

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**W.P.(C) No. 489 of 2023**

Smt. Aribam Sobita Devi, aged about 49 years, wife of Shri Bikramjit Sharma, resident of Nongmeibung Purana Rajbari – I, P.O. & P.S. Porompat, District – Imphal East, Manipur – 795005 and working as TGT – Hindi at Jawahar Navodaya Vidyalaya, Ukhrul, Manipur, Pin – 795 142.

.... Petitioner

- Versus -

1. Union of India, represented by the Secretary, Government of India, Ministry of Human Resource Development (Now Ministry of Education), Department of Education, New Delhi – 110 001.
2. The Commissioner, Navodaya Vidyalaya Samity, B – 15, Instructional Area, Sector – 62, Noida, Gautam Budha Nagar, Uttar Pradesh – 201 309.
3. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Temple Road, Barik Point, Lachumiere, Shillong – 793 001.
4. Smt. Khoibam Jerina, aged about 44 years, wife of Shri Takhellambam Ibomacha Singh, resident of Singjamei Mayengbam Leikai, Imphal West – 795001 and working as TGT – Hindi Jawahar Navodaya Vidyalaya, Chandel, Manipur, Pin – 795 008.

.... Respondents

**B E F O R E**  
**HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL**  
**HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

For the petitioner : Mr. M. Rarry, Advocate

For the respondents: Mr. Kh. Samarjit, DSGI  
Mr. M. Gunedhor, Advocate

Date of hearing : 18.12.2023

Date of order : **29.02.2024**

**JUDGMENT & ORDER**  
**(CAV)**

[1] Heard Mr. M. Rarry, learned counsel appearing on behalf of the petitioner, Mr. Kh. Samarjit, learned DSGI appearing on behalf of the respondents No. 1 to 3 and Mr. M. Gunedhor, learned counsel appearing on behalf of the respondent No. 4.

[2] The instant writ petition has been instituted on behalf of Smt. Aribam Sobita Devi under Article 226/227 of the Constitution of India with the following prayer :

*"Issuance of a writ of certiorari or a writ in nature of certiorari or an appropriate writ/direction(s)/order(s) to set aside and quash –*

*(a) the final order dated 27.04.2023 in Original Application No. 042/00207/2021 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench;*

*(b) the Office Order bearing F. No. 07-23/2021/NVS/ESTT-II (ATD – 20 – 21)/7083 dated 10.05.2023 issued by the Deputy Commissioner (Pers.), Navodaya Vidyalaya Samiti, Ministry of Education, Government of India."*

[3] The factual prism, as put forth by the petitioner are that the petitioner herein was the respondent no.4 in O.A. No. 042/00207/2021 and the present respondent no.4 is the petitioner in the said O.A. The Hon'ble CAT, Guwahati Bench, vide impugned final order dated 27.04.2023 in O.A. No. 042/00207/2021 disposed the said O.A. by allowing the said O.A. in an illegal and perverse manner in favour of private respondent No. 4, with a direction to the respondent No. 2 and 3 to consider the case of the private respondent No. 4 for transfer to JNV Bishnupur (Manipur) under the eligible condition of Transfer Conditions of 2021 as well as on the security principles of Transfer Conditions of 2012 , without considering at all the pleadings and submissions of the present petitioner as well as the official respondents as pleaded in their written statements and arguments addressed on the said grounds. Consequently, the impugned office order dated 10.05.2023 has been issued by official respondent stated to be in compliance of the said

illegal and perverse impugned order dated 27.04.2023. Accordingly, the present writ petition is filed on the grounds submitted below with a prayer for passing interim stay of the said two impugned orders in the interest of justice.

[4] The grounds taken herein by the petitioner are:

(a) The Hon'ble Tribunal has erred in law and facts in totally overlooking in the malafide conduct of the respondent No. 4 in suppressing facts and concealing material facts and documents since the filing of an earlier Original Application bearing O.A. No. 042/00163/2021 before CAT, Guwahati on 15.07.2021 to challenge only the proposed transfer list dated 22.06.2021 (Round 2) of ATD 2020-2021 by deliberately concealing the already published final transfer list dated 01.07.2021 when the said O.A. No. 163 of 2021 was filed on 15.07.2021 solely to mispresent before the Hon'ble Tribunal to obtain an order of stay of the transfer process relating to the present petitioner and which would have been rejected at the threshold, in the event the final transfer list was disclosed with honesty, as mandated in law.

(b) The Hon'ble Tribunal has erred in law and facts in totally overlooking the pleadings of the petitioner that without serving copy of the said O.A. No. 163 of 2021 to the present petitioner or without issuing Court notice or giving opportunity of being heard, a so called innocuous order dated 16.07.2021 was passed by Hon'ble CAT, Guwahati without going in to the merits of the said case to dispose the pending representation dated 06.07.2021 submitted by respondent No. 4. In the said order dated 16.07.2021, the Commissioner, NVS was directed to take a decision within 4 (four) months in respect of the said representation dated 06.07.2021 by passing a speaking order and till such time, the case of the petitioner and respondent No. 4 was directed not to be given effect to by making an

illegal and perverse observation till such so far the case of the respondent No. 4 shall not be given effect to.

