

50/100

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

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

ORDER SHEET

162/05

Original Application No. \_\_\_\_\_

Misc. petition No. \_\_\_\_\_

Contempt petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicant(s) \_\_\_\_\_

Respondents \_\_\_\_\_

Advocate(s) for the Applicant(s) \_\_\_\_\_

Advocate(s) for the Respondents \_\_\_\_\_

Tapasi Das

H.O.P. TWS

A.K. Purkayastha, M. Roy, S. Sankha  
B.P. Sinha

K.V.S. Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in form is filed/C.F. Rs. 50/- deposited vide PC/BP No. 206/134/27 Dated 22.6.05</p> <p><i>[Signature]</i> Dy. Registrar</p> <p><i>[Signature]</i> 23/6/05</p> <p><i>[Signature]</i> 24/6/05</p> <p>2 copies not taken and annexures are not legible.</p> <p><i>[Signature]</i></p> <p>Received Order Date 24/6/05 (Applicant).</p> <p>2 received a copy of the order. 24/6/05 K.V. Upadhyaya Advocate</p>	24.6.2005	<p>Present: Hon'ble Justice Shri G. Sivarajan, Vice-Chairman</p> <p>The applicant has filed this O.A. with the allegation that she has been transferred from the present place, i.e. Panchgram to Kendriya Vidyalaya, Haflong (SSB). According to her, at present, there is a vacancy of Assistant Teacher at Kendriya Vidyalaya, Silchar, which is nearer to the present place and that as per the norms she is entitled to be posted to the said place, which is at present vacant.</p> <p>Mr K. Upadhyaya appearing on behalf of Mr M.K. Mazumdar, learned counsel for the respondents, submits that he will get instructions from the respondents and that this case may be taken up on 28.6.2005. Considering the said request the case is adjourned to 28.6.05.</p> <p>However, if the post at Silchar is vacant as on today, it shall not be filled up till 28.6.05.</p> <p>Post on 28.6.05.</p> <p><i>[Signature]</i> Vice-Chairman</p>

28.6.2005

Heard Mr.A.K.Purkayastha, learned counsel for the applicant and Mr.M.K. Mazumdar, learned Standing counsel for the K.V.S.

An interim order was passed on 24.6.2005 wherein it is stated "if the Post at Silchar is vacant as on today, it shall not be filled up till 28.06.05". Mr.Mazumdar on instruction from the respondents states that no such vacancy exists, but the details are not stated. In view of the transfer guidelines which came into effect from 19.1.2005 on the K.V.S. at para 10.3 the respondents are directed to file an affidavit explaining the circumstances. This will be done on or before 13.7.2005.

Post this case on 18.7.2005. Interim order already passed will continue till then.

*[Signature]*  
Vice-Chairman

bb

18.7.2005

Heard Mr. A.K.Purkayastha, learned counsel for the applicant and also Mr. M.K. Mazumdar, learned counsel for the respondents.

Some more time is required counsel for the respondents to get certain clarification from the respondents. Counsel for the applicant also seeks some more time ~~more~~ to get clarification from his client. Post on 22.8.2005

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

mb

Order Dated 28/6/05  
Received Copy  
28/6/05  
Applicant

Pl. comply order  
dated 28-6-05  
28/6/05

Received by  
MK Mazumdar  
Advocate  
(Respondent)

15-7-05

no affidavit filed

by

19.7.05

Additional reply  
filed by the Respondent

Steps taken  
for resp. No. 2, 5 & 7.

18/7/05

Step received on  
behalf of Resp No. 5  
Rashab Upadhyaya  
20-7-05 Advocate

22.8.2005

Learned counsel for the applicant is absent. Mr. K. Upadhyay, learned counsel on behalf of Mr. M.K. Mazumdar learned counsel for the respondents seeks further time for written statement. Post on 7.9.2005. Interim order dated 24.6.2005 shall continue till next date.

*[Signature]*  
Vice-Chairman

mb

7.9.05

Heard Miss M.Roy, learned counsel for the applicant and Mr K.Upadhyay, learned counsel for KVS.

List on 13.9.05 alongwith M.P. 136/05.

*[Signature]*  
Vice-Chairman

pg

13.9.2005

Ms.M.Roy, learned counsel for the applicant seeks for short adjournment. Learned counsel for the respondents is not present.

Post on 27.9.2005.

*[Signature]*  
Vice-Chairman

bb

27.9.05.

Ms. M.Roy learned counsel for the applicant seeks further time. Mr. M.K.Mazumdar learned counsel for the Respondents has no objection.

Post the matter on 5.10.05.

*[Signature]*  
Vice-Chairman

lm

Received a. order  
copy of the O.A. 162/05  
dt. 22.8.2005  
Keshab K. Upadhyay  
Advocate  
26.8.05

① Additional Reply  
filed by the respondents

② No. W/S has been filed

*[Signature]*  
6.9.05

9.9.05

W/S filed by  
the respondents.

*[Signature]*

W/S has been filed

*[Signature]*  
12.9.05.

4-5-05

① W/S has been filed.

② No. Rejoinder has been  
filed.

*[Signature]*

5.10.2005

Mr. S. Saikia, learned counsel submits that counsel for the applicant has relinquished Vakalatnama and that he is filing Vakalatnama on behalf of the applicant. He accordingly sought for adjournment. Mr. M.K. Mazumdar, learned counsel for the respondents has no objection. Post on 19.11.2005.

Wls has been filed.

8.11.05

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

mb

9.11.2005

Though this case is posted for hearing, counsel for the applicant submits that 7th respondent - private respondent has not been served. It was for the applicant to ensure that notice to the respondents is served. After hearing counsel for the applicant for some time, it appears that 7th respondent has to be served with notice of this application. The applicant to take step for issuing notice to the 7th respondent by Speed Post with acknowledgement due. This will be done within two days from today. Office will ensure that on receipt of ~~step~~ notice is issued to the 7th respondent on the very same day.

Post on 8.12.2005.

*[Signature]*  
Vice-Chairman

Pl. comply order dated  
9.11.05  
NS  
9.11.05

Notice & order dt. 9/11/05  
sent to D/Section for  
issuing to resp. No-7  
by speed post with A/D.

less  
9/11/05.

New Addre

Notice & order  
dt. 9/11/05 sent to mb  
D/Section for issuing  
to resp. No. 7 by  
speed post with A/D.

less  
10/11/05. (with the cost of  
application).

D/No = 1594  
D/ = 10/11/05.

(5)

O.A. 162/05

7-12-05

8.12.2005 Mr. Saikia, learned counsel for the applicant seeks for time for hearing. Mr. M.K. Mazumdar, learned Standing counsel for the respondents are present. Post on 13.12.2005.

- ① Wls biled by the Respondants
- ② No Rejoinder has been biled.
- ③ Notice issued to Respondant No-7.
- ④ Service awaited from R. No-7.

bb

Vice-Chairman

13.12.2005 Heard Mr. D. Majumdar, learned counsel for the applicant and Mr. M.K. Mazumdar, learned Standing counsel for the KVS.

order is reserved.

My

*[Signature]*

Vice-Chairman

- ① Service report awaited from R. No-7.

bb

- ② No Rejoinder has been biled.

23.12.05. Judgment delivered in open Court. Kept in separate sheets. Application is disposed of.

My  
12.12.05

*[Signature]*

Vice-Chairman

Received copy for applicant

lm

*[Signature]*  
2/1/06

5/1/06  
Copy of the order handed over to the Applicant on 2/1/06 and a copy of the same sent to the D/Sec. for forwarding to the Respn No 2 by Post.  
*[Signature]*

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,  
Mizoram & Arunachal Pradesh)

W.p. (e)

No. 1763 of 200 6.

Kendriya vidyalaya sangathan 2 or.

Appellant  
Petitioner

Tapashi <sup>Versus</sup> Das & Amr

Respondent	Opposite Party
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Mr. J. Singh. (Sr. Advocate).  
Appellant—Mr. S. C. Biswas.  
For—Mr. R. Majumdar  
Petitioner—Mr. S. Das. Mr. S. Parashar.  
Mr. H. Chanda. Mr. B. Chondhury.

Respondent Mr. D. MAJUMDAR Mr. R. D. Sarma  
 For Mr. S. Sankar } For Plaintiffs: Advocate.  
 Opposite Party A. Sarma } R. P. Sharma, Rita Devi for Repd no 1  
Sri. G. P. Ghoshal, Gopal Sankar.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports orders or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p><b><u>W.P.(C) No. 1763/2006</u></b></p> <p>Before The Hon'ble Mr. Justice P.G. Agarwal The Hon'ble Mr. Justice H.N. Sarma</p> <p>21.2.07 (Agarwal J.)</p> <p>Heard Mr. SC Biswas, learned counsel appearing for the Kendriya Vidyalaya Sangathan &amp; Ors. ( for short 'Caveator') and Mr. RP Sarma, learned counsel appearing for the respondent applicant Mrs. Tapas Das.</p> <p>While the respondent applicant was working as a Drawing Teacher at Kendriya Vidyalaya Sangathan, Panchgram she was shifted and transferred to Kendriya Vidyalaya, Halflong in order to accommodate the private respondent Mr. SC Paul. The said order of transfer was challenged in O.A. No. 162/05 and vide impugned judgement dtd. 23.12.05 the learned Central Administrative Tribunal (for short 'The Tribunal') provided as follows :-</p> <p><i>The applicant, it is stated, is on leave. She has no objection if she is transferred to Silchar or in any other nearby schools. The KVS will immediately explore the possibility of providing the applicant with a posting either at Silchar or to a nearby place in accordance with the guidelines. If such a course is not possible the transfer order impugned in this O.A. will be cancelled and the position as it stood prior to that will be restored.</i></p>



Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p><i>This must be done within a period of two months from the date of receipt of this order."</i></p> <p>Hence, the present appeal by the Kendriya Vidyalaya Sangathan.</p> <p>We find from the submission made before us that the impugned order of transfer dt. 30.5.05 has already been acted upon as the respondent applicant has joined at Haflong and she is working there and the other respondent Mr. Paul has joined at Panchgram.</p> <p>In view of the above, we set aside the order providing for cancellation of the said order of transfer. However, considering the relief granted to the applicant respondent Mrs. Tapasi Das we do not propose to interfere with other directions.</p> <p>It is submitted by Mr. Biswas that in the meantime the earlier guidelines have been replaced in the Kendriya Vidyalaya Sangathan pursuant to which the department may consider the posting of the applicant Tapasi Das in the district of Barak Valley. However, the problem arises because she is holding the post of Drawing Teacher and there is only one post of Drawing Teacher in each of these schools.</p>

BY SPEED POST

URGENT

Central Administrative Tribunal  
केन्द्रीय प्रशासनिक अधिकरण

21 MAR 2006

Guwahati Bench.  
গুৱাহাটী ন্যায়পীঠ

by Officer or advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	4

Upon considering the submission made before us we provide that the respondent authority Kendriya Vidyalaya Sangathan shall accommodate the applicant with a posting in any other post in any other school situated in the Barak Valley preferably in the districts of Hailakandi, Silchar and Karimganj. It is also submitted by Mr. Biswas that the applicant may be asked to file a representation to that effect. No representation as such is called for in view of the directions issued and the respondent authority shall act accordingly. The process shall be completed on or before 30<sup>th</sup> June, 2007.

The writ petition is disposed of accordingly.

No costs.

36/- H.N. Sarma.  
JUDGE.

36/- P.G. Agarwal.  
JUDGE.

Memo No. HC.MI. 10, 710-13 / P.M. Dtd. 2/3/07

Copy forwarded for information and necessary action to:-

1. The Kendriya Vidyalaya Sangathan, 18, Institutional Area, Swahid Jeet Singh Marg, New Delhi- 110016. Through the Commissioner, KVS.
2. The Educational Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Swahid Jeet Singh Marg, New Delhi- 110016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Officer, Silchar, Hospital Road, Silchar-1, Dist. Cachar, Assam.
4. The Deputy Registrar, Central Administrative Tribunal, Rajgarh Road, Bhangegarh, Guwahati-781005. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No. 16-3/02-JA/250 Dtd. 04.04.2006.

Enclos:-

1. O.A. 162/2005 Part 'A' Files.
2. M.P. 136/2005 Part 'A' Files.
3. M.P. 139/2005 Part 'A' Files.

By order

Asstt. Registrar (Jail.)  
Guwahati High Court, Guwahati.

So (3)  
NS  
21.3.07  
H.N. Sarma

Chy  
11/3/07

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 162 OF 2005.

DATE OF DECISION: 23.12.2005.

Mrs Tapasi Das

APPLICANT(S)

Mr A.K. Purkayastha, Ms M. Roy and  
Mr D. Majumder. **Mr S.Saikia**

ADVOCATE(S) FOR THE  
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Mr M.K. Mazumdar and  
Mr K. Upadhyaya

ADVOCATE(S) FOR THE  
RESPONDENTS

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN

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

Judgment delivered by Hon'ble Vice-Chairman.

*G. Sivarajan*

12

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 162 of 2005.

Date of Order : This the 23<sup>rd</sup> day of December 2005

The Hon'ble Justice Shri G. Sivarajan, Vice-Chairman.

Mrs. Tapasi Das,  
W/o - Dr. Utpal Das,  
R/o - Cachar Paper Mill Campus,  
(HPC Ltd.) P.O. - Panchgram,  
P.S. - Algapur, Dist. - Hailakandi, Assam.

.....Applicant

By Advocates Mr A.K. Purkayastha,  
Ms M. Roy and Mr D. Majumder. Mr S.Saikia

- Versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Human Resource Development,  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi - 16.
3. The Education Officer (Ex. Asstt.)  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi.
4. The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, Maligaon,  
Guwahati-12.
5. The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office Silchar,  
Hospital Road, Silchar-1,  
Distt.- Cachar, Assam.
6. The Principal,  
Kendriya Vidyalaya,  
HPCL, Panchgram,  
P.O. Panchgram, P.S. Algapur,  
Distt.- Hailakandi, Assam.

7. Shri S.C. Paul,  
Asstt. Teacher,  
1870, Haflong (SSB),  
P.O. Haflong, P.S. Haflong,  
Distt.- N.C. Hills, Assam.

.....Respondents

By Advocates Mr M.K. Mazumdar and  
Mr K. Upadhyaya.

.....

### ORDER

#### SIVARAJAN. J. (V.C.)

The main issue involved in this case is regarding the scope and ambit of Clause 10 (2) read with Clause 8 of the Transfer Guidelines of Kendriya Vidyalaya Sangathan (KVS for short) particularly the expressions, "Transfer from ..... North Eastern Region after completion of a stay of 3 years" occurring in Clause 8 (b) and similar expressions occurring in Clause 10 (2) thereof.

