

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-97/02 ordersheet Pg-1 to 2 INDEX

disposed date- 10/02/03

M.P-101/02 ordersheet Pg-1 to 2

Disposed date- 16/08/02

O.A/T.A No. 178/02

R.A/C.P No.

E.P/M.A No. 97/02

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2. Judgment/Order dtd. 10/02/2003 Pg.....1 .....to.....3 Dismissed

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SECTION OFFICER (Judl.)

FROM NO. 4  
(SEE RULE 42 )

SENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 178/2002  
Misc Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicant(s)

Sri Archana Dey

-Vs-

Respondent(s)

Govt of Assam

Advocate for the Applicant(s)

Mu M Chander

Advocate for the Respondent(s)

KVS

Notes of the Registry	Date	Order of the Tribunal
T4 ST 4649 18/5/02 KVS 3/6/02	3.6.02	Heard learned counsel for the parties.
No slips		Issue notice on the respondents to show cause as to why the application shall not be admitted. Returnable by 4 weeks.
		Issue notice on the respondents to show cause as to why the impugned order No. F.10-2/2001/KVS(GR)/8629-53 dated 30.5.2002 shall not be suspended, so far re-deployment the applicant at KV No.2 Tezpur, as prayed for. Returnable by 3 weeks.
		In the meanwhile, the operation of the impugned order dated 31.5.02 so far the applicant is concerned shall remain suspended till the returnable date.
		List on 24.6.2002 for further orders.
		K. K. Sharma Member
		Vice-Chairman

24.6.02

List on 17.7.2002 to enable the respondents to file reply.

In the meantime, interim order dated 3.6.2002 shall continue. It is also made clear that pendency of this application shall not stand in the way of the respondents to consider the <sup>Respondent's</sup> case of the applicant.

I C Usha  
Member

Vice-Chairman

mb

17.7.02

Service is complete on the Respondents. The Respondents are yet to file written statement.

List on 16.8.2002 to enable the Respondents to file written statement. In the meantime, interim order dated 3.6.2002 shall continue to operate.

I C Usha

Member

Vice-Chairman

mb

16.8.02

In view of the order passed in M.R.No.101 of 02 the applicant may file consolidated application within 10 days. The respondents are given four weeks time to file written statement <sup>4 weeks after filing of</sup> to the consolidated application.

In the meantime the interim order dated 3.6.02 shall continue.

I C Usha  
Member

1m

27.9.02

The applicant has ~~filed~~ been filed a consolidated application on 10.9.2002. Copy of the application has been received by Mr.M.K.Mazumdar learned counsel for the respondents. The Respondents may file written statement within two weeks. List on 15.11.02 for orders. Interim order dated 3.6.02 shall continue.

I C Usha  
Member

7.2.03

additional  
rejoinder submitted  
to the applicant.

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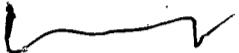
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OA 178/2002

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Notes of the Registry	Date	Order of the Tribunal
	15/11	Due to court setting at 8/11/2002, the case is adjourned to 27/11/2002. M/s. A. K. Jana (5/11)
No. written statement has been filed.	27.11.02	The respondents are yet to file written statement. Further four weeks time is allowed to the respondents to file written statement if any. List on 3.1.03 for orders.
<i>24</i> 17.12.02	1m	<i>Vice-Chairman</i>
No. written statement has been filed.	31.12.02	Due to valuation, the case is adjourned to 24.1.2003. M/s A. K. Jana
<i>24</i> 23.1.03.	24.1.03	present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.  Pleadings are complete. The case may now be listed for hearing on 7.2.03. The applicant may file rejoinder, if any in the meantime. Interim order to continue.
Order dtd 24/1/03 Communicated to the parties concerned. <i>27/1</i>	pg	<i>Vice-Chairman</i>
7.2.2003	7.2.2003	Adjourned on the prayer made by Mr. M. K. Mazumdar, learned counsel for the KVS. put the matter for hearing on 10.2.2003.
	bb	<i>Vice-Chairman</i>

Notes of the Registry	Date	Order of the Tribunal
<p><u>11.2.2002</u> Copy of the Judgment has been sent to the Office for issuing the same to the applicant as well as to the L/Adv for the Repl. Dr.</p> <p>45</p>	10.2.2003  nkm	<p>Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is dismissed. No order as to costs.</p> <p> Vice-Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. / XXXX No. 178 . . . of 2002

DATE OF DECISION 10.2.2003

Smt Archana Dey

**APPLICANT(S).**

Mr M. Chanda

ADVOCATE FOR THE  
APPLICANT(S).

- VERSUS -

## The Union of India and others

and others. **RESPONDENT(S).** **CENTRAL ADMINISTRATIVE TRIBUNAL** **CONSTITUTIONAL**

Mr M.K. Mazumdar

ADVOCATE FOR THE  
RESPONDENT(S).

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

### DATA AND METHODS

THE HON<sup>T</sup> 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 ?

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Judgment delivered by Hobble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.178 of 2002

Date of decision: This the 10th day of February 2003

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

Smt Archana Dey  
Wife of Shri Dwigendra Kumar Dey  
Working as Lower Division Clerk  
Kendriya Vidyalaya,  
Khanapara, Guwahati. ....Applicant  
By Advocate Mr M. Chanda.

- versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Department of Education,  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
New Delhi.
3. The Joint Commissioner (Admn)  
Kendriya Vidyalaya Sangathan  
18, Institutional Area,  
New Delhi.
4. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Guwahati Regional Office,  
Maligaon, Guwahati. ....Respondents

By Advocate Mr M.K. Mazumdar.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

Due to fixation of staff strength some of the non-teaching staff became excess in the Kendriya Vidyalaya and vide order dated 30.5.2002 they were redeployed in other Kendriya Vidyalayas. The name of the applicant also appeared in the list and accordingly she was transferred from Khanapara Kendriya Vidyalaya to No.2 Tezpur Kendriya Vidyalaya. The applicant moved this

Tribunal assailing the validity and legality of the order dated 30.5.2002. The applicant, amongst others contended that the impugned order by which the applicant was transferred to Tezpur would cause serious dislocation in the family. It was also contended that as per the policy guidelines of spouse posting, the applicant ought not to have been posted in a far away place.

2. The respondents submitted their written statement and contended that in view of the restructuring of staff, the applicant had to be accommodated at Tezpur. The applicant submitted a representation before the authority. The authority considered the same, but found it difficult to accede to her request and ultimately turned down her representation.

3. I have heard Mr M. Chanda, learned counsel for the applicant and Mr M.K. Mazumdar, learned counsel for the respondents at length. On hearing the learned counsel for the parties and on perusal of the materials on record, it is difficult to find flaw in the order of transfer and posting. The same was obviously made in the administrative exigency. It was stated at the Bar that the annual transfer is in the offing. The applicant, if she makes her request as per the policy, the authority will undoubtedly consider her prayer as per law, submitted Mr M.K. Mazumdar, learned counsel for the respondents.

4. On consideration of the materials on record no illegality is discernible in the action of the respondents for posting of the applicant. There is no scope for judicial review. The application is, therefore, liable to be dismissed and the same is accordingly

dismissed.....

dismissed. The dismissal of the application, however, shall not preclude the respondents to consider the case of the applicant at the time of the annual transfer of the staff of Kendriya Vidyalaya Sangathan and find a way to allay the grievance of the applicant. It is expected that the respondents shall consider the case of the applicant perceptively with commiseration. The applicant shall be at liberty to indicate her choice of posting to enable the respondents to consider her representation sympathetically and accordingly submit her representation to that effect.

5. Subject to the observations made above, the application stands dismissed. There shall, however, be no order as to costs.

  
( D. N. CHOWDHURY )  
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH  
(CONSOLIDATED APPLICATION)

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

Title of the case : O.A. No. 178 /2002

Sri Archana Dey : Applicant

- Versus -

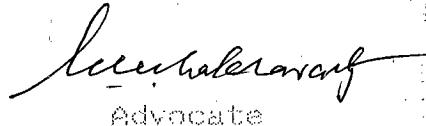
Union of India & Others: Respondents.

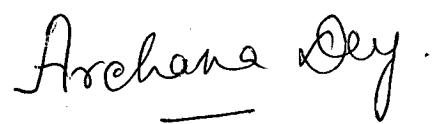
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Dated : 08.08.2002

Filed by

  
Archana Dey  
Advocate

  
Archana Dey

to

Filed by the applicant  
through Sri Gopal  
Chakravarty Advocate  
on 9-8-02.

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

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

(CONSOLIDATED APPLICATION)

O. A. No. 178 /2002

BETWEEN

Smti Archana Dey,  
Wife of Sri Dwijendra Kumar Dey  
Presently working at Lower Division Clerk  
Kendriya Vidyalaya, Khanapara, Guwahati - 22

Applicant

AND-

1. The Union of India,  
Represented by the Secretary to the  
Government of India, Department of Education  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan  
18, Institutional Area, Sahid Jeet Singh Marg  
New Delhi-110016.

*Archana Dey*

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The Joint commissioner (Admn.),  
Kendriya Vidyalaya Sangathan  
18, Institutional Area, Sahid Jeet Singh Marg  
New Delhi-110016.

4. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan  
Guwahati Regional Office, Maligaon,  
Guwahati - 11.

Respondents.

#### DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made:

This application is made against the impugned order issued under NO. F.10-2/2001-KVS9GR0/8629-53 dated 30.05.02 passed by the RESPONDENT NO. 4 thereby transferring the applicant, amongst others, due to fixation of Staff Strength in Kendriya Vidyalayas for the year 2002-2003 consequent upon declaration of surplus staff strength.

2. Jurisdiction of the Tribunal:

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

Archana Dey.

### 3. Limitation:

The applicant further declares 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 applicant is a citizen of India and as such she is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant initially joined under the respondents as a Lower Division Clerk (for short, as LDC) in the year 1984 and was posted at KV Khanapara. Ever since her joining under the respondents, the applicant has been rendering her duties to the satisfaction of all concerned and has always lived up to their expectation.
- 4.3 That the applicant was earlier subjected to transfers on two occasions consequent to her promotion to the post of Upper Division Clerk (for short, UDC) but in both of the occasions she had to surrender the promotion, as she was unable to undertake the transfer. In this context, it may be stated that in the year 1993 she was promoted to

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the post of UDC and was transferred to KV, NEPA, Barapani. But she refused the promotion on the ground of having domestic problems. Subsequently in the year 1999, she was again transferred to KV Missamari on her promotion to the post of UDC but this time too she had to refuse the promotion because of unavoidable circumstances. Consequently, she has been working at KV Khanapara.

- 4.4 That on 10.12.2001 the applicant submitted a representation to the respondent no.4, requesting her thereby to adjust to Kendriya Vidyalaya, Digaru, since she would be surplus at KV Khanapara in terms of KVS (Hq) staff sanction letter No. F.11-5/24-KVS (O & M) dated 29.11.2001. The said representation of the applicant was duly forwarded to the respondent no.4 by the Principal of the Vidyalaya on the same day. It was therefore, the legitimate expectation of the applicant that her case of adjustment would be duly considered by the respondents on being declared surplus at KV Khanapara in terms of the letter referred to above. It is pertinent to mention here that the applicant is the senior most L.D.C. of the Vidyalaya, as well as of the Region and as such she categorically prayed for her adjustment to a nearby Vidyalaya where vacancies were available.

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Copy of the representation dated 10.12.2001 along with the forwarding letter dated ibid are annexed hereto as **Annexure-1 and 1A** respectively.

4.5 That the applicant states that even after filing of the aforesaid representation, no action whatsoever was taken up by the respondents in that regard and in such a circumstances she again approached the Dy. Commissioner (A), through representation dated 25.1.2002 reiterating her prayer for adjustment in KV Digaru in the available existing vacant post of L.D.C. Even thereafter nothing fruitful came out and by the impugned order of transfer and posting dated 30.5.2002 issued by the respondent no.4 she has been arbitrarily transferred from KV Khanapara to KV No. 2, Tezpur without considering her prayer for adjustment at KV Digaru.

A copy of the representation dated 25.1.2002 is annexed as **Annexure-1B**.

4.6 That the applicant states that she is the senior most employee with the highest length of service working under the respondents in the Gauhati Region. It may also be stated here that the Circular issued under No F-I/96-KVS (Esstt. III) dated 23/24.07.1996 governs surplus adjustment and

transfers of staff within the region. It has been provided in the said circular, inter alia, that the surplus adjustment and transfers on request should be taken up simultaneously and efforts to be made to adjust the concerned employees against one of vacancies existing at the station.

A copy of the Circular dated 23/24.07.1996 is annexed hereto as **Annexure-2**.

- 4.7 That the applicant begs to state that Kendriya Vidyalaya Sangathan is an autonomous organization under the Government of India, Ministry of Human Resources and as such all welfare scheme of the Government of India regarding posting of husband and wife in the same station etc. are equally applicable to the employees of Kendriya Vidyalayas and for that matter the Kendriya Vidyalaya is bound to implement those welfare scheme for posting of husband and wife in the same station. In this connection, it is stated that the Government of India, Ministry of Personnel and Training had issued O.M. dated 12.6.1997 wherein it is provided, inter alia, that in cases where both husband and wife are working, they be invariably posted in a same station where the post exists in the appropriate level and especially when the children and the Government employee are

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below 10 years of age. In the instant case, the applicant is having a son aged about nine years. Be it stated that the husband of the applicant is working at Guwahati under the Government of Assam in the State Home Department and as such in the light of the OM dated 12.6.1997 she has acquired a valuable and legal right for retaining her in his present place of posting where her husband is presently serving. But the respondents have acted in total violation of the scheme issued by the government of India regarding transfer and posting and arbitrarily transferred her as stated above. On that score alone the impugned order of transfer and posting dated 20/21.3.2001 is liable to be set aside and quashed.

A copy of the Memorandum dated 12.6.97 and a copy of the impugned order dated 30.5.2002 are annexed as Annexure-3 & 4 respectively.

4.8 That the applicant states that the post of L.D.C. at KV Digaru has been lying vacant since last three/four years and till date no one has been posted to it. Therefore there is no impediment on the part of the respondents to adjust the applicant against the said post considering her longstanding prayer. It may be pertinent to mention here that one of the juniors to the applicant namely Mr. P. Bhattacharjee has been

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adjusted at Maligaon Regional Office from KV, Narengi on consideration of her request. But it appears that the respondents have acted in total disregard to all her grievances made out to them through her representations and passed the impugned order in a mechanical manner and have meted out a discriminatory treatment to her. The impugned order of transfer is bad in law and the same is therefore liable to be set aside and quashed.

- 4.9 That the applicant states that she is the only person to look after her son who is studying at Class V in KV Khanapara and is in the midst of his academic session. In this view of the matter, if the applicant is to carry out the impugned order of transfer and posting dated 30.5.2002, it would cause immense hardship to her. It may also be stated here that the applicant has not been relieved of her duties till date and as such the Hon'ble Tribunal may be pleased to protect her interest by way of an appropriate interim order.
- 4.9 The O.A. 178/2002 was moved before this Hon'ble Tribunal on 3.6.2002 and the Hon'ble Tribunal after perusal of the records and hearing the parties was pleased to issue notice upon the respondents to show cause as to why the application shall not be admitted and further

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pleased to pass an interim order staying the operation of the impugned order of transfer and posting dated 30.5.2002 so far the applicant is concerned till the returnable date. The matter again came up before this Hon'ble Tribunal on 24.6.2002 and the Hon'ble Tribunal was pleased to fixed the matter on 17.7.2002 to enable the respondents to file reply. However, it is further ordered that the interim order dated 3.6.2002 shall continue and at the same time it is also made clear that the pendency of this application shall not stand on the way to consider the representation of the applicant.

It is further stated that the O.A. 178/2002 was further listed before this Hon'ble Tribunal on 17.7.2002 for admission. However the Hon'ble Tribunal again fixed the matter on 15.8.2002 to enable the respondents to file written statements and also ordered that interim order shall continue to be operative.

4.9B Most surprisingly when the Hon'ble Tribunal is seized with the matter and the interim order of stay of the impugned order of transfer and posting dated 30.5.2002 is very much in force, the respondents particularly the respondent No.2 disposed of the representation of the applicant

Archives Of

vide Memorandum bearing letter No. F. No. 19-300(4)2002-KVS( L & C) dated 23.7.2002 whereby the representation dated 10.12.2001 and 25.1.2002 submitted by the applicant have been disposed rejecting her prayer for consideration of her posting at Kendriya Vidyalaya, Digaru i.e. in a nearby place from Guwahati where a post of LDC was lying vacant for about last 2/3 years. In the impugned Memorandum dated 23.7.2002 there is no averment regarding the availability of vacancy at Kendriya Vidyalaya Digaru and the Commissioner also did not disclose any reason for non-consideration of her posting at Digaru as claimed by the applicant in terms of Sangathan's letter dated 23/24.7.1996 and also in terms of O.M. dated 12.6.1997 issued by the Government of India.

In the impugned order the Commissioner has stated that the transfer and posting of the employees of the Sangathan falls entirely within the domain of respondents therefore the same cannot be quashed before any court of law and the matter does not call for any judicial review.

It is submitted that it is obligatory on the part of the respondents to follow the professed norms laid down by the Sangathan itself, more so in view of the fact that, the applicant prayed for per posting at Digaru in a near by place from

*Archana Dey*

Guwahati on spouse ground and also in terms of the Sangathan's policy dated 23/24.07.1996, specially where a clear vacancy exists at the appropriate level in the said Kendriya Vidyalaya at Digaru. The Commissioner did not assign any reason in the impugned order dated 23.7.2002 for non-consideration of her representation as such the said impugned Memorandum dated 23.7.2002 is liable to be set aside and quashed.

A copy of the Memorandum dated 23.7.2002 is enclosed as Annexure-5.

4.90 That the respondents subsequently issued a consequential order relieving the applicant in absentia on 27.7.2002 (Forenoon) with the instruction to report to the Principal Kendriya Vidyalaya No. I TEZPUR, when the stay of the impugned order of transfer and posting dated 30.5.2002 in respect of applicant is very much in force as such the impugned relieving order dated 27.7.2002 has been passed in total violation of Hon'ble Tribunal's interim order as such the impugned order dated 27.7.2002 is also liable to be set aside and quashed.

A copy of the impugned relieving order dated 27.7.2002 is annexed as Annexure-6.

