

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A./997/1999

Order, this the 2nd day of ^{July} June, 2004

D.C.VERMA : VICE CHAIRMAN(D)

D.R.TIWARI : MEMBER(A)

Smt. Prem Lata Devi,
R/o. VB-203, V.V. Colony
N.T.P.C. Shaktinagar, Sonbhadra (U.P.)
Presently posted as Primary Teacher,
Kendriya Vidyalaya (NTPC)
Shaktinagar.

.....APPLICANT

ADVOCATE : MR. B. RAM

V/s.

1. Union of India through the Secretary,
(Department of Education)
Ministry of Human Resources Development.
Govt. of India, New Delhi – 110 001.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi – 110 016.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Patna Region, Vijai Nagar, Rukumpara
Baely Road, P.O. B.V. College,
Patna – 800 014.



4. The Principal,
Kendriya Vidyalaya, Rau-Pusa
Samstipur (Bihar).

5. Principal,
Kendriya Vidyalaya,
NTPC Shakti Nagar,
Sonbhadra (UP).

.....RESPONDENTS

ADVOCATE : MR. N.P.SINGH

ORDER

MR. D.C.VERMA : VICE CHAIRMAN(J)

By this OA the applicant has challenged the order dated 6.2.98 by which an offer of appointment has been withdrawn by the Kendriya Vidyalaya Sangathan (in short Sangathan).

2. The fact in brief is that the applicant has been working as teacher in the primary Section under Kendriya Vidyalaya Sangathhn. Vacancy for the post of PGT, Hindi was notified by the Sangathan. The applicant was selected and asked to report personally to Assistant Commissioner on any working day latest by 5.9.97 between 9.00 am to 17.39 hours for further orders regarding appointment. It was also mentioned in the said communication that " Failure to report as aforesaid will be taken as if you are not interested and vacancy will be filled up, otherwise." The applicant moved a representation on 1.9.97 by registered post in favour of the Assistant Commissioner, KVS, Patna mentioning about her family problems and making a request for being posted in Kendriya Vidyalaya, NCL Kharia



on the post of PGT-Hindi. On 2.9.97 the Sangathan issued the offer of appointment to the applicant for the post of PGT-Hindi at KV, Rao Pusa, Samastipur, Bihar. The applicant again sent a representation on 8.9.97 to the Commissioner, KVS, New Delhi that she be accommodated at KV, Kharia, NCL Sonabhadra in place of KV-Rao Pusa. In the offer of appointment dated 2.9.97 it was mentioned that in case the applicant accepts the offer of the terms and condition stipulated, she should send acceptance by 8.9.97 and if the appointee does not report for duty at the mentioned Kendriya Vidyalaya, by 16.9.97 the offer will be automatically treated as withdrawn and no further correspondence will be entertained from her (copy Annexure A/6). After receiving the said offer of appointment the applicant, sent another representation on 11.9.97 with a request that the joining period be extended till 30th September '97 on the grounds mentioned in the representation (copy Annexure A/7). By communication dated 15.9.97 (copy Annexure A/8) the applicant was granted the extension upto 30th September 97. She was specifically informed by this communication that "no more extension be granted." She was also informed that request for change of Region has not been acceded to. Instead of joining place of posting by 30th September 1997, the applicant again sent a representation to Asstt. Commissioner, KVS, Patna on 29.9.97 with a request to extend the joining period upto 15.11.97. This representation was forwarded through KV Shaktinagar where the applicant was already working. On 13.11.97 the applicant sent a representation through proper channel with a request to permit her to join as PGT-Hindi at KV, Rao Pusa upto 25.11.1997. The request was however turned down and the impugned order dated 6.2.98 was issued, hence the present OA.

3. The case on behalf of the applicant is that the applicant has always been willing to join the promotion post. He was only making a request for change in place of posting and could not join the place of appointment because of family problems and illness. It is also submitted that the applicant has been on earned leave w.e.f. 5.10.97 to 13.11.97 which was sanctioned by the department, so she could not join the place of posting till that period. Further when the applicant was willing to join on 25.11.97 she was not permitted nor relieved by the department, where she was serving, and the Sangathan did not inform the applicant before canceling the offer of appointment. The learned counsel for the applicant has placed reliance on the following decisions :

- (1) Sravan Kumar Jha & Ors. v/s. State of Bihar & Ors. reported in 1991 SCC(L&S) Page 1078.
- (2) Tagin Litin v/s. State of Arunachal Pradesh & Ors. reported in 1996 SCC (L&S) Page 1126.
- (3) U.O.I. v/s. Rati Pal Saroj & Anr. reported in 1998(2) ATJ Page 361.
- (4) Purushottam v/s Chairman, M.S.E.B. & Anr. reported in 1999 SCC(L&S) Page 1050

4. Learned counsel for the respondents has, on the other hand, submitted that the applicant was granted sufficient time to join the place of posting, but actually she never intended to join the appointed place. She wanted change in place of posting on one pretext or the other. The applicant has been sending representation after representation. The respondents had not one occasion but twice informed the applicant that in case she does not join the place of posting, the offer will be treated as withdrawn. Subsequently when

the time was extended she was informed that no more extension would be granted, still the applicant did not join within the permitted time. The respondents were, therefore, not required to give any show cause. The applicant was quite aware that in case she fails to join, the offer of appointment may be cancelled.

