

50/100  
**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. O.A. 82/2003

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SECTION OFFICER (Judl.)

Kalla  
16/11/17

( RULE - 4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ORDER SHEET

Original Application No. 82/03

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) Smt. Sonita Paul (Mazunda)

- Vs. -

Respondent (s) W.O.P. Tams

Advocate for the applicant (s) M. Chanda, G.N. Chakrabarty  
S. Chaudhury

Advocate for the respondent (s) Case.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in but not in time. Non-<u>Opposition</u> Petition is d/ not filed C.R. Rs. 5/- deposited in IPO/P/ No. 76607870 dated 4.4.03</p> <p><i>Ami</i> <i>22/6/03</i></p>	1.5.2003	<p>Heard Mr. M. Chanda, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records.</p> <p>List on 30.5.2003 for orders.</p> <p><i>Ami</i> <i>22/6/03</i></p>
<p>Steps taken alongwith 30.5.2003 envelope.</p> <p><i>Ami</i></p> <p>Notice prepared and sent to A/S for issuing the Respondent No. 1 to 4 by Legal A.D.</p> <p><i>615</i> DINo. 90715910 add. 6/5/03.</p> <p>Vocalatnam filed on behalf of the respondents NO. 2, 3 24.</p> <p><i>Ami</i> <i>22/6/03</i></p>	mb	<p>Await service report. Put up again on 13.6.2003 for orders.</p> <p><i>Ami</i></p> <p><i>Vice-Chairman</i></p>

13.6.2003 Mrs. R.S. Choudhury, learned Addl. C.G.S.C. for respondent Nos. 2 and 3 prayed for time for filing written statement. Prayer is allowed. List again on 18.7.2003 for orders.

No. written statement has been filed.

30  
14.7.03

Vice-Chairman

mb

18.7.2003 On the prayer of Mrs. R.S. Choudhury learned counsel for the respondents four weeks time is granted to the respondents to file written statement. List the case on 22.8.2003 for written statement.

No. written statement has been filed.

30  
21.8.03

Vice-Chairman

bb

22.8.2003 Heard Mr. G.N. Chakrabarty, learned counsel for the applicant. None appears for the respondents. List again on 26.9.2003 for written statement.

No. written statement has been filed.

30  
25.9.03

Vice-Chairman

29.10.03

WPs filed by the respondent Nos. 2, 3 & 4.

mb

26.9.03 List on 31.10.03 for filing of written statement.

Op:

Vice-Chairman

lm

31.10.2003 Written statement has been filed. The case may now be listed for hearing on 12.12.2003. Applicant may file its rejoinder, if any, within two weeks from today.

Rejoinder submitted by the applicant.

Op:

Vice-Chairman

bb

6.1.2004 On the plea of the learned counsel for the respondents the case is adjourned and listed on 29.1.2004 again for hearing.

The case is ready  
for hearing.

*Regd*  
17.2.04

bb

*I.C. Bhattacharya*  
Member (A)

19.2.2004 On the plea of counsel for the respondent the case is adjourned. List on 15.3.2004 for hearing.

*I.C. Bhattacharya*  
Member (A)

mb

15.3.2004 On the plea of counsel for the respondents the case is adjourned. List on 23.3.2004 for hearing.

*I.C. Bhattacharya*  
Member (A)

mb

23.3.2004 On the prayer of learned counsel for the applicant, the case is adjourned. List on 7.4.2004 for hearing.

*I.C. Bhattacharya*  
Member (A)

mb

7.4.2004 On the prayer made by Mrs. R.S. Chowdhury, learned counsel for the respondents, the case is adjourned and again listed on 28.4.2004 for hearing.

*I.C. Bhattacharya*  
Member (A)

bb

28.4.2004 On the plea of counsel for the applicant, list on 3.5.2004 for hearing.

*I.C. Bhattacharya*  
Member (A)

mb

4  
The case is ready  
for hearing.

20.05.2004 On the plea of counsel  
for the applicant, the case  
is adjourned. List on  
3.6.2004 for hearing.

BB  
8.6.04

KV Poddar  
Member (A)

mb  
9.6.2004 On the plea of learned  
counsel for the applicant, the  
case is adjourned. List on  
8.7.2004 for hearing.

6-8-04  
The case ready  
for hearing

KV Poddar  
Member (A)

mb

BB  
9.8.2004 On the plea of Mr. M. Chanda, learned  
counsel for the applicant, the case  
is adjourned for three weeks. List the  
case again for hearing on 3.9.2004.

2-9-04  
The case ready for  
hearing.

KV Poddar  
Member (A)

bb

3.9.04 There was a reference  
adjourned to 5.10.04.

22-11-04

The case ready  
for hearing

BB  
23.11.2004 Heard Mr. M. Chanda, learned counsel  
for the applicant and also Mr. G. Rahul,  
learned counsel for the respondents.

On the plea of learned counsel for  
the parties, the case is adjourned to  
take instructions from the applicant as  
well as from the respondents.

List on 21.1.2005 for hearing.

Case is ready for hearing.

6.2.05

KV Poddar  
Member (A)

mb

## Notes of the Registry | Date | Order of the Tribunal

09.02.2005

Present : The Hon'ble Sri M.K. Gupta,  
Judicial Member.List on 10.02.2005 for hearing  
before the Division Bench.

Member (J)

mb

10.2.05.

On the request of Mr.M.Chanda, learned  
counsel for the applicant case is  
adjourned to 14th February, 2005.K. Basu  
Member (A)

Member (J)

lm

14.02.2005

None appears. List on 16.2.2005.

Member (J)

mb

16.2.2005

Mr M. Chanda, learned counsel for  
the applicant states at the outset that  
he will not be pressing the claim for  
LTC as well as bonus as prayed in the  
O.A. and will restrict his claim to the  
arrears of salary from July 1998 to  
25.10.1999 as well as increments which  
became due from February 1999 onwards.Heard Mr. M. Chanda, learned  
counsel for the applicant and Mr G.  
Rahul, learned counsel for the  
respondents. Hearing concluded. Orders  
reserved.K. Basu  
Member (A)

Member (J)

nkm

Notes of the Registry Date Order of the Tribunal

12.04.2005

Judgment pronounced in open Court,  
kept in separate sheets.

The O.A. is disposed of in terms of  
the order. No costs.

*[Signature]*  
Member (A)

11.5.05  
Copy of the Judgment  
has been sent to the  
Office for laying the  
same to the appellant  
as well as to the L.A.D.R.  
for the Respondent.

bb

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.**

**ORIGINAL APPLICATIONS NO. 82 & 309/ 2003**

, THIS THE 13th DAY OF APRIL, 2005

SHRI MUKESH KUMAR GUPTA ... MEMBER (J)

SHRI K.V. PRAHLADAN ... MEMBER (A)

**OA 82/ 2003**

Smt. Sumita Paul (Mazumdar)  
W/o Shyama Prasad Paul  
Art Teacher, Jawahar Navodaya  
Vidyalaya, Juketsa P.O.,  
Pfutsero, District: Phek  
Nagaland – 797 107. ... Applicant

(By Advocate: Mr. M. Chanda)

Vs.

1. The Union of India  
Rep. by its Secretary  
Department of Education  
Ministry of Human Resource  
Development, New Delhi.
2. The Deputy Director  
Navodaya Vidyalaya Samiti  
Regional Office, Nongrim Hills  
Shillong.
3. The Principal  
Jawahar Navodaya Vidyalaya  
Kakraban, Udaipur  
South Tripura.
4. The Principal  
Jawahar Navodaya Vidyalaya  
Jukesta, P.O. Pfutsero  
District Phek, Nagaland. ... Respondents

(By Advocate, Mr. G. Rahul)



OA 309/ 2003

Shri Shyama Prasad Paul  
 S/o late Laxmi Paul  
 Art Teacher, Jawahar Navodaya  
 Vidyalaya, Mao, PO: Mao  
 Nagaland.

... Applicant

(By Advocate: Mr. M. Chanda)

Vs.

1. The Union of India  
 Rep. by its Secretary  
 Department of Education  
 Ministry of Human Resource  
 Development, New Delhi.
2. Navodaya Vidyalaya Samiti  
 Rep. by its Director  
 NVS, A-39 Kailash Colony  
 New Delhi – 48.
3. The Deputy Director  
 Navodaya Vidyalaya Samiti  
 Regional Office, Nongrim Hills  
 Shillong.
4. The Principal  
 Jawahar Navodaya Vidyalaya  
 MAO, PO: MAO  
 Nagaland.
5. The Principal  
 Jawahar Navodaya Vidyalaya  
 Ramchandraghat, West Tripura. ... Respondents

( By Advocate, Mr. G. Rahul)

**O R D E R**

**SHRI MUKESH KUMAR GUPTA, MEMBER (J)**

Since the issue raised in the aforesaid 2 OAs are grounded on common facts, they are being disposed of by the present common order.



In OA No. 82/ 2003, filed by Smt. Sumita Paul (Mazumdar), the reliefs prayed for are as follows:

- (1) That the respondents be directed to pay the applicant her arrear salaries with effect from July 1998 to 25.10.1999.
- (2) That the respondents be directed to give her the benefit of increments that were due in February 1999, February 2000, February 2001, February 2002 and February 2003.
- (3) That the respondents be directed to pay the applicant the bonus due from 1997 till date.
- (4) That the respondents be directed to pay the applicant the benefits of LTC due in the year 1998 and the benefits of SCA.
- (5) Costs of the application.
- (6) Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

While the reliefs prayed for by Shri Shyama Prasad Paul in OA 309/ 2003 are as follows:

- (1) That the respondents be directed to release the Annual increment of applicant which fell due in the month of August, 1999 and further be pleased to direct the respondents to refix the pay of the applicant taking into consideration the due increment and to pay the arrears from the due date, i.e. with effect from 1.8.99 with all consequential benefits.
- (2) That the respondents be directed to release the salary of the applicant for the period between 23<sup>rd</sup> October 1999 and 9<sup>th</sup> November 1999 and also to allow the applicant to avail the Leave Travel Concession benefit due in the year 1998.
- (3) That the respondents further be directed to pay bonus, Special Compensatory Allowance, for the year 1997-98.
- (4) That the respondents be directed to pay the applicant the benefit of LTC due in the year 1998 and the benefits of SCA.
- (5) Costs of the application.
- (6) Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.



The applicants are wife and husband respectively and hereinafter they would be referred as 'A' & 'B' for the sake of convenience.

2. The admitted facts of the case are as follows:

'B' was appointed as Art Teacher in the year 1989 and was posted at Jawahar Navodaya Vidyalaya (JNV), Chandel, Manipur. In the year 1991, he was transferred to JNV, Ramachandraghat, Khowai, West Tripura District. 'A' was appointed as an Art Teacher pursuant to Special Spouses Scheme, vide order dated 16.12.92 and posted at JNV, Kakraban, Udaipur, South Tripura. 'A' was transferred from the said school to JNV, Mahadevpur, Lohit District, Arunachal Pradesh vide order dated 16.3.1995. The said order was challenged by filing writ petition before the Gauhati High Court which was transferred to Agartala Bench, numbered as Civil Rule No. 269/ 1995. She also filed Civil Miscellaneous No. 291/ 1995. Vide order dated 8.6.1995, the operation of the said impugned order was stayed. Ultimately, the writ petition was disposed of vide judgement dated 22.7.98 by the learned Single Judge holding that there was no merit in the said petition. However, a direction was issued to respondents to dispose of her representation within a period of one month until such time the representation was disposed of, the interim order was to continue. A writ appeal was preferred against the aforesaid judgement, before the Division Bench of the High Court along with application for interim order, which were registered and numbered as Writ Appeal No. 73/ 1998 and Civil Miscellaneous No. 292/ 1998 respectively. Vide order dated 18.8.98, the writ appeal was admitted and the order of "status quo" was passed. In the meantime, 'A' was relieved by the concerned Principal on 14.8.1998. The said writ appeal was finally disposed of vide judgement and order dated 2.11.98 with the following observations:



“7. In the peculiar facts and circumstances of the case we dispose of the appeal with a direction that the competent authority will now consider and post either the husband of the appellant or the appellant to such place or places so that either of them can cover the distance between the respective place of posting with least inconvenience and within as short a time as possible. The aforesaid order will be passed by the respondents within a period of one month from the date of receipt of the certified copy of this judgement and order and till such orders are passed the appellant need not join at Mahadevpur, Lohit District, Arunachal Pradesh.”

