

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.353/2008

Monday this the 24 th day of November, 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

Smt. K.K.Prajitha,
W/o V.Pradeep Kumar,
Gramin Dak Sevak Branch Postmaster,
Akkikavu P.O., Trichur Division,
Residing at: Vadakootayil House,
Thippalaserry P.O., Via Karikkad,
Trichur – 682 519.Applicant

(By Advocate Shri Shafik M.A.)

Vs.

1. Union of India, represented by
the Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur.Respondents

(By Advocate Shri P.A.Aziz, ACGSC)

The application having been heard on 24.11.2008,
the Tribunal on the same day delivered the following.

OR D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is aggrieved by the impugned order dated 4.6.2008 whereby
she has been issued with a notice of termination of her services as GDS BPM,
Akkikavu.

2. Briefly, the facts of the case are that:–

When a notification issued by the respondents for provisional appointment
as GDS BPM, Akkikavu, the applicant offered her candidature in the prescribed

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format with attested copies of certificates. Vide Annexure A-2 dated 25.4.2007 she was called for an interview and on her completing the formalities the applicant was asked to attend a practical training vide Annexure A-5 order dated 19.5.2007. She was inducted into service with effect from 24.5.2007 vide Annexure A-6 order dated 22.5.2007. The applicant has been continuing in that post vide Annexure A-8 order dated 19.7.2007. The applicant was governed by the Department of posts Gramin Dak Sevak (Conduct & Employment) Rules 2001 and it has also been stated therein that the employment of the applicant as GDS BPM shall be in the nature of contract.

3. The applicant has been performing her duties without any interruption. The applicant was informed that, amongst the applicants who aspired for the above post, one who secured the higher percentage of marks in the Matriculation had not been considered by the appointing authority and since the applicant was considered and appointed without considering a better merited person, the respondents proposed to terminate the services of the applicant. In Annexure A-11 representation dated 11.6.2008 the applicant had stated that she was the highest mark holder amongst the individuals who were present on that day. In fact after her joining, she was invited for interview as GDSMD Kattakampal in May, 2007 and GDSMP, Marthancode also in August, 2007, which she has to decline in view of selection as GDS BPM, Akkikavu. She had also indicated that she fulfilled all the conditions for appointment.

4. The applicant had preferred this O.A. for quashing the impugned A-1 order and for a direction to the respondents that the applicant be allowed to continue as GDSBPM, Akkikavu or in the alternative for a direction to the 2nd respondent to appoint the applicant in any other similar post with the same TRCA as if the

applicant is surplus of discharged GDS.

5. The respondents have contested the O.A. According to them, non-consideration of the higher marks holder was a mere mistake on the assumption that private income is a pre-requisite for the post of GDS whereas vide Annexure R-1 order dated 17.9.2003 this requirement has been done away with. Thus, the sole criteria for selection for the post of all categories of GDS would be only merit, subject to the order on reservation and fulfilling other eligibility conditions like providing of space for branch office, taking all responsibility in the Branch Office, village etc.

6. The respondents have contested that as held by the Apex court in the judgement reported in 2006 SCC (L&S) 422, *a void appointment does not give any vested right and in this case*, since the higher mark holder was not considered the applicant's appointment has become illegal.

7. Arguments were heard and documents perused. The admitted fact is that the applicant fulfills the requirement but if only the case of highest mark holder had been considered and the said individual accepted the appointment, the applicant would not have been appointed. Viewed from another angle, if the highest mark holder fell deficient in some other requirement, such as arranging for accommodation etc., or if he had refused to accept the offer, then obviously, the applicant would have been issued the offer of appointment. Thus, despite the existence of Annexure R-1 order that merit is the sole criteria for selection, yet, it need not be that selection on merit would always fructify into appointment. If so, there is no need to call any other person for verification. The highest mark holder alone could have been called for verification. In this regard to some extent

support could be had from the decision of the Apex Court in the case of Vice-Chancellor, Lucknow University v. M. Ismail Faruqui, 1995 Supp (1) SCC 320, wherein it has been held as under:-

May be, the selection is wrong. On that score, it cannot be held that there is an illegal deprivation of respondent's right to be selected. In spite of the qualifications, he might not have been selected, since selection is entirely a matter which rests with the Selection Committee unless of course vitiated by other grounds.