5. Counsel for the parties have been heard at length.

6. In the case of Srawan Kumar Jha, there was no direction to permit the applicants' therein to join. As there was dispute whether some of the applicants had actually joined or not, the Apex Court directed that in such a situation a show cause notice was required to be given. Consequently Court directed holding of an inquiry.

7. In the case of Tagin Litin, before the order of appointment could be issued, the same was cancelled. The Apex Court held that as earlier order was actually not communicated, it was not effective.

8. In the case of Rati Pal Saroj an offer of appointment was issued to the selectee, who was working in another department, but was not relieved to join the selected post on the ground that selectee has abused his official position as a public servant. On coming to know about it, offer of appointment was withdrawn. Plea that offer of appointment could not have been withdrawn without show cause notice was negatived by the Apex Court. The Apex Court held " if an employee who has been offered a post by the Central Government is not in a position to join on the date fixed under



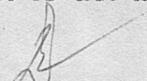
the appointment letter and there is no prospect of his joining for several years to come, the Central Government would be entitled to terminate the appointment as the person appointed is not available to the Central Government within a reasonable time of the appointment and hence he is not suitable”

09. In the case of Purushotam (supra) the Apex Court held that “ duly selected candidate could not be denied appointment on the pretext that panel’s term had expired and post had been filled up by someone else.” The fact of the said case was very different from the fact of the case before this Tribunal. In the case of Purushotam, the appointment was not given doubting the applicant’s status as Schedule Tribe candidate. Even though High Court held that the applicant therein was ST candidate, the appointment was not granted. The Apex Court held that in the facts and circumstances of the case therein, the appointment was denied on account of the Board’s own erroneous decision, the appellant’s right of appointment was illegally taken away, which could not have been done. It was in the said circumstances a direction was given to make appointment, which was to be prospective in nature.

10. The cases cited at the bar are not very relevant on the point in issue before this Bench. In the case of Rati Pal Saroj (supra) the selected candidate was not relieved to join the services of Indian Administrative Services because the candidate had allegedly abused his official position as a public servant. The offer of appointment was cancelled as he was not likely to be relieved in near future. It was also observed by the Apex Court that

even though candidate's name may be included in the selected list he has no right to appointment and Central Government is entitled to satisfy itself about the character and antecedents of the candidate. Therefore it was open to the Central Government not to appoint a candidate although he is on the selected list. In the case of Tagin Litin, as mentioned above, even appointment letter was not issued.

11. In the case before this Bench, in the very first communication dated 20.08.97 she was informed that " failure to report as aforesaid will be taken as if you are not interested and the vacancy will be filled up otherwise." Inspite of this, before offer of appointment could be issued to her she, sent a representation on 1.9.97 giving choice of place of posting. After offer of appointment was issued on 2.9.97 she again sent a representation on 11.9.97. In offer of appointment dtd. 2.9.97 it was specifically mentioned that in case she fails to report for duty by 16.9.97, the offer will be automatically treated as withdrawn. The applicant however kept on sending representations. The respondents by taking a lenient view extended the applicant's period upto 30th September 1997 as prayed by her in representation dated 11.9.97. Still the applicant failed to join. It was specifically mentioned therein that "no more extension would be granted" so the applicant was quite aware about the result of sending her representation. Hence the respondents had no alternative but to act and to refuse further extension.



12. The offer was given to the applicants to join as PGT in a college where college session was in progress and students' study was involved. We can not close our eyes to such a situation where future of students get ruined because of non availability of teachers. Here though the Sangathan made selection but the selected teacher on one pretext or the other failed to join the post affecting study of the subject on which selection was made. Result being that the student's future must have been affected thereby. Teaching institutions can not be treated like any other office where matters can some times wait. The Sangathan's action in withdrawing the offer of appointment, in such a situation is thus perfectly valid.

13. Learned counsel for the applicant submitted that as per the impugned order the applicant was permitted to join upto 21.10.97 but the order by which this permission was granted has not been produced. Even if that be so, the impugned order would not become invalid because of non production of the order by which the applicant was granted time to report upto 21.10.97. It is not the case of the applicant that she wanted to join on or before 21.10.97, but was not permitted.. The case of the applicants, on the other hand, is that she wanted to join by 25.11.97. So non-production of the order by which time was extended upto 21.10.97 has no meaning.

14. On the facts of this case, reference may be given to the decision of the Apex court in the case of Central Provident Fund Commissioner & Ors. v/s.



Ashok Dube & Ors reported in 1993 (1) SLR Page 10. In the cited case offer of appointment to the applicant therein who was working as a clerk in the bank was issued but the selected candidate could not join the post as he was not being relieved by the department. The selected candidate failed to produce the no objection certificate. A plea was taken that no objection certificate was to be issued by the bank, hence the selected candidate can not be at fault. The same was negatived. The plea that selected candidate was never afforded opportunity before the issue of cancellation order was also negatived.

15. In the case, in hand, the submission of the learned counsel for the applicant that actually the KVS, Shanktinagar where the applicants was serving had not relieved the applicant has no basis and is devoid of merit in view of the decision cited above.

16. In view of the discussions made above, the OA has no merit and the same is dismissed. With the dismissal of the OA, MA 871/2003 also stands disposed of. No costs.

D.R.Tiwari
(D.R.TIWARI)
MEMBER(A)

cmj/

D.C.Verma
(D.C.VERMA)
VICE CHAIRMAN(J)