

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4074 OF 2015

New Delhi, this the 30th day of January, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Pratibha Pandya,
D/o Shri Mahesh Chandra Pandya,
Age: 27 years,
BPO-Ramsour, via-Chikhali,
Tehsil-Galiakot,
District-Dungarpur, Rajasthan,
Ramsour-314030
Rajasthan

(By Advocate: Ms.Kiran Singh)

Vs.

1. Commissioner,
Ministry of Human Resources & Development,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi 110016

2. Deputy Commissioner,
Regional Office,
Kendriya Vidyalaya Sangathan,
KV AFS Campus, Sector 14,
Gurgaon (Haryana) í í í í Respondents
(By Advocate: Mr.U.N.Singh) í í í ..

ORDER**Per Raj Vir Sharma, Member(J):**

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- vi. The Hon'ble Court may graciously be pleased to pass an order to setting aside the order 19.02.2015.
- ii. The Hon'ble Court may be pleased to pass an order of appointing applicant as TGT (HINDI) by implementing the order of appointment dated 15.01.2015.
- iii. May pass such other further orders/directions which this Hon'ble Court may deem fit and proper in the facts of the case in favour of the applicant and against the respondents.ö

2. The brief facts of the applicant's case are as follows:

2.1 In response to the Advertisement No.07 issued by the respondent-Kendriya Vidyalaya Sangathan (KVS) for recruitment to teaching and miscellaneous teaching posts for the years 2012-13 and 2013-14, she made online application as a General Category candidate for selection and appointment to the post of TGT (Hindi) and duly participated in the selection process. On the basis of her performance in the written examination held on 15.12.2013, she was called to appear for an interview on 22.5.2014. Accordingly, she appeared for interview. The final result of written examination and interview was declared by the respondent-KVS on 12.8.2014. She got 70.75 out of 100 total marks. The cut-off marks for General Category/UR were 70.75. On 8.1.2015, the respondent-KVS published and uploaded on its website a Reserved Panel of TGTs for the

years 2012-13 and 2013-14, wherein her name appeared at sl.no.37 and she was shown to have been allotted to Gurgaon Region.

2.2 It is stated by the applicant that when her appointment was not notified by the respondent-KVS, her husband (Mr. Nilesh Trivedi) sent letters through emails on 5.7.2015, 7.7.2015, 13.7.2015, 13.9.2015 and 21.9.2015 informing the respondent-KVS authorities about non-receipt of any appointment letter by her and making query about the expected date of issuance of appointment letter. No response to any of those letters was received by her husband from the respondent-KVS authorities.

2.3 It is also stated by the applicant that her father, Shri Mahesh Chandra Pandey, vide his application dated 13.7.2015 under the R.T.I.Act, sought for information from the Public Information Officer, KVS, RO, Gurgaon, as to when the KVS, RO, Gurgaon, could give appointment to the candidates included in the Reserved Panel of TGT for the years 2012-13 and 2013-14 (Direct Recruitment), how many candidates included in the said Reserved Panel were issued appointment letters by other Regions, and why appointment letter was not issued by Gurgaon Region till then. In response thereto, the Public Information Officer, KVS, Regional Office, Gurgaon, vide letter dated 24.7.2015, informed her father that the information sought for by him did not come under the purview of the R.T.I.Act.

2.3 It is also stated by the applicant that the respondent-KVS, vide letter dated 5.10.2015, informed her that the offer of appointment to the post of TGT (Hindi), vide Memo No.32054/ TGT/ Admn./ 2014/ KVS/

GGN.13739-40, dated 15.1.2015, was issued to her by Speed Post No.EH52705750 1IN dated 16.01.2015, at the following address, requiring her to join Kendriya Vidyalaya, Harsinghpura, by 01.02.2015:

Ms.Pratibha Pandey,
D/o Shri Mahesh Chandra Pandey,
Flat No.14, Sahara Apartment, Near D-Mart,
Sector-29, Ravet,
PUNE 411044
(Maharashtra)

But as she did not report for duty by the stipulated date and as no response was received from her by 18.2.2015, the respondent-KVS, vide Memorandum No.F.32054/Admn./2014/KVS/GGN, dated 19.2.2015, withdrew the offer of appointment and communicated the Memo dated 19.2.2015, ibid, to her by Speed Post No. EH52960600 2IN, dated 20.02.2015, at the aforesaid address. The copies of the said offer of appointment and the order of withdrawal of the offer of appointment were also enclosed with the letter dated 5.10.2015, ibid. Therefore, the present O.A. was filed by her on 2.11.2015 seeking the reliefs as aforesaid.

