and arrogant. There is nothing solemn about the meeting of the Commissioner, Kendriya Vidyalaya Sangathan. Commissioner is expected to know the grievances of his employees. Commissioner is neither a God nor an emperor. Unfortunately, the problem is with the mindset of the senior officers. For them, the very fact of an Upper Division Clerk entering into a meeting room and meeting the Commissioner with his head held high is an act of arrogance. I humbly submit that the allegations made against me in the charge sheet prima facie show the defiant and arrogant behaviour of the senior officers. I deny categorically that I ever abused the Principal, Kendriya Vidyalaya, Maligaon. I deny that my behaviour was unbecoming and my act was of insubordination. I reiterate that the allegation contained in Article-IV does not constitute misconduct and the same does not violate Rule (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

#### PRELIMINARY OBJECTIONS

After rebutting and denying the four articles of charges framed against me I also raised a preliminary objection against the memorandum of charges. In this connection, it is stated that four documents have been listed in the memorandum of charges on the basis of which charges are proposed to be sustained. However, copies of these documents have not been annexed with the memorandum of charges. Either I may be given copies of these documents or I should at least be allowed to inspect these documents to take notes from the same. Only after I know as to what

*Handwritten signature/initials*

is contained in these documents, then only I would be in a position to file an adequate and effective written statement of defence. My present written statement of defence has been prepared on the basis of my memory of the aforesaid incident and the same is without the benefit of perusal of the documents listed in the memorandum of charges. Hence it is requested that I should be allowed to submit a proper and effective written statement of defence by either allowing me to inspect the listed documents or copies of the same may be furnished to me.

I would also like to remind the competent authority that till this very date, I have not been paid my back wages. Pursuant to the order of the Central Administrative Tribunal, Guwahati Bench followed by the dismissal of the Writ Petition of the Kendriya Vidyalaya Sangathan by the Division Bench of the Guwahati High Court, I was reinstated to the post of Upper Division Clerk and was transferred to Kendriya Vidyalaya, Dibrugarh, Tenga Valley, but in violation of the order of the Central Administrative Tribunal, Guwahati Bench, I have not been paid my back wages till this very date.

On an earlier occasion, the competent authority on the basis of articles of charges dismissed me from my service without holding an enquiry on the ground that it was not reasonably practicable to hold an enquiry. However, the order of my dismissal from service after dispensing with the enquiry, did not find favour with the Guwahati Bench of the Central Administrative Tribunal which set aside the order of dismissal and directed my reinstatement with back wages.

Attested  
*[Signature]*  
Advocate

The Writ Petition filed by the Kendriya Vidyalaya Sangathan against the order of Guwahati Bench of the Central Administrative Tribunal was also dismissed by the Division Bench of the Gauhati High Court. Hence it is clear that the instant memorandum of charges has been issued with mala fide intention with an ulterior motive.

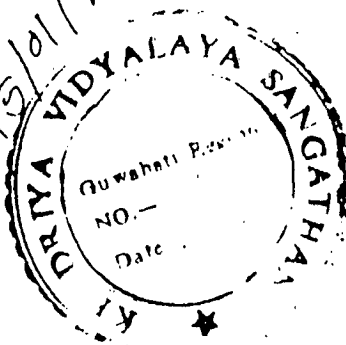
That the competent authority having failed to punish me on an earlier occasion <sup>which did not find favour with the Honble Court</sup> on the same set of charges has now issued the fresh memorandum of charges. The initiation of disciplinary proceeding is an empty formality inasmuch as the competent authority has a closed mind and it is keen to somehow punish me. I, therefore have a reason to believe that a fair and impartial enquiry is not possible under present dispensation.

Thanking you,

Yours faithfully,

( H.C. Das )

U.D.C.  
Kendriya Vidyalaya,  
Tenga Valley, (C.R.)



Attested  
M.D.M.  
Advocate.



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दूरभाष / Phone : 571797, 571798  
फैक्स : 571799

केन्द्रीय विद्यालय संगठन  
KENDRIYA VIDYALAYA SANGATHAN

ANNEXURE-5

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

संक्रांक :  
No. F. : 10-6/2001-KVS(GR)/4046-68

दिनांक :  
Dated : 05.03.2002

TRANSFER ORDER

Shri H.C. Das, UDC, Kendriya Vidyalaya,  
Tengavalley is hereby transfered to Kendriya Vidyalaya,  
Tawang in Public interest with immediate effect.

