

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No.276 of 2005

This the 26th day of September, 2011

Hon'ble Mr. Justice Alok Kumar Singh , Member-J
Hon'ble Mr. S.P. Singh, Member-A

Smt. Beenu Singh, Aged about 37 years, W/o Sri Raghvendra Singh, R/o Village Aquabad, Post Aquabad, Unnao

.....Applicant

By Advocate : Sri A.P. Singh

Versus.

1. Union of India through the Secretary, Posts Telecommunication Department, New Delhi.
2. Director Post Offices, New Delhi.
3. Chief Post Master General, Lucknow.
4. Superintendent of Post Offices (M) Division, Kanpur.
5. Sub-Divisional Inspector, Post Offices, Bighapur, District Unnao.
6. Sri Dinkar Rao, S/o Sri Ram Karan Singh, R/o 649 A.B. Nagar, Unnao.

.....Respondents

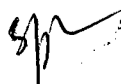
By Advocate : Sri S.P. Singh for R-1 to R-5

ORDER

By S.P. Singh, Member-A

The applicant has come to this Tribunal seeking following main relief(s):-

- (i) *to issue an order or direction declaring the selection/appointment of the respondent no.6 Sri Dinkar Rao to the post of Branch Post Master, Indemau, District Unnao null and void after summoning the original from the records.*
- (ii) *to issue an order or direction commanding the respondents to appoint the applicant to the post of Branch Post Master, Indemau, District Unnao.*
- (iii) *To issue an order or direction directing the Opposite parties to make an enquiry in the matter and take appropriate action against the erring official in making the illegal appointment and running the post office about 4 years by an unauthorized person.*



2. The facts of the applicant's case are as under:-

- (i) The respondents issued an advertisement vide notification dated 23.2.2000. The applicant-Smt. Beenu Singh had applied against the said advertisement for the post of Branch Post Master (In short BPM) Indemau, Unnao.
- (ii) After following the prescribed procedure stipulated in the above advertisement, one Sri Dinakar Rao was provisionally appointed on the said post of BPM, Indemau, Unnao vide Superintendent of Post Offices, Kanpur (M) Division memo dated 27.11.2000.
- (ii) Consequently the SDI (P), Bighapur, Unnao vide his memo dated 14.12.2000 ordered Sri Raghvendra Singh, BPM, Aquabad and officiating BPM, Indemau to transfer the charge of BPM Indemau to the newly appointed BPM Sri Dinakar Rao. At the same time, Sri Raghvendra Singh was further directed to take over charge of his original post of BPM, Aquabad, Unnao. Accordingly, Sri Raghvendra Singh resumed charge of BPM, Aquabad on 16.12.2000 from the substitute i.e. applicant-Smt. Beenu Singh, wife of Sri Raghvendra Singh who was engaged by Sri Raghvendra Singh, her husband on his own risk and responsibility.
- (iii) Aggrieved now with the selection/appointment of respondent no.6 - Dinakar Rao to the post of BPM, Indemau, Unnao, the applicant has instituted the instant O.A. for the relief(s) mentioned hereinabove.

2. The applicant has pleaded in para 4.01 of the O.A. that she was initially engaged on the post of BPM, Aquabad, Unnao as Substitute and took over charge on 27.10.1996. Since then she has been working continuously on the said post upto 15.12.2000. The applicant alleges that the selection of respondent no.6 was made ignoring the claim of the applicant of



her working experience to the post of BPM, Aquabad for about four years. The applicant has pleaded in para 4.07 of the O.A. that after the selection in response to the above mentioned advertisement, Sri Dinakar Rao-respondent no.6 has taken over charge of the post of BPM, Indemau, Unnao on 15.12.2000.

3. In further pleadings, the applicant has levelled certain other allegations pointing out the deficiencies/shortcomings in the selection of respondent no.6 by further mentioning that she stood IInd in the merit list after Sri Dinakar Rao-respondent no.6 (Annexure A-1). The applicant has further averred that one Sri Ram Naresh Singh was working in place of Sri Dinakar Rao and the appointment of respondent no.6 is, therefore, totally illegal, arbitrary, unfair and violations of the Rules.

4. The respondents filed Counter Reply in October,2005 wherein it was pleaded that one Sri Jagroop Singh, BPM, Indemau, Unnao was placed under put off duty vide SDI (P) memo dated 15.10.2006. Consequently, Sri Raghvendra Singh, BPM, Aquabad Branch Post Office was ordered to engage a substitute on his own risk and responsibility vice him and to take over charge of BPM, Indemau vide SDI (P) letter dated 15.10.1996. Sri Raghvendra Singh, BPM, Aquabad engaged his wife Smt. Beenu Singh (applicant) as his substitute.

