

(2003) 02 DEL CK 0049
In the Delhi High Court
Case No : C.W. No. 4374 of 1992

Ex. Constable Vijay Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Citation : (2003) 2 AD 81 : (2003) 103 DLT 33 : (2003) 67 DRJ 238 : (2003) 97 FLR 987 : (2003) 1 SLJ 221 : (2003) 6 SLR 271

Hon'ble Judges : V.K. Jain, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : J.N. Aggarwal, for the Appellant; Jayant Bhushan and Shilpa Singh, for the Respondent

Judgement

Vijender Jain, J.

Rule D.B.

1. This writ petition can be disposed of at this stage. The petitioner was appointed as a recruit constable in the C.R.P.F. Commandant 123 Battalion. His services were terminated on the basis of the following charges :

"That the said No. 913234629 Ct. Vijay Pal Singh committed an act of misconduct in his capacity as a member of the Force u/s 11(1) of CRPF Act, 1949, in that he got recruited himself as Ct/GD in 123 Bn, CRPF as per O/O No. R.II-4/91-123 dated 29/5/1991 by producing "PRATHMA" certificate issued by Hindi Sahitya Samelan, Allahabad showing it equivalent to metriculation whereas as per Govt. of India letter No. 3/3/1960-(H) dated 6/5/1960 Ministry of Home Affairs, Raj Bhasha Bidhag and Ministry of Personnel P.G. and Pension G.O.I. letter No. 15012/4/87-Estt-(D) dated 18/ 1/92 it has been dearly mentioned that the Govt. had accorded recognition to the "PRATHMA" examination conducted by the Hindi Sahitya Sammelan, Allahabad only in regard to the standard of Hindi prescribed in the metriculation Hindi examination. It has been further clarified that this recognition is not to be treated as equivalent to the full-fledged

metriculation certificate. As minimum education required for enlistment as a Constable in CRPF is metriculation Therefore, the individual got himself recruited by producing Prathma certificate which is not equivalent to metriculation as required vide Para 1.15 (c) (i) of Recruitment Manual, CRPF, 1975."

2. Counsel for the petitioner has contended that when the petitioner was recruited he had not misrepresented that the Prathma certificate was equivalent to metriculation. He had only given his Prathma certificate. It was further contended that petitioner never committed any act of misconduct while functioning as a Constable in 128 Battalion. On the other hand, he has received certificate for meritorious service from 128 Battalion. It was also contended that he never got recruited as alleged. It was respondent who has understood that Prathma certificate equivalent to metriculation. Our attention has been drawn at page 199 of paper-book. It is a letter dated 23.4.1994 issued by the Commandant 123 Battalion, the same is reproduced as under :

"OFFICE OF THE COMMANDANT-123 BN CRPF AJMER (RAJ)

No. R.II.1 /94-EC.II

Dated the April, 94

To, The Commandant-128 Bn, CRPF, At location. Subject: PRATHMA CERTIFICATE

Kindly refer to your office letter No. CII-7/94-128-SRC.IV dated 18/4/94.

No. 913234629 Ct. Vijay Pal Singh was recruited on the basis of Prathma certificate which was being known equivalent to metric. The fact was not known by us. Inconvenience cause is regretted please.

Sd/-

For Condt-123 Bn,

CRPF, Ajmer (Raj)."

3. Mr. Aggarwal has, in support of his contention, has cited Tara Chand v. Union of India and Ors., 2002 (65) DRJ 102. On the other hand, Mr. Jayant Bhushan, Counsel for the respondents has contended that the appointment of the petitioner was void ab initio as he could not have been appointed to the said post as the qualification in terms of CRPF Rules were metriculation for such post. In support of his argument, learned Counsel for the respondents has relied upon Santosh Kumar Singh Vs. State of U.P. and Others, . It was also contended by Counsel for the respondent that even if a mistake was committed by the respondent in taking Prathma as equivalent to metriculation, respondent could have rectified the same mistake.

4. We have given our careful consideration to the arguments advanced by learned Counsel for the parties. There is no doubt that if the petitioner did not fulfill the eligibility criteria, his services could have been terminated. It is also

settled proposition of law that if a mistake is subsequently found, that mistake can be rectified by the Appointing Authority. But we are not impressed by the stand of the respondent that it was the petitioner who committed misconduct as alleged in the article of charge. Respondent itself has understood Prathma certificate equivalent to metriculation. There was no misconduct on the part of the petitioner. Charge of misconduct can be sustained in the eyes of law. If the petitioner would have been removed for not having requisite qualifications or on account of non-fulfilling the eligibility conditions, that case would have been different. But to remove the petitioner on the ground that the petitioner has produced Prathma certificate and thereby has committed any misconduct, is totally perverse and untenable charge.

5. On this short ground alone, we set aside the impugned order of termination dated 17.8.1994 and 31.12.1994. Rule is made absolute. Petitioner shall be entitled to all consequential benefits.

Writ petition stands disposed of.