

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3214/2015

Order Reserved on: 17.11.2015
Order Pronounced on: 19.11.2015

**Hon'ble Shri V. Ajay Kumar, Member(J)
Hon'ble Shri Uday Kumar Varma, Member(A)**

Dr.Prem Kumar Tyagi
S/o ShriHari Singh Tyagi
R/o Flat No.204, Plot No.9/108,
Sector-3, Rajendra Nagar,
Sahibabad (Ghaziabad) UP
Presently working (On deputation basis) as
Regional Director
National Institute of Open Schooling
Regional Centre,
Chamunda Complex, Dari Road,
District Kangra, Himachal Pradesh.

(By Advocate: Shri K.K. Gautam)

Versus

1. Union of India
Ministry of HRD
Through its Secretary
ShashtriBhawan, New Delhi.
2. The Commissioner,
NavodayaVidyalayaSamiti,
B-15, Institutional Area, Sector-62, Noida,
Distt.GautamBudha Nagar UP ... Respondents

(By Advocate: Shri S. Rajappa)

Order

By Hon'ble ShriUday Kumar Varma,M(A)

This application through this OA has challenged the impugned order dated 22.07.2015 cancelling his offer of

appointment on deputation basis to the post of Deputy Commissioner, NavodayaVidyalayaSamiti. There is a further prayer to direct the respondents to allow him to join as Dy. Commissioner in the NavodayaVidyalayaSamiti and to deem his offer of appointment effective from the date of his joining.

2. The case and its chronology, in brief, is that he was originally appointed as a principal by the Govt. of National Capital Territory of Delhi. NCT of Delhi is, thus, his parent department. Subsequently, he joined as Regional Director in the National Institute of Open Schooling on deputation basis in Dharmshala, Himachal Pradesh on 04.07.2013. While on deputation in NIOS, the applicant applied and was selected for the post of Dy. Director in NavodayaVidyalaySamiti(NVS) on deputation basis, pursuant to the advertisement dated 14-18.4.2014 brought out by the respondent NavodayaVidyalayaSamiti. The NVS issues a letter dated 27.02.2015 to the Director, Directorate of Education, NCT of Delhi informing them about his selection for appointment to the post of Deputy Commissioner NavodayaVidyalayaSamit on deputation basis. It was mentioned in the letter that the offer of appointment may be communicated to the applicant and his willingness to accept the offer of appointment on the terms and condition laid down in the offer letter may please be communicated to them i.e. NVS. The applicant vide his letter

dated 09.03.2015 (Annexure A-6) requested the respondents NavodayaVidyalayaSamiti to modify the place of posting from NavodayaVidyalayaSamiti, Regional Office(RO), Bhopal to NavodayaVidyalayaSamiti Regional Office(RO), Pune and further requested that the joining time be extended upto 20.04.2015. The respondentNavodayaVidyalayaSamiti vide letter dated 12.03.2015, informed the applicant that his request for change of place of posting from NavodayaVidyalayaSamiti,RO, Bhopal to NavodayaVidyalayaSamiti Regional Office, Pune was not administratively feasible to accept. However, he was permitted to extend the joining time upto 20.04.2015, failing which the offer of appointment issued in the applicant's favour shall be withdrawn automatically.

3. The applicant made a further request vide his letter dated07.04.2015 for extending the joining time upto31st of May,2015 and again requested for change of place of postingfrom NavodayaVidyalayaSamiti,RO Bhopal to NavodayaVidyalayaSamiti Regional Office, Pune. The respondent vide letter dated 07.05.2015 conveyed to the applicant granting him extension in joining time upto 31.5.2015 and further mentioned that no further extension beyond that shall be considered and in case he does not join, his offer of appointment shall be withdrawn automatically. The applicant again wrote a

letter dated 18.05.2015 to the respondent to change his place of posting from NavodayaVidyalayaSamiti,RO, Bhopal to NavodayaVidyalayaSamiti Regional Office, Pune. The respondent again informed him that the change of posting is not possible however, he was directed to report to NavodayaVidyalayaSamiti, RO, Bhopal by 15.06.2015. The applicant again on 12.06.2015 wrote to the respondents that his joiningtime may be extended till 20.07.2015. The respondents vide letter dated 26.06.2015 informed the applicant that his joining time was extended upto 10.07.2015 and it was made clear that no further extension of time granted beyond 10.07.2015 will be entertainedand the offer of appointment issued in his favour shall stand withdrawn automatically if the applicant did not join by 10.07.2015. The respondents vide their letter dated 22.07.2015 withdrew the offer of appointment with immediate effect.

4. At the time of arguments, the learned counsel for the applicant submitted that the reasons for seeking extension of joining time as well as change of place of posting were genuine on account of his prevailing circumstance at his then place of posting. He further argued that the respondents had granted him four extensions and therefore giving him merely 10 more days for joining time would have been proper and just considering thecircumstances of the applicant. He contended that the act of

the respondents in withdrawing the offer of appointment is arbitrary.