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4.9D That it is pertinent to mention here that initially the applicant was sought to be transferred and posted at Kendriya Vidyalaya, No.II, Tezpur, vide impugned order of transfer and posting dated 30.5.2002 but subsequently during the pendency of this Original Application before the Hon'ble Tribunal when her representation has been disposed of through Memorandum dated 23.7.2002 rejecting her prayer for consideration of her posting at Kendriya Vidyalaya, Digaru, the Vice-Principal, Kendriya Vidyalaya passed the impugned relieving order dated 27.7.2002 directing her to report to Kendriya Vidyalaya, No.1 Tezpur. Therefore, it appears that since the applicant have challenged the impugned order of transfer and posting dated 30.5.2002 before the Hon'ble Tribunal through O.A. No. 178/2002 and the same is pending before the Hon'ble Tribunal for adjudication, the respondents very cleverly instructed her to report at Kendriya Vidyalaya No. I, Tezpur, instead of Kendriya Vidyalaya No.II. As such the action of the respondents smacks mala fide in the facts and circumstances of the case stated above.

4.10 That this application is made bonafide and for the cause of justice.

Archana Dey

5. Grounds for relief(s) with legal provisions:

- 5.1 For that, the impugned order of transfer and posting dated 30.5.2002 in so far it relates to the applicant is arbitrary, whimsical and therefore liable to be set aside.
- 5.2 For that, the applicant has acquired a valuable and legal rights in terms of the O.M. dated 12.6.1997 issued by the Government of India, Ministry of Personnel and Training for retaining her at Guwahati where her husband is working or a place nearby (Digaru) in as much as she is also having a male baby aged about nine years, namely Master Asmit Dey who is reading in Class V at KV Khanapara and is in the middle of his academic session.
- 5.3 For that, the circular dated 23/24.07.1996 has provided a clear guideline for adjustment of surplus employees in nearby places if not possible at the same station and in that view of the matter the applicant is entitled to be retained either at Guwahati or at Digaru or at any other nearby places.
- 5.4 For that, the junior to the applicant namely Mrs. P. Bhattacharjee, at Maligaon Regional Office from KV, Narengi but similar treatment has not been

*Archana Dey*

made out to the applicant without any justifiable reason.

- 5.5 For that, in view of the matter, the impugned order of transfer and posting in so far as the applicant is concerned is bad in law and as such the same is liable to be set aside.
- 5.6 For that the respondents has no jurisdiction to issue further impugned order relieving the applicant from duty, Kendriya Vidyalaya, Khanapara and directing to report to Principal, Kendriya Vidyalaya, Tezpur No.I when the matter is subjudice before the Hon'ble Tribunal and the interim order of stay is in force against the impugned of transfer and post dated 30.5.2002.
- 5.7 For that the respondents cannot avoid the order of interim stay by this Hon'ble Tribunal in O.A. No. 178/2002 by issuing fresh transfer and posting order in respect of the applicant in mocification of the earlier impugned order of transfer and posting dated 30.5.2002.

6. Details of remedies exhausted:

That the applicant states that he has exhausted all the remedies available to her and there is no

*Archana Dey*

other alternative and efficacious remedy than to file this application.

7. Matters not previously filed before or pending with any other Court:

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order of transfer and posting dated 30.05.2002 issued under letter No. —

Archana Dey  
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KVS(GR)/10454-53 in so far as it relates to the applicant.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to consider the case of the applicant for her continuation in her present place of posting i.e. at Kendriya Vidyalaya, Khanapara as well as for her adjustment at KV, Digaru against existing vacancy of L.D.C. or at a place nearby in the light of the Office Memorandum dated 12.6.1997 issued by the Government of India, Ministry of Personnel and Training as well as the Circular dated 23/24.07.1996 issued by the respondents.

8.2 A That the Hon'ble Tribunal be pleased to set aside the impugned memorandum dated 23.7.2002 and impugned relieving order dated 27.7.2002.

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim Relief(s) Prayed For:

During pendency of this application, the applicant prays for the following relief (s): -

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\_\_\_\_

- 9.1 That the Hon'ble Tribunal be pleased to suspend operation of the impugned order of transfer and posting dated 30.5.2002 in so far as it relates to the applicant.
- 9.2 That the respondents be restrain from filling up the existing vacant post of L.D.C. at KV, Digeru till disposal of this application or the case of the applicant for her adjustment is being considered.

10.....

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No. :  
ii) Date of Issue :  
iii) Issued from : G.P.O., Guwahati  
iv) Payable at : G.P.O., Guwahati

12. List of enclosures:

As given in the index.

Archana Dey

VERIFICATION

I, Smti Archana Dey, W/O Sri Dwijendra Kumar Dey, aged about 43 years, working as Lower Division Clerk, Kendriya Vidyalaya, Khanapara, Guwahati - 781022, do hereby verify that the statements made in Paragraph 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 \_\_\_\_\_ day of August, 2002.

  
\_\_\_\_\_  
Archana Dey

To

The Assistant Commissioner,  
 Kendriya Vidyalaya Sangathan,  
 Guwahati Region,  
 Chhayaram Bhawan,  
 Maligaon Chariali,  
Guwahati-781012.

Dated : 10th December, 2001.

Sub:- Prayer for the adjustment of surplus employee  
to the nearest vacant post regarding.

( Through the Principal, Kendriya Vidyalaya, Khanapara, Guwahati-22 )

Sir,

I have come to know that being the Senior most LDC of the Vidyalaya as well as of the Region, I shall be surplus from here vide KVS (HQ) staff sanction letter No.F.11-5/94-KVS (O & M) dated 29/11/2001. In this context, I have the honour to request your honour to adjust me as LDC at Kendriya Vidyalaya, Digaru, which is the nearest Kendriya Vidyalaya from my present place. The genuinity for my this request are given below for your kind consideration.

- (1). I am the Senior most LDC of Guwahati Station. I am a lady employee with a minor child with me and there is none except in the family to look after him.
- (2). My husband is an employee as an A.S.I. under the C.I.D. wing of the Director General of Police, Govt. of Assam, who will face hardship, if I am posted beyond K.V., Digaru.

I, therefore, request your honour to consider my prayer sympathetically and post me at K.V., Digaru as and when I am declared surplus from here and oblige.

*Pls. see  
Anchana Dey*

copy to:-

Yours faithfully,

ANCHANA DEY

(ANCHANA DEY),

L.D.C.

Kendriya Vidyalaya,

Khanapara, GUWAHATI-22

1. Shri C.N.Haloi, with a request to take up the matter with concerned authority.  
 Leader of JCM  
 A.T.K.V.T.A., K.V., Khanapara, Guwahati-22.

KENDRIYA VIDYALAYA KHANAPARA  
GUWAHATI-22

Enq. F.51/KVG/Trans/2001-02/ 882

Dated : 10/12/2001 30

To

The Asstt. Commissioner,

Kendriya Vidyalaya Sangathan,

Guwahati Region, Maligaon Chariali,

Guwahati-22.

Ref.

F.41-S/94-KVG(O & M) dated 29/11/2001. (staff sanction letter)

Sub:-

Forwarding.

Sir,

The Application \*(attached herewith) of Mr./Mrs. /Miss  
Archana Dey, L.D.C. is recommended and forwarded  
for your kind consideration and necessary action.

It is also certified that the above information given  
by the applicant is correct on verification by this office.

Thanking you,

Yours faithfully

\*Reg : Prayer for the adjustment of surplus  
employee to the nearest vacant post.

Indra

PRINCIPAL

Principal,

Kendriya Vidyalaya  
Khanapara, Guwahati-22.

-0-0-0-

*Archana Dey  
L.D.C.  
Khanapara*

3  
Annexure - 1B

Ref.: KVG/51/Trans/2001-02/1082

dt. 25/1

To

Deputy Commissioner (Admin),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Sahid Jeet Singh Marg,  
New Delhi-110016

FAX

Dated: 25<sup>th</sup> January, 2002

(Through the Principal, Kendriya Vidyalaya, Khanapara, Guwahati-22)

Subject:- Prayer for the adjustment of surplus employee to the nearest vacant post  
regarding:

Sir,

*Prayed to be posted to  
Kendriya Vidyalaya, Digaru  
as per my desire  
for the sake of my minor child  
and my husband.*  
I have come to know that being the Senior most L.D.C of the station as well as of the region, I shall be surplus from here vide KVS(HQ) staff sanction letter No. F.11-5/94-KVS (O & M) dated 29/11/2001. In this context, I have the honour to request your honour to adjust me as L.D.C at Kendriya Vidyalaya, Digaru, which is nearest Kendriya Vidyalaya from my present place. The genuinity for my this request are given below for your kind consideration.

*25/1/02  
Date  
Kendriya Vidyalaya, Digaru*  
(1) I am the senior most L.D.C of Guwahati Region as well as Guwahati Station. I am a lady employee with a minor child with me and there is none except me in the family to look after him.

*25/1/02  
Date  
Kendriya Vidyalaya, Digaru*  
(2) My husband is an employee as an A.S.I. under the C.I.D. wing of the Director General of Police, Govt. of Assam, who will face hardship, if I am posted beyond K.V., Kendriya Vidyalaya, Digaru as and when I am declared surplus from here and oblige.

I, therefore, request your honour to consider my prayer sympathetically and post me Kendriya Vidyalaya, Digaru as and when I am declared surplus from here and oblige.

Yours faithfully,

*Archana D.*  
(ARCHANA DEY), (L.D.C.)  
Kendriya Vidyalaya,  
Khanapara, Guwahati-22

*Archana D.  
Deputy  
L.D.C.  
Kendriya  
Vidyalaya  
Khanapara  
Guwahati-22*

SPEEDY POST

## KENDRIYA VIDYALAYA Sangathan

\*\*\*

F. 1-1/96-KVS (Letter-151)

10, Institutional Area,  
Shahid Jeet Singh Marg  
New Delhi-110016.