3. Resisting the O.A., the respondent-KVS have filed a counter reply. It has been stated that the offer of appointment was issued by the KVS, R.O., Gurgaon, vide its Memorandum No.F.32054 /TGT/Admn./2014/KVS/GGN/ 13740, dated 15.1.2015, through Speed Post bearing No. EH52705750 1IN, dated 16.1.2015, requiring her to send acceptance of the terms and conditions stipulated in the offer of appointment by 25.1.2015, and to join the Kendriya Vidyalaya, Harsinghpura, on or before 1.2.2015. It was also stipulated in the offer of appointment that if she did not report for

duty by the stipulated date, the offer of appointment would automatically stand cancelled, and no further correspondence would be entertained from her. The said offer of appointment was sent to her at the address mentioned in her *bio data*, dated 22.5.2014, i.e., Ms. Pratibha Pandya, Flat No.14, Sahara Apartment, near D Mart, Sector-29, Ravet, Pune-411044 (Maharashtra). The applicant neither reported for duty by 1.2.2015, nor did she submit any application for extension of time or otherwise in this regard till 18.2.2015. Accordingly, KVS, R.O., Gurgaon, vide Memorandum No.F.32054/Admn./ 2014/KVS/GGN, dated 19.2.2015, issued order withdrawing the offer of appointment and intimated the same to the applicant through Speed Post bearing No. EH52960600 2IN, dated 20.2.2015. Later on, the applicant, vide letter dated 1.10.2015, represented her case to KVS, RO, Gurgaon, for her appointment. The KVS, RO, Gurgaon, vide letter dated 5.10.2015 informed the applicant that as she did not report for duty on or before 1.2.2015, and no response was received from her till 18.2.2015, the offer of appointment was withdrawn by the KVS, RO, Gurgaon, vide Memorandum dated 19.2.2015. The offer of appointment and the order of withdrawal of the offer of appointment sent to the applicant, at the address mentioned in the *bio data* submitted by her on 22.5.2014, did not return back to the office undelivered. Thus, it shows that both the Speed Post packets/consignments containing the offer of appointment, and the order withdrawing the offer of appointment were duly delivered to and received by the applicant.

3. No rejoinder reply has been filed by the applicant refuting the stand taken by the respondents in the counter reply.

4. We have heard Ms.Kiran Singh, the learned counsel appearing for the applicant, and Mr.U.N.Singh, the learned counsel appearing for the respondents.

5. It has been contended by Ms.Kiran Singh, the learned counsel appearing for the applicant that when the respondent-KVS adopted online recruitment procedure and uploaded on their website all other relevant information pertaining to the recruitment process, and when the issuance of offer of appointment to the selected candidates was an integral part of the recruitment procedure, the offers of appointment ought to have been uploaded by the respondent-KVS on their website.

5.1 Ms. Kiran Singh has invited our attention to page 10 of the vacancy notification/advertisement and submitted that in terms of the vacancy notification/advertisement, all correspondences with candidates were to be done through e-mail only, and all information regarding the recruitment process was to be provided by the respondent-KVS on their website. As the offer of appointment was not uploaded by the respondent-KVS on their website, and/or no offer of appointment reached the applicant, she could not join duty by the date stipulated in the offer of appointment. The procedure adopted by the respondent-KVS in communicating the offer of appointment to the applicant was, thus, defective and/or faulty. Therefore,

the order of withdrawal of the applicant's offer of appointment is unsustainable.

5.2 It has also been contended by Ms.Kiran Singh that before withdrawing the offer of appointment on 19.2.2015, the respondent-KVS authorities ought to have given an opportunity to the applicant to show cause against withdrawal of the offer of appointment and/or ought to have once again communicated the offer of appointment to her extending the date of joining either through e-mail or by uploading the offer of appointment on the website. The respondent-KVS authorities have acted illegally and arbitrarily in not affording the applicant an opportunity to show cause against withdrawal of the offer of appointment and/or in not communicating the offer of appointment either by uploading the same on their website or through e-mail.