To  
✓ Shri H.C. Das  
UDC  
KV Tengavalley

( D. K. SAHNI ) 3/2  
ASSISTANT COMMISSIONER

Copy to Principal, Kendriya Vidyalaya, Tengavalley. He is requested to relieve Mr. H.C. Das, UDC of his Vidyalaya with the instruction to report to the Principal KV, Tawang immediately.

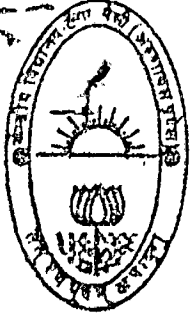
Copy to Principal, Kendriya Vidyalaya, Tawang for information.

ASSISTANT COMMISSIONER

Received  
18/3/02  
at 8.15 AM

8 P 49  
Attested  
W.D.M.  
Admission





## KENDRIYA VIDYALAYA TENGGA VALLEY

DIST. WEST KAMENG (ARUNACHAL PRADESH) 790115

Phone : 03782 - 73368, Army : 510

केन्द्रीय विद्यालय टेंगा वैली

जनपद-पश्चिमी कामेंग (अरुणाचल प्रदेश) 790115

Ref. No. F.25/KVIV/2001 .. 02/007

Dated 19.03.2002.

RELIEVING ORDER

With reference to KVS (GR) Transfer on public interest vide order letter No.F.10 - 6/2001/ KVS (GR)/4046 - 48 dt. 05.03.2002, Shri H.C.Das, UDC of this Vidyalaya is hereby relieved from this Vidyalaya on 19.03.2002 (A.N) and he is directed to report Principal Kendriya Vidyalaya Tawang.

He is entitled for transfer TA/DA as per KVS rules his Service Book and Personal file will be sent separately.

To,

Sh. H.C.Das, UDC  
K.V.Tenga Valley

(G.S.Sandhu)

PRINCIPAL

Principal / प्रधान

केन्द्रीय विद्यालय/Kendriya Vidyalaya

टेंगा वैली/TENGGA VALLEY

अरुणाचल प्रदेश/Arunachal Pradesh

Copy to :-

1. The Principal K.V. Tawang for information and necessary action.
2. A.C. KVS (GR) Guwahati Region, for information
3. Personal file of Sh. H.C. Das, UDC
4. Office Copy

Advocate

UDC

Advocate

(G. S. Sandhu)

PRINCIPAL

- 40 -

Date : 23/3/2002.

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To

The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Guwahati Region,  
Maligaon Chariali,  
Guwahati-781 012.

Sub : Prayer for modification of the Transfer Order No.  
F-10-6/2001-KVS(GR)/4046-48 dtd. 5-3-2002 from  
K.V. Tengavally to K.V. Tawang (AP).

Ref : Vide your Office No. F.10-6/2001-KVS(GR)/15983-86  
dtd. 19/9/2001.

Sir,

I have the honour to inform you the following facts for  
your kind information and sympathetic consideration.

- 1) That Sir, vide order dated 26/2/2001 passed by the  
Hon'ble CAT, Guwahati bench in OA No.390/99 and pursuance to  
the order dtd. 19/9/2001 under reference I joined as UDC in  
K.V. Tengavally (AP) on 27/9/2001.
- 2) That Sir, since my joining K.V. Tenga valley, I have  
been suffering from various ailments prevalling in cold and  
high altitudes in hilly areas like hypertension knee joints  
pain, Bronchitis, with Tonsillitis and high blood pressure etc.

The copy of the Medical Certificates dtd. 17/11/2001  
& 27/2/2002 and 23/3/2002, Asstt. Prof. B.A.M.S., MD  
(Ay) BHU. Govt. Ayurvedic College, Guwahati, Medical Officer  
P.H.C. Singh Chung, West Kameng (A.P.), Sub-Divisional Medical  
& Health Officer, Azara Hospital, Guwahati under GMC are  
enclosed herewith.

- 3) That Sir, I was very much shocked when vide your office  
order dtd. 5/3/2002, I was again transferred from K.V. Tenga  
Valley to K.V. Tawang within a period of 5½ months. (The most  
difficult and snow covered areas at highest altitudes of about  
15000 feets.)



Contd.....2

Attested  
*[Signature]*  
Advocate.