2. The issue arises this way. The 7<sup>th</sup> respondent, Mr S.C. Paul a Drawing Teacher at K.V. Haflong applied for a transfer to K.V. Panchgram. The request was made under Clause 8 (b) on the ground that he had completed a stay of three years in the North Eastern Region. The applicant Mrs Tapasi Das was working as Drawing Teacher at K.V. Panchgram. There was no open vacancy in the said school to accommodate the 7<sup>th</sup> respondent. The KVS, on the belief that the ground urged by the 7<sup>th</sup> respondent for transfer would fall under Clause 10 (2) read with Clause 8 of the Transfer Guidelines, in order to accommodate the 7<sup>th</sup> respondent at K.V. Panchgram, displaced the applicant who is alleged to be the junior most teacher in the subject and transferred her to K.V. Haflong stating that it is the nearest

*SM*

station where a clear vacancy is available by applying Clause 10 (3) of the Guidelines. The applicant alleges that the transfer is in violation of transfer guidelines. Here it is relevant to note that both the stations K.V. Haflong and K.V. Panchgram are in Assam which is in the North Eastern Region and KVS is an All India organisation fully financed by the Government of India. The applicant has got other contentions such as that she was transferred to K.V. Panchgram on spouse ground at her request in the year 2002 and therefore she cannot be transferred even by applying Clause 10 (2) and further that though there arose a clear vacancy at K.V. Silchar, the same was illegally given to another drawing teacher. Thus the main issue is regarding the applicability of the provisions of Clause 10 (2) read with Clause 8 of the Transfer Guidelines of the KVS. The KVS has filed a written statement and an additional reply affidavit.

3. Heard Mr D. Majumder, learned counsel for the applicant and Mr M.K. Mazumdar, learned counsel for the KVS. The 7<sup>th</sup> respondent has sent a letter to the Deputy Registrar of this Tribunal giving certain factual situation.

4. It will be profitable at this stage to refer to the scheme of the Transfer Guidelines of the KVS formulated with effect from 19.1.2005. Clause 1 of the Guidelines reads thus:

"In supersession of the existing guidelines/orders on the subject, it has been decided that transfers in the Kendriya Vidyalaya Sangathan will hereafter be made, as far as practicable, in accordance with the guidelines indicated below:"

*[Signature]*

Clause 2 (vi) and (vii) define "Region" and "Stay" as

follows :

"'Region' means a region as notified by the Commissioner, comprising Kendriya Vidyalayas in a specified area of the country and placed under the charge of an Assistant Commissioner.

"'Stay' means service at a station excluding the period or periods of continuous absence from duties exceeding 30 days (45 days in case of N.E. Region, Sikkim and A&N Islands) at a stretch other than on training or vacation."

Clause 3 regarding the transfer policy reads thus:

"Although in terms of their all India transfer liability, all the employees of the KVS are liable to be transferred at any time, no transfers will be made other than on administrative ground or on request made by teachers outside the Region identified for this purpose by KVS except for the reasons/circumstances explained under clause 10 (2). Transfers can not be claimed as a matter of right by those making requests nor do these guidelines intend to confer any such right. In an academic session, request of an employee for transfer will not be considered more than once."

Clause 4 regarding tenure of stay in one station reads thus:

"The maximum period of service at a station shall generally not exceed three years in the case of Assistant Commissioners and five years in case of Principals/ Education Officers. In case of Principal, Commissioner may extend the period of service beyond five years at a Vidyalaya in order to promote academic excellence."

Clause 5 deals with administrative grounds for transfer.

Clause 6 A deals with the time during which annual transfers be made and exceptions are also provided. Clause 6 B deals with excess teachers. Clause 7 provides that the transfers shall largely be done against vacancies on the basis of requests received for the same and the procedure to be followed in case there are more than one applicant for a particular station.

5. It is clear from the provisions of Clause 3 that in respect of KVS employees there is All India Transfer liability. However, it is

*9/24*

made clear that no transfer will be made other than on administrative ground or on request made by teachers outside the region identified for this purpose by KVS except for the circumstances explained under Clause 10 (2). It is also provided that transfer cannot be claimed as a matter of right by those making requests and that these guidelines does not intend to confer any such right. From Clause 4 it would appear that in the case of teachers there is no requirement of maximum period of service at a station. Clause 7 also provides that transfers shall largely be done against vacancies on the basis of requests received for the same. Thus transfer at request is not the rule. It can be ordered normally only against vacancies and that too, when there are more applicants for a particular station by following the procedure provided in Clauses 7 and 8. Clause 10 (1) also mandates that to effect transfers in terms of Clause 8 of these guidelines priority list shall be prepared listing all the applications received for transfer in terms of Clauses 7 and 8 showing the entitlement points against each applicant. This priority list shall be operated against the vacancies available only after liquidating the excess to requirement situations prevailing in the Vidyalayas.

6. The exceptions to this rule is contained in Clause 10 (2) which is a special provision to meet certain situations specified therein. It is this provision, which calls for decision as stated in para 1 of this order.

7. Clause 10 (2) of the Guidelines reads as follows:

"Where transfer is sought by a teacher under clause 8 of the transfer guidelines after a continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A&N Islands and other declared hard stations or by





a teacher falling under the grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion, in the event of non-availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (Post/Subject). However, the Principals who have been retained under clause 4 to promote excellence would not be displaced under this clause."

Clause 10 (2) in terms refers inter alia refers to certain grounds specified in Clause 8 for special consideration under the said sub clause. Clause 8 (b) which is relevant for this purpose reads thus:

"Transfer from declared hard stations and North Eastern Region after completion of a stay of 3 years."

We are now concerned with the expression "Transfer from..... North Eastern Region after completion of a stay of 3 years" occurring in Clause 8 (b) above and also "transfer ..... after a continuous stay of 3 years in the North East" occurring in Clause 10 (2) of the Guidelines.

8. The KVS is an All India Organisation financed by the Government of India. The employees are liable to be transferred anywhere in India. However, transfer will be made only on certain specified ground (Clauses 3, 7 and 8). Clause 1 also says that the transfers will be made, as far as practicable, in accordance with the guidelines. It is in this context the expressions occurring in Clauses 8(b) and 10 (2) viz. "Transfer from ..... North Eastern Region after completion of a stay of 3 years" has to be understood. It is also relevant in this context to have advertence to the Government of India Office Memorandum No.20014/283-E IV dated 14.12.1983 and the decision of the Supreme Court in Chief General Manager Vs. Rajendra

*[Signature]*

Ch. Bhattacharji, (1995) 2 SCC 532. The relevant portion of the Office Memorandum reads thus:

"The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows:

(i) Tenure of posting/deputation.- There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and 2 years at a time for officers with more than 10 years of service. Periods of leave training etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public services as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended."

9. A contention was raised by the counsel for the appellant in the above case that, "it is clear from the Central Government memo dated 14.12.1993 that the consideration for posting at a station of choice is provided only for those officers who come to North-Eastern Region to complete their tenure posting and the said choice is not available to those officers who are appointed and posted in the North-Eastern Region itself." The Hon'ble Supreme Court observed as follows:

*Int*

"We find much force in these submissions. A bare reading of the memo dated 14.12.1983 will go to show that it is meant for attracting and retaining the services of competent officers in the North-Eastern Region, from other parts of the country and the expression tenure posting will imply the posting of officers in that region from outside the region who have been attracted from other parts of the country and regions other than the North-Eastern Region and not the persons belonging to that very region where they are appointed and posted....."

10. The Supreme Court relying on an earlier decision of that Court in Union of India Vs. S. Vijaya Kumar, (1994) 6 SC 443 rendered in the context of Grant of Special Duty Allowance to the Central Government employees transferred to North Eastern Region from outside region held that:

"..... Applying the same analogy it can be said that the 1983 Memorandum with regard to the choice posting after the tenure posting is available only to persons belonging to the region other than the North-Eastern Region....."

The Supreme Court further observed that:

"It is needless to emphasise that a government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting."

11. The KVS is an autonomous organisation fully financed by the Government of India. The Office Memorandum issued by the Central Government, though not strictly applicable, has got an impact on the KVS also. It is taking into account the aforesaid position, it has to be presumed, that the KVS has made a provision in Clause 8 and a special provision in Clause 10 (2) for a separate treatment.

12. Now coming to the expressions transfer from (underlining given) the North Eastern Region after completion of a stay of 3 years,

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even without the aid of any other provision or decision, it is abundantly clear that it only means transfer from the North Eastern Region to any other region in view of the All India Transfer liability. The decision of the Supreme Court detailed hereinabove also supports this view of mine.

13. It is an admitted position that the 7th respondent belongs to the North Eastern. The Kendriya Vidyalaya in which the 7th respondent was working and the Kendriya Vidyalaya to which he is transferred both are located in the same region viz. North Eastern Region. Hence the provisions of Clauses 8 (b) and 10 (2) have no application to the 7th respondent and the transfer order issued by the KVS under Clause 10 (2) on the ground of completing 3 years stay in the North Eastern Region is illegal and unjustified particularly in view of the fact that the applicant was adversely affected. In this context the decisions of the Supreme Court in N.K. Singh Vs. Union of India, (1994) 6 SCC 98 and in Abani Kanta Ray Vs. State of Orissa, (1995) Supp (4) SCC 169 in regard to the scope of judicial review of transfer orders is relevant. Suffice to refer to the decision in Abani Kanta Ray for N.K. Singh's case is relied on in that case. In Abani Kanta Ray's case it was observed by the Supreme Court in para 10 as follows:

"It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. (See N.K. Singh v. Union of India)."

The instant case squarely falls within the said settled position.

14. In the above circumstances it is unnecessary for me to consider as to whether the respondents have properly applied the

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provisions of Clause 10 (3), which provides for transfer of the applicant to a nearby station where a clear vacancy is available. There occurred a clear vacancy at Kendriya Vidyalaya, Silchar simultaneously on account of the transfer of Paul from that school at his request, however, the same was given to another teacher at her request. Whether the said transfer was made in accordance with the procedure provided in Clauses 7, 8 and 10 (1) is also doubtful. This issue is left open to the KVS.

15. One other situation is that pursuant to the impugned transfer order dated 30.5.2005 the 7<sup>th</sup> respondent had joined Kendriya Vidyalaya, Panchgram on 28.6.2005. It is said that his children are studying at Silchar. In the ordinary course the transfer order impugned in O.A. should have been set aside and quashed. However, the said course is not being adopted now in view of the above circumstances.

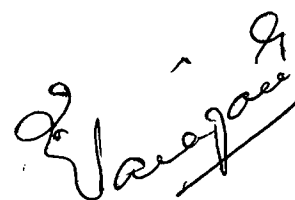
16. The applicant, it is stated, is on leave. She has no objection if she is transferred to Silchar or in any other nearby schools. The KVS will immediately explore the possibility of providing the applicant with a posting either at Silchar or to a nearby place in accordance with the guidelines. If such a course is not possible the transfer order impugned in this O.A. will be cancelled and the position as it stood prior to that will be restored. This must be done within a period of two months from the date of receipt of this order.

17. Needless to say that the period of absence from duty of the applicant in the meantime has to be regularised by granting eligible leave, if any.

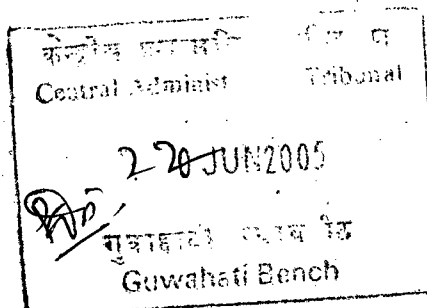


18. It is seen that a Division Bench of the Central Administrative Tribunal, Lucknow Bench in its order dated 8.9.2005 in O.A.No.282 of 2005 and connected cases considered a challenge to certain provisions of the Transfer Guidelines of the KVS effective from 19.1.2005 and observed that some of the provisions of the Guidelines including Clause 10 (2) and (3) are violative of Articles 14 and 16 of the Constitution of India and issued directions to reconsider the Guidelines. The transfer orders impugned therein were also directed to be kept in abeyance. These observations are also helpful to the applicant. It will not in any way affect the directions already issued in this order.

The O.A. is disposed of as above. In the circumstances the parties will bear their respective costs.

  
( G. SIVARAJAN )  
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH  
AT GUWAHATI.

ORIGINAL APPLICATION NO. 162/2005.

BETWEEN

Mrs. Tapasi Das,  
W/O Dr. Utpal Das,  
R/O Cachar Paper Mill Campus,  
( HPC Ltd.) P.O. Panchgram,  
P.S. : Algapur,  
Dist. : Hailakandi, Assam.

... Appellant.

- AND -

1. The Union of India  
represented by the Secretary  
to the Govt. of India,  
Ministry of Human Research  
Development, New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi - 16.

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3. The Education Officer (Ex.Asstt),  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi - 16.
4. The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, Maligaon,  
Guwahati - 12.
5. The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional office Silchar  
Hospital Road, Silchar - 1,  
Dist. Cachar, Assam.
6. The Principal,  
Kendriya Vidyalaya  
HPCL, Panchgram,  
P.O. Panchgram,  
P.S. Algapur,  
Dist. Hailakandi, Assam.
7. Shri S.C. Paul,  
Asstt. Teacher,  
1870, Haflong (SSB),  
P.O. Haflong,  
P.S. Haflong,  
Dist. N.C. Hills, Assam.

... Respondents.

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Ms. Jagmohan



DETAILS OF APPLICATIONS :

1. PARTICULARS OF THE ORDER/ACTION AGAINST WHICH THIS APPLICATION IS MADE.

- i) Transfer order : Transfer of the private Respondent No. 7 by way of displacing the applicant from her present place of posting despite the fact that she was earlier transferred to the said place of posting on spouse ground as well as in enforcement of her legitimate right as per the earlier Transfer Guidelines.
- ii) The date of impugned displacement 30/5/05 and vis-a-vis transfer : The applicant was displaced in terms of impugned transfer order dated 30/5/05 (not yet communicated) in order to accommodate the private Respondent No. 7 consequent upon acceptance of his request.
- iii) Prepared and published by : The impugned order of displacement of the applicant against the transfer of private Respondent No. 7 was issued by the Education Officer, K.V.S. in

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violation of the relevant provisions contemplated in the Transfer Guidelines effective from 19.1.2005.