Dated: 23-07-96.

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office,Sub:- Surplus adjustment 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 30-5-96 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 13-5-96 to 15-5-96. According to the decision in the Assistant Commissioners' meeting 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 etc. in the region should move out on transfer.

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 have been held back in view of the surplus position, as is evident from the computerised priority list. This is so because the Sangathan attaches a lot of importance for adjustment of surplus teachers within the region. Naturally, administrative and financial implications of the existence of surplus teachers need not be emphasised. It is our endeavour by the Assistant Commissioners are resolute efforts to be a drain on our financial resources. Some time no departure from the guidelines framed by the Board of Governors for request transfer is permissible at all.

3. A combination of the surplus position and the intra-regional transfer priority list show that the position/surplus can be removed by a proper mixture of surplus adjustment/transfers. It has therefore been decided that surplus

P.T.O.

*Alka*  
*Alka*

9 (A)

5. - 23 -

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- 2 -

adjustment and transfers on request should be taken up simultaneously. The employees who have been rendered surplus may be identified in terms of the clarification given in para 1 above. Thereafter efforts may be made to adjust them against one of the vacancies existing at the station. This will be applicable to automatic as well as created surplus. Then the transfers on request may be taken up strictly according to the guidelines. The vacancies occurring on account of the transfers on request at a station where surplus exists may be utilised for the adjustment of surplus. Wherever it is not feasible to accommodate them within the station, transfer to a place nearby essentially in respect of automatic surplus and by option in respect of caused surplus may be resorted. All transfers of surplus should be made in Public Interest. No transfer in departure of the guidelines or out of turn should be done in the name of adjustment of surplus.

4. It is again reiterated, like last year, that no transfer or request/posting on direct recruitment should be made to a station where there are surplus teachers in a particular category.

5. Separate communication will follow individually by name giving clearance for intra regional transfers of staff other than PGTs, to such regions from where confirmation relating to circulation of intra regional transfer computerised priority list has been received. The transfers on request within the region is expected to be done within the limits prescribed therein, both of number and time.

Yours faithfully,

(Dr. T.N. Goramgi)  
Deputy Commissioner(Admin.)

Albistide  
Jan  
Aer. caté

34  
35  
Annexure-3

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

New Delhi, the 12<sup>th</sup> 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.

- Referred  
Mr. J. V. S.  
D.S.O. etc.*
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.

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. 28034/7/86Estt.(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.

*Deendayal  
Upadhyay  
Marg  
New Delhi*

KENDRIYA VIDYALAYA SANGATHAN  
REGIONAL OFFICE  
CRIYARAM BHAWAN : MALIGAON CHARJALI  
GUWAHATI : 12.

No. F.10-2/2001-KVS(GR)/8629 - 53

Dated : 30.05.2002

TRANSFER ORDER

Due to the fixation of Staff strength in Kendriya Vidyalaya for the year 2002-2003 the staff in excess of the sanctioned strength in certain Vidyalayas is required to be redeployed against the existing vacancies in other Kendriya Vidyalayas. Accordingly, the following non-teaching staff are redeployed in the Kendriya Vidyalaya shown against their names in Public Interest with immediate effect.

S.No.	Name of the Non-Teaching Staff	Designation	Transferred from KV	Transferred to KV
01.	Mr. B. J. Hazarika	Asstt. Supdt.	CRPF Amerigog	No. 2 Tezpur.
02.	Mr. Bhupen Deka	L.D.G.	Boxjhar	DRFL Bongaigaon
03.	Mr. Prasen	L.D.G.	Happy Valley Laitkor Peak	
04.	Mr. A. C. Thakuria	L.D.G.	Maligaon	Tura
05.	Mr. A. C. Mathadas	L.D.G.	CRPF Amerigog	NEPA Barapani
06.	Mr. L. D.	L.D.G.	Amerigog	
06.	Mr. D. Ray	L.D.G.	No. 1 Itanagar	NERIST, Nirjuli.
07.	D.R. Sharma	L.D.C.	No. 1 Tezpur	Tawang
08.	Archana Dey	L.D.C.	Khanapara	No. 2 Tezpur.

*Specified*  
*Non-Teaching*  
*Copy to :-*

*Excess in  
Vidyalaya ( S. S. SEHRAWAT )*

ASSISTANT COMMISSIONER

1. Individual concerned with the direction to get himself/herself relieved immediately.
2. The Principal, KV, where non-teaching staff is presently working with the direction to relieve the concerned non-teaching staff immediately under intimation to this office. The incumbent is eligible to draw TA/DA as per KVS rules. In case non-teaching staff on leave/absentee/she should be relieved in absentia with immediate effect. On no account his/her relieving should be delayed. No pay and allowance should be drawn in respect of the transferred non-teaching staff with effect from the date he is relieved/deemed to have been relieved.
3. The principal, KV, where non-teaching staff has been posted on transfer with the direction to intimate the date of joining in respect of the non-teaching staff concerned to the undersigned immediately.
4. The Accounts-Cum-Inspecting Officer, KVS, RO, Guwahati.

*A. D. Achanta*  
ASSISTANT COMMISSIONER

*06/05/02*

KENDRIYA VIDYALAYA SANGATHAN  
18, INSTITUTIONAL AREA  
SHAHEED JEET SINGH NAGAR  
NEW DELHI-1100162

Speed Post  
8X

Ref. No. 19-300 (1) 2002-KVS (LDC)

Dated: 28/7/02

MEMORANDUM

Whereas Ms. Archana Dey, LDC, Kendriya Vidyalaya Khanapara filed an OA No. 178/2002 in Hon'ble CAT at Guwahati Bench against her transfer from KV Khanapara to KV No. 2 Tezpur on being found excess to requirement.

2. Whereas the Hon'ble CAT, Guwahati Bench heard the case on 24.6.2002 and directed to dispose of her representation already submitted and as per the directions of the Hon'ble Tribunal our advocate informed us to dispose of her representation.

3. Whereas the applicant has submitted her representation dated 10.12.2001 & 25.1.2002 with the following submissions:-

- 1) that she is the senior-most LDC of Guwahati Region as well as Guwahati station, she is a lady employee with a minor child and there is none except her in the family to look after her.
- 2) Her husband is an employee as an ASI under the CID wing of the Director General of Police, Govt. of Assam who will face hardship if she is posted beyond KV Dibrugarh.

In view of the above she has requested to consider her prayer sympathetically and post her at Kendriya Vidyalaya, Dibrugarh as and when she declared surplus from here.

Whereas the representation of the applicant has been considered carefully and sympathetically and who is hereby informed as follows:

- a) that the staff strength is determined and sanctioned every year by the Commissioner, on the basis of work load and other physical facilities, and in accordance with norms which are laid down in this behalf. In Article 48 of Education code (Revised edition) and instructions issued from time to time in this regard. As such the fixation of staff strength is an annual exercise and the staff found in excess to the sanctioned staff strength in a particular school are required to be redeployed in other KVs where a clear vacancy exists. As a result of fixation of staff sanction exercise of 2002-2003 in some of the vidyalay teacher/staff in various disciplines were found excess requirement. Employee having longest stay in the cadre in the particular KV has been fixed as a yardstick for redeployment as per policy of KVS. While redeploying such identified excess staff no one has been exempted including those on-medical grounds except the staff having less than two years to retire (LTR) and the staff excess to the requirement are redeployed against clear available vacancy.

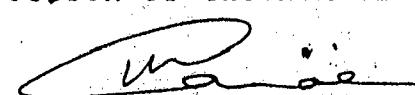
contd..p/2

However, it is the jurisdiction of the administration to decide how and where the services of an employee are to be utilised in the larger interest of the organisation and no one can claim any place for posting as a matter of right. Accordingly, Smt. Archana Dey, LDC, KV Khanapara was also been redeployed at KV No.1 Tezpur.

b) That as per Article 54(K) of Education Code (Revised edition) which is a documentary text for governance of Kendriya Vidyalaya, the services of KVS are liable to be transferred to any KV of the Sangathan at any time on short notice on organisational reasons, & administrative exigencies. Also as held by Apex Court that individual's personal inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. The personal problems expressed by the applicant should not come in the way of service conditions and public interest.

c) With reference to her submission regarding problems will be faced by her husband who is an ASI under the CID wing of the Director General of Police, Govt. of Assam due to her transfer it is informed that KVS being an autonomous body is having its own transfer guidelines. However, efforts are made to post husband and wife either in the same station or in the nearby station subject to the administrative constraints.

5. Having considered all the facts and circumstances of the case sympathetically and carefully in the light of the order of the Hon'ble CAT, Guwahati Bench the undersigned is of the view that the redeployment order issued in respect of Smt. Archana Dey, LDC on being found excess to requirement is in order. The applicant is hereby directed to report for duty at the place of posting forthwith in the interest of school. Her representation is disposed of in compliance with the direction of the Hon'ble Tribunal, Guwahati bench.

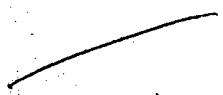
  
(M. M. CAIRAE)  
Commissioner

22/07/2008

Smt. Archana Dey, LDC  
Kendriya Vidyalaya  
Khanapara.