4) That Sir, the said high altitudes areas, hilly terrain and extreme cold climate areas like Tawang is not suitable for the employees who are about 45 years and I am now 48 yrs. old and suffering from several disease as stated above.

5) However, I have been advised by the Doctor to avoid such places for the survival on health grounds.

However in Surendra Bhakat V.S. UIO and others dated 21/9/2000. The Hon'ble Tribunal, New Delhi has also observed the same facts as stated above.

5) That Sir, it is also learnt that 2 posts of UDCs are lying vacant in the KVS(RO) Guwahati itself where in I can be accommodated to work more efficiently for the welfare and around development of KVS.

It is also stated that my mother is also about 78 yrs. old and ailing. My wife Smt. S.R. Das, is a Asstt. Teacher of State Govt. Provincialised School in Guwahati too. My old mother and wife along with my two younger children of age about 12 yrs. and 8 yrs. respectively are living alone in Guwahati. They are always worried about my poor and ill health conditions arising due to my transfer to hilly areas having extreme cold climatic conditions located at high altitudes like K.V. Tanga valley and thereafter again to Tawang within a period of 5 1/2 months.

Further it is also stated that previously I had also worked in KVS Regional Office, Guwahati itself and therefore I am eligible to be accommodated again in the said office as UDC.

6. That Sir, I most fervently request your honour kindly to consider my case and modify the said transfer order dated 5/3/2002 and post me either in KVS Regional Office, Guwahati and/or any other KVs in and around Guwahati.

Attested  
W. S. Das  
Advocate.

7. That Sir, there is no alternative and efficacious remedy except this representation to be submitted before your honour in order to seek justice for the survival of myself and my family members.

Therefore, in the facts and circumstances stated above, I request your honour to modify the transfer order dated 5/3/2002 from K.V. Tenga valley to K.V. Tawang and further be pleased to transfer me either in KVS (GR) Regional Office, Guwahati and/or in any other Kendriya Vidyalayas in around Guwahati.

AND

Further it is also prayed that I may kindly be given personal hearing to explain the ~~circumstances~~ prevailing circumstances before me for the interest of justice.

Thanking you Sir,

Encls : As stated.

7/12/11

Address for Communication :

Sri Haren Ch. Das  
"Jalti Ram Bhevan"  
C/O.Smt. Dipika Das  
Pandu Sadilapur,  
Guwahati-781 012.

Yours faithfully,

*H.C. Das*

( H. C. DAS )  
UDC  
K.V. Tenga Valley(A.P.)

*Advocate*  
Advocate

43 -

# ASSAM AREA PROJECT - IRR IX HEALTH & FAMILY WELFARE DEPT., ASSAM

## Advice slip for patient

O.P.D. Regd. No. ....

Date .....

Name .....

Age/Sex .....

Diagnosis .....

To whom it may concern

Certify that Mr. Haren  
Chandra Das an inhabitant  
of Sadiapur Guwahati - 12  
has been examined by me  
to-day the 23rd March '02  
at Azee Bazar. He has been  
suffering from "Osteoarthritis  
with hypertension" and under  
the treatment of Azee Bazar.  
He has been advised to avoid  
high altitude and dry areas.

SD M & HO

Dr. A. R. P. H. AZADA

KAMRIP, GUWAHATI, ASSAM

১- মাকৰ হাবীৰ সদাজাত কেঁৱাৰ উন্নয়ন আৰম্ভ।

২- গৰ্ভাৱস্থাত পৰীৱৰণকৃত হৈ আঁত কমেও তিনিবাৰ দাত্ত পৰীক্ষা  
কৰাৰে মাক আৰু কেঁৱাৰ বাবে অত্যন্ত সুকলি।

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**OUT PATIENT TICKET**

Primary Health Centre : Shingchung

Name \_\_\_\_\_

Age/Sex \_\_\_\_\_ OPD No. \_\_\_\_\_

NO MED/SING/4/01-02

To whom it may Concern

Certifying that Mr. H. S. Doo, M/A  
48yrs U.O.C of K.V Tengvalley  
is a case of Bilateral osteoarthritis  
<sup>both</sup> knee joint and Essential hypertension  
since 5 months. To avoid any  
further complications, he should  
avoid high altitude & heavy work.

Attest  
25/3  
P.S.

Dr. H. S. Doo  
(DR. H. S. Doo)  
M.B. Shingchung

Attest'd  
[Signature]  
Advocate.