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Mrs. Tapani Das

2. Jurisdiction of the Tribunal:

The Applicant declares at subject matter of the instant application for which she wants the redressal against her legitimate grievances is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The Applicant declares that the present application is within the period of limitation as prescribed under section 21 of the Central Administrative Act, 1985.

4.1 Facts of the case:

That the Applicant is the citizen of India. Presently she is residing in Panchgram H.P.C Paper Mill Complex in the district of Hailakandi and as such she is entitled to all protection, right and privileges as guaranteed

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under the Constitution of India. The applicant on the other hand, is residing in the jurisdiction of the Tribunal and she is thereby entitled to approach this Hon'ble Tribunal for enforcement of her legal and statutory right related to her service and this Hon'ble Tribunal being the real protector of the Govt. servant working in any Central Govt. Department, would be pleased to entertain this Application and give complete, adequate, full and substantive justice to her.

4.2 That the Applicant states that this Application is filed basically against the arbitrary and illegal action of the official Respondents who displaced the Applicant in order to accomodate the private Respondent No. 7 in violation of the mandatory provisions as contemplated in the Transfer Guidelines of 2005. Those official Respondents had not only act beyond authority but also in contrary to the said guidelines just with a view to accomodate the private Respondent No. 7 who was although not eligible under the present transfer guidelines. Since the Applicant's substantive right was taken away by the official Respondent in an arbitrary, malafide, unfair and discriminatory manner the applicant has got no other alternative remedies but to approach this Hon'ble tribunal with a present

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application. The basic contention of the Applicant as made in this application is that the legality and validity of the impugned transfer order vis-a-vis the displacement from the present place of posting, is totally against the present guidelines apart from being contrary to public interest and under that circumstances the Applicant is praying for issuing a positive direction to the official Respondent to recall or withdraw or cancel the impugned transfer order and allow the applicant to continue in her present place of posting.

4.3 That the Applicant states that she is a Central Govt. employee working as Art teacher in Kendriya Vidyalaya and at present she is posted at Panchgram H.P.C, Paper Mill by virtue of her last transfer from Jagiroad Paper Mill, H.P.C.L. vide order dated 01-04-02 (on spouse ground) under the earlier transfer guidelines. As such the applicant is legally entitled to approach this Hon'ble tribunal and file any application in connection with and/or in relation to her condition of service being affected or prejudiced by any illegal and arbitrary action and/or decision by and on the part of the Respondent authority. Since the applicant is the Central Govt. employee, this application is maintainable and <sup>this Hon'ble Tribunal</sup> is competent to entertain this application and grant appropriate and adequate relief or reliefs in accordance with law.

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Mrs. Tapani Das

4.4 That the applicant states that since the impugned transfer order and consequent displacement of the applicant are contrary to the present transfer guidelines, the said transfer order is subject to judicial scrutiny by this Hon'ble tribunal. The Respondent authorities cannot resort to any absolute power or discretion to transfer the employees in ignorance of the aforesaid transfer guidelines. It is apparently clear that in order to transfer the private Respondent No. 7 to the place of her choice, the Respondent authorities had displaced the applicant in total disregard to the aforesaid guidelines as well as the protection made available thereunder. Therefore, the impugned transfer order cannot be construed to be in public interest or for any administrative exigencies.

4.5. That the Applicant states that she was appointed as Trained Graduate Teacher in TGT in Hindustan Paper Corporation Ltd. Kendriya Vidyalaya, Jagiroad on 18.7.95 through regular selection conducted by the duly constituted selection Board in compliance with Recruitment Rules. During the entire tenure of her service, she has rendered a blameless service to the Department and since 1995 to 2002, she was completely detached from her family and the Respondent authorities after long continuous persuasion, considered her claim for transfer <sup>on</sup> spouse ground under the pro-

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prevailing Transfer Guidelines. The Respondent authorities although considered her claim for transfer but she was denied transfer according to her first choice as contemplated in the said Transfer Guidelines. The Respondent authorities infact, transferred the applicant anticipating the probable result of the earlier case which was filed by her before this Hon'ble Tribunal against the arbitrary and illegal non-consideration of her right for transfer.

4.6 That the Applicant states that Respondent authorities all along subjected her to serious discrimination by way of not treating her in a fair, reasonable and equal manner. The Respondent authorities did not ever consider the bonafide and legitimate claim of the Applicant in conformity with the earlier Transfer Guidelines and in denial of her right to be considered in a fair, equal and reasonable manner, extended undue favour to some other teachers having less better right. While considering the respective claim of the Applicant and others, the Respondent authorities totally overlooked the basic principles regarding transfer as contemplated under the prevailing Transfer Guidelines to the effect that the Applicant was senior to those two teachers namely, Pradip Paul and Sipra Paul<sup>and</sup> in view of her seniority she had a better claim under the said Guidelines and those two persons cannot be given any preference in supersession of her right and bonafide claim.

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4.7 That the Applicant states that the Applicant joined in service on 18.7.95 as TGT in HPCL Kendriyo Vidhyalaya where as the private Respondent No.7 (Shri pradit Paul ) and Respondent No.8 (Mrs. Sipra Paul) entered into service subsequent to her and under <sup>any</sup> circumstances and for any reasons those Respondent No.7 and 8 can <sup>not be</sup> given any priority over the Applicant in the matter of transfer and such preference would amount to serious discrimination being h by Article 14 and 16 of the Constitution of India.

Admittedly the Applicant is lawfully eligible to claim the transfer benefits as per the prevailing Transfer Guidelines and the Respondent authorities are legally bound to consider the said bonafide and legitimate claim under the sponse ground in conformity with the said Guidelines.

Prior to 1999, there was no transfer Guidelines and as per the normal practice, any Teacher of any Kendriya Vidhyalaya make application for transfer to any other Vidhyalaya under any Regoin provided the Applicant has completed at least three (3) years continuous service and that there are some vacancies available in the said Vidhyalaya. As per the prevailing practice, the Application in respect of transfer of any Teacher from class vi to x stage, were required to be submitted before the Head quarter at New Delhi through respective Principal of the Vidhyalaya. Under the prevailing practice and procedure prior to 1999- 2000 sessions, the prayer for transfer of

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any teacher was considered by the Headquarter of Kendriya Vidyalaya Sangathan, New Delhi by giving preference or priority on the " Spouse Ground " , " Medical Ground " and " Mutual Transfer ". Under that procedure and practice, the whole basis or criteria for consideration was the duration of the service in a particular school or the seniority as the case may be.

On the other hand as per the prevailing practice and procedure while submitting application for transfer, the Applicant need to mention in the respective column of the prescribed Application Form as to the chronological choice of the school preferred by them as well as the ground on which the transfer was sought for.

4.8 That the Applicant states that she having learnt about the vacancy likely to fall vacant during 1998-99 sessions, in Silchar Region, the Applicant submitted her application on 6.5.99 in prescribed Form for consideration of her prayer for transfer from Kendriya Vidyalaya under Silchar Region as referred to in the said Application Form. In that Application, the Applicant specifically mentioned that K.V. Panchgram (Paper Mill HPCL) was her 1st choice whereas K.V., Oil and Natural Gas Commission

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Shrikona and K.V. No. 1 Silchar to be 2nd and 3rd choice respectively.

In that Application the Applicant in justification of her claim for transfer under " Spouse ground" specifically mentioned that her husband is working at Silchar and except her, there is no any member to take care of her ailing in laws and in terms of the existing Guidelines, she is legally entitled to be transferred against any one of those schools on spouse Ground with due regard to her choice or preference.

A copy of the Application dated 6.5.99 seeking transfer is annexed as Annexure - 1.

4.9 That the Applicant states that the aforesaid Application dated 06.05.99 was thereafter, forwarded to Regional office at Maligaon by the Principal of her school as per the prescribed procedure and the Regional office accordingly, forwarded the said Application to the Headquarter of Kendriya Vidyalaya Sangathan at New Delhi recommending her name for favourable consideration in conformity with the prevailing Transfer Guidelines. It is noteworthy to mention that as per the said Transfer Guidelines, any teacher could make application for transfer to any other school of his or her choice or preference on "Spouse Ground " unless

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the wife or husband of the said Applicant is working in any Deptt. of State Govt./Autonomus Body/PSI. It is also to be noted that the husband of the present Applicant is an employee of the State Govt. of Assam working in the Deptt. of Health Service and during the relevant time, her husband was working at Silchar.

4.10 That the Applicant states that the Headquarter New Delhi duly considered the prayer of the Applicant along with others and her name found place in the top of the priority list in Sl.No.1 which was prepared by the said Head Quarter in respect of various schools under Silchar Region for the sessions 1998-99. The said priority list however, shows that the authorities accepted all the three (3) choice as opted by the Applicant vide her Application dated 06.05.99 (Annexure - 1).

The said priority list further shows that K.V., Panchgram was accepted to be the 1st choice of the Applicant and KV, ONGC, Shrikona and KV No.1 Silchar were accepted to be her 2nd and 3rd choice respectively. It also shows that the Respondent authorities did not consider any other teacher in respect of aforesaid three (3) schools viz, (a) KV Panchgram Paper Mill, HPCL, (b) KV, ONGC, Shrikona and (c) KV No. 1, Silchar under Silchar Region and the Applicant was the

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Mrs. Tapen Das

only candidate who was found suitable and equitable for transfer on the "Spouse Ground".

A copy of the priority list for 1998-99 sessions is annexed as Annexure - 2.

4.11 That the Applicant states that although she was selected for transfer to KV Panchgram HPCL as per First choice but due to some unknown reasons, she was not even considered for transfer in any one of aforesaid three schools as preferred by her. The Respondent authorities on the other hand, extended the said transfer benefits to all other candidates according to their choice or preference as referred in the aforesaid priority list. Against such non-consideration, the Applicant submitted a representation dated 14.11.99 before the Asstt. Commissioner, KV Sangathan, Regional office, Guwahati with a prayer for consideration of her case for transfer to K.V Panchgram in terms of her selection. In that regard the Applicant further contended that she was the only eligible teacher who was selected by the authorities by giving her First choice/preference against said KV, Panchgram.

4.12 That the Applicant states that she failed to evoke any response from any corner. Later on in course of her inquiry, she was for the first time informed by the Respondent No. 4 that a new Transfer Guidelines

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was introduced by the Headquarter and her case would be considered as per the said Transfer Guidelines and in that case she would be required to submit a fresh application under the said Guidelines.

Subsequently, the Respondent No. 2 issued a General Notification vide office Memo No.F.1-1/2000-KVS (Estd.III) dated 30.12.99 informing that all the pending application submitted by both teaching and non-teaching staffs for transfer would be considered as per the new Transfer Guidelines. By that Notification, fresh applications were also invited from both teaching and non-teaching staffs including Principal and vice-Principal for the Sessions 2000-2001.

4.13 That the Applicant states that the aforesaid Notification dated 30.12.99 prescribed a procedure regarding the submission of the application for transfer. The clause 3 provided that all eligible employees desire of transfer, may prefer application in "quaduplicate" through the prescribed Form and in conformity with the instructions and station KV code.

The clause 5 provided that the Medical certificate in support of transfer on medical ground and/or declaration regarding the employment of the spouse in support of transfer on spouse ground, would be the part of the application.

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4.14 That the Applicant states that the aforesaid Guidelines defined various terms and expressions related to the matter of transfer. As per clause 2(ii) of the earlier Transfer Guidelines the term "performance" means a) where the ACR (s) is/are available in the concerned Regional office, the assessment of the teacher at reflected in the ACR for the last 3 years preceeding the year in which transfer is taken up. b) Where the ACR (s) for last 3 years or any of the last 3 years is/are not available in the Regional office for any reason, the assessment by the Asstt. Commissioner of the Region from where transfer is sought for and the conduct of the teachers for the year (s) in respect of which ACR (s) is/are not available.

Clause 2(iv) of the earlier Guidelines defined the term "service" to be the period during which a person has been holding the charge of the post in the Sangathan on regular basis.

Clause 2(vi) defined the term "Teacher" to be the all categories of Teachers in the employment of Sangathan and includes Principal and Vice-Principal but does not include the Education officer and above.

Clause 2(viii) defines the term "Teacher" to be the continuous stay of 3 years in N.E.Region, Sikim, Andaman & Nikobor Island and listed hard station. While

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calculating the aforesaid period or periods of continuous absence from duties exceeding 30 days (45 days in case of N.E. Region, Sikim, Andaman & Nikubor Island) at a stretch other than the maternity leave, training or vacation shall be excluded.

Clause 5 provided that a Teacher is liable to be transferred on the recommendation of the Principal and the Chairman of the Vidyalaya Management Committee of Kendriya Vidyalaya,

Clause 6 provided that as far as possible the Annual Transfer may be made during the summer vacation and no transfer except those on the following grounds, shall be made after 31<sup>st</sup> August :

- i) Original reasons, administrative grounds and cases covered by para 5.
- ii) Transfer on account of death of spouse or serious illness when it is not practicable to defer the Transfer till next year without causing serious danger to the life of the teacher, his or her spouse and son/daughter.
- iii) Mutual transfer as provided in paragraph 12.

The Clause 8 of the earlier "Transfer Guidelines" under heading "spouse case" provided that where the spouse is a Sangathan employee, the teacher seeking

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transfer on the spouse Ground his or her entitlement point would be 20. On the other hand, the said entitlement point in case of a teacher whose spouse is an employee of State Govt. or its Autonomous Body or PSU, would be 12 and in the cases <sup>of</sup> all other spouse the said entitlement point is fixed as 10.

Clause 10(i) of the Guidelines provided that where a transfer is sought by any teacher under clause/ paragraph 8 of the Guidelines after continuous stay of 3 years in N.E Region and 5 years else where at places which were not of his choice or where such transfer is sought by a teacher falling under the proviso 2 para 7 of the Guidelines or every hard cases involving human compensation, the authority shall be required to create vacancy to accommodate him by transferring the teacher with longest period of stay at the station provided they had served for not less than 5 years at the station.

Clause 10(2) provided that while transferring out such teachers, the authorities would be required to make an effort to accommodate the lady teacher at nearby places/stations to the extent possible and administratively desirable.

The Applicant however, undertakes to produce the earlier Transfer Guidelines before this Hon'ble Tribunal as and when required.

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4.15 That the Applicant states that in terms of the aforesaid Transfer Guidelines she was directed by the Respondent No. 4 for submitting a fresh Application and accordingly she submitted a fresh Application on 17.2.2K before the Respondent No. 2 through Respondent No. 6 strictly in terms of the direction issued under the aforesaid Guidelines. Upon consideration of her application, the authorities later on, recommended her name for consideration on spouse ground to the extent of choice as preferred by her. It may be noted that the Applicant preferred her choice in chronological manner pointing out her present school i.e. KV, Panchgram, HPCL to be her 1st choice.

