

(2003) 02 OHC CK 0081

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8819 of 1999

Sri Bikas Kuanar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Citation : (2003) 02 OHC CK 0081

Hon'ble Judges : B.P. Das, J;B. Panigrahi, J

Bench : Division Bench

Advocate : P.K. Padhi, A. Routray, U.R. Bastia, for the Appellant; M. Agrawal, Senior Standing Counsel, Central for O.P. No. 1, A.S.C. for Ops. 2 to 5 and C.R. Misra, G. Misra, T.K. Misra and D. Das for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

1. The Petitioner in this writ petition has challenged the validity of the order passed by the Central Administrative Tribunal, Cuttack Bench in O.A. No. 6 of 1999 on 31st May, 1999 whereby and where under the Petitioner's application was dismissed.

2. The facts stated in the petition in his application before the Tribunal is as follows:

Petitioner's father was working as an E.D.D.A. On his superannuation, a vacancy arose in the said post and the Petitioner, thereafter applied for the said post. In the process of selection, it has come out that he secured the highest mark in the merit list and was accordingly appointed in that post vide order dated 2.7.1998. Pursuant to the said order of appointment, he joined the post on the day he received the appointment order. But to his misfortune, he received a letter on 2.1.1999 wherein it was stated that his selection vis-a-vis the appointment was reviewed and, therefore, his appointment was cancelled. Being aggrieved by such order of termination, the Petitioner had filed an application before the Tribunal.

3. The Opp. parties filed their counter before the Tribunal and they have stated that pursuant to the open advertisement, the Petitioner and two other persons applied for the said post. It is further indicated that Respondent No. 1 did not send requisition to the employment Officer through registered post, therefore, no candidate could be sponsored by the Employment Exchange. Although the other two candidates appeared in the interview, but their names were rejected on a very flimsy and frivolous ground. Therefore, the Petitioner was unreasonably favoured by the appointment authority and he was asked to join in the said post.

4. On perusal of the order passed by the Tribunal, it has appeared that it weighed much with the Tribunal that the Petitioner was given appointment illegally ignoring the case of other candidates who comparatively secured better marks than the Petitioner.

5. It has been further noticed that one Seshadeb Barik filed an application to be impleaded in this case. But, however, such application was not filed before the Tribunal nor he was a party there. Mr. Mallik, the learned advocate appearing for the 3rd party-applicant has submitted that in case the Tribunal's record is requisitioned, it can be found that the mark sheet which were originally attached to the application were subsequently detached, as a reason where of the 3rd party-Petitioner's case was not considered.

6. In this case, we shall not go into that question whether mark sheet was at all enclosed with the application or not? If the 3rd Party-Petitioner is so advised, he can take shelter in the appropriate Court of law.

7. Opp. Party No. 4 issued a notice against the Petitioner asking him to show cause why his appointment shall not be cancelled, since he secured less mark in comparison with other candidates in the Board of Higher Secondary Examination. The Petitioner accordingly replied. But the Superintendent of Post Office (Opp. Party No. 3) cancelled his appointment on the ground that there were other meritorious candidates and the Petitioner was improperly given appointment ignoring their claims.

8. In this background, it is to be determined as to whether the Petitioner had improperly secured an employment from the authorities. In Annexure-1, the eligibility criteria has been fixed for the post of E.D.D.A. that a candidate must have passed Class-VIII Standard (Matriculation or equivalent will be preferred). The candidates are being chosen from a particular area as determined by the authorities. The Petitioner was earlier working as an E.D.D.A prior to his appointment on ad-hoc basis. Since minimum qualification was Class-VIII Standard, but preference was given to Matriculation standard the Petitioner having secured Matriculation certificate along with the past experience as E.D.D.A, we do not find any illegality alleged to have been committed in appointing the Petitioner as indicated above. Besides, in case other candidates secured higher marks, the authorities could have directed for a fresh recruitment. But without doing that, it is not understood how the authorities

cancelled the appointment of the Petitioner.

9. Mrs. Agarwal, the learned Counsel appearing for the Central Government has strongly urged that since under the statute the power of review is available with the higher authorities, therefore, the Superintendent of Post Offices was competent to review the appointment of the Petitioner. While examining such contention, we were taken to the rules that the criteria for appointment of E.D.D.A. has been fixed by the Central Government. From the guide lines, it appears that the candidate should secure maximum marks in the examination to make him/her eligible for such appointment. The eligibility is Class-VIII standard, but Matriculate candidates are given preference. In this case, all the candidates were Matriculates, but since the Petitioner was working as E.D.D.A. on ad-hoc basis for more than 1 1/2 years authorities, therefore, gave him preference and appointed him as E.D.D.A.

10. On a closure reading of the provisions of the statute, it appears that in a departmental proceeding, such power is available with the higher hierarchy. Such analogy can, however, not be applicable to this case. In case irregular appointment has been made by Opp. Party No. 4, the Department should have questioned to the appointing authority as to how the Petitioner could be appointed without following the norms. But without taking any action against the appointing authority, how could Respondent No. 3 find fault with the Petitioner and pass an order of termination.

11. The Opp. Parties have mainly relied upon the administrative Instructions issued by the Chief Post-Master General vide letter No. ST./10-1/65-PT-IV/Rly/8/95-96 Bhubaneswar dated 9.12.1997. It is indicated in the circular that the superior authorities above the rank of appointing authority may review and pass orders requiring the appointment authority to cancel such irregular appointment and make fresh appointment. The applicability of the circular was considered in Anr. writ petition being O.J.C. No. 6631 of 2001 in which it was held that always higher authorities has the power of review to revise an administrative order. Ordinarily the power of review is conferred under the statute. In case of an appointment made under the rule framed for the purpose of appointment, such appointment could not be cancelled either by the same or higher authorities in exercise of power of administrative exigency. In this case, the civil rights have already accrued to the Petitioner who rendered 1 1/2 years of service. Once such civil right has accrued, the authorities by exercising their executive power cannot review the appointment. Thus the administrative Instructions having no statutory force, therefore, those cannot be enforced and following such instruction, the Petitioner's appointment could not be cancelled. According to our humble view, the opinion expressed by Anr. Division Bench of this Court in O.J.C. No. 6613 of 2001 may be treated as per incuriam and has not laid down any inflexible and rigid rule while interpreting the instruction.

12. In the result, the writ petition succeeds. The order of the Administrative Tribunal passed in O.A. No. 6 of 1999 dated 31.5.1999 is hereby set aside. It

must be made clear that by this order, the authorities shall not be precluded from initiating any Departmental Proceedings as laid down in the Service Rules extra departmental staff.

13. Since the Petitioner has not rendered service for all those periods, he shall not be given any salary. He shall be given an opportunity to resume his duties within 30 (thirty) days from the date of the order.

B.P. Das, J.

14. I agree.