Dr. B. S. Das

B.A., S.M. (Ay.), M.S. (D.M.)  
 Senior Professor of Ay. & Nat. College  
 No. 576485 (C)

Ex. Residence Physician, Institute of  
 Medical Science, Benares Medical University  
 \* Graduate in Anaesthetic disease

To whom it may concern

Respected Mr. Haren Ch. Das  
 of Pander Sadhopur, Dist. Champain, Assam  
 in order may treatment for Bronchitis  
 along with Emphysema. Now he is not  
 further and remain advised for rest  
 at least  $1\frac{1}{2}$  (one and half) months  
 17/11/2000 until recovery

Attest  
 17/11/2000  
 Dr. B. S. Das  
 Senior Professor of Ay. & Nat. College  
 No. 576485 (C)

17/11/2000  
 Dr. B. S. Das (A.Y.) (D.M.)  
 Benares Medical University - 12

Dr. B. S. Das  
 Office: 576485 (C)  
 Visit Hours: 5 pm to 7 pm

\* Residence :-  
 Gangaon, Gangaon-12  
 Tel: 572100, 571080  
 Hologram: Every day

Attested  
 Das  
 17/11/2000

Spouse care

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OFFICE OF THE DEPUTY INSPECTOR OF SCHOOLS  
CHANDMARI, GUWAHATI-3.

TO WHOM IT MAY CONCERN

Certified that Smt. Smita Rekha Das,  
W/O Haren Ch. Das is serving continuously as an  
Asstt. Teacher in the 733 (No. Poru Sadilapur)  
Wima Buniadi Vidyalaya w.e.f 26.6.93 on this  
date. The School is a Govt./Provincialised  
on w.e.f 4.9.73.

Sd/xxxxxx 16/9/2006

Signature & Seal of  
Deputy Inspector of Schools  
Guwahati -

Attention  
for 5/3  
for 8  
16/9/2006  
Asstt. Insp. of Schools  
Guwahati

Attested

*[Signature]*

Advocate.



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5

TRUE COPY

OUT PATIENT TICKET  
Primary Health Centre : Shingchung  
West Kameng Distt. Arunachal Pradesh

Name \_\_\_\_\_

Age/Sex \_\_\_\_\_ OPD No. \_\_\_\_\_

No. MED/SING/4/01-02

TO WHOM IT MAY CONCERN

Certifying that Mr. H.C. Das, M/A 48 Yrs.  
U.D.C of K.V. Tengavalley is a case of Bilateral  
Osteoarthritis Both knee joint and essential  
hypertension since 05 months. To avoid any further  
complications, he should avoid high altitude of hilly  
area.

Sd/xxxxxxx 27/2/02  
( DR. B. DUTTA )  
Medical Officer  
Sing Chung West Kameng Distt.  
Arunachal Pradesh  
(SEAL)

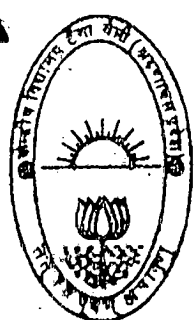
Attested  
27

Attested  
27/2/02  
B. Dutta  
Medical Officer  
Sing Chung West Kameng Distt.  
Arunachal Pradesh

Attested  
27/2/02  
Advocate.

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# KENDRIYA VIDYALAYA TENGA VALLEY

DIST. WEST KAMENG (ARUNACHAL PRADESH) 790115

Phone : 03782 - 73368, Army : 510

केन्द्रीय विद्यालय टेंगा वैली  
जनपद-पश्चिमी कामेंग (अरुणाचल प्रदेश) 790115

Ref. No. ....70/KVTY/2001-2002/

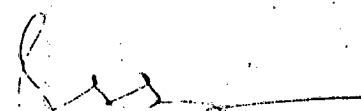
Dated .....19-3-2002.....

## TO WHOM IT MAY CONCERN

Shri H.C. Das , UDC who joined this Vidyalaya on 27th Sept . '2001 is relieved on 19-3-2002 (A/N) after his regular transfer to K.V. Tawang .

During the period his working and general conduct has remained appreciative . He has the potential to maintain the office routines very well .


I wish him success in life .

  
( G.S. SANDHU )

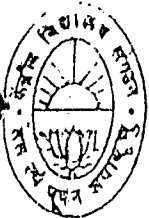
PRINCIPAL .