(c) The Hon'ble Tribunal has erred in law and facts in totally overlooking the pleadings on record in the present subject O.A. No. 042/00207/2021 that the present petitioner had challenged the said illegal and perverse Hon'ble CAT, Guwahati Bench final order dated 16.07.2021 by filing W.P.(C) No. 496 of 2021 before this High Court, wherein an interim order dated 12.08.2021 was passed by this High Court in W.P.(C) No. 496 of 2021 inter alia as under :

*"There shall accordingly be interim suspension of the order dated 16.07.2021 passed in Original Application No. 042/00163/2021 till the next date of hearing. Post on 28.09.2021."*

Further, it is the case of the petitioner that consequently, the Hon'ble CAT, Guwahati Bench order dated 16.07.2021 was rendered ineffective and non-operational since 12.08.2021 and the said suspension of the Hon'ble Tribunal order continued till 14.12.2021, when a final Court order dated 14.12.2021 was passed by this High Court with the observation that the Commissioner, NVS having now passed a speaking order dated 16.08.2021 disposing of the representation dated 06.07.2021 submitted by the respondent No. 4 in favour of the present petitioner, the said petition was closed in favour of the present petitioner.

The Ld. Tribunal has totally overlooked this legal plea and also the submission of the petitioner that the Commissioner, NVS was also legally bound to ensure that the petitioner was allowed to join her new posting at JNV, Bishnupur consequent upon her selection as on 12.08.2021, when this High Court had vacated the stay order of the CAT, Guwahati. However for unknown reason, the same was not done till 14.12.2021, in an illegal and perverse manner.

(d) The Hon'ble Tribunal has erred in law and facts in totally overlooking the admitted fact on record of the present O.A. No. 042/00207/2021 that this application also only filed seeking "to set aside and quash the proposed transfer list" and not the subsequent final transfer list.

The said application also prayed for setting aside and quashing the impugned rejection order No. F.No. 7-23/2021-NVS(Estt-II)/8455, dated 16.08.2021 without pleading how the said order is bad in law being issued based on subsequent transfer guidelines, 2021.

With further prayer for directing the official respondents to consider the respondent No. 4 case strictly basing on the guidelines issued by NVS in Clause No. 9(1)(C) of Transfer Policy, 2012 is also bad in law as the said Transfer Policy, 2012 has already been subsequently superseded, modified and eclipsed by the Transfer Policy, 2021 and in respect of how Transfer Policy, 2021 has been violated has not been pleaded at all in the preset O.A. by respondent No. 4.

(e) The Hon'ble Tribunal has erred in law and facts in totally erroneously allowing the prayer made in the said O.A. No. 042/00207/2021 without considering any of the pleadings and submissions made by official respondent NVS nor by the present petitioner, while passing the illegal and perverse order dated 27.04.2023.

(f) The Hon'ble Tribunal has erred in law and facts in failing to correctly appreciate the respondent No. 4 has chosen to solely rely upon Clause No. 9(1)(C) of the Transfer Policy, 2012 while the impugned order at Para No. 6 mentions "As per Transfer Policy, 2021, the applicant, Smt. Khoibam Jerina has already done three years in her current posting and thus falls in the category of eligible.

It is further asserted that the respondent No. 4 in the O.A. has not at all referred/not disclosed about the existence of Transfer Policy, 2021 to claim the relief in the said O.A. No. 207 of 2021. Apparently, respondent No. 4 has only relied upon Transfer Policy, 2012 and which Transfer Policy, 2012 has in fact been already modified and superseded. The Hon'ble Tribunal has erroneously relied upon both the Hon'ble Tribunal is totally contrary to settled law of land and is illegal and perverse, per se and not sustainable in law.

(g) The Hon'ble Tribunal has erred in law and facts in totally overlooking and not even making an attempt to appreciate that in the introduction of Transfer Policy, 2021, it itself mentions that the transfer system in NVS is governed by a well defined "Transfer Policy" and subsequent guidelines/clarifications which were issued from time to time with a view to facilitate the employees avail transfer with utmost transparency and accuracy.

Apparently, the respondent No. 4 had simply chosen to ignore all the subsequent guidelines/clarifications which were issued from time to time by NVS, while malafidely seeking to rely solely upon an already modified Transfer Policy, 2021. On the contrary, the respondent No. 4 was required to explain how the subsequent Transfer Policy and Guidelines of NVS, modifying the earlier Transfer Policies were not applicable to respondent No. 4 and more particularly, the reason furnished by Commissioner, NVS while passing the speaking order dated 16.08.2021, relying upon the subsequently modified Transfer Policy, 2021. The Hon'ble Tribunal has illegally chosen to totally ignore this legal submission despite being vehemently raised by the petitioner and official respondents, while considering the said O.A.

(h) Further, it is asserted that the Hon'ble Tribunal has erred in law and facts in totally failing to consider and correctly appreciate that the Transfer Policy, 2021 which the Hon'ble Tribunal relies in the impugned order has not been challenged before any High Court or any competent authority of law.

It is submitted that the applicability of the said Transfer Policy, 2021 and more particularly, the concept and Policy named NVS inter alia "Purpose of avoiding inter-region H/VH/SH cumulation" as mentioned in 4(1)(ii) if one H/VH/SH person is not eligible at his present station, his eligibility shall be counted on the basis of one immediate previous station (if it is an H/VH/SH station of the present region), ought to have been selectively overlooked by the Hon'ble Tribunal as done by the Hon'ble Tribunal to pass the impugned illegal and perverse order.

(i) It is also further asserted that the Hon'ble Tribunal has erred in law and facts in failing to correctly appreciate that it is totally impermissible in law for the Hon'ble Tribunal to rely upon Para No. 4(1)(i) of the Transfer Policy, 2021 in favour of the respondent No. 4, while seeking to totally ignore the same Para No. 4 (1) but Para No. 4(1)(ii), which is totally in favour of the petitioner, a transfer policy framed by NVS specifically to avoid inter region H/VH/SH cumulation.

This plea before the Hon'ble Tribunal by the petitioner is not at all disputable, as the existence and the provision of the said Transfer Policy, 2021 has not been mentioned by the respondent No. 4 in a malafide manner in the said O.A. No. 207 of 2021 nor pleaded nor said provision challenged in the said O.A.