Distribution:

01. The Principal, Kendriya Vidyalaya, Khanapara with a request to deliver the letter to the individual concerned.
02. The Principal, KV Tezpur No.1.
03. The Assistant Commissioner, KVS(RO) Guwahati with a request to apprise the position to Hon'ble CAT, Guwahati Bench, Guwahati.
04. Section Officer(L&C) Section, KVS(HQ).
05. Guard file.

  
(P. Devasena)  
Education Officer

*Pls see  
Jew Devasena*



29-

Amritam-6

## KENDRIYA VIDYALAYA

KHANAPARA, GUWAHATI-781 022 (ASSAM)

Ref. No. F.51/KVG/2002-03/631

Date 27.07.02...

RELIEVING ORDER

With reference to Commissioner, KVS(HQ), letter No. F.19-300(4)2002-KVS(L&C) dated 23.07.02, Smt. Archana Dey, LDC of this Vidyalaya is hereby relieved of her duties in the forenoon of 27.07.2002 with the instruction to report to the Principal Kendriya Vidyalaya No. I, Tezpur immediately.

She is entitled to draw TA/DA as per KVS rules.

Her Service Book, Personal File and Last Pay Certificate will be sent separately. She is relieved in absentia on 27.07.02 forenoon.

Encle:- Memo No. F.19-300(4)2002-KVS(L&C)  
dt. 23.07.02 from KVS(HQ), New Delhi.

B.M.A. 27/07/02

To

Mrs. Archana Dey, LDC,  
KV Khanapara,  
School Campus Q.No.5-B,  
Khanapara, Guwahati-22.

(SHRI B. MAHTO)  
VICE-PRINCIPAL  
OFFG. PRINCIPAL  
Principal,  
Kendriya Vidyalaya  
Khanapara, Guwahati-22.

Copy to:-

1. The Commissioner, KVS(HQ), Constitutional Area, New Delhi-16.
2. The Education Officer, KV, New Delhi-16.
3. The Principal, K. I. T., T. I. T.
4. The Admin. Commr. Mr. KVS(GR), Maligaon, Ghy-12.
5. The Section Officer, KVK (L&C), KVS(HQ), New Delhi-16.
6. OFFICE COPY.

OFFG. PRINCIPAL

40

Filed by the applicant  
Thresh M. Chunder  
3:6:02 Advocate

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

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

Title of the case : O.A. No. .... 178 .... /2002  
Sri Archana Dey : Applicant  
- Versus -  
Union of India & Others: Respondents.

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Date: 03.06.2002

Filed by

*Manik Chunder*

Advocate

*Archana Dey*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 1781 /2002

BETWEEN

Smti Archana Dey,  
Wife of Sri Dwijendra Kumar Dey  
Presently working at Lower Division Clerk  
Kendriya Vidyalaya, Khanapara, Guwahati - 22

...Applicant

-AND-

1. The Union of India,  
Represented by the Secretary to the  
Government of India, Department of Education  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan  
18, Institutional Area, Sahid Jeet Singh Marg  
New Delhi-110016.
3. The Joint commissioner (Admn.),  
Kendriya Vidyalaya Sangathan  
18, Institutional Area, Sahid Jeet Singh Marg  
New Delhi-110016.
4. Principal, Kendriya Vidyalaya,  
Khanapara, Guwahati-22

Archana Dey

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan  
Guwahati Regional Office, Maligaon,  
Guwahati - 11.

..... Respondents.

### **DETAILS OF THE APPLICATION**

#### **1. Particulars of order(s) against which this application is made:**

This application is made against the impugned order issued under NO. F.10-2/2001-KVS9GR0/8629-53 dated 30.05.02 passed by the RESPONDENT NO. 4 thereby transferring the applicant, amongst others, due to fixation of Staff Strength in Kendriya Vidyalayas for the year 2002-2003 consequent upon declaration of surplus staff strength.

#### **2. Jurisdiction of the Tribunal:**

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

#### **3. Limitation:**

The applicant further declares 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 applicant is a citizen of India and as such she is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

Archana Dey

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- 4.2 That the applicant initially joined under the respondents as a Lower Division Clerk (for short, as LDC) in the year 1984 and was posted at KV Khanapara. Ever since her joining under the respondents, the applicant has been rendering her duties to the satisfaction of all concerned and has always lived up to their expectation.
- 4.3 That the applicant was earlier subjected to transfers on two occasions consequent to her promotion to the post of Upper Division Clerk (for short, UDC) but in both of the occasions she had to surrender the promotion, as she was unable to undertake the transfer. In this context, it may be stated that in the year 1993 she was promoted to the post of UDC and was transferred to KV, NEPA, Barapani. But she refused the promotion on the ground of having domestic problems. Subsequently in the year 1999, she was again transferred to KV Missamari on her promotion to the post of UDC but this time too she had to refuse the promotion because of unavoidable circumstances. Consequently, she has been working at KV Khanapara.
- 4.4 That on 10.12.2001 the applicant submitted a representation to the respondent no.4, requesting her thereby to adjust to Kendriya Vidyalaya, Digaru, since she would be surplus at KV Khanapara in terms of KVS (Hq) staff sanction letter No. F.11-5/94-KVS (O & M) dated 29.11.2001. The said representation of the applicant was duly forwarded to the respondent no.4 by the Principal of the Vidyalaya on the same day. It was therefore, the legitimate expectation of the applicant that her case of adjustment would be duly considered by the respondents on being declared surplus at KV Khanapara in terms of the letter referred to above. It is pertinent to mention herethat the applicant is the senior most L.D.C. of the Vidyalaya, as well as of the Region and

Archana Dey

as such she categorically prayed for her adjustment to a nearby Vidyalaya where vacancies were available.

Copy of the representation dated 10.12.2001 along with the forwarding letter dated ibid are annexed hereto as **Annexure-1 and 1A** respectively.

4.5 That the applicant states that even after filing of the aforesaid representation, no action whatsoever was taken up by the respondents in that regard and in such a circumstances she again approached the Dy. Commissioner (A), through representation dated 25.1.2002 reiterating her prayer for adjustment in KV Digaru in the available existing vacant post of L.D.C. Even thereafter nothing fruitful came out and by the impugned order of transfer and posting dated 30.5.2002 issued by the respondent no.4 she has been arbitrarily transferred from KV Khanapara to KV No. 2, Tezpur without considering her prayer for adjustment at KV Digaru. *A copy of the representation dt 25.1.2002 is enclosed as annexure - 1B.*

4.6 That the applicant states that she is the senior most employee with the highest length of service working under the respondents in the Gauhati Region. It may also be stated here that the Circular issued under No FI/96-KVS (Esstt. III) dated 23/24.07.1996 governs surplus adjustment and transfers of staff within the region. It has been provided in the said circular, inter alia, that the surplus adjustment and transfers on request should be taken up simultaneously and efforts to be made to adjust the concerned employees against one of vacancies existing at the station.

A copy of the Circular dated 23/24.07.1996 is annexed hereto as **Annexure-2.**

Archana Dy

4.7 That the applicant begs to state that Kendriya Vidyalaya Sangathan is an autonomous organization under the Government of India, Ministry of Human Resources and as such all welfare scheme of the Government of India regarding posting of husband and wife in the same station etc. are equally applicable to the employees of Kendriya Vidyalayas and for that matter the Kendriya Vidyalaya is bound to implement those welfare scheme for posting of husband and wife in the same station. In this connection, it is stated that the Government of India, Ministry of Personnel and Training had issued O.M. dated 12.6.1997 wherein it is provided, inter alia, that in cases where both husband and wife are working, they be invariably posted in a same station where the post exists in the appropriate level and especially when the children and the Government employee are below 10 years of age. In the instant case, the applicant is having a son aged about nine years and as such in the light of the OM dated 12.6.1997 she has acquired a valuable and legal right for retaining her in his present place of posting where her husband is presently serving. But the respondents have acted in total violation of the scheme issued by the government of India regarding transfer and posting and arbitrarily transferred her as stated above. On that score alone the impugned order of transfer and posting dated 20/21.3.2001 is liable to be set aside and quashed.

A copy of the Memorandum dated 12.6.97 is annexed as  
Annexure-3 and a copy of the impugned order  
while: dt 30-5-2002 is enclosed as annexure-4

4.8 That the applicant states that the post of L.D.C. at KV-Digaru has been lying vacant since last three/four years and till date no one has been posted to it. Therefore there is no impediment on the part of the respondents to adjust the applicant against the said post considering her longstanding prayer. It may be pertinent to mention here that one of the

Archana Dey

4.7 That the applicant begs to state that Kendriya Vidyalaya Sangathan is an autonomous organization under the Government of India, Ministry of Human Resources and as such all welfare scheme of the Government of India regarding posting of husband and wife in the same station etc. are equally applicable to the employees of Kendriya Vidyalayas and for that matter the Kendriya Vidyalaya is bound to implement those welfare scheme for posting of husband and wife in the same station. In this connection, it is stated that the Government of India, Ministry of Personnel and Training had issued O.M. dated 12.6.1997 wherein it is provided, inter alia, that in cases where both husband and wife are working, they be invariably posted in a same station where the post exists in the appropriate level and especially when the children and the Government employee are below 10 years of age. In the instant case, the applicant is having a son aged about nine years. Be it stated that the husband of the applicant is working at Guwahati under the Government of Assam in the State Home Department and as such in the light of the OM dated 12.6.1997 she has acquired a valuable and legal right for retaining her in his present place of posting where her husband is presently serving. But the respondents have acted in total violation of the scheme issued by the government of India regarding transfer and posting and arbitrarily transferred her as stated above. On that score alone the impugned order of transfer and posting dated 20/21.3.2001 is liable to be set aside and quashed.