A copy of the Application dated 07.02.2K is annexed as Annexure - 3.

4.16 That the Applicant states that KV Panchgram was the 1st choice of the Applicant whereas KV, ONGC Shrikona, Silchar and KV No. 1 Silchar were 2nd and 3rd choice respectively. On the other hand, KV Masimpur and KV, Karimganj were 4th and 5th choice respectively.

In support of the aforesaid contentions, the Applicant begs to mention herein below a detail chart showing the respective Region Code, Station Code and KV Code:

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<u>Choice</u>	<u>Station/Vidyalaya</u>	<u>Region code</u>	<u>Station code</u>	<u>KV Code</u>
1.	KV Panchgram (HPC)	18	022	773
2.	KV Sonai Road (ONGC)	18	439	803
3.	KV Silchar	18	439	802
4.	KV Masimpur	18	439	795
5.	KV Karimganj	18	045	789

A copy of the Station arise list of  
KV Silchar is annexed as Annexure - 4.

4.17 That the Applicant states that the aforesaid application of the Applicant was duly placed before the committee constituted for the purpose in conformity the earlier Guidelines. Later on the applicant by her won efforts, collected the priority list and found that her name was placed in sl. No. 3 showing KV Dolchora, school to be her 1st choice.

The said priority list further shows that one Sipra Paul an existing teacher of KV Tuli, Nagaland was placed above the Applicant. Similarly, one Pradip Paul, was placed above the applicant in Sl.No. 2 who was posted in KV, Dinjan No. 1 and against his name there is no mention of any school to be his choice. In that priority list said Sipra Paul was given 1st preference and Pradip Paul was given 2nd preference whereas the applicant was given 3rd preference.

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Mrs Tapani Das

A copy of the priority list for the Sessions 1999-2000 Sessions is annexed as Annexure - 5.

4.18 That the Applicant states that meanwhile as per the priority list as referred to above (vide Annexure - 5) the Respondent No. 2 transferred ~~dent~~ ~~transferee~~ said Sipra Paul to the School of 1st choice namely KV Dholchora. On the other hand the above-named Pradip <sup>Paul</sup> although was junior to her, was sought to be given preference over her against the vacant post of KV Panchgram which was admittedly opted by the Applicant to be his 1st choice vide Application dated 17.2.2K (Annexure-3).

4.18 That the Applicant states that immediately thereafter, the applicant made a representation on 11.12.2K before the Respondent No. 4 on the contention that she was the only eligible candidate selected by the authority during 1998-99 sessions by way of accepting KV Panchgram to be her 1st choice but due to some unknown reason she was directed to submit a fresh application for the next session in terms of newly introduced Transfer Guidelines.

It was contended in the said application that she stayed in the existing school (KV Paper Mill, HPCL, Jagiroad) for continuous period of 5 years and applied

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for transfer for the 1st time under "spouse ground " showing KV Panchgram to be her 1st choice against the vacant post occurred on account of transfer of its last incumbent, Shri Madhu Dubey.

A copy of the application dated 11.12.2K is annexed as Annexure - 6.

4.19 That the Applicant states that the Respondent No. 4 vide office communication dated 12.12.2K recommended her name before Respondent No. 2 for consideration of her case for transfer to any of the schools of her choice as preferred by her in her application.

The Respondent No.4 wrote another letter vide office Memo No. 2. 19/99-2000/KWS (SR)/12802 dated 18.12.2K to Respondent No. 3 informing that KV, Panchgram was the 1st choice of the Applicant but considering her claim the authorities had transferred one S.K. Srivastava to that school. The said post remained vacant due to resignation submitted by said person and in that event, the Applicant needs to be transferred in terms of her 1st choice on "spouse ground".

A copy of the office letters dtd. 12.12.2K and 18.12.2K are annexed as Annexure - 7 & 8 respectively.

4.20 That the Applicant states that inspite of various recommendations as stated above, she was not

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considered and against such arbitrary and illegal non-consideration the Applicant filed a case being O.A. No. 388/01 before this Hon'ble Tribunal on 24.9.01. The challenge of the Applicant was that the action of the Respondents was totally vitiated due to total non-application of mind and arbitrary and discriminatory violation of the aforesaid Transfer Guidelines. The said order was also vitiated due to undue favour being shown to those private Respondents.

Under the aforesaid facts and circumstance, the Applicant prayed for striking down of the impugned action of the Respondent authorities denying the transfer of the Applicant according to her choice as preferred in the Transfer application dated 17.2.2000 (vide Annexure - 3). The Applicant's further prayer was for setting aside or quashing of the impugned priority list of 1999-2000 sessions so far as the Applicant is concerned.

The further prayer of the Applicant was for issuing direction to the Respondent authorities to transfer the Applicant to KV Panchgram as per her 1st choice or preference and further to recall or withdraw or cancel the said priority list for the sessions 1999-2000 and prepare a fresh list strictly in terms of the Transfer application dated 17.2.2000

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(vide Annexure-3) and also not to fill up the vacant post of said KV, Panchgram and/or the vacant posts of all other school of her choice as preferred in the Transfer Application dated 17.2.2000 by way of transferring any other person including Respondent No.7 and 8.

In the interim, the Applicant prayed for suspension of impugned priority list for the sessions 1999-2000 <sup>as</sup> so far the Applicant is concerned and for issuing direction to Official Respondents not to transfer any other person including Respondent No.7 and 8 against the vacant post of KV, Panchgram or any other school of her choice vide Transfer Application dated 17.2.2000 (Annexure-3) and ~~keep~~ preferably the vacant post of KV Panchgram reserved for the Applicant and/or any other vacant post of any of the schools of her choice and further not to invite any fresh application and make selection for transfer in respect of the existing and future vacancies of those schools of her choice as made in the Transfer Application dated 17.2.2000 (vide Annexure- 3).

4.21 That the Applicant states that upon consideration of the prima facie case and contentions made in the said Application and after hearing the L'd Counsels of both the parties, this Hon'ble Tribunal was pleased to admit the matter and issued notice to all the Respondents to show cause against the reliefs sought for by the Applicant.

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Having received the notice from this Hon'ble Tribunal, the Respondent No.2 to 6 entered appearance and filed a joint written statement before this Hon'ble Tribunal in connection with the aforesaid case. These official Respondents in their joint w/s however, admitted the bonafide and legitimate eligibility and entitlement of the Applicant apprising this Hon'ble Tribunal that the Transfer Guidelines were duly followed and there was no lapse or violation of any of the provisions or direction contemplated in the said Guidelines. It may be noted that the official Respondents signed the verification on 11.3.02 and filed their w/s on 13.3.02.

The Applicant however, begs to produce the aforesaid w/s before this Hon'ble Court as and when required.

4.22 That the Applicant states that later on during the pendency of the aforesaid case before this Hon'ble Tribunal, the Respondent authorities realised the wrong committed by them and accordingly they rectified the said wrong by way of issuing Transfer order dated 01.04.02 under office Memo No. F.17-1(MSC/BRGT/2002/KVS (Estd.IV) whereby the Applicant was transferred to KV Panchgram which was admittedly opted by her to be the 1st choice vide Transfer application dated 17/2/2k (Annexure-3). In terms of the aforesaid Transfer order dated 01.04.02, the Principal of KV, HPC Jagiroad issued an order dated 10.04.02 vide office Memo No.29/KVHPCL/JRD/2002-2003/48-52 releasing the Applicant from that

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Mr. Jaisankar Jaisankar

school with a direction to join in KV Panchgram.

Copies of the Transfer order dated  
01.04.02 and Release order dated  
10.04.02 are annexed as Annexure -  
9 and 10 respectively.

4.23 That the Applicant states that in terms of the  
aforesaid Transfer order dated 01.04.02 and consequent  
Release order dated 10.04.05, the Applicant joined in KV  
Panchgram on 11.4.02 which she preferred to be the school  
of First choice and since 17.04.02 she has been working in  
the said school consequent upon her transfer on spouse  
ground in pursuance of the earlier Transfer Guidelines.  
It may be noted that the Applicant worked in KV Jagiroad,  
HPCL for a continuous period of 5 years w.e.f. 20.6.95  
(Date of initial appointment). Subsequently, in order to  
enable her to enjoy the marital life, the Respondent autho-  
rities considered the Applicant on spouse ground in terms  
of the prevailing Transfer Guidelines. The said spouse  
ground is reasonably based on equity and compassion and  
once the equity was done by the authorities by way of  
considering the prayer of the Applicant on such equitable  
ground, it would not be justified, reasonable and equitable  
to restore back earlier position as existed prior to that  
transfer on 'spouse ground' by way of displacing the  
Applicant dehores the newly introduced Transfer  
Guidelines, 2005.

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4.24 That the Applicant states that she has been working in her present school consequent upon her transfer on 'spouse ground' vide Transfer order dated 01.04.02. On the other <sup>hand</sup>, the official Respondents filed their joint w/s on 13.3.02 before this Hon'ble Tribunal in connection with the earlier OA. No.388/01 and they issued the Transfer order on 1.4.02 in favour of the Applicant in conformity with choice as opted by her as per the earlier Transfer Guidelines. Therefore, it apparently appears that Respondent authorities had issued the said Transfer Order during the pendency of the case before this Hon'ble Tribunal having due regard to the legitimate and legal right of the Applicant as conferred under the prevailing transfer Guidelines.

4.29 That the applicant states that subsequently, this Hon'ble Tribunal by order dated 15.5.02 disposed of the said case after hearing the learned counsel appearing on behalf of the Respondents authorities but the said learned counsel of the Respondent authorities remained totally silent and did not apprise this Hon'ble Tribunal that the applicant was already granted full relief by way of transferring her vide order dated 1.4.02 in due regards to her lawful, bonafide and legitimate right and that she already joined in the school (KV, Panchgram) in implementation of the said transfer order and consequent Release order dated 10.4.02 and in view of the relief so granted to the applicant, the aforesaid case stood in-fructuous and it was under such circumstances, the applicant did not pursue the said case.

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Mrs. Tapen? Jm



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Mrs. Tejani Jm

4.26 That the Applicant states that this Hon'ble Tribunal admittedly disposed of the said case after the transfer of the Applicant in the present school. It is an admitted fact that the Applicant's basic relief in the case was also for issuing appropriate effective direction for her transfer to same KV Panchgram and that the Respondent authorities granted same relief what was exactly prayed by the Applicant in the said case .

This Hon'ble Tribunal however, on the basis of materials available on records and after hearing of the learned Advocate represented the Respondent authorities was pleased to dispose of the case by order dated 15.5.02 in holding that the said Application pertains to posting in the light of the policy guidelines for spouse posting.

The policies guidelines are made to render justice to the parties. Since the policies are there it is expected that the authority shall take all appropriate measures to allay the grievances of the applicant within the legal norms if not already alleviated.

A copy of the judgment and order dtd. 15.5.02 passed by this Hon'ble Tribunal in O.A. No. 388/02 is annexed herewith and marked as Annexure - 11.

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4.27 That the Applicant states that while she was working in the present school (KV Panchgram) by virtue of the aforesaid Transfer Order dated 1.4.02, the Respondent authorities surprisingly issued an order dated 30.5.05 vide office Memo No. F.3-1(D)/MSC (DRGT)/2005/KVS Estd.III whereby the Applicant was displaced from her present posting. By the said order, the Respondent authorities transferred the private Respondent No. 7 from his present place of posting (KV Haflong , SSB) to KV Panchgram by way of displacing the Applicant from the said KV Panchgram and transferring her to KV , SSB in place of said private Respondent No. 7 . It is to be noted that the said Transfer Order <sup>was</sup> issued behind the back of the Applicant and that too without any reason or prior intimation or opportunity of hearing. The Applicant did not have any knowledge regarding the said displacement. The applicant in fact, learnt about the said displacement and consequent Transfer order only 5 days back at Guwahati when she went the office of the Respondent No. 4 to enquire about her G.P.F A/C. Immediately thereafter, the Applicant made a request to the Respondent No. 5 to supply her a copy of the impugned Transfer Order but the same was denied to her.

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Mrs. Tapari Das

4.28 That the Applicant states that having no other alternative she obtained a copy of the impugned transfer order through internet like all earlier occasions. On careful perusal of the said Transfer order, the Applicant could learn that in order to accommodate the said private Respondent No. 7, the Respondent authorities had displaced her from KV Panchgram in illegal and arbitrary manner by way of posting her in the school of said private Respondent No. 7 (KV Haflong S.S.B.) .

It further appears from the said Transfer order that in terms of latest Transfer Guidelines, the said private Respondent No. 7 was transferred against the Applicant. It also appears that the clause 10(2) of the present Transfer Guidelines provides for creation of a vacancy so as to accommodate the persons who are figuring in the priority list and as per the priority position, the Respondent No. 7 and others were transferred on request. By the said Transfer order the displacement of the Applicant was effected as per clause 10(3) of the said guidelines.

A copy of the impugned Transfer order dated 30.5.05 is annexed as Annexure - 12.

4.29 That the Applicant states that by the aforesaid impugned order dated 30.5.05 (vide Annexure-12)

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Mrs Tapani Singh

the Applicant and one Pradip Paul were displaced in order to accommodate Private Respondent No. 7 and one D C Das. By that order the private Respondent No. 7 was transferred against her post in K V Panchgram and the Applicant was posted against the post of said private Respondent No. 7 consequent upon her displacement in terms of clause 10(3) of the new Guidelines.

On the other hand, one Pradip Paul was transferred on request from his existing posting (KV Silchar) to KV Lokra and in order to accommodate him, one D C Das was displaced from his existing post in said K V Lokra and he was posted in KV Tenga valley consequent his displacement. Thus it appears that on transfer of above-named Pradip Paul from KV Silchar to KV Lokra, his post in KV, Silchar was not filled up by transferring the above-named displaced person D.C. Das and the post is still lying vacant. Admittedly the KV Silchar is nearest to the Applicant's school and in terms of the provisions contained in clause 10(3) of the said Transferred Guidelines, the Applicant on her being displaced, ought to have been accommodated in any nearest school and since the post of KV Silchar was not filled<sup>up</sup> by the displaced person or any other person, the Respondent authorities ought to have taken utmost care of the said provisions and adjusted the Applicant in that vacant post in terms of said Clause 10(3).

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Mrs. Tapani Singh

4.30 That the Applicant states that in supersession of the existing Guidelines/orders on the subject of transfer, the KV Sangathan had introduced a new set of guidelines/orders. The said Guidelines were made effective w.e.f. 19.01.05. It appears from the impugned Transfer order <sup>at</sup> 30.5.05, the said transfer and consequent displacement were made in terms of the new transfer Guidelines/orders.