(j) The Hon'ble Tribunal has erred in law and facts in totally overlooking the counter affidavit filed by the official respondents No. 2 & 3 (NVS) in opposition to O.A. No. 207 of

2021 that the concept and policy of counting eligibility in H/VH/SH station on the basis of one immediate previous station has been framed and adopted by NVS to ensure that a person does not continue remain posted from one H/VH/SH station of a region to another H/VH/SH of another region within a short period.

(k) The Hon'ble Tribunal has erred in law and facts in totally overlooking and failing to give any finding that the automated system which had counted the previous stay of petitioner at JNV, Thoubal (Manipur/Hard and Difficult Station) where petitioner had stayed from 16.07.2007 to 03.09.2018 before her present stay at JNV, Ukhrul w.e.f. 04.09.2018 to cut off date 31.07.2021 had legally followed the applicable transfer policy as mentioned in Para No. 4(1)(ii).

The impugned order of the Hon'ble Tribunal has not given any finding regarding the legality or illegality of said automated system as the said Para No. 4(1)(ii) nor automated system has been mentioned in the pleading of the O.A. nor challenged before the Hon'ble Tribunal. Hence, the Hon'ble Tribunal has erred in facts and in law in totally ignoring this aspect while illegally determining eligibility solely based upon Transfer Policy, 2021 by ignoring all the other relevant transfer policies and guidelines of NVS and more particularly said Para No. 4 (1)(ii) of the same Transfer Policy, 2021.

(l) The Hon'ble Tribunal has erred in law and facts in totally overlooking and ignoring the issue of H/VH/SH station and eligibility / provision for transfer of employees into and out of hard & difficult (hard/very hard/semi hard) stations as mentioned in the Transfer Policy, 2021. It is totally erroneous for Hon'ble Tribunal to embark upon determining eligibility for transfer of employee of NVS by ignoring all the relevant

provision of the said Transfer Policy, 2021 duly framed by the competent authority, i.e. NVS for its employees.

(m) The Hon'ble Tribunal has erred in law and facts in failing to correctly consider and appreciate that once Transfer Policy, 2012 has already been modified and superseded by subsequent transfer policies, the issue of seniority or date of joining service does not arise, as transfer is not promotion where seniority issue is involved. Transfer is governed in the present case by relevant transfer policies and hence, the Hon'ble Tribunal by relying upon seniority and ignoring the relevant Para No. 4(1)(ii) of the said Transfer Policy, 2021 has committed gross error and perversity of law in passing the impugned order, under challenge.

(n) The Hon'ble Tribunal has erred in law and facts in illegality setting aside the speaking order dated 16.08.2021 by competent authority of law, without assigning a singular reason about how the said automated system can be said to be arbitrary, illegal or erroneous as the automated system simply followed the relevant provision of Para No. 4(1)(ii) of the Transfer Policy, 2021 and hence CAT order also suffers from perversity in law, on this score also.

(o) The Hon'ble Tribunal has erred in law and facts in totally overlooking the admitted that on the basis of the said automated system relying upon the applicability of Para No. 4(1)(ii) of Transfer Policy, 2021 may persons have already availed the benefit. Hence, it would result in treating equal as unequal and discriminating against the petitioner, in the event a similarly situated employee and discriminating against the petitioner is not made to avail the same benefit, based on result of said automated system in all fairness and equity, as the petitioner was already entitled to join JNV, Bishnupur the

day, when the petitioner obtained this High Court's stay order dated 12.08.2021 passed in W.P.(C) No. 496 of 2021.

(p) The subsequent order bearing F.No. 07-23/2021/NVS/ESTT-II(ATD 20-21)/7083, dated 10.05.2023 issued by the Deputy Commissioner (Pers.), Navodaya Vidyalaya Samiti, Ministry of Education, Government of India is also illegal and liable to be set aside being issued in consequence of an illegal and perverse order dated 27.04.2023 passed in Original Application No. 042/00207/2021 by the Hon'ble Central Administrative Tribunal, Guwahati Bench.

[5] The case of the respondents are as under :

The Navodaya Vidyalaya Samiti is an autonomous organization of Ministry of Education Department of School Education and Literacy, Government of India, having its present headquarters at Noida (UP) and registered under the Societies Registration Act, 1860. Navodaya Vidyalaya Samiti runs, manages and controls the functioning of Jawahar Navodaya Vidyalayas (in short JNVs) all over India, through its eight Regional Offices.

JNVs are fully residential co-educational schools set with the objective of providing modern quality education to talented children, predominantly from rural areas. Students, teachers and staff live in the same campus. Most of the JNVs are set up in rural areas, far away from district headquarters. Teachers and staff are expected to exhibit exemplary moral character before the students. Strict disciplinary measures are being followed to ensure high moral standard among teachers and staff.

Before the lower Court, the applicant has impleaded Union of India, represented by Secretary, Government of India, Ministry of HRD (now Ministry of Education), Department of Education, New Delhi as party respondent No. 1 who is the proforma party. None of the orders/action of the OP No. 1 has been challenged herein and the specific prayer made by the applicant is related to the affairs of the Navodaya Vidyalaya Samiti at its Headquarters, Sector – 62 Noida. Hence, the OP No. 1 has no role to play in

the instant matter and no specific reply in the subject matter of dispute is needed from the OP No. 1 in the facts and circumstances of the case. It would be pertinent to mention here that NVS at initial stage of OA has taken the objection, however, Hon'ble Tribunal did not take up the request of NVS for deletion the name of UOI/R-1. Hence, before the Hon'ble High Court at initial stage the applicant is requesting the same. This Court may be pleased to accede the same in the interest of justice and fair play as the R-1 has no role in the matter and no order passed by R-1 is challenged by the applicant.