A copy of the Memorandum dated 12.6.97 and a copy of the impugned order dated 30.5.2002 are annexed as Annexure-3 & 4 respectively.

4.8 That the applicant states that the post of L.D.C. at KV Digaru has been lying vacant since last three/four years and till date no one has been posted to it. Therefore there is

Archana Dey

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no impediment on the part of the respondents to adjust the applicant against the said post considering her longstanding prayer. It may be pertinent to mention here that one of the juniors to the applicant namely Mr. P. Bhattacharjee has been adjusted at Maligaon Regional Office from KV, Narengi on consideration of her request. But it appears that the respondents have acted in total disregard to all her grievances made out to them through her representations and passed the impugned order in a mechanical manner and have meted out a discriminatory treatment to her. The impugned order of transfer is bad in law and the same is therefore liable to be set aside and quashed.

- 4.9 That the applicant states that she is the only person to look after her son who is studying at Class V in KV Khanapara and is in the midst of his academic session. In this view of the matter, if the applicant is to carry out the impugned order of transfer and posting dated 30.5.2002, it would cause immense hardship to her. It may also be stated here that the applicant has not been relieved of her duties till date and as such the Hon'ble Tribunal may be pleased to protect her interest by way of an appropriate interim order.
- 4.10 That this application is made bonafide and for the cause of justice.

**5. Grounds for relief(s) with legal provisions:**

- 5.1 For that, the impugned order of transfer and posting dated 30.5.2002 in so far it relates to the applicant is arbitrary, whimsical and therefore liable to be set aside.
- 5.2 For that, the applicant has acquired a valuable and legal rights in terms of the O.M. dated 12.6.1997 issued by the Government of India, Ministry of Personnel and Training for retaining her at Guwahati where her husband is working or a

Archana Dey

place nearby (Digaru) in as much as she is also having a male baby aged about nine years, namely Master Asmit Dey who is reading in Class V at KV Khanapara and is in the middle of his academic session.

- 5.3 For that, the circular dated 23/24.07.1996 has provided a clear guideline for adjustment of surplus employees in nearby places if not possible at the same station and in that view of the matter the applicant is entitled to be retained either at Guwahati or at Digaru or at any other nearby places.
- 5.4 For that, the junior to the applicant namely Mrs. P. Bhattacharjee, at Maligaon Regional Office from KV, Narengi but similar treatment has not been made out to the applicant without any justifiable reason.
- 5.5 For that, in view of the matter, the impugned order of transfer and posting in so far as the applicant is concerned is bad in law and as such the same is liable to be set aside.

**6. Details of remedies exhausted:**

That the applicant states that he has exhausted all the remedies available to her and there is no other alternative and efficacious remedy than to file this application.

**7. Matters not previously filed before or pending with any other Court:**

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

**8. Relief(s) sought for:**

Archana Dey

During pendency of this application, the applicant prays for the following relief (s): -

- 9.1 That the Hon'ble Tribunal be pleased to suspend operation of the impugned order of transfer and posting dated 30.5.2002 in so far as it relates to the applicant.
- 9.2 That the respondents be restrain from filling up the existing vacant post of L.D.C. at KV, Digaru till disposal of this application or the case of the applicant for her adjustment is being considered.

10. ....

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No. 76-574649 18-5-02 Dated .....
- ii) Issued from and payable at: G.P.O., Guwahati.

12. List of enclosures:

As given in the index.

Archana Dey

**VERIFICATION**

I, Smti Archana Dey, W/O Sri Dwijendra Kumar Dey, aged about 43 years, working as Lower Division Clerk, Kendriya Vidyalaya, Khanapara, Guwahati - 781022, do hereby verify that the statements made in Paragraph 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 3rd day of June, 2002.

Archana Dey

To

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Guwahati Region,  
Chhayaram Bhawan,  
Maligaon Chariali,  
Guwahati-781012.

Dated : 10th December, 2001.

Sub:- Prayer for the adjustment of surplus employee  
to the nearest vacant post regarding.

( Through the Principal, Kendriya Vidyalaya, Khanapara, Guwahati-22 )

Sir,

I have come to know that being the Senior most LDC of the Vidyalaya as well as of the Region, I shall be surplus from here vide KVS (HQ) staff sanction letter No.F.11-5/94-KVS (O & M) dated 29/11/2001. In this context, I have the honour to request your honour to adjust me as LDC at Kendriya Vidyalaya, Digaru, which is the nearest Kendriya Vidyalaya from my present place. The genuinity for my this request are given below for your kind consideration.

- (1). I am the Senior most LDC of Guwahati Station. I am a lady employee with a minor child with me and there is none except in the family to look after him.
- (2). My husband is an employee as an A.S.I. under the C.I.D. wing of the Director General of Police, Govt. of Assam, who will face hardship, if I am posted beyond K.V., Digaru.

I, therefore, request your honour to consider my prayer sympathetically and post me at K.V., Digaru as and when I am declared surplus from here and oblige.

Yours faithfully,

*Archana Dey*

(ARCHANA DEY),  
L.D.C.  
Kendriya Vidyalaya,  
Khanapara, GUWAHATI-22

copy to:-

1. Shri C.K.Halei, with a request to take up the matter with concerned authority.  
Leader of JCM  
A.I.K.V.T.A., K.V., Khanapara, Guwahati-22.

KENDRIYA VIDYALAYA KHANAPARA  
GUWAHATI-22

Ap. F/51 /KVG/Trans/2001-02/ 882

Dated : 10/12/2001

To

The Asstt. Commissioner,

Kendriya Vidyalaya Sangathan,

Guwahati Region, Maligaon Chariali,

Guwahati-12.

Ref.

F.11-5/94-KVS(O & M) dated 29/11/2001. (staff sanction letter)

Sub:-

Forwarding.

Sir,

The Application \*(attached herewith) of Mr. /Mrs. Arches  
Archana Dey, L.D.C. is recommended and forwarded

for your kind consideration and necessary action.

It is also certified that the above information given  
by the applicant is correct on verification by this office.

Thanking you,

Yours faithfully

\*Reg : Prayer for the adjustment of surplus  
employee to the nearest vacant post.

Indor

PRINCIPAL

Principal,

Kendriya Vidyalaya

Khanapara, Guwahati-22.

-0-0-0-

KENDRIYA VIDYALAYA KHANAPARA  
GUWAHATI-22

Ref. No. FA51 /KVG/Trans/2001-02/ 882

Dated : 10/12/2001

To

The Asstt. Commissioner,

Kendriya Vidyalaya Sangathan,

Guwahati Region, Maligaon Chariali,

Guwahati-12.

Ref.

F.11-5/94-KVS(O & M) dated 29/11/2001. (staff sanction letter)

Sub:-

Forwarding.

Sir,

The Application \*(attached herewith) of Mr./Mrs. ~~Archana~~ ~~Archana~~ ~~Bey, L.D.C.~~

~~is recommended and forwarded~~

for your kind consideration and necessary action.

It is also certified that the above information given by the applicant is correct on verification by this office.

Thanking you,

Yours faithfully

\*Reg : Prayer for the adjustment of surplus  
employee to the nearest vacant post.

Indra

PRINCIPAL

Principal,

Kendriya Vidyalaya

Khanapara, Guwahati-22.

-0-0-0-

Ref.: 160G/54/Trans/2001-02/1082

dt. 25/1/2002

To

Deputy Commissioner, (Admn),  
 Kendriya Vidyalaya Sangathan,  
 18, Institutional Area,  
 Sector Jodh Singh Maru,  
 New Delhi-110016

FAX

Dated: 25<sup>th</sup> January, 2002

(Through the Principal, Kendriya Vidyalaya, Khanapara, Guwahati-22)

Subject:- Prayer for the adjustment of surplus employee to the nearest vacant post  
 regarding:

Forwarded to  
 Principal, Kendriya  
 Vidyalaya, Guwahati  
 for  
 consideration  
 of  
 the  
 concerned  
 authority  
 for  
 adjustment  
 of  
 surplus  
 employee  
 to  
 the  
 nearest  
 vacant  
 post  
 regarding  
 my  
 transfer  
 to  
 Kendriya  
 Vidyalaya  
 Digaru.

Sir,

I have come to know that being the Senior most L.D.C of the station as well as of the region, I shall be surplus from here vide KVS(HQ) staff sanction letter No. F.11-594-KVS (O & M) dated 29/11/2001. In this context, I have the honour to request your honour to adjust me as L.D.C at Kendriya Vidyalaya, Digaru, which is nearest Kendriya Vidyalaya from my present place. The genuity for my this request are given below for your kind consideration.

(1) I am the senior most L.D.C of Guwahati Region as well as Guwahati Station. I am a lady employee with a minor child with me and there is none except me in the family to look after him.

(2) My husband is an employee as an A.S.I. under the C.I.D. wing of the Directorate of Police, Govt. of Assam, who will face hardship, if I am posted beyond K.V. Kendriya Vidyalaya, Digaru.

I, therefore, request your honour to consider my prayer sympathetically and post me to Kendriya Vidyalaya, Digaru as and when I am declared surplus from here and oblige.