5.2 It is also the contention of Ms.Kiran Singh that by the impugned memorandum/order dated 19.2.2015 (Annexure A), three offers of appointment issued to her and two other persons, namely, Ms.Chaineet Kaur and Ms.Maumita Karmakar, were withdrawn with immediate effect. Ms.Chaineet Kaur was issued offer of appointment to the post of PGT (Commerce), KV, Faridkot, vide memorandum dated 16.9.2014/26.11.2014, and Ms.Maumita Karmakar was issued offer of appointment to the post of TGT(AE), KMS Wala, Ferozepur, vide memorandum dated 6.1.2015, whereas the applicant was issued offer of appointment to the post of TGT (Hindi), Harsinghpura, vide memorandum dated 15.1.2015. It, thus, appears

that before withdrawing their offers of appointment, the respondent-KVS granted more than one opportunity to Ms.Chaneet Kaur and Ms.Maumita Karmakar to join duty, but denied such opportunity to the applicant. Therefore, the withdrawal of the offer of appointment in the case of the applicant without affording her a second opportunity to join duty is discriminatory and hence liable to be quashed.

6. *Per contra*, it has been contended by Mr. U.N.Singh, the learned counsel appearing for the respondents that the offers of appointment were issued to all the selected candidates by Speed Post. The offer of appointment was duly sent to the applicant (at the address given by her in the *bio data* submitted on 22.5.2014) by Speed Post on 16.1.2015 giving more than 15 days time to her to report for duty. Mr. U.N.Singh has also produced before us the photocopies of the relevant papers/documents showing the communication of the offer of appointment and the order of withdrawal of appointment to the applicant by Speed Post on 16.1.2015 and 20.2.2015 respectively, and the *bio data* submitted by the applicant on 22.5.2014.

6.1 It has also been contended by Mr.U.N.Singh that when the Regional Office of KVS, Gurgaon, sent the offer of appointment to the applicant, at the given address, i.e., 14 Sahar Apartment, Sector 29, Pune, Maharashtra-411044, by Speed Post on 16.1.2015, stipulating the date of her joining on or before 1.2.2015, and when the Speed Post consignment did not return back to the Regional Office of KVS, Gurgaon, undelivered, it was

presumed that the offer of appointment was communicated/delivered to the applicant much before the stipulated date, i.e., 1.2.2015. As the applicant failed to join duty by the stipulated date, the offer of appointment was withdrawn by respondent no.2 in accordance with the terms and conditions thereof. The order withdrawing the offer of appointment having been issued to the applicant in the same manner, it has also to be presumed that the order withdrawing the offer of appointment was duly communicated to the applicant. Therefore, the applicant's plea of non-receipt of and/or lack of knowledge about the offer of appointment, and the order of withdrawal of the offer of appointment, is untenable. In support of his contention, Mr.U.N.Singh has placed reliance on the decision of the Hon'ble High Court of Delhi in **R.S.Misra Vs. Union of India and others**, W.P. (C) No. 1795/2016, decided on 2.3.2016.

6.1.1 In **R.S.Misra Vs. Union of India and others** (supra), the petitioner's services were terminated by order dated 24.1.2006 under Article 81(B) of KVS Education Code. In the O.A., the petitioner claimed that as the termination order dated 24.1.2006 was communicated to him on 1.2.2006, he would be governed by Rule 9 of the CCS (Pension) Rules and, therefore, the respondents could not deny complete pension to him. The petitioner's contention was rejected by the Tribunal after referring to the Constitutional Bench decision in the case of **Union of India Vs. Dinanath Shantaram Karekar**, 1998 SCC (L&S) 1837, in the following words:

523. In our considered view, what is required in case of valid service of an order of dismissal either it should be published or

communicated to the concerned but in the instant case the facts as taken cognizance of by the Constitution Bench the respondent therein was not even aware of the report submitted making an investigation. Even the chargesheet etc. have not been served upon the respondent. As such in the circumstances it was ruled that the order is not communicated. However, insofar as communication is concerned, in **Union of India v. Dinanath Shantaram Karekar**, 1998 SCC (L&S) 1837, the following observations have been made:

"7. As would appear from the perusal of that decision, the law with regard to "Communication" and not "Actual Service" was laid down in the context of the order by which services were terminated. It was based on a consideration of the earlier decisions in, **State of Punjab v. Khemi Ram**, AIR 1970 SC 214; **Bachhittar Singh v. State of Punjab**, 1962 Supp (3) SCR 713 : AIR 1963 SC 395; **State of Punjab v. Anr Singh Harika**, AIR 1966 SC 1313 and **S. Partap Singh v. State of Punjab**, (1964) 4 SCR 733 : AIR 1964 SC 72. The following passage was quoted from, **S. Pratap Singh's** judgment (supra):-

"It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it."