Annual Transfer Drive 2021 was effected in accordance with the provisions of transfer policy 2012 as well as transfer guidelines issued vide Samiti's letter dated 22.12.2015. It was well informed to all concerned in the said letter dated 22.12.2015 that the request transfer will be effected in certain order or priorities by adhering to the provisions of transfer policy and instructions of Government of India. The deponent at this stage humbly begs to extract the relevant clauses of the transfer guidelines issued vide letter dated 22.12.2015:

*"..... In order to maximize the request transfer in the year 2016 onwards the transfer will be effected in the following order of priorities:*

- (a) Transfer of differently abled employees to their choice place.*
- (b) Transfer of employees who are suffering from serious ailments/disease including their spouse and children as mentioned in Transfer Policy.*
- (c) Transfer of employees completing mandatory tenure at very hard, hard and NER region.*
- (d) Transfer of husband/wife to one station from unification with spouse or nearby station."*

It was, further, made clear that in the said letter dated 22.12.2015 that the transfer of (i) employees suffering from serious ailment/disease including their spouse and children as mentioned in Transfer Policy (iii) transfer of husband/wife to one station for unification with spouse or nearby station will not be covered under transfer counts keeping in view the Government of India orders in their favour.

It is imperative to mention herein that transfer of employees of JNVs is made through Automated Transfer Portal. Further, the deponent

humbly begs to state that such Automated Transfer Portal operates in accordance with the provisions of the Transfer Policy dated 04.04.2012 as well as the guidelines issued from time to time. In the interest of mass of the employees, who had served more than mandatory period at Hard/Very Hard station in a row in current spell, however could not get the transfer either out from hard station or desired station within hard stations as per provisions of Transfer Policy, it was approved by the competent authority to lay down interpretation vis-à-vis clause of policy determining the tenure of employee for acquiring eligibility for seeking transfer in the ATD 2020-21.

1. Hard Station employee (Cumulative Eligibility/Station Seniority):

As the employee working on the hard station has got provision for taking advantage of cumulated period of hard stations served in a row in current spell the provision of deciding eligibility of the Hard stationed employee shall be applicable exactly similar to the principle adopted in "Admin Cumulative Provision". Accordingly, the tenure of Ms. Aribam Sobita Devi was counted her stay at present station and preceding station at JNV, Thoubal (Manipur) [Hard & Difficult Station] adhering to the provision II mentioned hereunder:

- I. If a H/VH/SH person is eligible at its present Hard/Very Hard/Semi Hard Station, his eligibility shall be counted on the basis of present station itself. In such case no cumulation of previous station will be required for deciding eligibility/station seniority.
- II. If a H/VH/SH person is not eligible at his present station, his eligibility shall be counted on the basis of one immediate previous station (if it is an H/VH/SH station of the present region).
- III. If a H/VH/SH person is neither eligible at his present station nor at his immediate previous H/VH/SH station of counted by cumulating the period of

present and previous station (if it is a H/VH/SH station of the same region) with lower priority. In such case only one previous station shall be considered for calculation of the cumulative period.

IV. This provision shall stand applicable for transfer of employees from hard station to outside as well as transfer within hard stations.

V. The cutoff date set for the purpose of counting of stay at hard station was 31.07.2021. Smt. Khoibam Jerina was posted at JNV, Chandel, Manipur on 31.07.2021 she had duly completed the period of 3 years. As such, the automated portal worked out the total number of days of stay of Smt. Khoibam Jerina at JNV, Chandel counting her stay from 13.07.2017 to 31.07.2021 at JNV, Chandel which came to 1480 days. On the other hand, the petitioner was posted at JNV, Ukhrul, Manipur on 04.09.2018 and hence, as on cut off date 31.07.2021, she had not completed the mandatory period of 3 years at JNV, Ukhrul. Accordingly, her tenure was counted as per the clause (ii) of guidelines which stipulates that if an H/VH/SH person is not eligible at his present station, his eligibility shall be counted on the basis of one immediate previous station (if it is an H/VH/SH station of the present region at par with the provision mentioned in the Admin Cumulative Transfer Provision vide which Commission, NVS had taken the interpretation to safeguard the interest of employees to extend the benefit of cumulative tenure at preceding station in exercise the power conferred under Clause of 10 of Transfer Policy, 2021 and the

automated system count her cumulative stay counting her stay at the present station i.e. JNV, Ukhrul and previous station at JNV, Thoubal, Manipur (Hard & Difficult Station) where the petitioner stayed from 16.07.2007 to 03.09.2008 and therefore, the automated portal worked out total number of days of stay of the petitioner in hard and difficult station which came out to 4068 days as per the laid down provision of Admin Cumulative Provision as well as guidelines on the subject issue.

The respondents at this stage state that Smt. Khoibam Jerina filed the O.A. No. 042/00207/2021 challenging the proposed transfer list (round 2) ATD 2020-21 on the ground that the respondent No. 4 (Ms. Sobita Devi) is junior to the applicant, Smt. Khoibam Jerina Devi. Further, prayer was made seeking for a direction to the respondent authorities to consider the case of the applicant (Ms. Kh. Jerina Devi) to transfer to JNV, Bishnupur as per Clause 9(1)(c) of the Transfer Guidelines, 2012 before considering the case of the respondent No. 4 claiming that she is senior in the station seniority than Ms. Aribam Sobita Devi. In fact the transfer of Ms. Aribam Sobita Devi was considered by NVS under Admin Cumulative Provisions & Guidelines through the process of automation during the transfer drive of 2020 – 21 strictly as per the provision of Transfer Policy. In the submission of the answering respondents, the prayer made by Ms. Kh. Jerina claiming the transfer to JNV, Bishnupur being the station senior by filing the O.A. No. 042/00207/2021 was nothing but false and misleading in view of the fact that the representation submitted by the applicant Ms. Kh. Jerina was considered in the light of the transfer guidelines and regulations regarding count of cumulative eligibility/station seniority of employee served at Hard/Very Hard Station and disposed of vide speaking & reasoned order dated 16.08.2021 pursuant to the order of Hon'ble CAT dated 16.07.2021 passed in earlier O.A. No. 163/2021 filed by Ms. Kh. Jerina before the Hon'ble CAT Guwahati Bench, Guwahati. As such, while disposing of the