Pursuant to the above said directions, the respondents passed order dated 10.12.98 transferring and posting 'A' at JNV, Upper Subansri, Arunachal Pradesh as her husband 'B' had already been posted at Lower Subansri of the same State. The said order also stated in specific that it was well known fact that both husband and wife being Art Teachers cannot expect their posting in the same Vidyalaya as there is/ was only one post in each Vidyalaya.

Being aggrieved by the aforesaid order dated 10.12.98, 'A' & 'B' instituted Writ Petition (Civil) No. 20/ 1999 before the Gauhati High Court (Agartala Bench). Vide order dated 20.1.1999, a notice was issued in the said Writ Petition and in the Civil Miscellaneous Application No. 25/ 1999, it was observed that if the order dated 10.12.98 had not been made effective, “the same shall remain in abeyance” till returnable date. Though the interim order was passed on 20.1.1999, but they reported for duty vide communication dated 20.3.1999. The interim order continued to remain in force even after the transfer of the said writ petition before this Bench in the year 1999. On transfer, the case was numbered as OA No. 123/ 1999 (T) and vide order dated 21.4.99, the interim order passed by the High Court was continued until further orders. The said OA No. 123/ 1999 was allowed vide order dated 25.4.2001 by quashing order dated 10.12.98 and direction was issued to respondents: “to reconsider the matter for posting the applicant as well as her husband in some convenience places in terms

of the policy guidelines and the observations made by the High Court in the aforesaid appeal".

In the meantime, 'A' adopted a female child of almost two months old and applied for maternity leave vide application dated 1<sup>st</sup> April 1998, addressed to the Principal, Jawahar Navodaya Vidyalaya, Kakraban, South Tripura, for a period of 28 days with effect from 2<sup>nd</sup> April 1998 to 29.4.98. The said application also stated that she proposed to avail 28 days of "entitled leave and necessary relevant documents will be submitted afterwards." She rejoined the school on 30.4.98 for one day and proceeded on summer vacation beginning from 1<sup>st</sup> May 1998 to 30<sup>th</sup> June, 1998. She reported for duty on 1<sup>st</sup> July 1998 and again applied for maternity leave from 2<sup>nd</sup> July 1998 to 10<sup>th</sup> October 1998 vide her application dated 2<sup>nd</sup> July 1998. According to respondents, her request was not acceded to by the Deputy Director, Navodaya Vidyalaya Samiti vide communication dated 27.11.98 stating that in terms of Rule 43 A of FR & SR Part III Central Civil Services Leave Rule 1972, an adoptive mother is entitled for leave due and admissible as per leave record in service book, for a period of one year or till such time the child is one year old whichever is less subject to certain conditions like she should produce adoption certificate from the competent authority and the leave would not be allowed in more than one spell. It was further stated that her absence from duty for the period from 2<sup>nd</sup> April 1998 to 29.4.98 be regularized sanctioning leave kind due subject to the condition of production of valid adoption certificate from the competent authority. It was further stated that her absence without prior permission from the Principal with effect from 7.7.96 was unauthorized. According to respondents, 'A' never reported for duty even on 11.10.98 after availing the leave applied for on 2<sup>nd</sup> July 98 and in fact remained absent from duty till 20.3.99.

3. The grievance of 'A' is that the respondents have not paid her salary and arrears with effect from July 1998 till 25.10.99. The further grievance is that the increments which fell due in February 1999 and subsequently till the year 2003 have also not been released and paid. Though she also sought direction to respondents to pay bonus as well as LTC besides the benefit of Special Compensatory Allowance, but the said prayers were not pressed specifically as recorded by this Tribunal vide order dated 16.2.2005. In other words, the relief claimed and being considered in the present OAs are limited to the extent of arrears of pay for the aforesaid period as well as annual increments as noticed hereinabove.

Similarly, the grievance of 'B' is that he is entitled to salary as well as annual increments & also confined his claim to the annual increments which fell due to him in the month of August 1999 and consequential benefits besides the salary for the period 23.10.99 till 9.11.99. The other portion of the reliefs as extracted hereinabove, namely, LTC, Special Compensatory Allowance, etc. was given up as recorded vide order dated 16.2.2005.

4. We have heard learned counsel for the parties at length and perused the pleadings carefully.

As far as the claim of 'B' for grant of salary for the period in between 23.10.99 to 9.11.99, i.e. 18 days is concerned, we may note that the respondents in rely para 8, with reference to OA para 4.10 have specifically stated that the salary of the applicant "for the period 23.10.1999 to 9.11.1999 has already been paid to him vide pay bill for the month of November, 1999 which includes Pay, Dearness Allowance (D.A.), Special Compensatory Allowance (S.C.A.) etc., Bonus for the year 1997-98 has been paid to him vide pay bill for the month of

*JPS*

October, 1998." As such, the only grievance survives for grant of annual increment which fell due to him in August 1999. To this aspect, the respondents in the aforesaid reply para have further stated that: "the increment of the applicant for August 1999 was released w.e.f. 1.8.2000 due to the reason that although the applicant was relieved w.e.f. 22.10.1998 on his transfer to Jawahar Navodaya Vidyalaya, Lower Subansiri, however, he did not comply with the order and failed to report at Jawahar Navodaya Vidyalaya, Lower Subansiri and remained absent till 14.11.1999." It was further contended by the respondents that 'B' was absent from duty without any reasons and did not apply for any leave for his period of absence. Since he had not joined JNV, Lower Subansiri till 14.11.1999, his absence was treated as unauthorized as per order dated 30.3.1999. As there had been some ambiguity about the facts in chronological order in order to have clarity, we decided to peruse the records of earlier litigation, i.e. writ petition filed before the High Court being No. 20/ 1999 and transferred to this Tribunal and registered as OA 123/ 1999 (T). On perusal and consideration of the same, we find that 'B', was posted to Lower Subansiri, Arunachal Pradesh and was relieved from JNV, Ramchandraghat, West Tripura with effect from 22.10.98. These facts were neither disclosed nor challenged in the aforesaid proceedings. He merely joined in the said proceedings as a co-petitioner/ co-applicant. The factum of his relieving was noticed from the perusal of the order dated 10.12.98, posting 'A' at JNV, Upper Subansiri. As such, we are of the view that 'B' has not approached this Tribunal, in the present proceedings with clean hands. It is well settled law that what cannot be done directly, cannot be done indirectly. The facts remain that 'B' neither challenged his transfer/ posting order whereby he was posted at Lower Subansiri nor his relieving with effect from 22.10.98. Moreover, the order dated 30.3.99 treating his absence as unauthorized also

remained unchallenged. Merely because his wife's transfer and posting order dated 10.12.98 was quashed and set aside by this Tribunal on 25.4.2001, or the applicants filed contempt petition alleging non-compliance of interim orders dated 20.1.99 and 21.4.99, passed by High Court as well as this Tribunal respectively, in the aforesaid proceedings, would not create a right upon 'B' to claim of relief, particularly when the said posting and transfer order had remained unchallenged.

Since he remained absent unauthorisedly for the aforesaid period i.e. 22.10.98 to 14.11.99, he is not entitled to any increment for the said period. However, the SCA arrears amounting to Rs.5516/- have already been paid to him vide pay bill for November 1999. No rejoinder has been filed by 'B' to the aforesaid aspect. Accordingly, we do not find any merits in his claim.

5. As far as the disputes regarding arrears of salary from July 98 to 25.10.99 as well as increment which fell due in February, 1999 onwards in respect of 'A' are concerned, unless and until her absence is regularized by passing a specific order of leave kind due and admissible, neither she would be entitled to arrears of pay and allowance nor the increments which are necessary depending on the regularisation of such period. As we have already noticed that she was directed to produce valid adoption certificate from competent authority and other aspects were stated vide communication dated 27.11.98 & as the respondents in their reply specifically stated in para 5 (viii) if she "applies for the leave kind due and admissible for '**Foster Maternity Leave**' to the competent authority alongwith all the requisite certificates, the same shall be looked into and after calculating her date of increments and regularizing her services for the period 1998-99, the

same shall be released to her.", we do not wish to record any findings on her claim at this stage.

6. In view of the above specific stand and the understanding of the respondents, we deem it fit to dispose of her claim with a direction to respondents to abide by the same undertaking and consider the treatment of period in question as leave due or otherwise, if she applies for the leave kind due and produce the requisite certificates within a reasonable period and thereafter regulate the same in accordance with rules and law on the said subject by passing a reasoned and speaking order within a period of three months from the date of receipt of such information.

7. In the light of the discussion made hereinabove, our conclusions are as follows:

- (a) OA 82/ 2003 is disposed of with a direction as noticed in paragraph 5 & 6.
- (b) OA No. 309/ 203 is dismissed without any order as to costs.

  
(K.V. PRAHLADAN)  
MEMBER (A)

  
(MUKESH KUMAR GUPTA)  
MEMBER (J)

18

नियमित अधिकारी
CENTRAL ADMINISTRATIVE TRIBUNAL
12 <sup>th</sup> APR 2003
गুৱাহাটী বিহু
Guwahati Bench
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Filed by applicant  
through Advocate  
Swagit Choudhury  
17/4/03

D.A. No. 82 /2003

Smti Sumita Paul (Mazumdar)

-VS-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

16.12.1992 The applicant was initially appointed as Art Teacher in pursuance of spouse scheme. Be it mentioned that husband of the applicant is also an Art Teacher and the applicant got selected in response of an Special Recruitment Drive for spouse. The condition of service being that she would be accommodated at the same station along with her husband as far as possible.

16.3.1995 The applicant was transferred to JNV, Mahadevpur, Lohit district, in Arunachal Pradesh. Against the said order the applicant preferred a Writ Petition before the Gauhati High Court which was numbered as Civil Rule No. 269 of 1995.

8.6.1995      The Hon'ble High Court passed an order staying the operation of the order of transfer.

22.7.1998      The Learned Single Judge of the Gauhati High Court disposed of the said Civil Rule holding that the application had no merit. However, by the said order, the respondents were directed to consider the representation filed by the applicant within a period of one month from the date of receipt of the said order. It was also directed the applicant might not be disturbed from her place of posting until the representation filed by her is disposed of.

16.8.1998      The applicant preferred a Writ Appeal being W.A. No. 73 of 1998 against the judgment and order of 22.7.1998. The division bench of the High Court passed an order staying the operation of the judgment and order appealed against.

18.8.1998      It is stated that the applicant was serving as Art Teacher of JNV, Kakaraban in the state of Tripura.

2.11.1998      The Writ Appeal was finally disposed of setting aside the judgment and order passed by the learned Single Judge in Civil Rule No. 269 of 1995. The Hon'ble Division Bench directed the respondents to consider posting of the applicant in the same station, in

which her husband was working subject to the availability of vacancies. It was also directed by the Hon'ble Division Bench to consider posting of the applicant or the husband of the applicant as the case may be in such place or places so that either of them could cover the distance between the respective places of posting with least inconvenience and within as short time as possible. The respondents were also directed to pass necessary consequential orders in this regard within a period of one month from the date of receipt of the order.