8. It is not known whether that applicant with highest mark is interested in taking up the appointment. The counsel for the applicant rightly pointed out that there has been no representation, or complaint from that applicant who secured the highest mark in the S.S.L.C. It is only on the basis of review conducted that this omission by the authorities surfaced.

9. Again, it is not the case of the respondent that there has been any hand of the applicant in the other candidate not being considered. It was purely on the basis of an error committed at the stage of pre-offer of appointment that the error occurred. Here again, it appears that the Superintendent of Post Office or any other authority who had not called the merit holder for verification did not do so deliberately, but due to the fact the said applicant with highest mark did not attach private income certificate which was a pre-requisite prior to the issue of Annexure R-2 order and the said authority was unaware of the change in the selection criteria.

10. In so far as the applicant is concerned, two offers of appointment were rejected by her by virtue of the fact that he had been offered the present post and had been functioning in that capacity. Had the authorities not committed the error of not considering the highest mark holder, and had the applicant been not selected to this post, obviously, she would have been in a position to accept one of the other

two offers received by her.

11. Principles of 'promissory estoppel' do apply in this case in so far as the applicant is concerned. The principle of legitimate expectation or promissory estoppel has become a source of substantive as well as procedural rights. In this connection, reliance could be placed upon the decision by the Apex Court in the case of National Buildings Construction Corp. v. S. Raghunathan, (1998) 7 SCC 66, wherein the Apex Court has held as under:-

Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

12. In order to invoke the doctrine of estoppel, the requirement is that the person should have altered his position due to the act of the other party. The Apex Court has referred to a foreign judgment, vide Ashok Kumar Maheshwari (Dr) v. State of U.P., (1998) 2 SCC 502 wherein it has been stated as under:-

13. Dixon, J., an Australian jurist, in Grundt v. Great Boulder Pty. Gold Mines Ltd. laid down as under:

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it."
(Emphasis supplied)

In the instant case, rejection of offers on the basis of the appointment already held by the Government is the change of position.

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13. Of course, the principle cannot be invoked in case of certain misstatements of the applicant, as held in the case of Central Airmen Selection Board v. Surender Kumar Das, (2003) 1 SCC 152 wherein it has been observed as under:

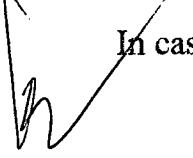
It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled.

Such is not the case here. The error committed is entirely attributable to the respondents.

14. Counsel for the respondents argued that the appointment offered to the applicant is not absolute and is subject to outcome of a pending case (OA 281/07). True, but here in the instant situation, the action proposed in cancelling the appointment is not on the basis of any decision by the Tribunal in the other case. Thus, this argument has to be negated.

15. In the conspectus of the above facts and circumstances, it is to be seen as to how the deprivation of the legitimate right of the highest mark holder to be considered for appointment and how the deprivation of the applicant who had rejected two offers due to the present appointment of his right of estoppel should be cured.

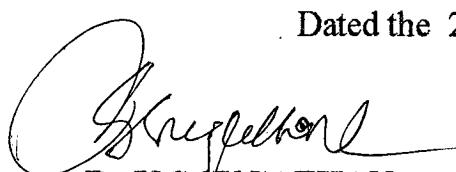
16. It could be possible for the respondents to ascertain as to whether the highest mark-holder who had applied for the post (Smt. Rema) is still interested in the appointment. If the said individual is not interested, then automatically, it is the applicant who is entitled to be appointed (of course subject to outcome of the decision in OA No. 281/07). In that case, there shall be no further action required.

 In case the said Rema is interested in the appointment, it is to be seen whether the

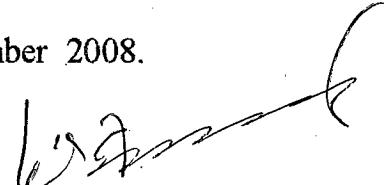
other attendant conditions are fulfilled and if so, then, she may be considered for the appointment in the same post office. In that event, in so far as the applicant is concerned, she shall be considered for any other corresponding post in any other neighbouring post offices. Till such time an alternative posting is located and the applicant posted, the applicant shall continue to function as EDBPM at Akkikavu itself.

17. The OA is disposed of on the above lines. No cost.

Dated the 24 th November 2008.



**Dr.K.S.SUGATHAN
ADMINISTRATIVE MEMBER**



**Dr.K.B.S.RAJAN
JUDICIAL MEMBER**