representation submitted by the applicant, the answering respondents found that the applicant is not eligible to be transferred to JNV, Bishnupur rejecting the claim of the applicant being devoid of any merit in the light of the provisions of the transfer policy.

In the light of the records of the case as well as in terms of the order dated 16.07.2021 passed by the Hon'ble Tribunal in O.A. no. 163/2021, the respondent further states that considering all the relevant factors, the computer system found the petitioner senior than Smt. Kh. Jerina respondent No. 4 after counting the stay of petitioner in the immediate previous station and consequently, allotted JNV, Bishnupur to her.

As to the statements made in the writ petition, the respondent has no comments to offer. However the deponent does not admit anything which is contrary to and inconsistent with the records of the instant case.

With regard to the statements made, the respondent states that the office order bearing No. F.No. 07-23/2021/NVS/Estt-II(ATD-20-21)/7083 dated 10.05.2023 transferring Smt. Kh. Jerina, TGT (Hindi), Jawahar Navodaya Vidyalaya, Chandel (Manipur) to JNV, Bishnupur (Manipur) was issued in compliance with the order dated 27.04.2023 passed by the Hon'ble CAT Guwahati Bench, Guwahati in O.A. No. 207/2021 titled Smt. Kh. Jerina Vs. UOI &Ors. The operative part of the order dated 27.04.2023 passed by the Hon'ble CAT, Guwahati Bench is reproduced as under:

*"6. We are of the considered view that Commissioner, Navodaya Vidyalaya Samiti has erred in arriving at the above conclusion by ruling in favour of respondent No. 4, Smt. Aribam Sobita Devi and caused discrimination and prejudice to the applicant, Smt. Kh. Jerina, by rejecting her claim. As per the Transfer Policy, 2021, the applicant Smt. Kh. Jerina has already done three years in her current posting and thus falls in the category of 'eligible' as per 4(1)(i) above. Respondent No. 4 Smt. Aribam Sobita Devi has not done three years in her current posting and thus falls in the category of "not eligible" as per 4(1)(ii).*

*7. This Tribunal is of the view that once the applicant (Ms. Jerina) has been found to be eligible, she deserves to get priority and precedence over respondent No. 4 who prima facie is "not eligible" and but made "eligible" cannot be compared with "not eligible" and*

*thus the order of Commissioner, Navodaya Vidyalaya Samiti is bad in law and deserves to be set aside and quashed.*

*8. Accordingly, we set aside and quash the impugned No. 7-23/2021-NVS(Estt-II)/8455, dated 16.08.2021 (Annexure – A/2) and direct the respondent No. 2 and 3 to consider the case of the applicant for transfer to JNV, Bishnupur (Manipur) under the "eligible" category of Transfer Conditions of 2021 as well as on the "seniority" principles of Transfer Conditions of 2012 (The applicant having joined Navodaya Vidyalaya Samiti as TGT-Hindi on 14.07.2006 vis-à-vis Smt. Aribam Sobita Devi who joined Navodaya Vidyalaya Samit on 16.07.2007).*

*9. With the above observation and directions the instant O.A. is allowed with no order as to costs."*

The respondents state that in compliance of the order of Hon'ble CAT, Guwahati Bench, Guwahati, NVS issued the office order dated 10.05.2023 transferring Smt. Kh. Jerina, TGT (Hindi) at JNV, Bishnupur considering the fact that the transfer is related to long back of ATD 2020-21 and due to which no one can be posted to JNV, Bishnupur which adversely hampered the academics of the students of JNV, Bishnupur. Accordingly, to avoid the unnecessary further litigation in the compelling situation, Samiti transferred Smt. Kh. Jerina to JNV, Bishnupur. Smt. Kh. Jerina, TGT (Hindi) had already joined to the post of TGT-Hindi at Jawahar Navodaya Vidyalaya, Bishnupur (Manipur) on 23.05.2023 and as of now there is no vacancy of TGT-Hindi in JNV, Bishnupur (Manipur).

The respondents state that two posts of TGT – Hindi are sanctioned and two teachers are already working against the sanctioned posts of TGT-Hindi resulting into no vacancy of TGT-Hindi in JNV, Chandel (Manipur).

In view the aforementioned submissions and in the facts and circumstances of the case, the respondents state that the impugned office order dated 10.05.2023 transferring Smt. Kh. Jerina, TGT-Hindi to JNV, Bishnupur (Manipur) was issued as per the direction of Hon'ble CAT, Guwahati Bench, Guwahati passed in its order dated 27.04.2023 passed in O.A. No. 042/00207/2021. As such, the petitioner is not entitled to any relief/s as prayed for in the writ petition and the instant writ petition

deserves to be dismissed. In view of the said submissions made hereinabove, this Court may be pleased to dismiss the present petition.

The learned counsel for the petitioner submits that the present respondent No. 4 filed O.A. No. 042/00163/2021 before CAT, Guwahati challenging the proposed transfer list dated 22.06.2021 (Round 2) of ATD 2020-21 by deliberately concealing the already published final transfer list dated 01.07.2021 by misrepresenting facts.