10.12.1998

The applicant was transferred to Upper Subasiri, Arunachal Pradesh. Being aggrieved by the said order, the applicant again approached the Hon'ble High Court by filing a Writ Petition being W.P.(C) No. 20 of 1999 challenging the said order.

20.1.1999

The High Court passed an order keeping the said order of transfer in abeyance and thus the applicant continued at her earlier place of posting.

17.3.1999

The said Writ petition was transferred to this Hon'ble Tribunal by the High Court. The High Court ordered that the interim order would continue till consideration of the matter afresh by the Tribunal.

21.4.1999 This Hon'ble Tribunal admitted the application registered under O.A. No. 123 of 1999 and ordered that the interim order passed by the High Court would continue until further order.

26.10.1999 The respondents allowed the applicant to join.

22.3.2000 The salaries and other allowances of the applicant w.e.f. July 1998 to 25.10.1999 remained unpaid to her. The applicant also did not get her due bonus and the L.T.C. benefits for the year 1998. She also did not get her increments w.e.f. February, 1999 2003 to February, 2003. Thereafter the applicant submitted detailed representation but the respondents did not pay any heed to it.

25.1.2001 The applicant again submitted a representation to the respondents No.2 demanding here dues which could not fetch any respite to her. It may be stated that due to such arbitrary and whimsical act of the respondents the applicant has been suffering financial loss each and every month.

PRAYER

## PRAYER

8.1 That the respondents be directed to pay the applicant her arrear salaries with effect from July 1998 to 25.10.1999. ✓

8.2 That the respondents be directed to give her the benefit of increments that were due on February 1999, February 2000, February 2001, February 2003 and February 2003. ✓

8.3 That the respondents be directed to pay the applicant the bonus due from 1997 till date. X

8.4 That the respondents be directed to pay the applicant the benefits of LTC due in the year 1998 and the benefits of SCA. X

8.5 Costs of the application.

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

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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. 82 /2003

Smt. Sumita Paul (Mazumdar): Applicant

- Versus -

Union of India & Others: Respondents.

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03.	1	Copy of representation dated 22.3.2000	- 14 -
04.	2	Copy of letter dated 28.3.2000	- 15 -
05.	3.	Copy of representation dated 25.1.2001	16-17.

Filed by

Date Advocate

Sumita Paul (Mazumdar)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 82 /2003

BETWEEN

Smti Sumita Paul (Mazumdar)  
Wife of Sri Shyama Prasad Paul  
Art Teacher, Jawahar Navodaya Vidyalaya,  
JUKETSA P.O. PFUTSERO, District Phek,  
Nagaland,  
PIN- 797107.

...Applicant

-AND-

1. The Union of India,  
Represented by the Secretary to the  
Department of Education,  
Ministry of Human Resource Development.  
New Delhi.
2. The Deputy Director,  
Navodaya Vidyalaya Samiti,  
Regional Office, Nongrim Hills, Shillong.
3. The Principal, Jawahar Navodaya Vidyalaya,  
Kakraban, Udaipur, South Tripura.

Sumita Paul (Majumder)

4. The Principal,

Jawahar Navodalaya Vidyalaya

Jukesta, P.O. Pfutsero

District Phek,

Nagaland

PIN-797107

... Respondents

#### DETAILS OF THE APPLICATION

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

This application is made against the action of the respondents in not paying the applicant her due arrear Salary, Annual increments with effect from 1999 to February 2003, Bonus, Leave Travel Concession (for short, LTC) benefits and Special Compensatory Allowance (for short, SCA) with effect from July 1998 and other subsequent dates.

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.

Sumita Paul (Mazumder)

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. The applicant presently working at J.N.V., Juketsa, Nagaland.

4.2 That the applicant was initially appointed as Art Teacher on 16.12.1992 and since her appointment, she has been serving as such being under the Administrative Control of the respondent no. 3. Be it mentioned that the husband of the applicant is also an Art Teacher and it was in pursuance of a scheme namely, Spouse Scheme that the applicant was appointed vide order-dated 16.12.1992. As the Navodaya Vidyalaya Samiti (for short, NVS) runs co-educational residential school, it was considered necessary in the interest of the organisation to employ couple as far as possible. Thus, a Special Recruitment Drive for Spouse was undertaken in response to which the applicant applied and got selected. The condition of service being that she would be accommodated at the same station along with her husband as far as possible.

4.3 That on 16.3.1995, the applicant was transferred to JNV, Mahadevpur, Lohit district, in Arunachal Pradesh. Against the said order the applicant preferred a Writ Petition before the Gauhati High Court which was numbered as Civil Rule No. 269 of 1995. The Hon'ble

*Sumita Paul (Majumder)*

High Court, on 8.6.1995, passed an order staying operation of the aforesaid order. Learned Single Judge of the Court finally disposed of the said Civil Rule on 22.7.1998 holding that the application had no merit. However, by the said order, the respondents were directed to consider the representation filed by the applicant within a period of one month from the date of receipt of the said order. It was also directed by the said judgment that till the representation filed by the applicant, is disposed of she might not be disturbed from her place of posting. It may be stated herein that by virtue of the interim order dated 8.6.1995, the applicant was continuing in her post.

4.4 That against the said judgment and order dated 22.7.1998 passed in Civil Rule No. 269 of 1995, the applicant preferred a Writ Appeal being W.A. No. 73 of 1998 whereupon the Division Bench of the High Court passed an order on 16.8.1998 staying operation of the judgment and order appealed against. It is stated that on 18.8.1998 the applicant was serving as Art Teacher at JNV, Kakraban, in the State of Tripura.

4.5 That in view of the order of status quo passed by the Division Bench in the aforesaid Writ Appeal the applicant continued in her place of posting. The said Writ Appeal was finally disposed of on 2.11.1998 setting aside the judgment and order passed by the learned Single Judge in Civil Rule No. 269 of 1995. It

*Sumita Paul (Majumder)*

was held by the Division Bench that the applicant was appointed pursuant to the scheme for appointment of spouse and according to that scheme she was required to be posted in the same station in which her husband was working subject to the availability of vacancies. It was also held that in case the authority found that there was no availability of vacancies in the place where her husband was posted, the authority had to post the applicant in such adjoining place which is of short distance. The Hon'ble Division Bench thus, directed the respondents to consider posting of the applicant or the husband of the applicant as the case may be in such place or places so that either of them could cover the distance between the respective places posting with least inconvenience and within as short time as possible. The respondents were also directed to pass necessary consequential orders in this regard within a period of one month from the date of receipt of a certified copy of the judgment and order passed in W.A. No. 73 of 1998. It was also made clear that till such orders were passed by the respondent authority the applicant need not undertake the transfer as ordered.

4.6 That thereafter vide order dated 10.12.1998, the applicant was transferred to Upper Subansiri, Arunachal Pradesh while her husband was posted at Lower Subansiri in the same State. Being aggrieved by the said order, the applicant again approached the Hon'ble High Court by way of filing a Writ Petition being W.P.(C) No. 20

Sumita Paul (Majumder)

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of 1999 challenging the said order on the ground that it was against the spirit/direction of the Hon'ble High Court passed in Writ Appeal No. 73 of 1998 in as much as the distance between the JNV, Upper Subansiri and JNV, Lower Subansiri is about 300 kilometers, and it takes around 15 hours journey to cover the distance between the two places.

4.7 That on 20.1.1999, the High Court passed an order keeping the said order of transfer in abeyance and thus the applicant continued at her earlier place of posting. In the meantime, on 17.3.1999 the said Writ Petition was transferred to this Hon'ble Tribunal by the High Court. The High Court however, ordered that the interim order would continue till consideration of the matter afresh by the Tribunal.

4.8 That on 21.4.1999, this Hon'ble Tribunal admitted the application registered under O.A. No. 123 of 1999 and ordered that the interim order passed by the High Court would continue until further orders. In such a situation, the applicant communicated the said order passed by the Tribunal to the respondents and thus continued in her earlier place of posting. The respondents allowed the applicant to join on 26.10.1999.

4.9 That in the aforesaid process, the salaries and other allowances of the applicant with effect from July, 1998 to 25.10.1999 remained unpaid to her. Besides these,

Sumita Paul (Majumder)

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the respondents also did not pay her the due bonus and the L.T.C. benefits of the year 1998 and did not regularise her yearly increments. It may be mentioned that her increments were due on February 1999, February 2000, February 2001, February, 2002 and February, 2003 respectively. Thus, after joining to her post, the applicant submitted her claim for payment of her arrear salaries and other allowances like Leave Travel Concession, Special Compensatory Allowance, yearly increment, and prayed for regularisation of her Contributory Provident Fund/GSLIS.

4.10 That even after submission of a detailed representation on 22.3.2000, the respondents did not pay any heed to it and did not release her dues as claimed. Situated thus, the applicant ~~against~~ submitted a representation on 25.1.2001 to the respondent no.2 demanding her dues, which could not fetch any respite to her. Moreover, the respondents also did not regularise her increments, which were due since 1999.

Copy of representation dated 22.3.2000 is annexed as **Annexure-1**.

4.11 That your applicant begs to state that after submission of representation dated 22.03.2000 the then Principal i.e. respondent No.3 forwarded the same to the Respondent No.2 for passing appropriate order vide letter No. F. 31-1/Audit/JNV/STR/99-2000/1638 dated 28.3.2000 but to no result. The applicant being highly disappointed submitted another representation on

Sumita Paul (Majinder)

25.1.2001 to the respondent No.2 through proper channel but in spite of the same the respondent no.2 did not take any action, as a result the applicant has been suffering financial loss each and every month, more particularly due to stoppage of Annual increments since February 1999 to till February 2003. Thereby, in the meantime 5 (five) Annual increments have already been withheld in respect of the applicant by the respondents in a most arbitrary and unfair manner, although the applicant has attained eligibility for grant of those five increments as per law. Be it stated that the applicant was subsequently transferred and posted to J.N.V. Juketsa, Nagaland.

Copies of letter dated 28.3.2000 and representation dated 25.1.2001 are annexed as Annexure 2 and 3 respectively.

4.12 That the respondents are acting arbitrarily and whimsically in not paying the applicant her dues. The applicant has approached the respondents by way of representation but to no avail. She has therefore no alternative or efficacious remedy than to approach this Hon'ble Tribunal for protection of her rights and interests. Due to non payment of salaries cause of action arises each and every month since February 1999 to till date.

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

Sumita Paul (Majumder)

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

5.1 For that, the action of the respondents in not paying the applicant her dues, Annual increments since February 1999 to February 2003, is arbitrary, unfair and unreasonable and thus liable to be declared illegal.

5.2 For that, the applicant continued to work in her place of posting by virtue of the orders passed by the Hon'ble High Court as well as this Hon'ble Tribunal and as such became entitled to salaries, Annual increments, and other allowances as admissible under the rules.

5.3 For that, the applicant has earned the salaries, Annual increments and other benefits and allowances in lieu of her service, which cannot be taken away by the respondents in such a manner without affording any opportunity to the applicant as, has been done in the instant case.

5.4 For that, the action of the respondents cuts at the throat of Article 14 and 21 of the Constitution of India and as such the same liable to be declared illegal.

5.5 For that, by their impugned action the respondents have deprived the applicant of her legitimate dues which cannot be allowed to sustain.

Sumita Paul (Majumder)

5.6 For that, in any view of the matter, the action of the respondents are unreasonable and unjustified and liable to be declared illegal.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him 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.