It is provided in clause 3 that although in terms of the all India transfer liability, all the employees of KVS are liable to be transferred at any time <sup>and</sup> no transfer will be made other than on administrative ground or on request made by teachers outside the Region identified for this purpose by KVS except for the reasons/circumstances explained under clause 10(2). The transfer cannot be made as a matter of right by making requests nor do these Guidelines intend to confer any such right. In an academic session, the request of an employee for transfer will not be considered more than once.

Clause 4 provides that the maximum period of service at a station shall generally <sup>not</sup> exceed 3 years in the case of Asstt. Commissioners and 5 years in the case of principals/Education officers. In case of Principal, commissioner may extend the period of service beyond 5 years at a Vidyalaya in order to promote academic excellence.

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Clause 5 provides that a teacher is liable to be transferred on grounds of misconduct or unsatisfactory academic performance on the recommendation of the principal and the Chairman of Vidyalaya Management Committee of the Kendriya Vidyalaya/Asstt. Commissioner of the Region. However, the Commissioner KVS reserves the right to transfer any employee on administrative grounds.

Clause 6 (A) provides that as far as possible the annual transfer may be made during summer vacation. The crucial date for determining the eligibility, stay etc. for those serving at the Vidyalaya at NE Region, very hard stations/hard stations, shall be 30th June and in rest of the cases, it shall be 31st March. However, no transfer except those on the following grounds shall be made after 30th June. Any modification /corrigendum arising out of effecting regular transfer, will be completed by 31st July.

Clause 7 provides <sup>that</sup> the transfer shall largely be done against the vacancies on the basis of request received for the same provided that -

a) in the event of there being more than one request for the same vacancy, priority for transfers on request against vacancies, shall follow the descending order of combined weightage.

Clause 7 (d) provides that as far <sup>as</sup> possible and also subject to the provisions contained in clause

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clause 10(2) such cases will be considered whenever transfers were made in the past for lady teachers to more than 500 kms. from respective home towns, choice will be given to come back to any position within 500 kms. provided there is a vacancy .

The said clause 7(d) further provides that in the event of a tie among the same category of spouse lady employee would be given preference over male employee and interse priority as under among different categories.

..... Joining of spouse ..... priority

4.21 While the spouse is an employee of the state Govt. or its Autonomous Body or PSU

2 Clause 10(1) provides that in order to effect the transfers in terms <sup>of</sup> clause of these guidelines priority list shall be prepared listing all the applications received for transfers in terms of clause 7 and showing the entitlement points against each applicant. The priority list (First) shall be operated against the vacancies available only after liquidating the excess to requirement situation prevailing in the Vidyalaya.

Clause 10(2) provides that where the transfer is sought by a teacher under Clause 8 after continuous

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stay of 2 years in the very HARD STATION or 3 years in the NE REGION, A & N Islands and other declared hard station or by a teacher falling under the grounds of medical/death/spouse/less than 3 years to retire or very hard case involving human compassion in the event of non-availability of vacancy at his choice station. ~~the~~ the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (post/subject). However, the principals who have been retained under clause 4 to promote excellence would not be displaced under this clause.

Clause 10(3) provides that while displacing the teacher, efforts will be made to accommodate them in the nearest KV against clear vacancy.

That the Applicant states that the private Respondent No. 7 was in KV, Masimpur for more than a decade and after such along time, he was transferred from that school to KV Haflong, SSB. Admittedly through his entire tenure of service, he enjoyed the service within the vicinity of his home town. The said respondent No. 7 in fact, worked outside the vicinity of his home town just for 4 years and after such a short period, he was given highest preference and brought back again within the vicinity within his home town and that too at the cost of the petitioner. On the other hand, the said Respondent No. 7 does not

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✓ fall within the perview of clause 10(2) when he has 5 years more service to go on retirement. The said fact would be evident from the latest seniority list dated 1.1.04. The said private Respondent No. 7 is shown in sl. no. 5 of the said seniority list which shows that he was appointed in the year 1978 and his date of birth is recorded to be 1.4.60 and as such his actual date of superannuation at the age of 60 years, would be 2010 and from this factual position, it unquestionably appears that the said Respondent No. 7 does not fall within the scope and ambit of the clause 10(2) and on that point of view, this transfer was totally vitiated.

4.31-A That this Application has been filed bonafide and for ends of justice.

4.32 That the applicant demanded justice but the same was denied to her.

4.33 That there is no alternative efficacious remedy and the remedy sought for would just, proper, adequate and complete.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS.

5.1 That it is stated that the impugned Transfer order and consequent displacement of the Applicant were seriously vitiated due to total non-application of mind and illegal and arbitrary deviation from the

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the transfer Guidelines and on that point of view, the impugned Transfer order is not tenable in law and the same is accordingly, liable to be set aside and quashed.

5.2 That it is stated that the Respondent authorities having failed to exercise their administrative discretion in just, judicious and equitable manner, the impugned Transfer order is subject to judicial scrutiny by this Hon'ble Tribunal. Once the Respondent authorities are directed to be guided by the Transfer Guidelines while dealing with the transfer matter of their employees, they <sup>are</sup> legally obligated to follow the said Guidelines and take the decision in conformity with the direction issued thereunder. The Respondent authorities in that case have had no administrative discretion and any deviation or departure from the said Guidelines would not only vitiate the legality and validity of the decision and consequent order of transfer vis-a vis displacement of the Applicant but would also render the same liable to be struck down.

4.3 That it is stated that the Transfer Guidelines being imperative on the Respondent authorities, have legal binding force and the right so accrued there under, is also enforceable in law. The Respondent authorities under <sup>that</sup> circumstance, can either deviate from the said Guidelines or take any decision beyond authority so conferred under the said Guidelines. Due to gross disregard to the said Guidelines, the entire decision making process shall be deemed

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be deemed to have been vitiated and any decision through that process shall be totally a non-existing decision and the same cannot be the basis of any administrative order. In the instant case when the impugned decision making process was seriously vitiated due to such deviation from the aforesaid Transfer Guidelines, the impugned transfer order and resultant displacement of the Applicant, are not sustainable in law and the same are accordingly, liable to be set aside and quashed.

5.4 That it is stated that even assuming but not conceding that the Respondent authorities have the administrative discretion but that discretion has to be exercised judiciously and with due application of mind into the relevant Rules, Guidelines, Instructions etc. Any decision or action taken by the said Administrative authorities without taking care of the relevant provisions of the said Guidelines etc, would be wholly injudicious, arbitrary inequitable and discriminatory rendering the consequent order being based on such decision, liable to be set-aside and quashed.

✓ 5.5 That it is stated that the case of the private Respondent No. 7 not having fallen within the scope and ambit of the clause 10(2) of the Transfer Guidelines, the impugned Transfer order was seriously vitiated and in

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that event the consequent displacement of the Applicant would be contrary to law and without jurisdiction.

Admittedly, the essential conditions as provided under that clause are not available in the instant case nor the said Respondent No. 7 prima facie seems to have fulfilled any of these conditions and in view of that factual and legal position, the impugned Transfer order and consequent displacement of the Applicant, are totally illegal, unjustified and injudicious and the same are accordingly, liable to be set-aside and quashed.

5.6 That it is stated that the impugned order of displacement having been vitiated due to total disregard to the relevant provisions as contemplated under clause 10(3) of the present Transfer Guidelines is not just, proper, valid and legal and it amounted to violation of the vested right and privileges of the Applicant rendering the same liable to be set-aside and quashed.

5.7 That it is stated that even assuming that in view of the provisions provided under clause 10(2) the displacement is permissible and within the competency of the authorities but the said displacement is subject to compliance of the provisions contemplated under clause 10(3) of the said Transfer Guidelines. Since the Respondent authorities had completely failed to take care of the provisions of Clause 10(3), the

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Mrs. Tapani Singh

impugned displacement of the Applicant is wholly illegal, mala fide, unfair and contrary to law apart from being without any authority in law and the same is accordingly, liable to be set-aside and quashed.

5.8 That it is submitted that admittedly the impugned Transfer order shows that the incumbent of Kendriya Vidyalaya, Silchar, Shri Pradip Paul was transferred to Kendriya Vidyalaya Lokra by displacing one D.C. Das from the said School. The said displaced employee was posted by the said impugned order in K.V. Tenga Valley. As a result, the post held by above-named Pradip Paul, was not filled up by the said displaced employee, D.C. Das. But the Respondent authorities did not take any care of the said factual position and in terms of provisions of clause 10(3), the Respondent authorities also did not accommodate the Applicant in the said vacant post in K.V. Silchar. It is a mandatory requirement that the Respondent authorities while displacing any employee for the purpose of accommodating another employee on transfer as per clause 10(2) of the Guidelines, are legally bound to make all possible effective efforts to accommodate the said displaced employee in the nearest K.V. of the Applicant and due to transfer of its last incumbent Pradip Paul vide impugned Transfer order dated 30.5.06 the said post fell vacant permanently and the Respondent authorities did not fill up <sup>that</sup> post by any person and in

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that event, they should have accommodated the Applicant against the vacant post in terms of clause 10(3) and non-compliance of the said clause, had totally vitiated the legality of the impugned order rendering the same not sustainable in law.

5.9 That it is stated that since the private Respondent No.7 has more than 3 years service to go on superannuation, he does not fall under clause 10(2) and as such the transfer of the said private Respondent No. 7 as per clause 10(2) of the aforesaid Guidelines is illegal, unfair, mala fide and without authority in law and the same is therefore, not tenable in law.

5.10 That it is stated that the Applicant's case being covered by clause 10(3) of the Transfer Guidelines <sup>he</sup> is legally entitled to the benefits as provided under that Guidelines and the Respondent authorities should not have denied the said benefits or protection. On the other hand, the manner in which the Applicant was denied of that benefits and protection, is not only arbitrary and illegal but is also contrary the rule of fairness in administrative action apart from being violative of the right to equality as guaranteed under Article 14 and 16 of the Constitution of India. Hence the impugned order is not tenable in law.

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5.11 That it is stated that aforesaid Transfer Guidelines having been introduced by the competent authorities are unquestionably the only guiding factor or basis and the said guidelines have therefore, binding legal force apart from being imperative on the Respondent authorities and any deviation or departure or non-compliance would vitiate the entire decision making process and any decision or consequent order thereon, would result in serious illegality rendering the same liable to be set-aside and quashed.

5.12 That it is stated that official Respondent being statutory have the statutory obligation to act in a fair, reasonable and equal manner. Those Respondent authorities are also obligated to maintain the transparency and act in conformity with the principles natural justice. The Respondent authorities do not have unfettered or absolute administrative discretion or pleasure even in the matter of transfer. Their each and every decision or action is bound to be tested by the touchstone of public interest and reasonableness. They are further accountable and answerable to the court of law to justify that the impugned administrative decision and consequent order are justified and in conformity with law. Once the impugned Transfer order appears to be not in conformity with any public interest or for any administrative exigencies, the same is mala fide, unfair and not valid.

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5.13. That it is stated that the Respondent authorities having discharged administrative functions, are unquestionably subject to rule of fairness and principles of natural justice and they are totally obligated to justify their decision and consequent order when the same had taken away the vested right of the petitioner in an arbitrary and discriminatory manner. The Respondent authorities are further obligated to give reason and afford pre-decisional opportunity of being heard and non-compliance of the said basic and fundamental requirements of law, had vitiated the fairness in decision and resultant action and the impugned order in view of that refusal by and on the part of these Respondent authorities is not tenable in law and the same is accordingly, liable to be set aside <sup>and</sup> quashed.

5.14. That it is stated that in view of the provisions under clause 10(3), the Applicant is legally entitled to the privileges and protection under clause 10(3) and the denial of that privileges and protection would result in serious arbitrariness and illegality apart from frustrating the very object of the said transfer policy and guidelines and the impugned Transfer order on that point of view, is therefore, liable to be set aside and quashed.

5.15 That it is stated that admittedly the Applicant was earlier considered for transfer on spouse

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ground under the prevailing Transfer Guidelines and since she was considered on equitable ground, she can not be displaced on contrary to the relevant provisions of the said Transfer Guidelines and also to frustrate the very purpose of her earlier transfer on such special consideration on spouse ground. Since it is a case of displacement, the respondent authority should have accommodated her <sup>in</sup> K.V. Silchar where a post fell permanently vacant due to transfer of the last incumbent, Pradip Paul. On the otherhand, although there are other senior teachers working in Silchar Region but none of those senior teacher was displaced while accommodating the private Respondent No.7 and the said action of the Respondents therefore, resulted in serious discrimination affecting the right to equality as well as right to work and livelihood as guaranteed under Article 14, 16 and 21 of the Constitution of India.

5.16 That it is stated that the decision of the official Respondents to transfer the Private Respondent No.7 and consequent transfer order by way of displacing the applicant being contrary to the aforesaid guidelines, are arbitrary, illegal, mala fide and without any authority in law apart from being violative of the legal and constitutional right to equality.

5.17 That it is stated that the impugned decision and consequent order of transfer and displacement are the direct infringement of the fundamental and all other legal rights of the applicant as guaranteed under Article 14, 16, 21 and 41 of the Constitution of India and all other law being in force.

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Ms. Tapani Datta

5.18 That it is stated that the impugned transfer order and consequent displacement of the applicant in any view of the matter, are otherwise, bad in law and same are accordingly <sup>liable to be</sup> set aside and quashed.

6. The details of remedy exhausted.

That the applicant states that there is no other alternative efficacious remedy available to her under any provision of law. And the remedy sought for would be just, adequate and complete.

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT OR TRIBUNAL.

The applicant declares that in connection of the present issue, she has not filed any application, writ petition, or any suit in any court or Tribunal nor any appeal or representation against the present subject matter, is pending in any court or any Tribunal or any authority. It may be noted that against the refusal of transfer under the earlier transfer policy, the applicant had filed an application being O.A. NO.388/01 before this Hon'ble tribunal and during the pendency of the said application, the authorities granted her the entire relief as prayed for in the said Application and considering the said factual position, the Hon'ble Tribunal by order dated 15.05.02 was pleased to dispose of the said Application directing the Respondent

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authorities to take appropriate decision strictly in accordance with law and prevailing Transfer Guidelines in case the matter is pending for decision.

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8. RELIEFS SOUGHT FOR

On the facts and circumstances and premises aforesaid, the Applicant prays for following reliefs :

8.1 For striking down the impugned action in displacing the private Respondent No.7 in utter disregard to the existing Transfer Guidelines dated 19.01.05.