प्रधान / Principal.  
केन्द्रीय विद्यालय / Kendriya Vidyalaya  
टेंगा वैली / TENGA VALLEY  
अरुणाचल प्रदेश / Arunachal Pradesh

Attested  
by

  
D.G. DAS  
MAGAZIN, ASSAM

Attested  
  
Advocate.



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 दूरभाष / Phone : 571797, 571788  
 फ़ैक्स : 571799

 केन्द्रीय विद्यालय संगठन  
 KENDRIYA VIDYALAYA SANGATHAN

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

 पत्रांक :  
 No. F. : 10-6/2001-KVS(GR)/5780/- 02

 दिनांक :  
 Dated : 9.4.02
MEMORANDUM

With reference to his application dt. 26.3.02 Sh. H.C. Das, UDC (under order of transfer from KV Tengavalley to KV Tawang) is hereby informed that his request to modify his transfer from KV Tawang to KVS, RO, Guwahati or any KV in Guwahati has been considered sympathetically, but the same cannot be acceded to.

He is therefore, hereby directed to report for duty at KV Tawang immediately.

( D.K. SAINI )  
 Assistant Commissioner

Sh. H.C. Das, UDC  
 "Jalti Ram Bhavan"  
 C/O Smt. Dipika Das  
 Pandu Sadilapur  
 Guwahati-781 012.

Copy to the Principal, KV Tawang for information.

Asstt. Commissioner

Abom 43405

Not to post @ H. S. B. S.

Received on  
 16/4/02  
 at 2.30 pm

UDM  
 S. S. B. S.

Mr 5 P 38

Filed by the Respondent  
Through MKMgindin  
Advocate  
19-12-02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

O.A. NO. 130/2002

H.C.Das.

- Vs -

K.V.S. and Ors.

IN THE MATTER OF

Written statement on behalf  
of the Respondent.

AND

IN THE MATTER OF

Assistant Commissioner

K.V.S.

Guwahati Region

- DEPONENT

The humble written statement of the Respondent are  
as follows -

MOST RESPECTFULLY SHEWETH -

1. That the Respondent states that in the Original Application he has been made party and a copy of the same has been served upon him. The Respondent has gone through the contents of the petition and understood the same and he is competent to file the

Cont.

written statement on behalf of him and for others, they being the Official Respondents.

2. That the Respondent states that the statement and averments made in the original application are totally denied. The statements which are not born out of records are denied. The Respondent further states that the statements which are not specifically admitted may be deemed to be denied.

3. That the Respondent states that before controverting the statements and averments made in the above application the Respondent craves leave of this Hon'ble Tribunal to submit the following facts of the case in brief for appreciation.

4. That with regard to the statements made in para 4.2, the Respondent does not forward any comment.

5. That with regard to the statements made in para 4.1, 4.3 and 4.4, the Respondent submits the following comments - that is a matter of fact as per order dated 26/2/01 passed by the Hon'ble CAT, the Applicant was reinstated as U.D.C, and posted at K.V.S., Tengavalley, vide Order dated 19/9/2001.

In this connection, it is submitted that Sri Jaydev Barman, U.D.C., K.V.S., Tengavalley was earlier transferred to Kendriya Vidyalaya, Kimin as administrative ground and pursuant to the transfer

order dated 20/21.3.2001 he was relieved from Kendriya Vidyalaya, Tenga valley vide Order dated 31.3.2001 enabling him to report at Kendriya Vidyalaya, Kimin. But he preferred court case O.A.No. 135/2001. The Hon'ble Tribunal after hearing the case, vide judgement and order dated 20/21.3.2001 and the relieving order dated 31.3.2001 were set aside and quashed.

Honouring the Tribunal order dated 18/1/2002 applicant Sri Jaydev Barman, allowed to re-join at kendriya Vidyalaya, Tengavalley as U.D.C., and Sri H.C.Das, U.D.C., petitioner has been transferred to Kendriya Vidyalaya, Tawang in public interest with immediate effect vide Transfer Order dated 5/3/2002 against the clear vacancy. His request for modification of his transfer from Kendriya Vidyalaya, Tawang to Kendriya Vidyalaya Sangathan, regional Office, Guwahati or any other Kendriya Vidyalaya and also been considered, but same cannot be acceded to same was communicated to him vide Memorandum dated 9/10.4.2002.

6. That with regard to statements made in paras 4.5, 4.6 and 4.7, the Respondent states that in compliance with the order of the Hon'ble CAT dated 26/2/2001 the petitioner was posted at kendriya Vidyalaya, Tengavalley as because there was no vacancy of U.D.C. at Kendriya Vidyalaya, Borjhar.