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):

Sumit Paul (Majumdar)

- 8.1 That the respondents be directed to pay the applicant her arrear salaries with effect from July 1998 to 25.10.1999.
- 8.2 That the respondents be directed to give her the benefit of increments that were due on February 1999, February 2000, February 2001, February 2002 and February 2003.
- 8.3 That the respondents be directed to pay the applicant the bonus due from 1997 till date.
- 8.4 That the respondents be directed to pay the applicant the benefits of LTC due in the year 1998 and the benefits of SCA.
- 8.5 Costs of the application.
- 8.6 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

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

- 9.1 Hon'ble Tribunal be pleased to make an observation that pendency of this application shall not be a bar to the respondents to extend the reliefs to the applicant as prayed for in this application.

10. ....

This application is filed through Advocates.

Sumita Paul (Majumder)

11. Particulars of the I.P.O.

- i) I. P. O. No. : 7G 607890 .
- ii) Date of Issue : 4.4.03 .
- iii) Issued from : G.P.O., Guwahati .
- iv) Payable at : G.P.O., Guwahti .

12. List of enclosures.

As given in the index.

Sumita Paul (Majumder)

VERIFICATION

I, Smti Sumita Paul (Mazumdar), Wife of Sri Shyama Prasad Paul, aged about 41 years, Art Teacher, Jawahar Navodaya Vidyalaya, JUKETSA P.O. PEUTSERO, District Phek, Nagaland, 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 17<sup>th</sup> day of April, 2003.

Sumita Paul (Majumder)

## Annexure-1

To

The Deputy Director,  
Navodaya Vidyalaya Samiti  
Shillong.

Sub : Payment of arrears/due salary, SCA, Bonus, L.T.C.  
regularization of CPF & GSLIS deduction and  
increment regarding.

(Through the Principal JNV South Tripura,  
Kakraban) advance copy sent.

Respected Sir,

With due respect and the reference to the subject cited above I have the honour to say that I was not allowed to resume duty though stay order was there, after that I was recalled vide your letter No. F. 23-2/99-NVS(SHR)/4051, dated the 12/13th October 1999 to resume duty in the month of October, 1999 as per said stay order passed by the Hon'ble Guwahati High Court Agartala Bench as well as the Hon'ble C.A.T. Guwahati, the Principal already represented the matter before you.

Therefore, I pray for release of my arrear salary, SCA, Bonus, L.T.C., regularization of CPF & GSLIS deduction and also my yearly increment which was due on February 1999 may please be regularized.

For this act of your kindness I shall be remain ever grateful to you.

Thanking you with sincere regards,

Yours faithfully,

Dated 22.03.2000

Sd/- Sumita Paul  
(Mrs. Sumita Paul)  
Art Teacher  
J.N.V. South Tripura,  
Kakraban

Attested  
Sewajit Choudhury  
Advocate  
17/9/09

Annexure-II

2e

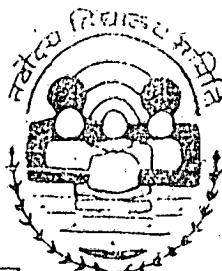
of

जवाहर नवोदय विद्यालय  
(मनव समाधन विकाश मंत्रालय  
शाक्ति विभाग का एक स्वायत्त संस्थान)

भारत सरकार  
मानकराबन, उदयपुर, (द) त्रिपुरा - 322204

जवाहर नवोदय विद्यालय, काकड़ाबन, भजन दह

उदयपुर, (द) त्रिपुरा, पिन : ७९९१०५



JAWAHAR NAVODAYA VIDYALAYA  
Ministry of Human Resource Development

(Dept. of Education)

Government of India

Kakrabali, Udaipur - 799105

South Tripura

Hello : 65202 (Off)

65260 (Resi) STD CODE : 03821

Fax : 03821-22347

Date 28-03-2000.

Ref. No. F.31-1/Audit/JNV/STR/99-2000/ 1638

To,

The Deputy Director,  
Navodaya Vidyalaya Samiti,  
Regional Office, Shillong.

Sub:

Arrear payment of Mrs. Sumita Paul, (Art Teacher) ...  
Regarding.

Ref:

- 1) Her application dated-22-03-2000.
- 2) This office letter No.F.31-1/JNV/STR/99-2000/  
1083-85, Dated-07-12-99 regarding Bonus.
- 3) This office letter No.F.31-1/JNV/STR/99-2000/  
1087-88, Dated-08-12-99 regarding L.T.C.

Sir,

Please find herewith a representation from  
Mrs. Sumita Paul, (Art teacher) of this vidyalaya in connection with  
her payment of arrears/due salary, SCA, Bonus, LTC, regularisation  
of CPF & CSLIS deduction and increment. Smt. Paul has resume her  
duties on 26-10-99 as per order of Regional Office, Shillong, vide-  
letter No.F.23-2/99-NVS(SHR)/4051, Dated-12th Oct '99. If the above

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application is considered, the necessary order may please be passed  
accordingly.

This is for favour of your information and  
taking action please.

Thanking you.

Yours Faithfully.

( S.N.Biswas )  
Principal.

Copy to Mrs. Sumita Paul, (Art teacher) in connection of her repr-  
esentation dated- 22-03-2000.

( S.N.Biswas )  
Principal.

Attested  
Swajit Chandra  
Advocate  
17/4/04

\$\$\$\$\$\$\$\$

লিখাপড়া করে যে, সর্বসুযথে থাকে সে।

মা যদি হয় সাক্ষর, সন্তোন হয় না নির্বাচন।

TO

The Deputy Director  
 Navodaya Vidyalaya Samiti  
 Shillong Region  
 Shillong.

Sub:- Payment of arrears and regularisation of Increment, C.P.F and Group Insurance.

Ref:- a) My representation dated 22/03/2000.

b) For: warded by the Principal vide letter No.F.31-1/Audit/JNV/STR/99-2000/I638 dated 28/03/2000.

THROUGH THE PRINCIPAL JNV SOUTH TRIPURA, KAKRABAN. (Advance copy sent)

Respected Sir

With reference to the above mention Subject I am submitting the following facts before you for your kind perusal and necessary action.

I) That on 14/08/98 Principal JNV SOUTH TRIPURA, Kakraban relieved me through Messenger for JNV MAHADEVPUR, ARUNACHAL PRADESH, when I was on foster maternity leave w.e.f. July '98.

2) On 02/11/98 the Honourable Division Bench passed its Judgement and order against my appeal 'that', "the competent authority will now consider and post either the wife husband or the appellant or the appellant to such place or places so that either of them can cover the distance between the respective place of posting with least inconvenience and within a short a time as possible" and also ordered that "till such orders are passed the appellant need not to join at Mahadevpur, Lohit District, Arunachal Pradesh".

On 02/11/98 when the Honourable Division Bench passed the order 'need not to join at Mahadevpur' then and there the relieving order dated 14/08/98 for Mahadevpur issued by the Principal JNV South Tripura, Kakraban has lost the merit.

3) On 10/12/98 the Deputy Director, Shillong issued order vide No.1-12/2/NVS(SHR)Admin/7308 to join at JNV Upper Suban Siri (JNV Lopabiring) and withdraw the earlier transfer order for Mahadevpur. There was no following order for Upper Suban Siri.

Further we appeal to the Honourable High Court.

4) On 20/01/99 the Honourable High Court was pleased to kept in abeyance the order dated 10/12/98 on condition that if the same has not been made effective till 20/01/99. The order dated 20/01/99 passed by the Honourable High Court was renewed time to time.

In pursuance of the Honourable High Court order dated 07/03/99 the case was transferred before Honourable Tribunal.

Contd/...2

Attested  
 Savajit Choudhury  
 Advocate  
 17/4/09

Page.2

5) On 21/04/99 the Honourable Tribunal again passed the order that the Interim order of stay passed by the Honourable High Court will continue until further order through M.P.NO 107/99 (OA NO.123/99).

After that also I was not allowed to resume my duty.

On 26/10/99 against the same stay order passed by the Honourable High Court as well as the Honourable Tribunal I was recalled to resume duty to avoid contempt of Court. My salary and other allowances being unpaid from the month of July'98 to 25/10/99.

Therefore in the light of above mentioned facts on 22/03/2000 I have submitted my representation claiming due Salary, S.C.A, Bonus, L.T.C.98 all arrears and for regularisation of yearly Increment. Already my two Increments are due viz. Feb'99 and Feb'2000 and third Increment will be due on Feb'2001. Now I am working against the fixed Basic only and my Juniors are getting more.

On 22/03/2000 I have submitted my representation claiming all dues but 10 months passed, I did not get any response from your end. So that, through this representation again I am requesting your Honour to release my arrear, due salary, SCA Bonus, LTC etc and regularies my Increments, CPF and Group Insurance also.

Thanking you with sincere regards

Yours faithfully

*Sumita Paul*

(Mrs. SUMITA PAUL)

Art Teacher

JW South Tripura

Kakraban.

Date: 25/01/2001

Ends - 02 nos

- 1) My representation dated :- 22/03/2000
- 2) forwarded by the Principal JWW South Tripura. Kakraban

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

*29*  
Tried By: John  
The Respondents  
MURDOUGH: John  
Mrs. R. S. CHOWDHURY  
Advocate  
29/10/03

IN THE MATTER OF:

O.A. No. 82/2003

Smt. Sumita Paul (Mazumdar)

... APPLICANT.

- Versus -

Union of India & Ors.

... RESPONDENTS.

-AND-

IN THE MATTER OF:

Written statement filed on behalf of the

Respondent Nos. 2, 3 and 4.

I, Sri Debananda Hazarika, S/O late Dambarudhar Hazarika aged about 52 years, presently serving as Deputy Director, N.V.S. Shillong, do hereby solemnly affirm and state as follows: -

1. That I have been impleaded as Respondent No.2 in the instant Original Application and as such I am fully conversant with the facts and circumstances of the case. A copy of the Application has been duly served upon me and I have gone through the same and understood the contents thereof.
2. That all the averments and submissions made in the Original Application are denied by the answering respondents, save and except those which have been specifically admitted herein and those which appears from the records of the case.
3. That with regard to the statements made in paragraph 1 of the Application, the answering respondents state that the same shall be contended in the subsequent paragraphs herein below:
4. That with regard to the statements made in paragraph 2 and 3 of the Original Application the answering respondents has no comments to offer.

5. That prior to contending the statements and averments made in the Original Application, the answering respondents respectfully beg to state that the entire application is based on mis-conceived and mis-represented facts. The contention of the Applicant and the averments made with regard to the various transfer orders and the relief/s so granted by the Hon'ble High Court have absolutely no bearing on the facts of the instant case or the relief so claimed by the Applicant in the Original Application. The answering respondents further humbly place the following facts on record for due consideration by this Hon'ble Tribunal.

(i) That the Applicant on adopting a female child of about 2 months had proceeded on Foster Maternity Leave with effect from 02.04.1998 to 29.04.1998 in the first spell and then subsequently rejoined on 30.04.1998 for one day and proceeded on summer vacation from 01.05.1998 to 30.06.1998. The Applicant has also preferred an Application dated 01.04.1998 before the concerned authority praying for allowing her to go on Maternity Leave from 02.04.1998 to 29.04.1998 for a period of 28 days.

A copy of the said Application dated 01.04.1998 alongwith a typed copy of the same are annexed herewith and marked as ANNEXURE – A1 AND A2 respectively.