8.2 For quashing and/or setting aside the impugned Transfer order dated 30.05.05 passed by the Respondent No.3 (vide Annexure- 12 ) so far as the displacement of the Applicant is concerned.

8.3 For directing and commanding the official Respondents to recall or cancel or withdraw the impugned Transfer order dated 30.05.05 so far as the displacement of the Applicant is concerned.

8.4 For directing and commanding the official Respondents more particularly the official Respondent No.2,3 and 4 not to fill up the vacant post of K.V. Silchar and/or all other vacant or future post lying in all other KVS within Silchar Region.

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8.5 For directing and commanding the official Respondents more particularly the official Respondent No. 2, 3 and 4 not to implement the impugned Transfer order dated 30.05.05 and also not to allow the private Respondent No. 7 to join and assume the charge in KV panchgram in implementation of the impugned Transfer order dated 30.05.05 and further to allow the Applicant to continue her service in the present school viz. KV panchgram by virtue of her transfer order dated 01.04.02 ( vide Annexure - 9).

8.6 For granting any other or further relief or reliefs as to this Hon'ble Tribunal may deem fit and proper in the facts and circumstances as narrated in the present Application.

9. INTERIM ORDER PRAYED FOR

9.1 To stay or suspend the operation of the impugned Transfer order dated 30.05.05 passed by the Respondent No. 3 so far as the Applicant is concerned.

9.2 To direct the official Respondents not to transfer the private Respondent No. 7 and also not to allow him to join and take the charge against the post of the Applicant in KV panchgram.

9.3 To direct the official Respondents not to handover the unilateral charge to the private Respondent

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Mrs. Jayanti Dm

No.7 in terms of the impugned Transfer order dated 30.05.05 against the post of the Applicant.

9.4 To direct the official Respondents to allow the Applicant to continue her service in the present school viz. KV panchgram and to pay her salary and other service benefits regularly.

9.5 This Hon'ble Tribunal may be pleased to pass any other or further suitable interim order or orders as to your Lordship may deem fit and proper.

10. PARTICULARS OF IPO

(i) I.P.O. No.	: 206/34/27
(ii) Date of issue	: 22.6.05
(iii) Issued from	: G.P.O., Guwahati
(iv) payable at	: G.P.O., Guwahati

11. LIST OF ENCLOSURE

(1) Application	-	1 copy
(2) Verification	-	1 copy
(3) An application dated 6.5.99 for consideration of transfer	-	1 copy
(4) Priority list of 1998-99 sessions-		1 copy
(5) Transfer Application dated 17/02/2k- for 1999 - 2000 sessions		1 copy
(6) Region wise list KV schools, Silchar-		1 copy

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H/No Tapani Dns

- (7) Priority list of 1999-2000 sessions - 1 copy
- (8) Representation dated 11/12/2k to  
Respondent No.4. - 1 copy
- (9) Official Letter dated 12/12/2k  
written by Respondent No.4 to  
Respondent No.2. - 1 copy
- (10) Official Letter dated 18/12/2k  
written by Respondent No.4 to  
Respondent No.3. - 1 copy
- (11) Transfer order dated 01.04.02  
issued by Respondent No.2. - 1 copy
- (12) Release order dated 10.04.02  
issued by Respondent No. - 1 copy
- (13) Order dated 15.05.02 passed by  
this Hon'ble Tribunal Guwahati  
Bench in O.A.No. 388/01. - 1 copy
- (14) Impugned Transfer order dated  
30.5.05 passed by Respondent No.3- 1 copy
- (15) Vakalatnama. - 1 copy

Total- 15 copies

For use in the Tribunal office

Date of filing :

Registration :

Registrar

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Mr. Tapani Sin

V e r i f i c a t i o n

I, Smti Tapashi Das, wife of Sri (Dr.) Utpal Das, aged about 43 years, resident of Cachar Paper Mill Campus (HPC Ltd) P.O. Panch Algapur, Panchgram in the District of Hailakandi, Assam hereby solemnly verify that the statements made in paragraph Nos. 1, 2, 3, 4.1 to 4.27, 4.29  
^ to 4.33, 6, 7, 10 and 11  
^ are true to my knowledge and those made in paragraph Nos. 4.28 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this 22<sup>nd</sup> day of June, 2005 at Guwahati.

*M. Tapashi Das*

S i g n a t u r e

# ANNEXURE-1 KENDRIYA VIDYALAYA SANGATHAN

Transfer Type 02  
Region Code 10

70 qm

Dated: 06-05-99

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## APPLICATION FOR TRANSFER ON REQUEST 1999-2000

(Read instructions carefully before filling up)

Name H. P. C. L. JAGIROAD

Date of Birth

1. Date of appointment

4. Date from which posted at the Vidyalaya/Station by Present Post

5. Whether Male/Female

6. Post Code

7. Sub Code

CATEGORY

DIVISION

8. Grounds for Transfer

9. Region

10. Code

9. (a) Choice Vidyalaya/Station

K. V. PANCHJOLAKHANI  
K. V. O. N. G. P. SHRIKONA  
K. V. H. O. I. G. TECHARK

Region Code

9. (b) In case you are interested in transfer to any K.V. in a particular Region indicate the preferences in terms of Region

Region Code  
1 9  
1 9  
1 9

10. Station where spouse is working

11. Have you obtained a medical certificate overleaf

12. Have you given the declaration regarding the employment and place of posting of spouse?

13. Narrate the Compelling problem(s) for seeking transfer (in 50 word(s))

14. Details of last transfer

15. Type of disease certified in MC overleaf

16. Relationship of the patient with the applicant

Please fill up correct Code

Please fill up in Code

I, Shri/Smt./Kum. MRS TAPASI DAS do hereby affirm that the information given in columns 01 to 16 of this application are correct and that the medical certificate/declaration given overleaf is/are bonafide. I understand that wrong/suppressed information shall render me liable for disciplinary action.

Place: K. V. H. P. C. L. JAGIROAD

Date: 6. 5. 99

Signature Tapasi Das  
Name MRS TAPASI DAS  
Designation DRAWING TEACHER

\* Vidyalaya is Applicable only for Transfer within the station.  
Write 01 for Intra (within region) or 02 for Inter.

Certified to be true copy.  
Reg (Adn)



ANNEXURE - A  
MEDICAL CERTIFICATE

Signature of patient  
Address

I, Dr. \_\_\_\_\_ of \_\_\_\_\_ (Name & Designation) \_\_\_\_\_ (Hospital & place)

after careful personal examination of the case, hereby certify that \_\_\_\_\_ whose  
(Name of the patient)

signature is given above is suffering from \_\_\_\_\_ and that facilities for treatment  
(Full medical condition of the patient in CAPITAL letters)

of this disease are not at all available at this station or its vicinity. It is further certified that aforesaid disease is within  
the parameters prescribed by the KVAFS at Patna.

Place: \_\_\_\_\_ Signature of the competent authority: \_\_\_\_\_  
Date: \_\_\_\_\_ Designation: \_\_\_\_\_  
Seal of the competent authority: \_\_\_\_\_

DECLARATION

(Kindly fill the information in bold letters. Strike out whichever is not applicable)

I, MRS. TAPASI DAS solemnly declare that my spouse DR. UTPAL DAS is presently  
(Name)  
employed at/under orders of transfer to SILCHAR as MEDICAL OFFICER MINI P.H.C  
(Place) (Designation) (Dept./Unit/Branch)

since 1.1.93 His/Her full office address with Name and Designation of immediate superior/details  
(Place)  
of self-employment is/are as follows:

Name and Office/Registered Business or  
Professional Address of spouse  
MINI P.H.C. KOTIGHAR  
SILCHAR (ASSAM)

Name and Address of Immediate  
Superior Officer or Registration No. of Business/Profession  
DR. H. C. DAS  
JOINT DIRECTOR OF HEALTH SERVICES, CACHAR  
Signature of the Employee: Tapasi Das  
Name: MRS. TAPASI DAS  
Designation: DR. H. C. DAS

For Office use only in Kendriya Vidyalaya  
(Strike out whichever is not applicable)

- 1. \* Disciplinary case pending/contemplated not pending/not contemplated against  
Sbri/Smt./V. Am. MRS. TAPASI DAS
- 2. \* The medical certificate/declaration given in the application itself is from the competent authority.
- 3. Certified that the details furnished by the applicant have been verified from the service records and found correct.
- 4. She/He was on leave/absent without pay during \_\_\_\_\_ and is still away/not away from duties  
(in RS 00 only)

Place: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date: \_\_\_\_\_ Name of the Principal: E. C. Manna  
Office Seal: \_\_\_\_\_

Principal  
Kendriya Vidyalaya  
Kendriya Vidyalaya  
Kendriya Vidyalaya  
Kendriya Vidyalaya

Certified to be  
true copy  
By (Adv)

# ANNEXURE-2

Priority List of 1998-99 sessions

CRP No MP No Name	Kendriya Vidyalaya	Kendriya DOP Vidyalaya/ Stations	Wider Reg Choice Regions
-------------------	--------------------	--	--------------------------------

## Choice Regionwise Priority List Silchar

MSC (Drawing)

Spouse in State Govt/Autonomous Body/PSU

Mr. TAPASI DAS	HPC JAGROAD	19. July 18, 1995 PANCHERAM	19	19
		ONGC BERNONA	19	19
		NO: SILCHAR	19	19

## General Cases

Mr. TAPAN KUMAR GHOSH	SEVONE ROAD	March 24, 1997 PANBAGAR	19	
		BAGGA	19	5
		KARIMGANJ	19	
Mr. D.DAS	AFS CHABUA	19. July 14, 1995 DULHAN	19	
			3	12
			9	

## MSC (Physical Education)

### General Cases

Mr. KHUNDRAKAM SUBHAS	AFS DIGARU	19. June 29, 1995 NO: IMPHAL LANGJING	19	17
		NO: IMPHAL LANGJING	19	5
		NO: IMPHAL LANGHEL	19	9

During the last 5 years commencing from the present station. Also indicate whether the station(s) is/are vacant.

IRING	STATION CODE	WHETHER IT WAS HIS/HER CHOICE (Y/N)
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1. At the present station in completed years excluding the period of absence  
0. (See instructions).

021

Use only (Confidential) To be filled in by Regional Office.

Is of performance during the last 3 years - B:

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Performance points (A+B)

Signature with seal of Assistant Commissioner

Vidyalaya*	Region Code	Station Code	K.V. Code (Please see instructions below)
	18	022	773
	18	439	803
	18	439	802
	18	439	795
	12	045	789

# ANNEXURE-3

KENDRIYA VIDYALAYA SANGATHAN

Application for 1999-2000

Dated: 14/2/2000

Transfer Type

02 (a)

STATION CODE

K.V. CODE

APPLICATION FOR TRANSFER ON REQUEST 2000-2001

(Read Instructions carefully before filling up)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----

3. Date of appointment to the present Post

4. Date from which posted at the Vidyalaya/Station

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----

6. Post held

7. Sub Code

Male/Female

or Transfer

8. Date of spouse within a period of two years preceding the date of application (Y/N)

9. Medical Grounds (See Instructions) (Y/N)

10. (See Instructions for following Codes):

Category Code

Division Code

Entitlement Points

N	E	N
J	S	P
S	P	S

0	4
0	6
1	3
6	

2	0
1	2
0	1
3	3

Total: A

11. Duration of 3 years of continuous service in NE & Hard Stations and 5 years elsewhere excluding the period of (Y/N)

17

Certified to be  
true copy  
Raj (Adv)

55

$$\begin{bmatrix} x \\ y \end{bmatrix} = \begin{bmatrix} 1 & 0 \\ 0 & 1 \end{bmatrix} \begin{bmatrix} x \\ y \end{bmatrix}$$

James  
R. Smith

Station	Year	Region Code	Station Code	K.V. Code

1511

1 in Code

10

К. У. ОБЩЕСТВО ИСК.  
ПЕЧАТ.

Signature : *Tapani Das*  
Name : *MR. TAPANI DAS*

01 for Intra (within region) or 02 for Inter-regional transfer.

6

60

## Stichwort

[illegible]

Certified to be  
true copy.  
RR (Adm)

Back To Form

and Dis's priorities. Opps!! Your application may not have been received yet or  
check your Station code and post again.

Name	Current KY Posting	Current Station	Transfer Station I	Priority No.	Transfer Stat
SONA RAM NATH	SIBSAGAR NO.I(ONGC)	SIB SAGAR	GUWAHATI	1	
SONA RAM NATH	SIBSAGAR NO.I(ONGC)	SIB SAGAR	GUWAHATI	1	
RIJ MOHAN PUJARI	WADSAR(AFS)	AHMEDABAD	UDAIPUR	1	UDAIPUR
A H JAMI	JAMNAGAR NO.I(AFS)	JAMNAGAR	RAJKOT	1	
RANTOSH SEN	AGARTALA NO.I (KUNJIBAN)	AGARTALA	CALCUTTA	2	
BRA LAL	HAZARIBAGH (BSE)	HAZARIBAGH	RANCHI	1	RANCHI
MALA UKHERJEE	BOKARO NO.I	BOKARO NO.I	PATNA	1	PATNA
PRA PAUL	TULI	TULI	DHOLCHHERA	1	DHOLCHHERA
JOHENDU GHOSH	GANGTOK	GANGTOK	CALCUTTA	3	KANCHAPA
MOHINI LAWRIKAR	HOSANGABAD	HOSANGABAD	GWALIOR	1	
JP KUMAR PATRA	PORT BLAIR NO.I	PORT BLAIR	DELHI	1	
ENUDHAR SETHI	BALASORE	BALASORE		0	BHUBANESH
ATILAL N MAHAN	ANKLESIWAR (ONGC)	ANKLESIWAR	BARODA	1	
ADIP PAUL	DINJAN NO.I	DINJAIN		2	
GANNAJI KRABARTI	DURGAPUR (CMER)	DURGAPUR	KANCHAPARA	2	KANCHAPA
IRATA PAL	HASIMARA	HASIMARA	CALCUTTA	5	
S SHASHI GOVIL	JODHPUR NO.II(AFS)	JODHPUR	UDAIPUR	2	
MALLICK	KANKINARA	CALCUTTA	KANCHAPARA	4	

H. J. J. J.

Certified to  
be true copy  
By (Adv)



57 59

82

LAGIROND CHPO	LAGIROND	3	DHOLCHET
KHURDA ROAD	KHURDA ROAD	2	BIHULANESHI
LAGIROND	LAGIROND	1	MUTSAN

*Harpreet Singh*

60

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ANNEXURE-6

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

Dated: 11-12-2020

(Through the Principal, KV, HPCL, Jagir Road.)