Cont.

It is a fact that the competent disciplinary authority, issued a charge sheet under Rule 14 to Sri H.C.Das, vide Memorandum dated 2.1.2002. He was directed to submit a written statement within 10 days of the receipt of said Memo of his defence. In reply of that Memo Sri H.C.Das has submitted his written statement of defence vide his letter dated 15/1/2002.

Sri H.C. Das has denied the charges leveled against him in the above letter. After that the disciplinary authority considers that an Inquiry Authority should be appointed to enquire to the charges framed against Sri H.C. Das. Accordingly as per rule Inquiry Officer & Presenting Officer were appointed vide this office order dated 28/1/2002.

7. That with regard to statements made in para 4.8 and 4.9 it is submitted that the averment made by the applicant is not correct.

For honouring the Judgement and order dated 18/1/2002. Passed in OA No.135/2001, by the Hon'ble CAT, Guwahati Bench the transfer of Sri Jaydev Barman, UDC Kendriya Vidyalaya, Kimin ordered vide this office order of even number dated 21/3/2001 was cancelled and Sri Barman was called back to Kendriya Vidyalaya Tengavalley vide this office order dated 5/3/2002. (Copy enclosed) and Sri H.C. Das, UDC transferred from Kendriya Vidyalaya, Tengavalley to Kendriya Vidyalaya,

Cont.

Tawang (A.P.) on Public interest vide Transfer order dated 5/3/2002.

8. That with regard to statements made in para 4.10 & 4.11 it is submitted that his request to modify his transfer from Kendriya Vidyalaya, Tawang to KVS, RO, Guwahati or any other Kendriya Vidyalaya in Guwahati was considered sympathetically but the same could not be acceded to. His representation was disposed of vide this office Memorandum dated 10/4/2002 with a direction to report for duty at Kendriya Vidyalaya, Tawang immediately and he has joined his duties at Kendriya Vidyalaya Tawang accordingly.

9. That with regard to statements made in para 4.12 the averments made by the applicant in this paragraph are not correct. As per direction of Hon'ble CAT Sri Jaydev Barman was called back at Kendriya Vidyalaya, Tengavalley and Sri H.C. Das was posted at Kendriya Vidyalaya, Tawang.

It is pertinent to mention here that in the Judgement dated 26/2/2001 in OA No.390/99, there was no any direction given by the Hon'ble CAT to post him at Kendriya Vidyalaya, Borjhar. Based on the said direction he was reinstated with full back wages.

It is also to submit that the employee appointed in KVS are liable for transfer any where in India under Article 49(K) of the Education code of KVS.

Cont.



It is also submitted that an employee of KVS is liable to be transferred to any Kendriya Vidyalayas of Office at any time for exigencies of service, organisational reasons and administrative grounds. It is also submitted that Personal Problems of the individuals should not come in the way of public service. It is in the jurisdiction of the administration to avail the services of any employee as to where the service of its employees are to be utilised.

10. That with regard to the statements made in para 4.13 it is submitted that there is no any direction in transfer guidelines as stated by the applicant. He belongs to the N.E. Region and he was also transferred from Kendriya Vidyalaya, Tengavalley (A.P) to Kendriya Vidyalaya, Tawang (A.P) within state only, where there was clear vacancy of UDC lying vacant since last long.

11. That with regard to the statements made in Para 4.14 and 4.15 it is submitted that on the facts stated in paras of the written statement no further comments is required to be presented and such does not forward any comment.

12. That the Respondent humbly submits that with regard to the grounds forwarded in support of the averments in the original Application it is reiterated that the transfer of the petitioner is made within the

Cont.

same state where he was posted keeping in view of the exigency of services. Further it is submitted that the disciplinary action initiated against him by the competent disciplinary authority were also as per rule. There is no deviation in following the rules and the guidelines of transfer. Hence the same is not illegal and the O.A. deserves to be dismissed.

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

I, Sri Sunder Singh Sehrawat...., aged about ... years, resident of ... .., employee of Kendriya Vidyalaya Regional Office, do solemnly affirm and verify that conversant with the facts and circumstances of the case. I am competent to verify this case and the statements made in paragraphs 1-9.....are true to my information derived from records and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 18th Day of December 2002.

Sunder Singh Sehrawat