(ii) After the summer vacation the Applicant reported on duty on 01.07.1998 and applied for Maternity Leave from 02.07.1998 to 10.10.1998 vide her application dated 02.07.1998. It is pertinent to state herein that the total leave availed by the Applicant in such fashion amounted to approximately four months and a few days. The leave application so preferred by the Applicant on 02.07.1998 was examined by the competent authority i.e. the Deputy Director, N.V.S., Regional Office, Shillong. The Applicant's requests for sanction of Maternity Leave was however rejected vide letter dated 27.11.1998 in terms of Rule 43-A of the CCS Leave Rules, 1972.

The deponent craves leave of this Hon'ble Tribunal to produce a copy of the application dated 02.07.1998 of the Applicant.

A copy of the said letter dated 27.11.1998 is annexed herewith and marked as ANNEXURE – B.

(iii) The answering Respondents further beg to state that vide the leave application of the applicant dated 02.07.1998, she had applied for Maternity Leave from 02.07.1998 to 10.10.1998. However, the Applicant never reported for duty on 11.10.1998 after availing the Leave period of 3 months and some days and infact remained absent from duty till 20.03.1999. ✓

(iv) That it is a fact that during the said period of 1998-99, the Applicant was transferred vide Order dated 10.12.1998 to J.N.V., Upper Subansiri, Arunachal Pradesh. The Applicant had once again challenged this order dated 10.12.1998 vide W.P.(C) No. 20/99 and the Hon'ble High Court vide Order dated 20.01.1999 had been pleased to keep the Order of transfer in abeyance. It is also a fact that the said W.P.(C) No. 20/99 was transferred to this Hon'ble Tribunal and on 21.04.1999 this Hon'ble Tribunal admitted this Application which was registered as O.A. No. 123/99. ✓

(v) The answering respondents humbly beg to state that as per Rule 43-A of the CCS Leave Rules, 1972, Leave to a female Government servant on adoption of a child may be granted of the kind due and admissible (including leave not due and commuted leave not exceeding 60 days without production of Medical Certificate) for a period upto 1 year or till such time the child is one year old, whichever is earlier. The Applicant herein has never applied Leave kind due for the period of leave availed by her to the competent authority and as such her services during the period of leave availed by from 02/03/1998 to 28.03.1999 could not be regularised. 3

(vi) The answering respondents further humbly state that without regularising the period of absence of an employee and without verifying whether there has been any gap in service, the date of increments of an employee cannot be fixed since the date of increment accordingly shifts. As such, in the case of the applicant the increments for the year 1999, 2000, 2001, 2002 and 2003 have been withheld since her period of absence from service for the year 1998-99 has not been regularised. ✓

(vii) The answering respondents further beg to clarify that the applicant is not entitled to 'Maternity Leave' and infact is entitled only to 'Foster Maternity Leave' due and admissible. It is further pertinent to note that as per the Earned Leave/Half Pay Leave Proforma (which is maintained for Government servants) in the case of the applicant, there was no Earned Leave to the credit of the applicant as on June, 1998. As such the applicant could not have been granted 'Foster Maternity Leave' under the provisions contained in rule 43 – A of CCS (Leave) rules, 1972 since she is not entitled to avail leave she is not entitled to avail leave not due and commuted leave. It is further pertinent to note that the applicant ought to have submitted an Adoption Certificate from the competent authority which was however not done by the applicant. Be it stated herein that the Adoption Certificate issued by Tripura State Council for child welfare dated 02.04.1998 could not have been considered as a valid adoption certificate by the authorities concerned.

A copy of the relevant Earned Leave/Half Pay Leave Proforma of the Applicant is annexed herewith and marked as ANNEXURE – C.

(viii) In view of the facts and circumstances as have been narrated above, it is apparent that the applicant is trying to mislead this Hon'ble Tribunal by not narrating the complete facts of the case. The answering respondents categorically state that if the applicant applies for the leave kind due and admissible for "Foster Maternity Leave" to the competent authority alongwith all the requisite certificates, the same shall be looked into and after calculating her date of increments and regularising her services for the period 1998-99, the same shall be released to her.

#### PARAWISE REPLY:

6. That with regard to the statements made in paragraph 4.4 to 4.8 of the Original Application, the answering respondents have no comments to offer thereon since the same are in no way material/related to the non-payment of salaries/increments of the petitioner.

7. That with regard to the statements made in paragraph 4.9 of the Original application, the answering respondents reiterates the statements made in paragraph 5 hereinabove.

8. That while denying the statements and averments made in paragraph 4.10 to 4.13, the answering respondents state that the applicant has not applied for leave kind due and admissible for the period from 02.07.1998 to 20.03.1999 to regularise her absence from duty despite clear instructions in this regard. The answering respondents further reiterate the statements made in paragraph 5 hereinabove.

9. That none of the grounds averred in the Original Application are valid grounds and no fundamental right of the applicant has been infringed in any way. Under the facts and circumstances as have been narrated above, it is submitted that the instant application is devoid of any merit and is liable to be rejected.

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

I, Sri Debananda Hazarika, S/O late Dambarudhar Hazarika aged about 52 years, presently serving as Deputy Director, N.V.S. Shillong, do hereby verify that the statements in paragraph<sup>s</sup>.....1 to 9..... are true to my knowledge, belief and <sup>information</sup> records derived therefrom and I have not suppressed any material facts.

*Debananda Hazarika*  
 Deputy Director  
 NAVODAYA VIDYALAYA SAMITI  
 (Min. of HRD. Govt. of India)  
 Nomgrim Hill, Shillong-3

Place : *GUNAHATI.*

Date : *29/1/03.*

The Principal  
J.N.V - Kakraban,  
South Tripura

15/9/98  
9020  
Set. 45-98  
PT. 25

Sub:- Prayer for Foster Maternity leave.

Respected Sir,

With due respect I like to submit that I have adopted a child. The adoption has been made in compliance with Law and competent authority has given the child in adoption to me. The adopted child is about two months old. The child requires post-natal care and for this I will have to provide her constant company. As per O.M. No 13018/4/89-EST (L) Dt 25-10-89 issued by the Child Sectoral Secretary, Govt. of India adoptive mother is also entitled maternity leave. I would like to avail initially maternity leave in the first spell w.e.f 2/04/98 to 29/04/98.

Under the circumstances mentioned above I pray that I may be allowed to go on maternity leave on and from 02.04.98 for 28 days. As the adopted child is two months old I may entitle the proportionate maternity leave as per order. I now desire to avail 28 days of my entitled leave. Necessary relevant documents will be submitted after wards.

Thanking you with sincere regards

Enclosure - (c)

Date - 01.04.98  
place - Kakraban.

Yours faithfully

Mr. Sumit Paul

Art teacher

J.N.V - Kakraban.

Principal  
J.N.V - Kakraban  
South Tripura  
Date 01.04.98  
Signature

Signature

ANNEXURE -A2

To,

The Principal,  
J.N.V. – Kakraban,  
South Tripura.

Sub.: Prayer for foster of Maternity Leave.

Respected Sir,

With due respect I like to submit that I have adopted a child. The adoption has been made in compliance with Law and Competent authority has given the child in adoption to me. The adopted child is about two months old. The child requires post-natal care and for this I will have to provide her constant company. As per O.M. No. 13018/4/89-Estt (L) dated 25.10.89 issued by the Under Secretary Govt. of India adoptive mother is also entitled maternity leave. I would like to avail initially maternity leave in the first spell w.e.f. 02.04.98 to 29.04.98.

Under the circumstances stated above I pray that I may be allowed to go on maternity leave on and from 02.04.98 for 28 days. As the adopted child is two months old I may entitle the proportionate maternity leave as per order. I now desire to avail 28 days of my entitled leave. Necessary relevant documents will be submitted after words.

Thanking you with sincere regards.

Yours faithfully,

Enclosure (01)

Date - 01.04.98

Place - Kakraban

Mrs. Sumita Paul

Art teacher

J.N.V. – Kakraban

**Certified to be true Copy**

*Rakhee Sirauthia Chowdhury*  
ADVOCATE

(62)

10

F.1/PF/SP/93-NVS(SHR)/ 6990

27.11.98.

To,

The Principal  
JNV.Kakraban  
South Tripura.

Sub : Clarification regarding "Foster Maternity Leave" to be granted to Mrs. S.Paul Art teacher of the vidyalaya.

Ref: No.F.47-1/JNV/(STR)/98-99/510-11 dated 5.8.98.

Sir,

Your attention is invited towards your letter under reference on the subject cited above, the clarification as sought by you as under.

- 1) Mrs S.Paul, Art teacher of the vidyalaya is not entitled for maternity leave as is extended to natural mothers under subrule 1 of Rule 43 of FRSR part III Central Civil Services Leave Rule 1972 amended from time to time.
- 2) As per provisions contained in the Rule 43 A of FRSR Part-III Central Civil Services Leave Rule 1972 extended for adoptive mothers, Mrs Paul is entitled for leave due and admissible (As per her leave record in service book) for a period of one or till such time the child is one year old which ever is less. Grant of such leave is subject to the following conditions :
  - i) Mrs Paul should produce adoption certificate from the competent authority, "The Hon'ble Court" alongwith a copy of affidavit filed for adoption of child in question and all other relevant papers.
  - ii) Leave should not be allowed in more than one spell.

 Mrs Paul is not entitled to avail leave not due and commuted leave as per provision in the Rule 43 A, as Mrs Paul is not entitled for half pay leave.

contd.....2/-

Certified to be true Copy



Revised 2018-07-01 10:45:57

4) Adoption Certificate issued by Tripura State Council for Child Welfare dated 2.4.96 should not be considered as valid adoption certificate as it is not competent authority to issue such certificates.

5) Absence of Mrs S.Paul from duty for the period 2.4.98 to 29.4.98 may be regularised sanctioning leave kind due subject to the condition that She should produce valid adoption certificate from competent authority.

6) Absence of Mrs S.Paul without prior permission from Principal w.e.f. 7.7.96 is unauthorised. Necessary disciplinary action may be initiated for her unauthorised absence from duty under CCS(CCA) Conduct Rule 1964.

Yours faithfully,

  
( D. C. KISHRA )  
DEPUTY DIRECTOR.

sp/

## 26

### ଓଡ଼ିଆ ଲେଖକ ରୂପ Form of ଲେଖକ

ममारा का ज  
प.तिथि  
Date of Birth

नियमित सेवा प्रारंभ की तिथि  
Date of commencement of continuous service

विषयित सेवा प्रारंभ की तिथि

[Note-1. The Earned leave due should be expressed in days.]

Note:-2. When a Govt. Servant is appointed during the course of a particular calendar half-year, E. L. should be credited @  $2\frac{1}{2}$  days for each completed year and the fraction of a day will be rounded to the nearest day.

Note:-3. The old leave account in respect of existing Govt. Servant has to be closed and the balance as on 31-12-75 will have to be carried forward to the new account in Col. II. While doing so the balance at credit on 31-12-75 may be rounded off to the nearest day.

Certified to be true COPY

RECEIVED 1974 10 14 1974 10 14 1974

**FORM 2 (See Rule 15)**

## अवकाश लैखा का फार्म Form of

कर्मचारी का नाम Name of Employee.....

जन्म-तिथि  
Date of Birth

**नियमित सेवा प्रारम्भ की तिथि**  
 Date of commencement of continuous service

G. A. G.

Note-1: The Earned Leave due should be expressed in days.  
Note-2: When a Govt. Service is terminated, the leave balance will be paid to the employee.

Note:-2. When a Govt. Servant is appointed during the course of a particular calendar half-year, E. L. should be credited @  $2\frac{1}{2}$  days for each completed year and the fraction of a day will be rounded to the nearest day.