However, this submission of the learned counsel for the petitioner is not sustainable, as on perusal of the both transfer lists, the present respondent No. 4 was found aggrieved/affected by both the proposed transfer list as well as the final transfer list.

Further, the learned counsel for the petitioner submits that the said O.A. No. 163 of 2021 was disposed of without issuing notice or giving opportunity of being heard to the present petitioner. However, on perusal of the said order of the Ld. Tribunal, it was found that the Ld. Tribunal has given just a direction to the authority to dispose of the representation filed by the present respondent No. 4 within 4 (four) months nothing else without going into merit of the case.

Further, the learned counsel for the petitioner submits that against the said Hon'ble CAT's order, the present petitioner filed the writ petition being W.P.(C) No. 496 of 2021 and this Hon'ble High Court passed favourable order in favour of the present petitioner. We extract the operative portion of this Hon'ble Court's order and the same is reproduced herein below:

*"[4] Mr. T. Momo, learned counsel, would state that the only grievance of the writ petitioner was that the Tribunal, without putting her on notice, had directed that her case should not be given effect to, while disposing of OA No. 042/00163/2021. He would state that she no longer has any grievance in the light of the disposal of the representation dated 06.07.2021 by the competent authority in her favour, by the order dated 16.08.2021. He would further state that as the validity of the said order is presently under consideration before the Tribunal in the new OA filed by respondent No. 4, herein, the cause in this writ petition no longer survives.*

*As the grievance of the writ petitioner was on limited to the direction of the Tribunal that her case should not be considered as she had no grievance whatsoever with the direction to dispose of the representation dated 06.07.2021 made by respondent No. 4 herein, the validity of such disposal is not in question before this Court. It is for the Tribunal to verify the validity of the order dated 16.08.2021 passed in exercise of such disposal in the pending O.A. Further, as the disposal of the representation was made by the competent authority pursuant to the direction of the Tribunal, in ignorance of the interim suspension granted by this Court, which was altogether on a different ground, the Commissioner, Navodaya Vidyalaya Samity, Uttar Pradesh, is at liberty to lift the interim suspension of his earlier order dated 16.08.2021 so that its validity can be examined by the Tribunal.*

*The writ petition is disposed of with the above observation.*

*In the circumstances, there shall be no order as to costs."*

However, on perusal of the above reproduced operative portion of this Hon'ble Court's order, we find no favourable order in favour of the petitioner. But, instead, this Hon'ble Court rather has given liberty to the CAT to examine and dispose of the case of the parties which was filed by the present respondent No. 4.

It was, further, submitted by the learned counsel for the petitioner that the plea of respondent No. 4 was basing on the guidelines issued by NVS in Clause No. 9(1)(c) of the Transfer Policy, 2012 which is bad in law as the said Transfer Policy, 2012 has already been superseded/modified and eclipsed by the Transfer Policy, 2021.

Further, the learned counsel appearing for the respondents No. 2 & 3 submitted that as the respondent No. 1 has no role to play in the instant matter, no specific reply in the subject matter is needed in the facts and circumstances of the case and as such, requested this Court to delete the name of the respondent No. 1. Accordingly, the prayer for deleting the name of respondent No. 1 is allowed. The Registry is directed to delete the name of respondent No. 1 in the cause title.

At the outset, we extract relevant portion of both guidelines.

*"9.1 Method for Request Transfer basing on Transfer count*

*(c) In case of a tie in two or more employees of the same gender an employee with an earlier date of joining in present post in present station shall be accommodated and in case, if the date of joining in present post in present station also coincides then the older employee shall be first accommodated".*

Relevant portion of 2021 Transfer Guidelines as follows:

*"4.6 (i) Benefit of Cumulative tenure for eligibility to employees working in hard and difficult station: If an employee has successfully worked in different Jawarhar Navodaya Vidyalaya in Very Hard/Hard/Semi Hard Stations of a region in a row in the current spell, the tenure of immediate previous station shall be used as a cumulative factor to determine his/her eligibility (for transfer) from present station. The governing provisions of cumulative tenure shall further be as under:*

- i. If an employee serving at present hard station, is eligible by virtue of his tenure at present station, the provisions of cumulative tenure count shall not be extended to him.*
- ii. If an employee serving at present hard and difficult station, is not eligible by virtue of his tenure at present hard station, his tenure of service at immediate previous hard station (of the same region) shall be the deciding factor of his eligibility. If he is eligible to seek request transfer due to stay at his immediate previous station, he shall be considered eligible to seek transfer due to stay at his immediate previous station only subject to lower hard station's category (between present and immediate previous station).*
- iii. If an employee serving at hard and difficult station, is neither eligible by virtue of his tenure at present hard station nor his tenure at previous hard station (of the same region), his tenure of eligibility shall be decided by cumulating the tenure of present hard station and immediate previous hard station of the same region, restricting the eligibility to lower hard station's category (between present and immediate previous station).*
- iv. It is to clarify that such provision of cumulative tenure of hard station shall be region specific and shall not be applicable for two different hard stations of different regions.*
- v. By mentioning hard station, it implies for very hard, hard and semi hard stations interchangeably among such stations".*

[6] On perusal of both guidelines, we found both the guidelines are in favour of the present respondent No. 4, because the fact

remains that the present respondent No. 4 joined service on 14.07.2006, the petitioner joined service on 16.07.2007 and the petitioner joined her present posting i.e. JNV, Ukhruul on 04.09.2018 and the respondent No. 4 joined her present place of posting (before her transfer to JNV, Bishnupur) on 13.07.2017. Accordingly, the present respondent is eligible for transfer to JNV, Bishnupur straight away by applying the relevant guidelines i.e. Transfer Guidelines, 2012 and also that the respondent No. 4 will also be the eligible candidate for transfer by applying clause (i) of the Transfer Guidelines, 2021. In short, the respondent No. 4 is senior to the present petitioner and the respondent No. 4 has already completed 3 years at her present place of posting i.e. JNV, Chandel as required under both guidelines.