Yours faithfully,

Archana Dey  
 (ARCHANA DEY), (L.D.C)  
 Kendriya Vidyalaya,  
 Khanapara, Guwahati-22

SPEEDY POST

KENDRIYA VIDYALAYA SANGATHAN

10, Institutional Area,  
Shaheed Jeet Singh Marg  
New Delhi-110016.

F.1-1/96-KVS(Batt-III)

Dated: 23-07-96.

The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office,

Sub:- Surplus adjustment 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 30-5-96 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 13-5-96 to 15-5-96. According to the decision in the Assistant Commissioners' meeting the yardstick to be adopted for adjustment of surplus teachers were as

- 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 bench of the particular category who had the longest etc. in the vidyalaya should move out on transfer.
2. 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 or the existing incumbents in the cadre.
3. Very genuine cases of inter regional transfers have been held back in view of the surplus position, as is 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 emphasised. concerted efforts by the Assistant Commissioners are necessary to wipe out the surplus position so that it does not continue to be a drain on our financial resources. Some time, no departure from the guidelines framed by the Board of Governors for request transfer is permissible at all.
4. A comparison of the surplus position and the intra regional transfer priority list shows that the position/surplus can be reduced by a proper mixture of surplus adjustment/intra transfer. It has therefore been decided that surplus

P.T.O.

9(A)

- 2 -

adjustment and transfers on request should be taken up simultaneously. The employees who have been rendered surplus may be identified in terms of the clarification given in para-1 above. Thereafter efforts may be made to adjust them against one of the vacancies existing at the station. This will be applicable to automatic as well as created surplus. Then the transfers on request may be taken up strictly according to the guidelines. The vacancies occurring on account of the transfers on request at a station where surplus exists may be utilised for the adjustment of surplus. Wherever it is not feasible to accommodate them within the station, transfer to a place nearby essentially in respect of automatic surplus and by option in respect of caused surplus may be resorted. All transfers of surplus should be made in Public Interest. No transfer in departure of the guidelines or out of turn should be done in the name of adjustment of surpluses.

4. It is again reiterated, like last year, that no transfer on request/posting on direct recruitment should be made to a station where there are surplus teachers in a particular category.

5. Separate communication will follow individually by name giving clearance for intra regional transfers of staff other than PGTs, to such regions from where confirmation relating to circulation of intra regional transfer computerised priority list has been received. The transfers on request within the region is expected to be done within the limits prescribed therein, both of numerical and time.

Yours faithfully,

T.N. Gourami  
(Dr. T.N. Gourami)  
Deputy Commissioner(Admn.)

16 - 5  
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Annexure-3

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

New Delhi, the 12<sup>th</sup> 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.

Archana Dey

-17-  
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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. 28034/7/86estt.(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.

Attended  
While  
pw

Archana Dey

KENDRIYA VIDYALAYA SANGATHAN  
REGIONAL OFFICE  
CHIYARAM BHAWAN : MALIGAON CHARJALI  
GUWAHATI : 12.

No.F.10-2/2001-KVS(GR)/8620 - 53

Dated : 30.05.2002

TRANSFER ORDER

Due to the fixation of Staff strength in Kendriya Vidyalayas for the year 2002-2003 the staff in excess of the sanctioned strength in certain Vidyalayas is required to be redeployed against the existing vacancies in other Kendriya Vidyalayas. Accordingly, the following non teaching staff are redeployed in the Kendriya Vidyalayas shown against their names in Public Interest with immediate effect.

S.No.	Name of the Non-teaching Staff	Designation	Transferred from KV	Transferred to KV
01.	Mac.B.F.Hazarika,	Asstt. Supdt.	CRPF Amerigang	No.2 Tezpur.
02.	P.K. Bharali,	L.D.C.	Borjhar	DRFL Bongaigaon
03.	R. Biswas,	L.D.C.	Happy Valley Laitkor Peak	
04.	A.C. Thakuria,	L.D.C.	Maligaon	Tura
05.	A.C. Malodes	L.D.C.	CRPF Amerigang	NEFA Barapani
06.	L. Dey	L.D.C.	No.1 Itanagar	NERIST. Nirjuli.
07.	D.R.Sharma,	L.D.C.	No.1 Tezpur	Tawang
08.	Archana Dey,	L.D.C.	Khanapara	No.2 Tezpur.

Copy to :-

( S. S. SEHRAWAT )  
ASSISTANT COMMISSIONER

1. Individual concerned with the direction to get himself/herself relieved immediately.
2. The Principal, KV, where non-teaching staff is presently working with the direction to relieve the concerned non-teaching staff immediately under intimation to this office. The incumbent is eligible to draw TA/DA as per KVS rules. In case non-teaching staff on leave/absentee/she should be relieved in absentia with immediate effect. On no account his/her relieving should be delayed. No pay and allowance should be drawn in respect of the transferred non-teaching staff with effect from the date he is relieved/deemed to have been relieved.
3. The principal, KV, where non-teaching staff has been posted on transfer with the direction to intimate the date of joining in respect of the non-teaching staff concerned to the undersigned immediately.
4. The Accounts-Cum-Inspecting Officer, KVS, RO, Guwahati.

*Acting  
Officer  
D.S.*

A.S. Acharyat  
ASSISTANT COMMISSIONER  
30/5/02

14  
SG  
F. Legal & Respondents  
through N.K. Majumdar  
Jhargram

FERMI

FERMI

FERMI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:

(CONSOLIDATED APPLICATION)

(An application under Section 13 of the Administrative  
Tribunal Act. 1985).

Title of the Case :- O.A. No. 178 /2003,

Sri Archana Dey... Applicant.

-Versus -

Union of India & Ors.. Respondents.

IN THE MATTER OF:-

Written statement filed  
by the Respondents.

- AND -

IN THE MATTER OF:-

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Guwahati Regional Office, Maligaon,

.... Respondent.

The humble written statement of the  
Respondent above named.

Contd..

- 2 -

MOST RESPECTFULLY SHEWETH: -

1. That the respondent petitioner states that before controverting the averments of the statements made in the appeal memo the respondent petitioner furnishes the following facts for perusal.

KVS is a registered Society under the Societies Registration Act.XXI of 1860 and fully financed by the Govt.of India with the objective (i) to meet the educational need of Children of transerable Central Govt. employees including defence personnel by providing a common pg- programme of education (ii) to develop vidyalaya as a model school in the context of national goal of Indian Education(iii) to initiate/ promote experimentation in the field of education in collaboration with other bodies like CBSE,NCERT,etc., and (iv) to promote national integration.

At present there are as many as 845 KVs situated all over India including two abroad . The KVS has devised its codes namely Education Code and Accounts Code for running the Vidyalayas. The recruitment of its teaching and non-teaching employees are made centrally and the teachers appointed will be liable for transfer anywhere in India under Article 49(K) of the Education Code.

It is also laid down that the staff strength will be determined and sanctioned by the Commissioner

- 3 -

on the basis of work load in accordance with norms which may be laid down in this behalf from time to time. Article 47 of Education Code in this regard is referred.

As such the fixation of staff strength is an annual exercise and the teachers found in excess to the sanctioned staff strength in a particular school are redeployed against clear available vacancy.

During academic session 2002-2003 in an annual exercise of staff strength undertaken by Sangathan, the staff in excess of sanctioned strength in certain Vidyalayas were required to be redeployed against the existing vacancies in other KVS. In accordance with the policy of surplus/excess staff redeployment, the employee in the cadre having longest stay in the particular vidyalaya is identified as excess/surplus to requirement in that Vidyalaya in the event of reduction in the number of posts. Ms. Archana Dey, LDC, KV Khanapara having longest stay in KV Khanapara, has been redeployed to KV No.2 Tezpur. It is the responsibility of the Sangathan to redeploy the staff found in excess to the sanctioned staff strength e in order to get the required services from them at a place where it is required for smooth functioning of the Vidyalaya.

contd..

- 4 -

2. That with regard to the statements made in paragraphs 4.1 and 4.2 the respondent petitioner submits that there are matter of record hence no comment is forwarded.

3. That with regard to the averment made in para by the petitioner it is submitted that declining of promotion by her due to her personal problems in no way helps her to be retained in the same KV according to her wishes. The services of the KVS Employees are liable to be transferred anywhere in India.

4. That with regard to the averment made by the petitioner it is submitted that redeployment of the petitioner have been considered as per the latest guidelines of the Kendriya Vidyalaya Sangathan in this regard, However, while considering such redeployment, efforts are made to consider if any choice tendered and it is feasible as per guidelines.

5. That with regards to the averment made by the petitioner it is submitted that all representations received in this office are given due consideration subject to administrative constraints but it is not possible to deploy all unless it is fundamental required to do so.

contd..

6. That with regards to the averments made by the petitioner it is submitted that her redeployment has been considered as per the existing KVS transfer guidelines and she has been adjusted against one of the existing vacancies within the region.

Further it is submitted that since, the number of vacancies were less than the number of surplus LDCs, no request transfer of LDCs has been considered.

7. That with reference to the averments made by the petitioner it is submitted that Kendriya vidyalaya Sangathan is an autonomous body having its own transfer guidelines duly approved by Board of Governors which is an apex body for framing the policies of KVS. However, the policies and instructions of Govt. of India regarding posting of husband and wife in a same station are also given due consideration subject to the administrative constraints.

Further it is submitted that as per Article 49(K) of Education Code which is a documentary text for governance of Kendriya Vidyalaya, the services of the employees of KVS are liable to be transferred to any KV of the Sangathan at any time on short notice on organisational reasons/administrative exigencies.

Also as held by the Apex Court that the Individual's personal inconveniences have got little importance over administrative exigencies and Public interest particularly in the matter of transfer/posting. The personal problems expressed by the applicant should not come in the way of service conditions and public interest.

8. That with regard to the averment made by the petitioner it is submitted that vacancy of LDC at KV Digaru has also been utilised for redeployment of surplus as such there is no vacancy of LDC at KV Digaru. Further it is submitted that the petitioner cannot claim similar treatment given to other counterpart because there are so many factors like report of controlling officer as well as work and conduct of the individual are also taken into account. As such, the action of the respondent/petitioner is as per the policies of the Sangathan.

9. That with regard to the averment made by the petitioner, it is submitted that as stated in preceding paras the personal problems of the petitioner should not come in the way of administrative matters like transfer and posting as she holds. All India Transfer liability.

10. That with regards to the statements made in paragraph 4.9(A), 4.9(B), 4.9(C) it is submitted that there facts are forced to draw the sympathy of the Court illegally by suppressing the facts or it is not the first transfer which the appellants is declining even if facts remain that she forgot her promotion more than a time. It is further submitted that the O.A. is pending the respondent as per direction of the learned Tribunal , dispose the representation filed by the appellant, just ahead of filing the appeal and while disposing the representation the authority give reasoning and there is no malafide.

11. That the Respondent petitioner submits that since disposal of the representation vide letter dated 23.7.2002, which was filed by the appellant just ahead of filing original application and as such, the Chairman disposed the representation with a direction to join the place of posting and as such, there is no malafide in complying with the order of the Commissioner by the vice Principal in relieving the appellant.

However when the pendency of appeal was notified the respondent allowed the appellant to join in the original post.

contd.

12. That with regard to the statements made in para 4.9(D) the respondent specifically submitted re that the/appears to be lack of information while filing the consolidated application for, a corrigendum was issued on 21.8.2002 correcting the place of posting and as such, there is no malafide.

13. That with regard to the grounds set forth in para 5 in support of the appeal are no good ground and in the facts and circumstances forwarded by the respondent controverting the averments made by the appellant and liable to be dismissed.

....

contd..

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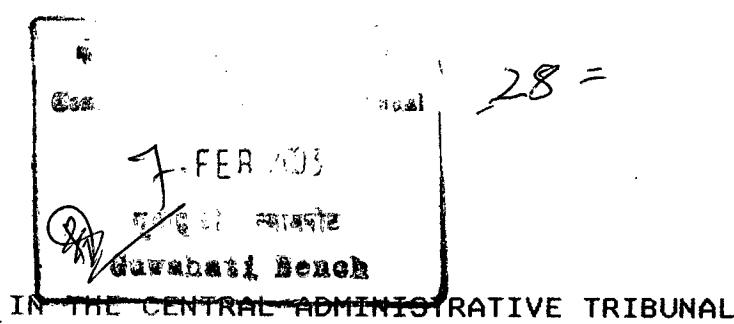
Dr

VERIFICATION

I, Shri Sunder Singh Sehrawat

Assistant Commissioner, Kendriya Vidyalaya Sangathan,  
Guwahati Regional Office, Maligaon, do hereby solemnly  
affirm and verify that the statements made in this  
petition and in paragraphs 2, 3, 4 — 8, 9 and 10  
are true to my knowledge and belief and rest are my  
humble submissions before this Hon'ble Tribunal. And  
I sign this verification on this 24<sup>th</sup> day of January,  
2003 at Guwahati.

Sunder Singh Sehrawat  
Signature.



GUWAHATI BENCH

In the matter of :

O.A. No. 178 of 2002

Smti Archana Dey

-vs-

Union of India & Ors.

And

In the matter of :

An additional Rejoinder submitted  
by the applicant .

The applicant above named Most humbly and  
Respectfully begs to state as under :

1. That it is stated that Kendriya Vidyalaya Sangathan, New Delhi issued an Office Memorandum vide letter No. F. No. 1-1/2002-2003/KVS (Estt.-II) dated 8.1.2003 whereby certain amendment is made in the transfer guidelines for teaching and non teaching staff for Kendriya Vidyalaya Sangathan. In the said amended clause it is specifically stated that a lady staff member on promotion may be posted in the same station but in a different Vidyalaya from which she has been promoted provided that she has not completed five

Filed by the applicant  
through and no costs are  
G. N. Chakravarty S.C.  
S. No. 100

years of service in the same station. It is further held in the said amended clause that if a lady teacher has completed five years of service in a same station, she will not be posted in the same station but to the nearest available vacancy outside the station. The aforesaid Office Memorandum supports the contentions of the applicant raised in the Original Application.

A copy of the Memorandum referred to above is annexed as **Annexure-A**.

2. That it is stated that during the pendency of this Original Application the applicant was posted on promotion at Agartala, however being a lady due to domestic problem she was compelled to surrender her promotion since the posting was given to a far of place from the present place of posting.

Under the facts and circumstances stated above the Original Application is deserves to be allowed with costs.

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VERIFICATION

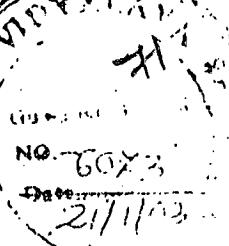
I, Smti Archana Dey, W/O Sri Dwijendra Kumar Dey, aged about 44 years, working as Lower Division Clerk, Kendriya Vidyalaya, Khanapara, Guwahati - 781022, do hereby verify that the statements made in Paragraph 1 to 3 in the Additional Rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 7th day of February, 2003.

*Archana Dey*

4- Annexure-A  
Kendriya Vidyalaya Sangathan  
18 Institutional Area  
Shaheed Jeet Singh Marg,  
New Delhi-110 016

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F.No. 1-1/2002-2003/KVS(Estt-II)

8<sup>th</sup> January, 2003

### OFFICE MEMORANDUM

**Sub :- Amendment in the transfer guidelines for teaching and non-teaching staff of Kendriya Vidyalaya Sangathan.**

The following clauses/sub clauses of Transfer Guidelines have been amended.  
These amended clause shall read as follows :-

#### Provision to Clause 2

#### Amended Clause

"Provided that transfers sought on account of death of spouse within a period of 2 years of death, medical grounds as per para 9 and employees who have less than 3 years to retire will be placed en bloc higher in the above sequence than the others listed in para 8 of these guidelines."

#### Clause 10 (2)

#### Amended Clause

"While transferring such teachers efforts will be made to accommodate lady teacher in the same Notional Zone either against clear vacancy or by displacing the male teacher having the longest stay in his present station (in terms of length of stay in the present station as notified in KVS letter No.1-1/2003-04/KVS(Estt-III) dated 14.8.2002) of the Notional Zone. Such displaced male teacher would be posted to the station outside the Notional Zone where the lady teacher would have otherwise gone on displacement. In case no male teacher is eligible for displacement out of the Notional Zone, the lady teacher would be posted out as per her displacement".

**Explanation :-** For the purpose of this clause five "Notional Zones" have been created comprising of Regions as follows :-

S.No.	Name of the Zone	Name of the regions contained in the zone
1.	Zone I	Chandigarh Dehradun Jammu
2.	Zone II	Delhi Jaipur Lucknow
3.	Zone III	Ahmedabad Bhopal Jabalpur Mumbai
4.	Zone IV	Guwahati Kolkata Patna Silchar
5.	Zone V	Bangalore Bhubaneswar Chennai Hyderabad

Contd.....2/-

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Clause 15  
Amended Clause

"Subject to availability of vacancies, lady staff members, on promotion, may be posted in the same station but in a different Vidyalaya from which she has been promoted provided that she has not completed 5 years of service in the same station. In case, the teacher has completed 5 years of service in the same station she will not be posted in the same station, but to the nearest available vacancy outside the station.

Subject to availability of vacancies, male staff members, on promotion, may be posted in the same region, but out of the station of their present posting".

The following sub clause has been added to the Transfer Guidelines. This new Sub clause shall be numbered as 11 (c) and will be read as follows :-

Addition - Clause 11 (c)

"Priority list 2 will be operated after adjustment of teachers declared excess to the requirement of the School against available vacancies. Adjustment of lady teachers going out of notional zone on displacement will be taken up thereafter as per clause 10 (2). Priority List 1 will be operated subsequently.

The following clause has been added to the Transfer Guidelines. This new clause shall be numbered as 12 (A) and will be read as follows :-

Addition - Clause 12 A

In cases where both husband and wife are employed in KVS, they will have the option to seek posting together at one station. In this situation the employees will not have the option of specifying a choice of station. Though posted at same station husband & wife will be posted in different schools. The posting would be made subject to the availability of vacancies and administrative exigencies.

These amendments shall come into force with immediate effect.

(D.S. BIST)  
Joint Commissioner (Administration)

**Distribution :**

1. All officers in KVS (HQ).
2. All Assistant Commissioners, Regional Offices with the instruction that the copy of this be circulated to all the Vidyalayas under their jurisdiction.
3. All Sections in KVS (HQ).
4. President/ General Secretary of recognized associations.
5. Guard File.

NO.F.Trans/Cir/KVS/G2/

Dated 23/1/03

Forwarded to the Principal of all Kendriya Vidyalayas of Guwahati Region a copy of KVS(Hqrs) Memorandum No.1-1/2002-2003/KVS(Esstt.II) dated 8-1-2003 for information and necessary action.

Asstt. Commissioner