Note:-3. The old leave account in respect of existing Govt. Servant has to be closed and the balance as on 31-12-75 will have to be carried forward to the new account in Col. II. While doing so the balance at credit on 31-12-75 may be rounded off to the nearest day.

file

**AM 2 (See Rule 15)**

## અયકારાની રીતું કા ફાઈ Form of

कर्मचारी का नाम Name of Employee..... SUMITRA PAYL..... A.R.T. TEACHER )

जन्म-तिथि

Date of Birth 12-02-1959

Date of commencement of continuous service 03-02-1995

## गिरिधर मित्र सेवा प्रारम्भ की लिंगिधर

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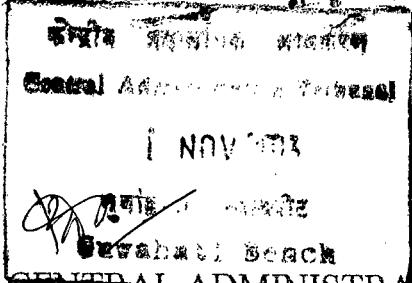
EARNE D

Date of commencement of continuous service 03.02.1975

Note:-1. The Earned Leave due should be expressed in days.

Note:-2. When a Govt. Servant is appointed during the course of a particular calendar half-year, E. L. should be credited @  $2\frac{1}{2}$  days for each completed year and the fraction of a day will be rounded to the nearest day.

Note:-3. The old leave account in respect of existing Govt. Servant has to be closed and the balance as on 31-12-75 will have to be carried forward to the new account in Col. II. While doing so the balance at credit on 31-12-75 may be rounded off to the nearest day.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A. No. 82/ 2003

Smti Sumita Paul (Mazumdar)

...Applicant

-VS-

Union of India and others

...Respondents

-AND-

IN THE MATTER OF:

Rejoinder submitted by the applicant against the written statement filed by the respondents.

The applicant above named most respectfully begs to state as follows: -

1. That the applicant categorically denies the statements made in paragraphs 2,3 and 5 (i) to (viii) of the written statement and begs to submit that the respondents have stated the facts in a colourable manner just in order to mislead the Hon'ble Tribunal and hide their own lapses and further begs to state the following facts in this context.

(i) That the applicant having adopted a child of about two months, applied on 01.04.1998 for foster maternity leave and proceeded on leave for 28 days w.e.f.02.04.1998 to 29.04.1998 on expiry of leave, she resumed her duties on 30.04.1998 as scheduled and thereafter commenced the summer vacation of the school for the period from 01.05.1998 to 30.06.1998 which she availed of on expiry of summer vacation, she resumed her duties on 01.07.1998 and again

filed by the applicant  
through Subroto Kumar  
Advocate  
21/11/03

applied for foster maternity leave for the period from 02.07.1998 to 10.10.1998 on this occasion the Principal verbally allowed her to submit the application and proceed on leave.

(ii) That the applicant was scheduled to join her duties on 11.10.1998 after availing the leave but in the meantime the Principal, JNV, South Tripura relieved the applicant vide letter No.F.14-1/JNV/(STR)/98-99/0547-52 dated 14.08.1998 in pursuance to an earlier order transferring the applicant from JNV, South Tripura to JNV, Mahadevpur in Arunachal Pradesh which was already stayed by the Court and the matter was pending before the Court since 1995 for final disposal, as being stated in Para (iii) below.

(iii) That by an order dated 16.03.1995 issued by the respondents, the applicant was sought to be transferred from JNV, Kakraban, South Tripura to JNV, Mahadevpur, Lohit district, Arunachal Pradesh which was challenged by the applicant through WPC No 269 of 1995 before the Hon'ble high Court. The Hon'ble high Court vide its interim order dated 08.06.1995 stayed the order of transfer which was finally decided by the single judge who vide his Judgment and order dated 22.07.1998 directed the respondents to consider the representation of the applicant within one month time and further directed not to disturb the applicant till consideration of the application submitted by the applicant. The applicant thereafter preferred a writ appeal against the said judgment dated 22.07.1998 before the Division Bench, which was registered as Writ Appeal No.73 of 1998. The Division Bench vide its interim order dated 16.08.1998 directed to maintain status quo and as such the applicant was still continuing in her existing post at JNV, South Tripura. The Writ Appeal No. 73/98 and Civil Misc. Petition No.

3

Petition No. 292/98 therewith was finally disposed by the Division Bench of the Hon'ble High Court on 2.11.1998 and vide its judgment and order dated 2.11.1998 set aside the judgment and order dated 22.7.1998 of the Single Judge and directed the respondents to retain the applicant in the place of her husband i.e. her existing station failing which she should be posted at a nearby place with least inconvenience with further direction that necessary orders should be passed within one month time and till such time the applicant need not undertake the transfer order. Pursuant to this, the respondents withdrew their original order of transfer dated 16.3.1995 vide their order No. 1-12/98-NVS (SHR)/Admn/7308 dated 10.12.1998 and under the same order dated 10.12.1998, the applicant was transferred and posted at JNV, Upper Subansiri, Arunachal Pradesh. This new transfer order being not in accordance with the direction given in the judgment dated 2.11.1998 of the Hon'ble High Court was again challenged before the Hon'ble Court through W.P.C No. 20/99. The Hon'ble High Court this time again passed its interim order on 20.1.1999 in W.P.C No. 20/99 staying the operation of the order of transfer dated 10.12.1998. Thereafter the Hon'ble High Court vide its order dated 17.3.1999 transferred the W.P.C No. 20/99 to the Central Administrative Tribunal (CAT), Guwahati Bench with the order that the stay order would continue till the case is disposed of by the CAT. On 21.4.99 the Hon'ble CAT admitted the case under O.A. No. 123/99 with the direction that the interim stay order passed earlier by the High Court would continue until further orders. In spite of all those orders of the High Court and the order of the CAT dated 21.4.1999 the respondents did not allow the applicant to join her duties all along although she reported for joining several times.

Eventually, the applicant filed Contempt Petition before the Hon'ble CAT against the respondents for non compliance of the order dated 21.4.1999 of the CAT. Following the filing of Contempt Petition, the Hon'ble CAT issued notice upon the respondents and only after the respondents allowed the applicant to join her duties for the purpose of avoiding the Contempt of Court. In the process, the respondents have not paid the salary and allowances of the applicant from July, 1998 to 25.10.1999 and so also her annual increments due from February, 1999 to February, 2003. The applicant therefore has now filed an O.A. No. 82/2003 before the Hon'ble CAT against non-payment of her salary, allowances and incremental benefits etc. and the said O.A. is pending before the Hon'ble CAT.

Copy of order of transfer dated 10.12.98 and judgment and order dated 20.1.1999, judgment dated 17.3.1999 of the Hon'ble High Court and order dated 21.4.1999 of the Hon'ble CAT are annexed herewith as Annexure-A,B,C and D respectively.

(iv) That from the facts stated above, it is clear that the applicant was on Foster Maternity Leave during the period from 02.07.1998 to 10.10.1998. The statement of the respondents made in para 5 (ii) of the written statement that the said leave was not sanctioned and that it was rejected vide letter dated 27.11.1998 is categorically denied by the applicant. The applicant did not receive any such letter dated 27.11.998 nor was aware of rejection of her leave, if any at any point of time. It appears from the written statement now filed by the respondents that the said letter dated 27.11.998 was addressed by the Deputy Director, NVS to the

Principal, JNV, Kakraban, South Tripura which the applicant was not aware of.

v) That it is quite evident from the above mentioned facts that when the Writ Appeal No. 73/1998 (in W.P.C. No. 269/1995) against the judgment and order dated 22.7.1998 of the Learned Single Judge of the Hon'ble High Court was pending before the Division Bench of the Hon'ble High Court, the respondents relieved the applicant from JNV, Kakraban, South Tripura vide order dated 14.8.1998. The applicant was in fact continuing in her existing place i.e. JNV, South Tripura under the protection of the order dated 8.6.1995 (in W.P.C. No. 269/1995) of the Hon'ble High Court and thereafter also under the High Court's order dated 16.8.1998 (in Writ Appeal No. 73/1998), order dated 2.11.1998 (in Writ Appeal No. 73/1998 and M.P. No. 292/1998), order dated 20.01.1999 (in W.P.C. No. 20/1999) order dated 17.03.1999 (in W.P.C. No. 20/1999) and subsequent order dated 21.4.1999 (in O.A. No. 123/1999) of the Hon'ble CAT. But the respondents relieved the applicant from JNV, South Tripura on 14.08.1998 arbitrarily and illegally ignoring the directions of the Court and thereafter did not allow the applicant to join her duties till 26.10.1999 ever, on a plea or the other defying the direction of the Court aforesaid until they received Notice from CAT in connection with the Contempt Petition filed by the applicant. Consequently, the salary and all allowances due from July, 1998 to 25.10.1999 have not been released by the respondents and further her annual increments which fell due on February 1999, February 2000, February 2001, February 2002 and February 2003 have also not been paid causing irreparable financial loss and sufferings to the applicant.

(vi) That the applicant, during the aforesaid period has made all her efforts and approached the respondents requesting them to allow her to join her duties and release her pay, allowances, incremental benefits etc. but with no results whatsoever. Eventually she submitted her formal joining report on 20.3.1999 but the Principal, JNV, South Tripura did not allow her to join on the plea that he has recently taken over the charge and the Vidyalaya is passing through period of crisis and he cannot allow her to join without consulting his Lawyer. In this context the letter dated 20.3.1999 of the Principal is appended herewith. The applicant again submitted an application on 24.4.1999 for her joining in terms of the order dated 21.4.1999 of the Hon'ble CAT but this time also the Principal did not allow her to join on the plea that he could allow here to join only after having the decision of the Deputy Director, NVS, Shillong. In this context, the letter dated 24.4.1999 of the Principal is appended herewith. The applicant also submitted similar applications to the Deputy Director, NVS, Shilong on 22.3.2000 and on 25.1.2001 but with no results. These facts were known to the respondents which they did not dispute even during the admission of the Contempt Petition filed by the applicants wherein this facts were submitted before the Hon'ble Tribunal and now in their written statement in the instant O.A., the respondents have resorted to the new pleas that the salary, allowances, increments etc. of the a applicant cannot be released due to non-regularisation of her absence and stated that her Foster Maternity Leave is not admissible, her leave was rejected, her absence were unauthorized etc. which are not sustainable and as such emphatically denied by the applicant. The respondents did not raise such pleas before the Hon'ble Tribunal at the time of admitting the

Contempt Petition even, or earlier although these were issues stated therein also.

Copies of Principal's letter dated 20.3.1999 and letter dated 24.4.1999 and representations dated 22.3.2000 and 25.1.2001 are annexed hereto as Annexure-E,F,G and H respectively.

2. That the applicant categorically denies the statements made in paragraphs 6,7 and 8 of the written statement and begs to state that the issues involved in the instant O.A. is against non-payment of salary, allowances etc. of the applicant from July 1998 to 25.10.1999 and the alleged absence of the applicant as stated by the respondents is for no fault of the applicant but entirely attributable to the respondents for their arbitrary, illegal and mala fide actions as stated herein above.
3. That the applicant categorically denies the statements made in paragraph 9 of the written statement and begs to submit that all the grounds averred in this O.A. are valid and the applicant is fully entitled to the reliefs sought for in this O.A. under the facts and circumstances stated above and the O.A. deserves to be allowed with costs.

## VERIFICATION

I, Smti Sumita Paul (Mazumdar), Wife of Sri Shyama Prasad Paul, aged about ... years, Art Teacher, Jawahar Navodaya Vidyalaya, JUKETSA P.O. PFUTSERO, District Phek, Nagaland, do hereby verify that the statements made in Paragraph 1 to 3 of this rejoinder and are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 18<sup>th</sup> day of November, 2003.