On the other hand, the present petitioner was junior to the respondent No. 4 and was not yet completed 3 year at her place of posting i.e. JNV, Ukhruul and thus, respondent No. 4 falls in the category of "Eligible" as per part (i) of 4.6(i) above. As such, the respondent No. 4 is eligible for consideration of transfer to JNV, Bishnupur over the present petitioner under the above 2 (two) transfer guidelines. Accordingly, the authority should give priority to the respondent No. 4 over the petitioner.

It is also fact that both the present respondent No. 4 as well as the petitioner filed their respective request letters for transferring them to the JNV, Bishnupur, as per the guidelines of the transfer policy of Navodaya Vidyalaya Samiti (Transfer Guidelines of employees of NVS). Guideline No. 2 of the Transfer Policy of the Navodaya Vidyalaya Samiti for transfer of employees of NVS is reproduced herein below:

**"2. GUIDING/BASIC PRINCIPLES**

*(a) An employee on initial posting after recruitment/promotion will not be considered for request transfer before he completes the prescribed mandatory tenure/normal tenure at his initial place of posting.*

*(b) Transfer/posting to a choice place/desired station shall not be claimed as a matter of right. Some crucial determinants for such transfer are as under:*

- i) Availability of a clear-cut vacancy.*
- ii) Domain expertise of an employee.*
- iii) Performance of an employee against tangible parameters wherever possible for example, CBSE*

*results, APAR Grading in the last five years or such other parameters as may be prescribed from time to time for different posts.*

*iv) Factors such as; due for retirement, medical problems faced by an employee or family members, spouse working at a station etc.*

*v) Redeployment of surplus staff in excess of sanctioned strength at a location to other location against sanctioned vacancies.”*

The learned counsel for the respondent submitted that in compliance of the Ld. CAT Guwahati Bench's order, the NVS had already issued office order dated 10.05.2023 transferring the respondent No. 4 at JNV, Bishnupur considering the fact that the transfer was related to long back ATD 2020-21 and due to which, no one can be posted to JNV, Bishnupur which adversely hampered the academy of JNV, Bishnupur. Accordingly, to avoid the compelling, the Navodaya Vidyalaya Samiti transferred the respondent No. 4 to JNV, Bishnupur and accordingly, respondent No. 4 had already joined JNV, Bishnupur on 23.05.2023, and as of now, there is no vacancy in JNV, Bishnupur.

On careful conspectus of the final transfer list, we are convinced and satisfied that the authority prepared the said proposed list as well as the final list by applying clause (ii) of 4.6 (i) of the Transfer Guidelines, 2021. However, the authority should apply this only when there is only 1(one) candidate asking for transfer and posting. However, in the instant case, 2(two) candidates from the same region were applying for transfer in the same place of posting i.e. JNV, Bishnupur.

As such, we are of the considered view that the authority erred in issuing the said proposed list as well as the final list and issuance of the rejection order No. F.No. 7-23/2021-NVS issued by the Commissioner, Navodaya Vidyalaya Samiti. The authority should consider the case of the present respondent No. 4 at the first instance, as she is eligible for transfer to JNV, Bishnupur by applying column No. (i) of 4.6(i) of the Transfer Guidelines, 2021 at the first instance. However, the authority issued the said order in favour of the petitioner by applying (ii) of 4.6(i). The authority

should give priority to the respondent No. 4, as the present respondent No. 4 deserves to get priority and precedence over the present petitioner.

[7] In the circumstances, we are of the opinion that the authority violates the mandatory statutory rules and acted malafide.

[8] On perusal of the Ld. CAT's order, we find that the Ld. CAT, Guwahati Bench considered the pleas put forth by the parties in totality while passing the order.

[9] In our view, the Deputy Commissioner (Pers.), Navodaya Vidyalaya Samiti, Ministry of Education, Government of India rightly issued the order bearing F. No. 07-23/2021/NVS/ESTT-II(ATD 20-21)/7083, dated 10.05.2023.

[10] The learned counsel for the petitioner, in support of his case in the matter of limitation of power of the Court to interfere with the transfer and posting of the employees of the State, relied upon the following the Hon'ble Supreme Court's judgments.

1. **"Shilpi Bose (Mrs.) &Ors. v. State of Bihar -1991 Supp. (2) SCC 659"**

But, here the Hon'ble Supreme Court held that -

*"3. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule, therefore the High Court had no jurisdiction to interfere with the transfer orders.*

*4. The courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested*

*right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."*

**2. "Rajendra Singh and Ors v. State of Uttar Pradesh and Ors.- (2009) 15 SCC 178"**

But, here the Hon'ble Supreme Court held that -

*"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires (see State of U.P. v. Gobardhan Lal', SCC p. 406, para 7).*

*9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In Shilpi Bose v. State of Bihar this Court held: (SCC p. 661, para 4)*

*'4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the*

*administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.'*

*10. In N.K. Singh v. Union of India' this Court reiterated that: (SCC p. 103. para 6) a 6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision.... "*

3. **"Union of India v. S.L. Abbas - (1993) 4 SCC 357"**

But, here the Hon'ble Supreme Court held that -

*"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority. Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.*

*7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.*

*8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of*

*the constitution of India in service matters. This is evident from a perusal of Article 323-A of the constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority)."*