5. The learned counsel for the respondents on the other hand argued that the applicant, in the first place, had not accepted the offer of appointment because it was not an unconditional acceptance. The fact of the matter is that the applicant wanted the order to be modified both in terms of the place of posting as also the date of joining. Consequently, his initial communication seeking these two modifications can be termed as acceptance of the offer. He further submitted that the respondents were very considerate in giving him four extensions but it was not possible to keep on giving the applicant these extensions in view of the fact that the post of Dy.Director was lying vacant for a long time, They could not have continued to give him extension and therefore, in the interest of the organization i.e. NavodayaVidyalayaSamiti,they decided to withdraw the offer of appointment and in fact they have issued fresh advertisement to fill up this post.

6. We have gone through the record and have given serious consideration to the submissions made by the learned counsel for the rival parties.

7. The applicants were unable to point out as to under which legal provision the Tribunal could direct the respondents to extend the time of joining which is a purely administrative matter. We have noted the fact that the respondents were not unreasonable as they did give the applicant as many as four extensions. They could have been in legal bounds even if they had refused the very first request for extension of time, but they did not do so. Clearly, an organization has to take decisions in its interest. Thus, a decision withdrawing the offer in this case can not be termed as legally questionable or unjust.

8. The advertisement for this post was explicit in regard to the places where the applicant was likely to be posted. He could not have forced the respondents to post him to a particular place. There is nothing to suggest that at the time of selection he had indicated that he is willing to join only if he would be posted to a particular place. Nevertheless, the respondents, were generous and tried to accommodate the applicant by giving him as many as four extensions. In fact, the conduct of the applicant raises serious doubts about his intentions to join the NVS at the conditions laid down in the offer of appointment. It appears that he was ready to join only at his terms and conditions, and therefore, the respondent NVS was entirely justified in withdrawing the offer of appointment. We can not also overlook the fact that the offer of

appointment was made on 27.02.2015 which was initially for a period of one year and almost 4 and ½ months were already over, when the matter was finally settled.

9. The settled law is that it is the prerogative of the employer to consider the request for change of place of posting and extension of joining time. And unless there is on record the fact of a proven lack of reasonableness and sensitivity on the part of employer, the court must not interfere in such matters. We are unable to conclude that the respondents were unreasonable or insensitive to the request of the applicant. On the contrary we get the impression that the conduct of the applicant seeking frequent periodical extensions creates doubt about his willingness to join the new post at the terms offered to him.

10. While going through the records, we have also come across a letter dated 17.04.2015 from the Director of Education, Govt. of NCT of Delhi addressed to the Joint Director, National Institute of Open Schooling where the parent department has taken the stand that if the applicant intends to join on the said posting at NavodayaVidyalayaSamiti, RO, he should be repatriated to the parent department so as to enable the department to release him to join from NavodayaVidyalayaSamiti on deputation. However, this aspect has not been brought in any of the communications of the applicant to NavodayaVidyalayaSamiti. The contents of this

letter, therefore, also raises the issue of proper procedure of his relieving from National Institute of Open Schooling. We did not find that this particular procedure was mentioned anywhere and in any of the communication of the applicant either to the National Institute of Open Schooling or to NavodayaVidyalayaSamiti.

11. During the course of arguments, learned counsel for the applicant placed before us a judgment of Hon'ble Supreme Court of India in the case of **Ashok Kumar Ratilal Patel Vs. Union of India & Another.** We have gone through the aforesaid judgment and we find that the facts and circumstances of the present case are distinctly different. In the case before Supreme Court, the appellant **Ashok Kumar Ratilal Patel**(supra) was selected for the post of Director on deputation basis on a certain pay scale however, the parent department of the appellant informed the borrowing department that the pay scale of the appellant was to be revised following 6th Pay Commission recommendations and will be fixed on higher pay scale. The respondents who were to take appellant on deputation basis withdrew the offer of appointment on the ground that the person getting higher scale of pay cannot be deputed against a lower scale of pay and is not admissible under rules. No such situation prevails in this case. The Supreme Court in the said case has

held that they have failed to appreciate the difference between 'transfer on deputation' and 'appointment on deputation'. Therefore, the stand of the department not taking the appellant on deputation was not found legally sustainable. In the instant case, no similarity can be drawn from the said judgment placed before us by the learned counsel for the applicant.

12. In view of the above discussion, we are of the view that the case of the respondent in withdrawing the offer of appointment to the applicant is an action that does not merit any interference from us and they cannot be legally forced to extend the period of joining or change of place of posting at the behest of the applicant. The fact that the said post had been lying vacant for sometime and the respondents are entitled to fill up the post and have indeed issued advertisement to this effect further validates the decision of the respondents to turn down the applicant's request for further extension and withdraw the offer of appointment. We find no arbitrariness in the stand taken by the respondents.

13. The OA, resultantly, dismissed. No costs.

(Uday Kumar Varma)
Member(A)

(V. Ajay Kumar)
Member(J)