Sumita Paul (Mazumdar)

## नवीदय विद्यालय समिति

शिलांग

मानव संसाधन विकास मंत्रालय  
(शिलांग विभाग)

No. 12/98-NVS(SHR)/Admn/ 17/11/98

- 9 -



Regional Office

NAVODAYA VIDYALAYA SAMITI

SHILLONG

Ministry of Human Resource Development  
(Dept. of Education)ANNEXURE - A

Dated 17/11/98, Dec, 98.

ORIGIN.

With due reference to the order of Hon'ble High Court, Guwahati, Agartala Bench dated the 02nd Nov, '98, passed in writ appeal No.73 of 98, the undersigned has considered the place of posting of the petitioner Mrs. Sunita Paul wife of MR.S.P.Paul.

Mrs.S.Paul was posted at Jawahar Navodaya Vidyalaya, Mahadevpur, Arunachal Pradesh and accordingly relieved vide letter No.F.14-1/JNV/(STR)/98-99/0547-52, dated 14th Aug, 98 or Principal, JNV, South Tripura and husband of Smt.S.Paul, Shri S.P.Paul was posted at Lower Subansiri, Arunachal Pradesh as per order of Hon'ble Guwahati High Court (Agartala Bench) Single bench dated 22nd July, 98 and hence he has also been relieved from Jawahar Navodaya Vidyalaya, R.C.Ghat, West Tripura.

Thereafter as per direction contained in the said order of Hon'ble Guwahati High Court (Agartala Bench) Smt.S.Paul has been posted at JNV, Upper Subansiri, Arunachal Pradesh while her husband is posted at Lower Subansiri of the same state.

It is known fact that both husband and wife being Art teacher cannot expect their posting in the same Vidyalaya as there is only one post in each Vidyalaya.

The said places can be covered with least inconvenience and in a shorter time.

Hence our order no.F.1-PF/PBC/89-NVS(SHR)25223-28, dt.16th Mar, '98 by which the petitioner was transferred to JNV, Mahadevpur, on immediate effect and she is being posted to JNV, Upper Subansiri, Arunachal Pradesh.

She should join JNV, Upper Subansiri, Arunachal Pradesh immediately.

(D.C. Mishra )  
DEPUTY DIRECTOR.

To: Mrs.S.Paul,  
Ex.Art Teacher  
JNV, Kakraban.

Copy for information and necessary action to :-

1. Mr.S.P.Paul, Ex-Art Teacher, JNV, R.C.Ghat, W.Tripura.
2. Mr.K.N.Bhattacharjee, Sr.C.G.S.C; Govt.of Tripura., Guwahati High Court, Agartala Bench, Agartala.
3. Mr.P.Roy Barman, Advocate, Guwahati High Court, Agartala Bench, Agartala.
4. The Principal, JNV, Kakraban, South Tripura with request to find out both the art teachers mentioned above and deliver the letters through peon.

DEPUTY DIRECTOR.

नांगरीम हिल्स, शिलांग - 793 003 (मेघालय) Nongrim Hills, Shillong-793 003 (Meghalaya) • Phone : 233361, 233362 (Fax) 233363

Attested  
Date  
Anmolak  
21/11/03

## IN THE GAUHATI HIGH COURT

HIGH COURT OF ASSAM, NAGALAND, MEGH  
LAYA, MANIPUR, TRIPURA,  
MIZORAM AND ARUNACHAL PRADESH

## CIVIL APPELLATE SIDE

W.L.P. (C) AGARTALA BENCH, AGARTALA

Appeal from  
CIVIL RULESmt. Samita Paul (Nagaland)  
of am.Appellant  
Petitioner

20

CHAPL. 25 195

Petition

The Deputy Director, Narodaya P. D. Galiga, Respondent

Smt. Samita Paul (Nagaland) Opposite Party

Appellant Mr. P. R. Bhattacharya, M.A.

For Petitioner Mr. P. R. Bhattacharya, M.A.

Petitioner

Respondent Mr. K. N. Bhattacharya, M.A.

For Opposite Party Mr. P. R. Bhattacharya, M.A.

CONTINUED TO THE NEXT PAGE

Anolmani Registration,  
Gauhati High Court,  
Agartala Bench,  
Agartala.

Amberlata U/6 Regd. No. 1088

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Gauhati High Court,  
Agartala Bench,  
19Noting by Office  
or AdvocateSerial  
No.

Date

Date of Registration, order or proceeding  
with signature

ADMANITED REA

25/2/99

RECORDED

Affd  
Smt. Samita  
Paul  
9/1/03

115

Ann-B (contd)

PRESENT

THE HON'BLE MR JUSTICE BN SINGH NEELAM.

20.1.99.

Heard Mr. P. Roy Barman, learned counsel for the petitioners Smti. Sumita Paul (Majumder) and Shri Shyama Prasad Paul filing this writ petition in aggrieved by the transfer order of 10.12.1998, and it is submitted that the husband and the wife are being posted at a distance of 300 km whereas the Writ Appeal is disposed of by this Court on 2.11.98 in Writ Appeal No. 73 of 1998 there is a specification direction so given to the respondents as to the posting of the petitioner No. 1 at such a place where she may have least inconvenience with the place of posting of her husband.

Let a notice of motion be issued calling upon the respondents to show cause as to why a rule should not be issued as prayed for; or why such further or other order or orders should not be passed as to this Court may seem fit and proper.

Notice is made returnable within 6 weeks.

Learned counsel for the petitioner has to take steps within 2 days from today.

Mr. K.N. Bhattacharjee, learned counsel appearing on behalf of the respondent is also heard.

RECORDED BY

K.L.  
25/2/99  
Signature

Relefed  
Shubh  
Advocate  
8/1/03

12/2

Caped 20/09

Ann-B (contd)

Office notes, reports, orders or proceedings  
with signature.

Mr. H. Dabpath, learned counsel  
accepts notice on behalf of the respondent  
and no  
No ~~any~~ formal notice to be sent to the  
respondent No. 4. A copy of the petition  
along with annexures be furnished to the  
learned counsel for the respondent No. 4,  
which has already submitted.

Learned counsel for the peti-  
tioner, as to take steps to other respon-  
dents within 2 days from today.

25/2/99  
Court Registry,  
Gauhati High Court,  
Agnibina Bench.

4/10/99  
Received UAC No. 1020

Sd/- B. N. SINGH 'VEELAM'  
JUDGE

25/2/99  
Information (Copying)  
Gauhati High Court,  
Agnibina Bench.

COPIED BY

16/10/99  
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Attest  
Sachin  
Agnibina  
9/10/99



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Superintendent (Copying) 25/2  
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Assam State  
16/2/79

16/2/79 25/2/79  
G. B. B. Biju  
Asst. Registrar  
Gauhati High Court  
Assam State

## CIVIL APPELLATE SIDE

ANN - B (contd.)

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## AGARTALA BENCH, AGARTALA

Petition from

C.M.A-1002

No. 25

of 1999

Smti. Samita Pathak (Najulicong, C. No. (C) 20/99))

shown

Appellant  
Petitioner

CERTIFIED TO BE A TRUE COPY

D. 11/257/11

Assistant Registrar,

Gauhati High Court,

Agartala Bench,

Agartala.

Authorised U/S 10 of L.P.A.

Smti.  
Superintendent (W.O.)  
Gauhati High Court,  
Agartala Bench

Serial No.	Date	Office notes, reports, orders or proceedings with signature
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Date / 1 11/11/2017, by (Signature) Qilly Note, repays, on behalf of, the  
Debt, in full, with signature.

In the back ground of the directions so made by this Court in Writ Appeal, this posting was so made because there was only one post of Art Teacher in one School.

Let a notice issue calling upon the respondents to show cause as to why the impugned order should not be stayed as prayed for ; or why such further or other order/orders should not be passed as to this Court may seem fit and proper.

Notice is made returnable within two weeks time.

Objection if any is to be filed by the other side within this period serving advance copy to the learned counsel for the petitioner.

Mr. P. Roy Darman, learned counsel for the petitioners has pointed out that if the interim order is not given, the very purpose for filing this writ petition will be frustrated because of their joining at new place of posting where they have not yet joined. In that light till the returnable date, if the order dated 10.12.98 has not been made effective till today, the same shall remain in abeyance till returnable date.

3 of / - B. N. SINGH NEELA  
JUDGE

Affection  
Love  
Adoration  
26/11/03

654 *AMERICAN JOURNAL*

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REGISTRATION

Date of application and fee	Date fixed for notifying the requisition holder Stamp and other	Date of issue of certificate or stamp	Date of return of stamp	Date of return of certificate
16-2-79	16-2-79	16-2-79	16-2-79	16-2-79

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Mauritius High Court  
Assistance Branch

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Commissioner (Copy)  
Mauritius High Court  
Assistance Branch

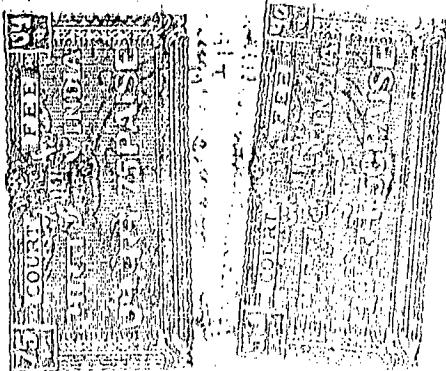
C.M. APPL. NO. 25/99

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Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
<i>Advocate</i> A. K. Bhattacharjee Advocate Gauhati High Court Agrahar Bench Assam Baldorilek U/8 Amrit Lal		11.2.99	<p><b>PRESENT</b></p> <p>THE HON'BLE MR. JUSTICE AK PATNAIK</p> <p>Mr. K.N. Bhattacharjee, the learned senior Central Government Standing Counsel prays for two(2) weeks time to file counter-affidavit in regard to the writ petition.</p> <p>List this matter after two(2) weeks. In the meanwhile the interim order passed on 20.1.99 shall continue.</p>

Rev/- J.J. PATNAIK  
JUDGE

*25/2/99*  
Superintendent (Copyng)  
Gauhati High Court  
Agrahar Bench.



COMPILED BY

*25/2/99*  
Signature

*A. K. Bhattacharjee  
Advocate  
Gauhati High Court*

ANNEXURE - C 20



In the gaohati high court,  
Assam, a writ of habeas corpus

Case No. 145, (C) 20 of 1970.

In the matter of -

A Petition under Article 226 of  
the Constitution of India.

AND

In the matter of -

Smt. Sumita Paul (injunctee), the petitioner.

vs

The Deputy Director, Navodaya Vidyalaya  
and ors. Respondents.

Respondents.

Attn  
Smt.  
Sumita  
Paul  
1/1/70

## BEFORE

THE HON'BLE THE JUDGE, P.R. JURISDICTION

I have heard Mr. P.R.Banerjee, learned Counsel appearing on behalf of the petitioners and Mr. K.N.Battacharjee, learned Sr. C.G.S.Counsel assisted by Mr. R. Debnath, learned Counsel for the respondents.

Mr. Battacharjee has produced a notification of the Central Govt. dated 17.12.98 and from the said notification, it appears that from 1st day of January, 1999, the provision of Administrative Tribunal Act, 1985 shall apply to Navodaya Vidyalaya Samiti. Mr. Battacharjee consequently submits that all disputes regarding the conditions of service of the employees of Navodaya Vidyalaya Samiti will be decided by the Central Administrative Tribunal and not by any other court with effect from 1st January, 1999. Mr. Banerjee submits that in accordance with the notification of the Govt. of India, the dispute will be decided by the Central Administrative Tribunal, but learned Counsel submits that an interim order was passed by this Court on 20.1.99 and the interim order may continue till the Tribunal passes appropriate order on

Arrested  
Sarkar  
21/1/00

Noting by Officer or  
Advocate in P.R.Serial  
No.