4. **"Shayara Bano v. UOI"** (the Triple Talaq Case)

But, here the Supreme Court ruled that –

*The practice of instantaneous triple talaq (Talaq-ul-biddat) was unlawful. The Bench noted that the equality of status was a manifestation of the fundamental right to equality protected by Article 14 of the Constitution.*

*The equality of status of present Petitioner qua the other employees of Official Respondents who have obtained the benefit of Automated Transfer Portal and which is unchallenged nor interfered by any Court of Law and even in the impugned order of CAT, is to be protected in favour of the Petitioner.*

5. **"U.P. Power Corpn. Ltd. vs. Ayodhya Prasad Mishra - (2008) 10 SCC 139"**

But, here the Hon'ble Supreme Court held that -

*"36. It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.*

*37. Every classification, to be legal, valid and permissible, must fulfil the twin- test, namely,*

*(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and*

*(ii) such differentia must have a rational relation to the object sought to be achieved by the statute or legislation in question.*

*38. In the present case, the sole criterion for promotion of an Executive Engineer to the post of Superintending Engineer is 'merit'. The Regulations, therefore, contemplate preparation of different select lists and allotment of marks".*

[11] On a careful conspectus of the legal spectrum, we are of the considered view that the aforementioned decisions of the Hon'ble Supreme Court do not help the case of the petitioner, rather it goes against the petitioner. We are convinced here that the Hon'ble Supreme Court laid down the principle of law that the transfer and posting of a public servant should not be interfered with by the Court, which is made in public interest and for administrative reasons. We also mindful of the principle of law that the principle of transfer and posting of the public servant should not be affected by violation of any mandatory statutory rule or on the ground of the malafide.

However, in the present case as discussed above, the authority of Navodaya Vidyalaya Samiti committed violation of mandatory statutory rule as set out in the Transfer Policy and committed malafide.

[12] The operative portion of the order dated 27.04.2023 passed by the Ld. CAT, Guwahati Bench, impugned herein, reads as follows:

*"6. We are of the considered view that Commissioner, Navodaya Vidyalaya Samiti has erred in arriving at the above conclusion by ruling in favour of respondent No. 4, Smt. Aribam Sobita Devi and caused discrimination and prejudice to the applicant, Smt. Kh. Jerina, by rejecting her claim. As per the Transfer Policy, 2021, the applicant Smt. Kh. Jerina has already done three years in her current posting and thus falls in the category of 'eligible' as per 4(1)(i) above. Respondent No. 4 Smt. Aribam Sobita Devi has not done three years in her current posting and thus falls in the category of "not eligible" as per 4(1)(ii).*

*7. This Tribunal is of the view that once the applicant (Ms. Jerina) has been found to be eligible, she deserves to get priority and precedence over respondent No. 4 who prima facie is "not eligible" and but made "eligible" cannot be compared with "not eligible" and thus the order of Commissioner, Navodaya Vidyalaya Samiti is bad in law and deserves to be set aside and quashed.*

8. Accordingly, we set aside and quash the impugned No. 7-23/2021-NVS(Estt-II)/8455, dated 16.08.2021 (Annexure – A/2) and direct the respondent No. 2 and 3 to consider the case of the applicant for transfer to JNV, Bishnupur (Manipur) under the "eligible" category of Transfer Conditions of 2021 as well as on the "seniority" principles of Transfer Conditions of 2012 (The applicant having joined Navodaya Vidyalaya Samiti as TGT-Hindi on 14.07.2006 vis-à-vis Smt. Aribam Sobita Devi who joined Navodaya Vidyalaya Samiti on 16.07.2007).

9. With the above observation and directions the instant O.A. is allowed with no order as to costs."

[13] Letter of the Deputy Commissioner dated 10.05.2023 addressed to Smt. Khoibam Jerina whereby transferring her to the JNV, Bishnupur is reproduced herein below:

"Ref.: No. PERS. OA (Jerina)/NVS(SHR)/E.III/1177 Date : 10.05.2023  
To

Smt. Khoibam Jerina,  
TGT (Hindi),  
Jawahar Navodaya Vidyalaya,  
Chandel (Manipur)

Subject: Transfer to JNV, Bishnupur (Manipur) under  
H/VH/SH category against ATD 2020-21 –  
Regarding.

Madam,

I am to refer to NVS, Hqr, Office Order No. 07-23/2021/NVS/Estt-II (ATD – 20-21)/7083 dated 10.05.2023 by which in compliance with the order dated 27.04.2023 passed by the Hon'ble CAT Guwahati Bench, Guwahati in OA No. 207/2021 titled Smt. Khoibam Jerina Vs. UOI &Ors. you have been transferred to Jawahar Navodaya Vidyalaya, Bishnupur (Manipur) under H/VH/SH Category against the ATD 2020-21.

Smt. Khoibam Jerina, TGT (Hindi) will not be entitled for transfer benefits.

Yours faithfully,  
Sd/-

(K.V. SURESH)  
DEPUTY COMMISSIONER

Encl. : Office Order No. 7083  
Dated 10.05.2023."

[14] After having considered the facts and circumstance of the case and in the background of the discussions made herein above and on taking an overall view, we find no ground to set aside and quash the impugned final

order dated 27.04.2023 passed in O.A. No. 042/00207/2021 by the Hon'ble CAT, Guwahati Bench and the office order bearing Ref.: No. 07-23/2021/NVS/ESTT-II(ATD-2020-21)/7083, dated 10.05.2023 issued by the Deputy Commissioner (Pers.), Navodaya Vidyalaya Samiti, Ministry of Education, Government of India.

[15] With the above, the present writ petition stands dismissed without costs.

**JUDGE**

**CHIEF JUSTICE**

FR/NFR

*Bipin*