8. It was in this background that in cases where services are terminated or a person is dismissed from service, communication of the order and not its actual service was held to be sufficient. But this principle cannot be invoked in the instant case".

24. Having regard to the above, the Constitution Bench in **S. Pratap Singh v. State of Punjab**, AIR 1964 SC 72 has also held that communication would not necessarily be actual service but once an order has been sent out of the jurisdiction of the concerned authority it would amount to communication.

The aforesaid finding has been reiterated by the Apex Court in **D.D.A. v. H.C. Khurana**, 1993 SCc (L&S) 736.

25. A decision is an authority for what it holds in law. The ratio decidendi of a Constitution Bench decision or any decision having a binding precedent value under Article 141 of the Constitution of India is the law discerned and not what could be gathered from the judgment. In this view of the matter though publication and communication are the conditions precedent for effectiveness of an order, yet the aspect of communication has not been gone into by the Constitution Bench in **Amar Singh** (supra). This has been dealt with and a ratio decidendi arrived at in **S. Pratap Singh** (supra) makes it no more res integra that if an order leaves the domain and goes out of the control of the competent authority, where there are no prospects of its being altered or being interfered in any manner, it amounts to communication whether actual service is made or not. The aforesaid dicta would not only hold good for the chargesheet but also for an order of dismissal as well. In such view of the matter, we find from the record that once the order of dismissal has been passed against applicant it was delivered through messenger but as he was not found on 24.1.2006 a speed post was sent on 24.1.2006 and in the matter of presumption three days is attributed to the speed post to reach the destination within Delhi and it is deemed to have been served upon applicant on 27.1.2006, i.e., much before his retirement on attaining the age of superannuation on 31.1.2006. In our considered view we have no hesitation to rule that the order of dismissal dated 24.1.2006 was communicated to applicant much before his date of superannuation on 31.1.2006. As such, the plea raised by Shri G.D. Gupta cannot be countenanced in law.ö

The writ petition filed against the Tribunal's decision was dismissed by the Hon'ble High Court of Delhi.

7. After having given our thoughtful consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contentions of the applicant.

8. The information about the recruitment process in question was uploaded on the website of the respondent-KVS at various stages. The

Reserved Panel of TGT for the years 2012-13 and 2013-14 (Direct Recruitment) was uploaded on the website of the respondent-KVS on 8.1.2015, where the name of the applicant appeared at sl. 37. She was shown to have been allotted to Gurgaon Region of the KVS. The recruitment process was conducted by the Head Office of KVS at New Delhi. After publication of the panel/reserved panel of selected candidates by the Head Office of KVS at New Delhi, the respective Regional Offices had to issue the offers of appointments to the candidates allotted to their Regions. Thus, in our considered view, the recruitment process undertaken by the Head Office of KVS ended with the publication of the panel/reserved panel.

9. At page 10 of the Advertisement No.07, *ibid*, the following instructions appear:

¤CORRESPONDENCE WITH CANDIDATES

All correspondence with candidates will be done through e-mail only. All information regarding examination schedule/admit card/interview call letters etc. will be provided through uploading on KVS website. Responsibility of receiving, downloading and printing of admit card/interview call letter/any other information shall be of the candidates. KVS will not be responsible for any loss of email sent, due to invalid/wrong email ID provided by the candidate or for delay/non-receipt of information if a candidate fails to access his/her email/website in time. Candidates are requested to regularly visit KVS website i.e. kvsangathan.nic.in for the information regarding the recruitment.º

There is no whisper in the above instructions that the offers of appointment of the candidates named in the panel/reserved panel shall be uploaded on the website or sent by e-mail. The above instructions relate to the correspondence and information pertaining to the recruitment process which ended with publication of the panel/reserved panel. Therefore, we do not

find any substance in the contention of the applicant that the respondent-KVS adopted a faulty procedure by sending to her the offer of appointment by Speed Post instead of e-mail or uploading the same on their website.