Respected Sir,

With due respect and humble submission I beg to draw the following few lines in your kind consideration and sympathetic order please.

1. That Sir, I am serving at K.V. HPCL, Jagir Road since 5 years with full satisfaction to the superior.
2. That Sir, from last five years I am applying to the concerned authority for my transfer at Silchar, as because my husband work at Silchar, and I could not communicate with him and his family.
3. That Sir, my name was in 3rd position in the transfer priority list.

Now, kindly please see that considering all the above mentioned grounds, I may be posted at any of the schools that I mentioned in the priority list in the transfer form filled up by me in the Silchar Region, wherever a post is lying vacant.

Kindly consider my case and oblige.

Thanking You, Sir,

Yours faithfully,

*Tapasi Das*

(MRS. TAPASI DAS.)  
Drawing teacher.  
KV, HPCL, Jagir Road.

Dated: 11-12-2020

Encl:

1. Transfer Application.
2. Priority list.

Certified to be

true copy

*[Signature]* (Adv)

*[Signature]*  
Principal  
KV, HPCL, Jagir Road

ANNEXURE-7

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Telephone : 571797, 571798  
Fax : 571799

केन्द्रीय विद्यालय संगठन

Dated: 12-12-2000

KENDRIYA VIDYALAYA SANGATHAN

Regional Office  
Mallgaon Chariali  
Guwahati : 781 012

No. F : 10-1/2000-EVS(CH)/ 7421 22

Dated : 12/12/2000

To  
The Commissioner,  
Kendriya Vidyalaya Sangathan,  
(Hqrs),  
New Delhi - 16.

Subject:- Forwarding of application of Smt. Tapasi Das  
Drawing teacher, KV, HFCL, Jagiroad in  
connection with her transfer.

Sir,

I am to forward herewith an application  
dated 11/12/2000 of Smt. Tapasi Das, Drawing teacher  
KV, Jagiroad, requesting for her transfer to any of  
the Vidyalaya mentioned in the transfer application  
(Copy enclosed) within Silchar Region as her husband  
is working in Silchar which is self explanatory for  
necessary action at your end.

Yours faithfully,

(D.K. SAINI)

Asstt. Commissioner

Encl:- As above.

Copy to Principal, KV Jagiroad for information w.r.t.  
her endorsement dated 11/12/2000.

Asstt. Commissioner

Certified to be  
true copy  
By (Adv)

## ANNEXURE-8

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45

KENDRIYA VIDYALAYA SANGATHAN  
REGIONAL OFFICE: SILCHAR  
HOSPITAL ROAD  
SILCHAR - 788001 (ASSAM)  
Tel. : 34000 (O), 34339 (R)

Dated: 18-12-2K

2-19 / 99-2000/EVS(SR)/ 12802

Date: 18-12-2K

Dear Shri Vijoy Kumar,

I may kindly recall my telephonic conversation with you two days back regarding transfer of Smt. Tabashti Das, Drawing Teacher, KV, Jagiraul. Smt. Das had applied for transfer to KV Panchgram, where one Sh. Srivastava has been transferred from KV RDSO Lucknow but Sh. Srivastava has resigned the post and as such the post of Drawing Tr. at KV Panchgram is lying vacant. The request for transfer has been made interms of spouse case by Smt. Tabashti Das.

*Handwritten note:*  
1. *Tabashti Das*

May I request you to look into the matter and post this lady at KV Panchgram - this case is very genuine in all respect.

With warm regards.

Yours Sincerely,

*Handwritten signature*

To  
Sh. S. Vijoy Kumar,  
Education Officer  
(Executive Asstt.)  
Kendriya Vidyalaya Sangathan, B-1,  
New Delhi.

Certified to be  
true copy  
Raj (Adv)

## ANNEXURE-9

KENDRIYA VIDYALAYA SANGATHAN  
18, INSTITUTIONAL AREA,  
SHAHJEE JEET SINGH MARG  
NEW DELHI - 110 016

Date : 01/04/2002

P17-1 (REV. 03/01/2002) KVS (Extt. IV)

## TRANSFER ORDER

Transferees of the following Drawing Teachers (Miscellaneous) are hereby  
ordered on request.

Post : DRAWING TEACHER : DRGT

Smt. S. S. SINGH

<----- FROM -----> <----- TO ----->  
KV STATION REGION KV STATION REGION

1. Smt. S. S. SINGH	418 217 10	773 022 18
2. Smt. S. S. SINGH	113 000 03	000 000 03
3. Smt. S. S. SINGH	106 066 03	102 061 03
4. Smt. S. S. SINGH	109 066 03	106 066 03
5. Smt. S. S. SINGH	500 000 12	500 000 03
6. Smt. S. S. SINGH	480 237 11	106 117 05
7. Smt. S. S. SINGH	358 199 09	188 120 05
8. Smt. S. S. SINGH	506 000 14	188 120 05
9. Smt. S. S. SINGH	235 100 06	204 133 05

This is with the approval of the competent authority of KVS.



(M.K. Rao)

DY. COMMISSIONER (Admin.)

RECOMMENDATION :

1. The Principal concerned.
2. The Regional Officer concerned with the direction to relieve the employee immediately.
3. The Regional Officer is also directed to intimate this office, RO concerned about relieving/joining of the employee.
4. The Regional Officer, KVS, is concerned to take information and necessary action.
5. The Regional Officer of the Region concerned for necessary action.
6. The Regional Secretary of the concerned associations of KVS.
7. The Regional Secretary.

Certified to be  
one copy  
By (Adv)



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ANNEXURE - 10

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केन्द्रीय विद्यालय एच, पी, सी, लिमिटेड  
KENDRIYA VIDYALAYA H.P.C. LTD.  
कागजनगर, जागीरोड : असम-782413  
KAGAJNAGAR, JAGIROAD : ASSAM-782413  
PHONE : H. P. C. 586, P & T 42265


Ref. No. 29/KVHPCL/JRD/2002-2003/48-52


Date 10/04/2002

RELIEVING ORDER

Consequent upon KVS (HQ) New Delhi Transfer Coder  
No. F. 17-1 (MSE/DRGT/2002/KVS/Estt. IV) Dated 01/04/2002  
Mr/Mrs. Japasi Bar. Designation Accounting Tr.  
of this Vidyalaya has been transferred to Kendriya Vidyalaya,  
KV, Cachar Panchgram (HPC). He/She is hereby  
relieved from his/her duties in the afternoon of 10/4/2002

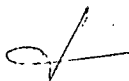
Personal file and Service Book will be sent  
separately.

  
(ERAL C MOORE)  
PRINCIPAL  
*Principal*  
KENDRIYA VIDYALAYA  
HPC, Jagiroad.

To:  
  
Mr/Mrs. Japasi Bar.  
KV, HPCL, Jagiroad.

Copy to :-

1. The Principal,  
Kendriya Vidyalaya, HPC  
Cachar Panchgram.
2. The Dy. Commissioner,  
Kendriya Vidyalaya Sangathan  
New Delhi.
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan  
Guwahati Region.
4. The Accounts Officer,  
Kendriya Vidyalaya Sangathan  
Guwahati-12

  
PRINCIPAL  
KV, HPCL, Jagiroad

Certified to be  
true copy.  
By (Adv)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No:388 of 2001.

Date of Order : This the 15th Day of May, 2002.

THE HONBLE MR JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

Mrs. Tapana Das  
Wife of Dr. Utpal Das  
Resident of Village Japarigog  
H.P.C. (MPM.Complex) Jagiroad  
P.O:- Jagiroad  
P.S:- Jagiroad  
District:-Morigaon, Assam. . . . Applicant.

By Advocates Mr.A.K.Purkayastha & Mr.S.K.Sinha.

- Versus -

1. The Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Human Resource Development  
New Delhi.
2. The Commissioner  
Kendriya Vidyalaya Sangathan  
18 Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi - 16.
3. The Education Officer (Ex.Asstt)  
Kendriya Vidyalaya Sangathan (Hqrs)  
18 Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi.
4. The Assistant Commissioner  
Kendriya Vidyalaya  
Regional Office, Maligaon  
Guwahati.
5. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office, Silchar  
Hospital Road  
Silchar-1  
District :- Cachar, Assam.

Certified to be  
true copy.  
By (Adv)

Contd./2

... Respondents.

...

O R D E R

CHOWDHURY J. (V.C.):

None appears for the applicant to press the Petition. No representation was made on behalf of the applicant. Heard Mr. S. Sarma, learned counsel for the respondents.

The application pertains to posting in the light of the policy guidelines for spouse posting. The policy guidelines are made to render justice to the parties. Since policies are there it is expected that the authority shall take all appropriate measures to allay the grievance of the applicant within the legal norms, if not already alleviated.

With this, the application stands disposed.

No order as to costs.



# 67 ANNEXURE- 12

Kendriya Vidyalaya Sangathan  
18, Institutional Area, Shaheed Jit Singh Marg,  
New Delhi - 110 016

488 -5-  
Date :30.05.2005

F.3-1(D)/MSC(DRGT)/2005/KVS (ESTT.III)

## TRANSFER ORDER.

In terms of clause 10 (2) of the latest transfer guidelines which inter-alia, provides to create a vacancy so as to accommodate the persons who are figuring in priority list II, as per their priority position, transfer of the following employees is hereby ordered on request / in public interest. The displacement of employees have been effected as per clause 10(3) of latest transfer guidelines. The employees transferred in public interest and from NEH and VHS are entitled for all transfer benefits as per clause 15 of latest transfer guidelines.

POST:— MSC DRGT

is hereby ordered on request for transfer benefits as per clause 15 of latest transfer guidelines.

POST:— MSC DRGT

S.No	Emp-code	Name	From				To				Shift	Nature of transfer	
			Reg	Stn	KV	KV-Name	Reg	Stn	KV	KV-Name			
21	180169	SHRI PRADIP PAUL (By displacing) SHRI D.C.DAS	18	566	1891	SILCHAR	1	10	268	1497	LOKRA	1	On request
			10	268	1497	LOKRA	1	10	265	1489	TENGA VALLEY	1	In pub. int.
			18	490	1870	HAFLONG (SSB)	1	18	490	1859	CACHAR PANCHGRAM (HPC)	1	On request
22	180229	SHRI S C PAUL (By displacing) SMTI TAPASHI DAS	18	490	1859	CACHAR PANCHGRAM (HPC)	1	18	490	1870	HAFLONG (SSB)	1	In pub. int.

This issues with the approval of the Competent Authority of KVS

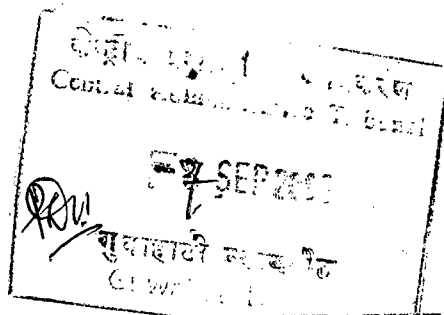
Certified to be  
true copy.

Regy (Adv)

### Distribution :

1. The individual concerned
2. The principal concerned with the direction to relieve the employee immediately. They are also directed to intimate this office / RO concerned about relieving / joining of the employee.
3. Assistant Commissioner, KVS, RO concerned for information and necessary action.
4. Audit Accounts Officer of the region concerned for necessary action
5. General Secretaries of the recognised associations of KVS.
6. Office copy

Ranvir Singh  
(RANVIR SINGH)  
EDUCATION OFFICER



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

Original Application No 162/05.

**SMT. TAPASI DAS**

..... APPLICANT.

**-VERSUS-**

**UNION OF INDIA & Ors.**

..... RESPONDENTS.

**IN THE MATTER OF:-**

Written Statement filed by the  
Respondents.

**- AND -**

**IN THE MATTER OF:-**

Additional reply filed by the  
respondents on 28-06-2005.

**- AND -**

**IN THE MATTER OF:-**

Additional Reply filed by the  
respondents on 06-09-2005 to vacate the  
order dated 24-06-2005.

91  
Filed by the Respondents  
Thang Karab Upadhyaya  
Advocate.  
07-09-05

Contd.../-

- AND -

IN THE MATTER OF:-

The Assistant Commissioner,  
K . V. Sengathan, Regional office,  
Khanapara, Guwahati.

..... RESPONDENT.

The humble written statement on behalf of  
the respondents are as follows :-

I, Sri U. N. Khawari, the Assistant Commissioner,  
K.V. Sangathan, regional office, Khanapara Guwahati  
being arrayed as one of the Respondents and more  
precisely as respondent No.4, and having being supplied  
with the Para-wise comment from the headquarter and  
having gone through it, is competent to file this  
written statement on my behalf and on behalf of the  
other respondents, do hereby solemnly affirm and file  
this written statements.

PRELIMINARY SUBMISSION:-

KVS is an autonomous organization registered under the  
societies Registration Act XXI of 1860 and fully  
financed by the Govt. of India with the objective (i) to  
cater to the educational needs of children of  
transferable Central Govt. employees including personal  
by providing a common programme of education (ii) to  
develop Vidyalaya as a model school in the context of  
national goal of Indian Education (iii) to  
initiate/promote experimentation in the field of

Contd..../-

education in collaboration with other bodies like CBSE, NCERT etc., and (iv) to promote national integration.

That the challenge made by the applicant above named to clause 10(2) of the Transfer Guidelines of KVS which has come into effect from 19-01-2005 is bereft of any merit and the same is liable to be rejected by this Hon'ble Tribunal. The said clause 10(2) of the Transfer guidelines have been framed by way of policy decision after taking into account the difficulties faced by staff mentioned therein.

The object of framing the said clause is to prevent more hardship being caused to those who have stayed for 2 years in the very hard station or 3 years in the North East, Andaman and Nicobar Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion by creating a vacancy in the place of their choice. The said clause also provides a note to determine as to how displacement has to be affected. In effect, by way of policy decision, a mechanism has been provided in the Transfer Guidelines by evolving a methodology to displace a person from KV and the same cannot be questioned by the applicant.