In view of the aforesaid developments, the respondents have averred in para 4 of the Counter Reply that the advertisement was issued on 24.2.2000 in order to make provisional appointment for the post of BPM, Indemau. The applicant had also applied for the post of BPM, Indemau, but she could not be selected on the said post of BPM, Indemau because the marks obtained by her in High school examination were less than those obtained by the candidate selected for the post of BPM, Indemau (Annexure CR-2). The orders were accordingly issued after observing all required formalities of appointment and Sri Dinakar Rao was provisionally appointed on the said post vide Superintendent of Post Offices, Kanpur (M) Division memo dated 27.11.2000. Therefore, at present the post of BPM, Indemau is not vacant because Sri Dinakar Rao-

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respondent no.6 is still holding the said post being regular appointee appointed on merit and conforming to the required eligibility criteria for the said appointment.

The respondents have also contended in the Counter Reply that earlier an O.A. no. 582/2001 filed by the applicant, which had been dismissed by judgment and order dated 6.2.2003 (Annexure CR-4). It is further pleaded by the respondents that the applicant has absolutely no right for regular selection on weightage basis because no weightage can be given to a substitute at the time of regular appointment made only on merits, which has already been settled by Full Bench of this Tribunal in the case of **D.M. Nagesh Vs. Asstt. Superintendent of Post Offices reported in ATJ 2000 (2) 259**. The operative portion of the judgment reads as under:

“.....No weightage could be given to previous experience gained by a candidate due to his working as Substitute ED Agent at the time of regular selection.”

In para 13 of the Counter Reply, it has been admitted by the respondents that respondent no.6 appointed on the post of BPM, Indemau was a resident of 694, AB Nagar, Unnao, but he had arranged himself the residence of Sri Ram Naresh Singh resident of village and post Indemau to house and to run the Branch Post Office, Indemau before appointment as per condition of appointment of BPM, referred to in his application for appointment of BPM, Indemau duly supported by residence verification report of SDI (P), Bighapur, Unnao.

Further, in para 24 of the Reply, the respondents have reiterated that the entire grounds for relief asserted by the applicant in para 5-A to 5-D are false, concocted, misconceived and misleading and without merit.

5. The applicant filed Rejoined Reply reiterating almost all the pleadings contained in the O.A. However, the applicant has averred that the respondent no.6 was not in a position to open/run the post office at Indemau. Further, the selection of respondent no.6 was made in an illegal manner to facilitate Sri Ram Naresh Singh in collusion with the then SDI (P) for extraneous reasons. The applicant has also pleaded that O.A.

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no. 582/01 filed by her for appointment at post office Aquabad, has no relevancy in the present matter. No-where in the Rejoinder Reply also, she has brought out any correspondence which she made after issue of advertisement or the procedure prescribed for the selection of the candidates through the said advertisement regarding the recruitment rules and conditions of service therein before completion of selection procedure in terms of the said advertisement. The applicant also admits that she participated and has enclosed Annexure-1 in proof of such participation. Annexure-1 shows comparative merit of the candidates, who participated.

6. We have heard the learned counsel for the parties and perused the material on record and to assess the rival contentions.

7. At the outset, it may be mentioned that the Hon'ble Supreme Court while dealing with the similar matter in the case of Chandra Prakash Tiwari & Others Vs. Shakuntala Shukla & Others reported in 2002 SCC (L&S) 830 has held as under:

"32.It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla Vs. Akhilesh Kumar Shukla a three-judges Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participate therein, only because the result of the interview is not "palatable" to him he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

8. Admittedly, there is no dispute that the advertisement vide order/notification dated 23.2.2000 for appointment to the post of BPM, Indemau was issued and the applicant submitted

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her application before the authorities concerned for appointment against the post of BPM, Indemau wherein Sri Dinakar Rao-respondent no.6 was also one of the candidate and respondent no.6 was selected on the basis of merit under the relevant recruitment rules as specified in the said advertisement. The respondent no.6 was at sl. No.1 in the merit list filed by the applicant as Annexure A-1 and also filed by the respondents as Annexure CA-2 to the Counter Reply. The applicant has also admitted in para 4.07 of the O.A. that Sri Dinakar Rao- respondent no.6 after his selection has taken over charge of the post of BPM, Indemau on 15.12.2000.

9. From the facts and circumstances stated in the foregoing paragraphs, it is crystal clear that the process of selection was complete by taking over the candidate selected on merit on 15.12.2000. During this period, no complaint against the selection procedure was initiated by any candidate including the applicant on the selection made vide advertisement dated 23.2.2000.

10. In the light of the position as explained hereinabove and also after going through the principle of estoppel laid down by the Hon'ble Supreme Court in the case of Chandra Prakash Tiwari (supra), we come to the conclusion that the case of the applicant will be barred by her conduct to come back and complain against the said selection, which has obviously not gone in her favour and is, therefore, not very 'palatable' to her.

11. In view of the above, the O.A. has no merit and is liable to be dismissed

12. O.A. is dismissed accordingly. No order as to costs.

S.P. Singh
26.9.11
(S.P. Singh)
Member-A

Girish/-

Alok Kumar Singh
26.9.11
(Justice Alok K. Singh)
Member-J