Date

Office notes, reports, orders or proceedings  
with signatures

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the interim prayer.

According to the provision of Section 29 of the Central Administrative Tribunal Act, 1985, every suit or other proceeding pending before a court shall stand transferred to the Central Administrative Tribunal from 1st January, 1999. Accordingly, the case records may be sent to the Central Administrative Tribunal, Gauhati and the parties are directed to appear before the Central Administrative Tribunal, Gauhati on 19.4.99.

I do not like to pass any order in respect of interim order passed by this Court on 20.1.99. However, the petitioners may file fresh application for order before the Central Administrative Tribunal, Gauhati on or before 19.4.99 and the Tribunal may decide such application on merit. Interim order passed by this Court will continue till 19.4.99.

A copy of the order may be given to the learned Counsel of both the parties by tomorrow i.e. 18.3.99.

Sd/ P.K. Baruwa  
Judge



In The Central Administrative Tribunal  
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 107/99

OF 199

04/12/99(T)

Applicant(s) Smt. Section Officer, Panel Magistrate

Respondent(s) Ex. Director, Niradgaon Vidyalaya  
Signatory

Advocate for Applicant(s) Mr. M. Chandra

Advocate for Respondent(s)



Date	Order of the Tribunal
21.4.99	<p>Present: Hon'ble Mr Justice D.N. Baruah, Vice-Chairman Hon'ble Mr G.L. Sanglyine, Administrative Member</p> <p>The application is admitted. The interim order passed by the Hon'ble Gauhati High Court will continue until further orders. Two weeks time allowed to the respondents for filing of written statement. Fix it on 7.5.99.</p>

Certified to be true Copy

प्रमाणित प्रदितिपि

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)

Section Officer (S)

आनुसारा नियमी उपचार दस्तावेज  
Central Administrative Tribunal  
केन्द्रीय नियमी उपचार दस्तावेज  
Guwahati Bench, Gauhati-6  
पात्रा 21 अ.प्रदेश, गुवाहाटी-6

21/4/99

Weston  
Baruah  
21/4/99

ANEXURE E

No. F. N.I./Court Case/JNV/(SRR)/98-99/ 1159  
Office of the Principal,  
Jawahar Navodaya Vidyalaya,  
Ministry of Human Resource Development,  
(Department of Education) (Government of India)  
Kakraban, Udaipur, South Tripura, Pin : 799101

Dated, the 20th March, 1999.

To: Mrs. Sumita Paul,  
Asst Teacher,  
JNV, Kakraban, (S) Tripura.

Sub: Joining regarding.

Re: Your application for joining duty on 20.3.99,  
and for release of salary, dated 20.03.99.

Madam,

Your 02 (two) applications dated 20.03.99 as  
mentioned above have been received at this office on 20th March,  
1999.

Since, I have taken charge of the vidyalaya recently  
and the vidyalaya is passing through a period of crisis owing  
to the arrest and suspension of the Principal and the Senior  
Most Teacher, I have not been able to study the court case  
between you and the Samiti.

Hence, before taking any step I will have to  
consult the lawyer dealing with the case.

However, since you have reported to the vidyalaya  
this morning, if my lawyer assures me that there is no legal  
complication involved, you will be treated on duty w.e.f.  
20th March, 1999 forenoon.

Yours faithfully,

(M. R. CHAKRABARTY)  
PRINCIPAL  
JAWAHAR NAVODAYA VIDYALAYA

Copy for information and necessary action to :-

1. The District Magistrate and Collector and Chairman, Vidyalaya Management Committee, Udaipur, South Tripura.
2. The Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, Shillong-3.
3. Sri Kalyan Narayan Bhattacharjee, Sr. C.G.S.C., Hon'ble Guwahati High Court, Agartala Bench, Agartala.

(M. R. CHAKRABARTY)  
PRINCIPAL

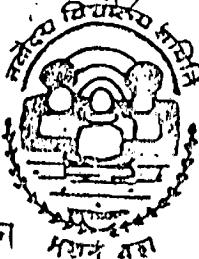
Mr. K. N. Bhattacharjee  
20/3/99

ANNEXURE - F *Answer to*  
JAWAHAR NAVODAYA VIDYALAYA  
Ministry of Human Resource Development  
(Dept. of Education)

Government of India - *Ans* - A  
Kakraban, Udaipur - 799105  
South Tripura  
Hello : 65202 (Off)  
65260 (Resi) STD CODE : 03821  
Fax : 03821-22347

Date 24.4.99

जवाहर नवोदय विद्यालय  
मानव संसाधन विकास मंत्रालय  
शिक्षा विभाग का एक स्वायत्त संस्थान  
भारत सरकार  
जाकरापुर, उदयपुर, (रु.) प्रिपुरा - 322204  
जवाहर नवोदय विद्यालय, काकड़ावन  
उदयपुर, (रु.) त्रिपुरा, पिन : 799109  
Ref. No. P. 25/SP/Fers/JNV/STR/99-2000/11



TO  
Mrs. Sumita Paul  
Ex-Art Teacher,  
JNV, Kakraban  
South Tripura.

Your application dated 24 Apr '99, in connection with the Interim Order of the Central Administrative Tribunal (Guwahati Bench) dated 22.4.99.

Udaipur, Udaipur - 322204

Madam,

Please refer to your application, dated 20.3.99, along with the Court Order, with a prayer to allow you to join duties at this Vidyalaya.

Copies of your Court Order and application sent to the Deputy Director, Navodaya Vidyalaya Samiti, Shillong Region, Shillong. In response, this Office received the letter no. 9126 dated 10 Mar '99, which was sent to you on 09 Apr '99. The letter directs you to join your duties at another Vidyalaya. Hence, I could not allow you to join this Vidyalaya, as I did not have order of the Deputy Director.

As per your present application, dated 24 Apr '99, and the enclosed order of the Guwahati Bench of the Central Administrative Tribunal, No. 107/99/QA/23/99 (T) of 22.4.99, the same will be referred to the Deputy Director, Navodaya Vidyalaya Samiti, Shillong Region & Shillong, the respondent of the case. The decision of the Deputy Director, as and when received at this Office will be communicated to you.

Yours faithfully,

( M.R. CHAKRABORTY )  
PRINCIPAL

Copy to:  
1. Deputy Director, Navodaya Vidyalaya Samiti, Shillong Region, Shillong.  
2. District Magistrate and Collector, South Tripura.

( M.R. CHAKRABORTY )  
PRINCIPAL

*Mr. Chakraborty  
Principal  
JNV, Kakraban  
South Tripura*

To The Deputy Director  
Akrodaya Vidyalaya Samiti  
Shillong.

Sub:- payment of arrears/due Salary, SCA, Bonus,  
L.T.C., regularisation of CPF of G.S.L.I.S  
deduction, and increment pending.

(Through the principal ISV South Thipperam, Tachakram)  
advance copy enclosed.

Respected Sir,

With due respect and the reference to  
the subject cited above I have the honour to say  
that I was not allowed to resume duty through stay  
order was three, after that I was recalled with your  
letter NO-F.D3-2/99-NVS(SHR)/41051, dated the 12th October  
1999 to resume duty in the month of October 1999  
as per my stay order passed by the Honorable  
Gauhati High Court Agartala Bench on 11/11/99  
the Honorable C.A.T Gauhati. The principal already  
represented the matter before you.

Therefore I pray for release of my arrear  
Salary, SCA, Bonus, L.T.C., regularisation of CPF of  
G.S.L.I.S deduction and also my yearly increment  
which was due on Feb '99 may please be regularise.

For this act of yours kindness will  
be genuine even satisfied for you.

Thanking you with sincere regards

Yours faithfully

San

Mrs. Sumita Paul,  
Act. Director,  
S.N.V South Thipperam  
Tachakram.

Date - 22/03/2000

Attest  
San  
Advocate  
9/11/09.

~~ANNEXURE~~

12/98

ANNEXURE - 'H'

TO

The Deputy Director

Navodaya Vidyalaya Samiti  
Shillong Region  
Shillong.

Sub:- Payment of arrears and regularisation of Increment, C.P.F and Group Insurance.

Ref:- a) My representation dated 22/03/2000.

b) For warded by the Principal vide letter No.F.31-1/Audit/JNV/STR/99-2000/I638 dated 28/03/2000.

THROUGH THE PRINCIPAL JNV SOUTH TRIPURA, KAKRABAN, (Advance copy sent)  
Respected Sir

With reference to the above mention Subject I am submitting the following facts before you for your kind perusal and necessary action.

1) That on 14/08/98 Principal JNV SOUTH TRIPURA, KAKRABAN relieved me through Messenger for JNV MAHADEVPUR, ARUNACHAL PRADESH, when I was on foster maternity leave w.e.f. July '98.

2) On 02/11/98 the Honourable Devision Bench passed his Judgement and order against my appeal 'that', "the competent authority will now consider and post either the M/s husband of the appellant or the appellant to such place or places so that either of them can cover the distance between the respective place of posting with least inconvenience and within as short a time as possible" and also ordered that "till such orders are passed the appellant need not to join at Mahadevpur, Lohit District, Arunachal Pradesh."

On 02/11/98 when the Honourable Devision Bench passed the order 'need not to join at Mahadevpur' then and there the relieving order dated 14/08/98 for Mahadevpur issued by the Principal JNV South Tripura, Kakraban has lost the merit.

3) On 10/12/98 the Deputy Director, Shillong issued order vide No.1-10/98-NVS(SHR)Admin/7308 to join at JNV Upper Suban Siri (JNV Lopajaring) and withdraw the earlier transfer order for Mahadevpur. There was <sup>no</sup> relieving order for Upper Suban Siri.

Further we appeal to the Honourable High Court.

4) On 20/01/99 the Honourable High Court was pleased to kept in abeyance the order dated 10/12/98 on condition that if the same has not been made effective till 20/01/99. The order dated 20/01/99 passed by the Honourable High Court was renewed time to time.

In pursuance of the Honourable High Court order dated 07/03/99 the case was transferred before Honourable Tribunal.

Attn  
Smt  
Anwak  
3/11/03

Contd/...?

Page.2

5) On 21/04/99 the Honourable Tribunal again passed the order that the Interim order of stay passed by the Honourable High Court will continue until further order through M.P.NO 107/99 (OA NO.123/99).

After that also I was not allowed to resume my duty.

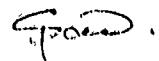
On 26/10/99 against the same stay order passed by the Honourable High Court as well as the Honourable Tribunal I was recalled to resume duty to avoid contempt of Court. My salary and other allowances being unpaid from the month of July 1998 to 25/10/99.

Therefore in the light of above mentioned facts on 22/03/2000 I have submitted my representation claiming due Salary, S.C.A, Bonus, L.T.C. 98 all arrears and for regularisation of yearly Increment. Already my two Increments are due viz. Feb 1999 and Feb 2000 and third Increment will be due on Feb 2001. Now I am working against the fixed Basic only and my Juniors are getting more.

On 22/03/2000 I have submitted my representation claiming all dues but 10 months passed, I did not get any response from your end. So that, through this representation again I am requesting your honour to release my arrears, due salary, SCA Bonus, LTC etc and regularise my Increments, CIP and Group Insurance also.

Thanking you with sincere regards

Yours faithfully



( Mrs. SUMITA PAUL )

Art Teacher

JNV South Tripura

Kakraban.

Date: 25/01/2001

Enclo - 02 nos.

- 1) My representation dated :- 22/03/2000
- 2) forwarded by the Principal JNV South Tripura. Kakraban

  
Affixed  
Signature  
21/11/01