It is a trite law that unless a transfer guidelines, statutory rules, without jurisdiction and is actuated with malafides, the same cannot be interfered with in a judicial review. Further more wheels of administration cannot be stalled and Tribunals cannot act as an appellate authority in the matters of

Contd..../-

transfer. In the present case, the object of framing clause 10(2) in the Transfer Guidelines is to prevent more hardship being caused to those who have stayed for 2 years in the very hard station or 3 years in the North east, Andaman and Nicobar Islands and other declared hard stations or by a teacher falling under the grounds of Medical/death of spouse/less than three years to retire or very hard case involving Human compassion by creating a vacancy in the place of their choice. Thus the policy decision which is based on sound rationale cannot be interfered with in as much as the applicant has no indefeasible right to be posted at a particular place of his/her choice. Posting is further dependent on various factors including administrative exigency, availability of vacancies as mentioned in the transfer guidelines. Further more, the applicant has been the beneficiary of the transfer guidelines, which in vogue prior to 19-01-2005, and she cannot now complain that his rights have been infringed upon. As an autonomous body, KVS can frame its own policies to further the interest of its employees. While implementing such policies, if some staff/teachers feels aggrieved by the same, it cannot form a ground for quashing the policy as such. Administrative exigency is a continuous process by which organisation tries to keep pace with the progress of the institution as a whole, which ultimately results in providing continuous and uninterrupted teaching to the students. While keeping up pace, KVS takes into account various factors while framing policies.

✓ Identifying junior most for displacement is one such policy issue by which a large number of persons who suffer in hard stations etc. are given choice posting. This cannot be said to be bad in law so long as the

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object sought to be achieved by framing clause 10(2). In the circumstances therefore, the applicants have not made out any case whatsoever for quashing clause 10(2) of the Transfer Guidelines.

It is further submitted that in the following case, it has been held by Division Bench of Delhi High Court in Delhi Vidyut Board's case that policy decision may be changed from time to time and no mandamus can be issued regarding adoption of a policy decision. In view of the position stated above, it is submitted that the OA is bereft of merit and the same requires to be dismissed with costs.

Further it is informed that as per Article 54(k) of Education code, which is a documentary text, for governance of Kendriya Vidyalaya, the service of KVS are liable to be transferred to any Kendriya Vidyalaya of the Sangathan at any time on short notice on organizational reasons and administrative exigencies. Also as held by Apex Court that the personal inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. The personal problems expressed by the applicant should not come in the way of service conditions and public interest.

That a new transfer guideline has been framed by the respondents, which came into force w.e.f. 19-01-2005 and duly adopted by BOG in its 72<sup>nd</sup> meeting held on 22-02-2005. According to Para 10(2) of approval transfer guidelines by the Board of Governors which is an apex

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policy making body of KVS, inter-alia provides that where transfer is sought by a teacher under Clause 8 of the transfer guideline after a continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A & N Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion, in the event of non availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (Post/subject).

In the instant case under Para 10(2) of KVS transfer guidelines the following transfers orders have been issued and aggrieved by this petitioner filed this OA:

<u>Name of Drawing Tr.</u>	<u>From KV</u>	<u>To KV</u>
Shri S.C. Paul	Haflong	Cachar Panchgram
By displacing		
Smti. Tapashi Das	Cachar Panchgram	Haflong.

#### PARA-WISE COMMENT

1. That, this W.S. is filed on receipt of Para-wise comment from the Headquarter and it is to be noted that deponent have already filed 2 nos. of preliminary reply and for the sack of brevity the facts and figures which not being reiterated here in this W.S. and have been stated in those reply may be taken as part of the reply.

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2. That the deponent states that the averments made by the applicant in Para 4.1 are all Matters of records and hence the deponent does not offer to make any comments upon it.
3. That the deponent states that with reference to the averment made by the petitioner in Para 4.2, it is stated that new transfer guideline has been framed by the respondents, which came into force w.e.f. 19-01-2005 and duly adopted by BOG in its 72<sup>nd</sup> meeting held on 22-02-2005.

According to Para 10(2) of approved transfer guidelines by the Board of Governors which is an apex policy making body of KVS, inter-alia provides that where transfer is sought by a teacher under Clause 8 of the transfer guidelines after a continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A & N Islands and other declared hard stations or by a teacher falling under the grounds of medical / death of spouse / less than three years to retire or very hard case involving human compassion, in the event of non availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (Post/ Subject). Accordingly, Shri S.C. Paul, Drawing teacher is working in KV Haflong which comes in North East Region and he was eligible for getting transfers under Para 10(2) of KVS latest transfer guidelines effecting from 19-

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01-2005 to his choice place as he had completed his tenure of North East Region/Hard station. As per the Para 10(2) of KVS transfer guidelines the petitioner is the junior most teacher in the service of KVS in the said station of the same category (Post/Subject). Accordingly, in order to accommodate the Sri SC Paul, Drawing teacher, KV Haflong, Smt. Tapashi Das, Drawing teacher, KV Cachher Panchgram has been transferred (displaced) to KV Haflong. Hence the transfer of the petitioner is in order.

4. That the deponent states that with reference to the averment made by the petitioner in Para 4.3 of the instant O.A. is completely denied. It is stated that her previous transfer was ordered as per transfer guidelines existed at that time and as her requested had been considered previously she had faith in the guidelines of KVS but being displaced in this year by the existing guidelines the petitioner had moved to court and stated it a illegal and arbitrary action.
5. That the deponent states that the averment made by the petitioner in Para 4.4 of the instant O.A., it is stated that she was displaced to consider the choice of another person who is working in North Eastern Region and as stated above there is no ignorance of the transfer guidelines.
6. That the deponent states that the averments made by the applicant in Para 4.5 are matter of records and hence does not require any comments to be made with

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respect to it. However, it is informed that as per Article 54(k) of Education code, which is a documentary text, for governance of Kendriya Vidyalaya, the services of KVS are liable to be transferred to any Kendriya of the Sangathan at any time on short notice on organizational reasons and administrative exigencies. Also as held by Apex court that the individual's personal inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. The personal problems expressed by the applicant should not come in the way of service conditions and public interest.

7. That the deponent states that the averment made by the petitioner in Para 4.6, it is stated that as per the existing transfer guidelines all the applicants requesting transfer are considered as per their priority position and there is no question of favoring any one and in no case the respondents had overlooked the basic principles regarding transfer as contemplated under the prevailing transfer guidelines. However, if the petitioner had any such doubts she should explain the same to examine the case before the respondents' office.
8. That the deponent states that the averments made by the petitioner in Para 4.7 to 4.9 has no relevance. Her transfer has been ordered as per the provision of KVS transfer guidelines w.e.f. 19-01-2005 duly approved by BOG. The personal problems expressed by the petitioner like various ailments to her husband

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

9. That the deponent states that the averment made by the petitioner in Para 4.10 to 4.26 are related to her transfer prior to present transfer which are irrelevant within reference to her present transfer and by quoting all these irrelevant things she has tried to mislead the Court. The present transfer of the petitioner from Cachar Panchgram to Haflong is as per the clause 10(2) of KVS transfer guidelines effective from 19-01-2005.
10. That the deponent states that averments made by the petitioner in Para 4.27 is wrong and baseless. The transfer of petitioner from Cachar Panchgram to Halflong is as per the clause 10(2) of KVS transfer guidelines effective from 19-01-2005.
11. That the deponent states that the averments made by the applicant in Para 4.28 relating to receive of transfer order through internet is denied for, she was served with a copy of the impugned Transfer order on 10-06-2005.
12. That the deponent states that with reference to the averment made by the petitioner in Para 4.29 it is stated that respondents have tried to adjust the

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displaced teacher to nearby available vacancies as per clause 10(3) of transfer guidelines, and the clear vacancy stood only at KVS Haflong.

13. That the deponent states that the averments made by the petitioner in Para 4.30 to 4.33 in the instant O.A., it is stated that where transfer is sought by a teacher under Clause 8 of the transfer guidelines after a continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A & N Island and other declared hard stations or by a teacher falling under the grounds of medical/ death of spouse/less than three years to retire or very hard case involving human compassion, in the event of non availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (Post/Subject). Accordingly, Shri S.C. Paul, Drawing teacher is working in KV Haflong which comes in North East Region and he was eligible for getting transfers under Para 10(2) of KVS latest transfer guidelines effecting from 19-01-2005 to his choice places, as he had completed his tenure of North East Region/Hard station. As per the Para 10(2) of KVS transfer guidelines the petitioner is the junior most teacher in the service of KVS in the said station of the same category (Post/Subject). Accordingly, in order to accommodate the Shri S.C. Paul, Drawing teacher, KV Haflong, Smt. Tapashi Das Drawing teacher, KV Cachar Panchgram has been transferred

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(displaced) to KV Haflong. Hence, the transfer of the petitioner is in order.

14. That the grounds stated in the Original Application from Para 5.1 to 5.18 to substantiate the cause of aggrievedness and the delayed illegality committed by the Respondent is total deviation from the existing transfer guidelines only to accommodate the Private Respondent No.7 against her place at Panchaygram Vis-à-Vis displacing her to a placing without following Rule 10(3) of New Transfer Guidelines and more particularly not accommodating her at Silchar are all baseless, has no legs to stand and full of imagination. Further there is no question of favouring any one and there is no case where the Respondent had overlooked the basic principles of transfer as contemplated under the prevailing Transfer guidelines.
15. That the deponent submits that under such circumstances it is clear that the present O.A. has not been filed with clean hand; and more specifically from the facts and records it appears that the applicant have tried to mislead the Court and as such the O.A. may be dismissed with costs.

VERIFICATIONS.

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VERIFICATION

I Shri Uday Narayan Khawarey, Son of Shri Jagat Narayan Khawarey, aged about 44 years, presently working as Assistant Commissioner in the Regional Office of Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, do hereby verified that the statement made in paragraphs 1 to 4, 6 to 9 are true to my knowledge and those made in paragraphs 5, 10, 11 & 12 are based on records.

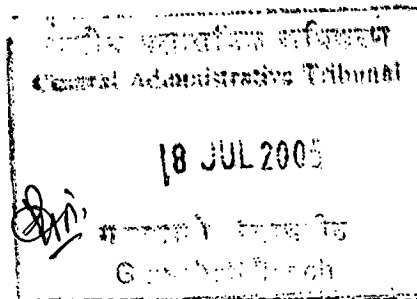
And I sign this verification on this the 7<sup>th</sup> day of September, 2004 at Guwahati.

Uday Narayan Khawarey

Place: Guwahati

DEPONENT

Date: 7-09-'05



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH : GUWAHATI.

ORIGINAL APPLICATION No.162/05.

Smti. Tapashi Das,

.... Applicant.

- Versus -

Union of India & Ors,

.... Respondents.

IN THE MATTER OF :

Additional reply filed by the  
respondent in view of the order  
passed on 28/6/05.

- AND -

IN THE MATTER OF :

Communication dated 4-7-05 addressed to  
the Offg. Assistant Commissioner,  
K.V. Sangathan, Silchar Region.

- AND -

IN THE MATTER OF :

The Assistant Commissioner,  
K.V. Sangathan Regional Office,  
Khanapara, Guwahati.

.... Respondent.

contd.... p/2.

Filed by the Respondent 109  
Through Mr. K. Majumdar  
Advocate  
Standing Counsel K.V. Sangathan  
18/11 July '05

The humble preliminary objection on behalf of the Respondents are as follows :-

I, Sri U.N. Khawary, the Assistant Commissioner, K.V. Sangathan, Regional Office, Guwahati being arrayed as party Respondent No. 4 is competent to file this preliminary objection on my behalf and on behalf of other Respondents, do hereby solemnly affirm and file this objection.

1) That the deponent states that pursuant to the order dated 24/6/05 the respondent have apprised this Hon'ble Tribunal about the vacancy of K.V. Silchar and this Hon'ble Tribunal was pleased to pass another order on 28/6/05 for submission of further reply.

2) That the deponent states that since the para comment is not received from the Head Quarter, the present deponent files this further reply on the basis of available record at the School level and craves leave to submit further written statement in due course if need be for the ends of justice.

3) That the deponent states that the vacancy position of Drawing Teacher as on 31-5-05 sent to

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KVS (HQ) vide letter No. F. 2-21/2002-KVS (SR)4555 dated 14-6-05 clearly indicates that there is no vacancy of Drawing Teacher at KV, Silchar or nearby Kendriya Vidyalaya at Silchar.

4) That the deponent states that the Staff sanction orders of KV, Silchar and other nereby Kendriya Vidyalayas within Silchar station for the Academic year 2004-05 and 2005-06 are also enclosed.

5) That the deponent states that Shri S.C. Paul, Drawing Teacher of KV, Haflong has been transferred to KV Panchgram on request in terms of clause 10(2) of the transfer guidelines which inter alia provides to create a vacancy so as to accomodate the person who are figuring in priority list II. Shri S.C. Paul, Drawing Teacher was posted to KV Haflong on 25-11-2000 and he has completed more than 4-1/2 years in N.E. Region, therefore he has been posted at KV, Panchgram (his second choice) on his request displacing Smt. Tapashi Das, Junior Most Drawing Teacher at KV, Panchgram (actually only one Drawing Teacher) as per transfer guidelines (extract of clause 10(2) and 10(3) of latest transfer guidelines of KVS enclosed). As there was no vacancy of Drawing Teacher either at KV, Silchar or any of the nearby Kendriya

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Vidyalayas at Silchar, consequential vacancy created at KV Haflong was the only vacancy to be adjusted by transferring her.

In this connection it is also mentioned that Shri P. Paul, Drawing Teacher, KV, Silchar has been transferred to KV, Lokra on his own request and in his place Smt. X Jayanti Paul Choudhury, Drawing Teacher, KV, Dinjan has been transferred to KV, Silchar also on her own request. As such there is no vacancy at all at KV, Silchar.

The copy of annual transfer application bearing unique application No. 180229 in respect of Shri S.C. Paul, Drawing Teacher is enclosed herewith.

6) That the deponent submits that the order is passed in consonance with the present transfer guideline applicable to the employees and as such there is no deviation from the transfer policy.

7) That the deponent submits that under such circumstances, this Hon'ble Tribunal may dispose the matter by passing necessary order of implementation of the transfer order dated 30.5.05 since the other party have been releaved and joined in the post already, for the ends of justice.

.... Verification.

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**AFFIDAVIT** / verification

I Shri Uday Narayan Khawarey, Son of Shri Jagat Narayan Khawarey, aged about 44 years, presently working as Assistant Commissioner in the Regional Office of Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, do hereby solemnly affirm and declare as follows:

1. That I am the Assistant Commissioner of the Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, as such I am acquainted with the facts and circumstances of the case. By virtue of my office I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraph 1, 2 & 3 are true to my knowledge, those made in 4, 5 paragraphs being matter of records are true to my information derived therefrom. Annexures 4 are true copies of the originals and groups urged are as per the legal advice.

And I sign this affidavit on this the 18<sup>th</sup> day of July October, 2005 at Guwahati.

Identified by

Uday Narayan Khawarey

**DEPONENT**

Advocate's Clerk.