10. The Memorandum dated 15.1.2015 issued by the respondent-KVS offering appointment to the applicant on the post of TGT (Hindi) contained 15 conditions. Condition no.11 reads thus:

öIf he/she accepts the offer on the term and conditions stipulated he/she would send his/her acceptance immediately to this office on receipt of this Memorandum latest by 25/1/2015 by (FAX/E-mail) and will join the Kendriya Vidyalaya mentioned overleaf on or before 1/2/2015. Necessary proforma for the purpose are enclosed which should be submitted to the Principal concerned, after getting the same duly completed in any case by 1/2/2015. If the offer is not accepted by the said date or after acceptance if the appointee does not report for duty at the above named Vidyalaya by 1/2/2015, this offer of appointment will automatically stand cancelled and no further correspondence will be entertained from him/her.ö

The applicant having failed to send her acceptance of the offer of appointment by 25.1.2015 and also having failed to report for duty at the concerned Kendriya Vidyalaya by 1.2.2015, the respondent-KVS, vide Memorandum dated 19.2.2015, withdrew and/or cancelled the offer of appointment in accordance with condition no.11, *ibid*. The applicant has not shown any rule or instruction issued by the respondent-KVS and/or by any other competent authority, laying down that in a case where acceptance of the offer of appointment is not received from the candidate and the candidate does not report for duty at the concerned Vidyalaya by the stipulated date in pursuance of the offer of appointment, before withdrawal

of the offer of appointment, the respondent-KVS should issue a notice to the candidate to show cause, and/or should re-issue the offer of appointment to the candidate extending the date of joining.

11. Save and except taking a bald plea that before cancelling the offers of appointment issued to Ms. Chaineet Kaur and Ms. Maumita Karmakar, the respondent-KVS granted more than one opportunity to them to report for duty, the applicant has not produced before this Tribunal any material whatsoever to substantiate the plea. It is also not known as to under what circumstances the respondent-KVS, vide Memorandum dated 19.2.2015, simultaneously withdrew three offers of appointment issued to the applicant and Ms. Chaineet Kaur and Ms. Maumita Karmakar on three different dates.

12. It is the plea of the applicant that she was not aware of the offer of appointment dated 15.1.2015 and the order of withdrawal of the offer of appointment dated 19.2.2015, and that she came to know only from the letter dated 5.10.2015 of the Regional Office, KVS, Gurgaon, that the offer of appointment, vide memorandum dated 15.1.2015, was issued to her by Speed Post on 16.1.2015, and because of her non-reporting for duty by the stipulated date, the offer of appointment was withdrawn, vide memorandum dated 19.2.2015, and the memorandum of withdrawal of the offer of appointment was also communicated to her by Speed Post on 20.2.2015. The applicant has not produced before this Tribunal any material/evidence in support of her plea of lack of knowledge about the offer of appointment and

the withdrawal of the offer of appointment till she received the respondent-KVS's letter dated 5.10.2015.

12.1 The respondent-KVS, while rebutting the above plea of the applicant, have filed the relevant papers/documents mentioning the names, addresses, etc., of different persons including the applicant, whom letters were sent and/or despatched by Speed Post on 16.1.2015 and 20.2.2015 from the Regional Office, KVS, Gurgaon (respondent no.2). The Speed Post receipts bearing respective barcodes and Speed Post registration nos. were also affixed on those papers. The respondent-KVS have also asserted that none of the Speed Post consignments returned back to the Regional Office, KVS, Gurgaon, undelivered, and, therefore, it was presumed that the Speed Post consignments containing the offer of appointment and the order of withdrawal of the offer of appointment were duly delivered to the applicant.

12.2 When the details of the Speed Post consignments were intimated to her by the respondent-KVS, vide its letter dated 5.10.2015, and if, according to the applicant, the said Speed Post consignments were not delivered to her by the concerned Post Office, the applicant ought to have obtained a certificate/report from the concerned Post Master at Pune (Maharashtra) to the effect that those two Speed Post consignments were not delivered to and received by her, and produced the same before the respondent-KVS for the purpose of considering her claim for appointment. In our considered view, such a certificate/report of the concerned Post Master at Pune (Maharashtra) is the best evidence which is available to the

applicant to support her plea of lack of knowledge and/or non-receipt of the offer of appointment and the withdrawal of the offer of appointment, and to disprove the claim of the respondent-KVS to have duly sent/communicated the offer of appointment and the withdrawal of the offer of appointment to the applicant by Speed Post on 16.1.2015 and 20.2.2015. Since the applicant has failed to adduce the said best evidence, we are not inclined to accept her plea that neither the offer of appointment nor the order of withdrawal of offer of appointment, issued by the respondent-KVS through Speed Post, was delivered to and received by her at the relevant point of time.

13. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER