

CASE NO.:
Appeal (civil) 4388 of 2006

PETITIONER:
Union of India & Others

RESPONDENT:
Bikash Kuanar

DATE OF JUDGMENT: 11/10/2006

BENCH:
S. B. SINHA & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
[Arising out of SLP (C) No. 15966 OF 2003]

Dalveer Bhandari, J.

Leave granted.

This appeal is directed against the judgment of the Division Bench of the High Court of Orissa at Cuttack in Original Jurisdiction Case No. 8819 of 1999.

Brief facts of the case are as follows:

Respondent Bikash Kuanar's father was working as an Extra Development Delivery Agent (for short, 'EDDA') in Narangochha B.O. and, on his superannuation a vacancy arose in the said post. The respondent herein had applied for the said post. In the process of selection, the respondent was selected and posted vide order dated 2.7.1998. Pursuant to the said order, the respondent joined the service. The respondent, to his utter surprise and astonishment, on 2.1.1999 received a letter, wherein it was stated that the selection vis-à-vis the appointment of the respondent was reviewed and, thereafter, his appointment had been cancelled.

The respondent, aggrieved by the said order dated 2.1.1999, filed an application before the Central Administrative Tribunal. A counter affidavit was filed by the appellants before the Tribunal. It was stated in the counter affidavit that an open advertisement was issued and in response to the same, the respondent herein and two other candidates, namely, Pitamber Majhi and Seshadeba had applied for the said post. One Pitamber Majhi secured 348 marks in the matriculation examination as against 298 marks secured by the respondent.

According to the appellants, both these candidates Pitamber Majhi and Seshadeba were wrongly rejected on wholly untenable grounds, therefore, the higher authority in the department had reviewed the case of the appointment of the respondent and opined that the appointment of the respondent to the said post was illegal and, consequently, cancelled the same. This, of course, was done after taking into consideration the representation of the respondent.

The Central Administrative Tribunal dismissed the respondent's application and thereafter the respondent preferred a writ petition before the High Court, which was

decided by the Division Bench of the High Court of Orissa.

The Division Bench after hearing the counsel for the parties observed that the power of review is conferred by the statute. In case of an appointment made under the Rules framed for the purpose of appointment, such appointment could not be cancelled either by the same authority or higher authorities in exercise of power of administrative exigency.

The High Court in the impugned judgment also stated that the civil rights had already accrued to the respondent who rendered one and a half years of service. Once such civil rights had accrued, the authorities exercising their executive power cannot review the appointment.

The Division Bench held that the administrative instructions have no statutory force, therefore, these cannot be enforced and following such instructions, the respondent's appointment could not be legally cancelled.

The Division Bench also directed that the respondent be given an opportunity to resume his duties within 30 days from the date of its order.

The appellants, aggrieved by the said judgment, preferred a special leave petition before this Court. We have heard the learned counsel for the parties at length. Mr. T. S. Doabia, the learned senior counsel appearing for the appellants, submitted that once an irregular or unconstitutional appointment has been made, the higher authorities have the power to review the appointment. Moreover, the Department has issued OM No. 19-15/2002-GDS dated 9.5.2003 which empowers the superior authority to rectify the irregularity in such cases on its motion or otherwise. Mr. Doabia contended that the power to rectify any irregularity cannot be questioned. Mr. Doabia also contended that an employee who has been appointed irregularly cannot claim any right of recruitment. Nevertheless, the respondent was given a show-cause-notice under the rules before his appointment was terminated. He further submitted that, in the instant case, the respondent and other two candidates applied for the post of EDDA. Admittedly, all the candidates possessed not only the minimum educational qualification required for the said post, i.e., VIII standard but were matriculates. Though the respondent in all respects was qualified to be appointed to the said post but according to the appellants one Pitamber Majhi had secured higher marks than the respondent in the matriculation examination and his claim could not have been ignored. According to the appellants the irregularity which had crept in with regard to appointment to the said post could not be perpetuated for eternity. Therefore, the higher authorities of the department were justified in rectifying the irregularity. The Division Bench did not accept the plea of the appellants being contrary to law. In this view of the matter it has become imperative to examine correct position of law.

The matter relating to appointment or recruitment of EDDA is not governed by any statute but by departmental instructions. It is now trite that if a

mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance of the principles of natural justice. It is only in a case where the mistake is apparent on the face of the records, a rectification thereof is permissible without giving any hearing to the aggrieved party.

The respondent was recruited not only on the basis of marks obtained by him in the matriculation examination but also upon consideration of various other criteria necessary therefor. He filed all necessary and requisite documents. The candidature of all the candidates has been considered on their own merits. Only because one Pitamber Majhi had obtained higher marks in the matriculation examination, the same by itself should not have been a ground for cancelling the order of recruitment passed in favour of respondent.

When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the Official Act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice. In this view of the matter, we are of the opinion that the said Pitamber Majhi by reason of higher marks obtained by him in the matriculation examination also cannot be said to be a better candidate than the respondent herein. In this view of the matter, we do not find any fault with the impugned judgment of the High Court.

The Division Bench of the High Court, in our considered view, correctly applied the law, which has been crystallized in a number of decisions of this Court.

Indisputably, the respondent has fulfilled all the essential terms and conditions for the appointment to the said post. The respondent alone had submitted all necessary and required documents before the date prescribed by the appellants. It may also be pertinent to mention that at the time of selection the respondent was the only one who had the experience of working continuously on the said post for a period of one and a half years. Perhaps, all these factors cumulatively persuaded the concerned authorities to select the respondent to the said post.

In our considered view, no interference is called for in the impugned judgment. The appeal, being devoid of any merit, is accordingly dismissed.

In the facts and circumstances of the case, we direct the parties to bear their own costs.