

(1995) 05 DEL CK 0067

In the Delhi High Court

Case No : Election Petition No. 6 of 1995

Harcharan Singh Josh

APPELLANT

Vs

Hari Krishan

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122

Delhi High Court (Original Side) Rules, 1967 — Rule 2

Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 — Rule 5

Representation of the People Act, 1951 — Section 81, 83

Citation : (1995) 3 AD 217 : (1995) 60 DLT 237

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Judgement

Vijender Jain, J.

(1) This writ petition has been filed by the petitioner on the ground that his removal from service by the Deputy Inspector General of the respondent was illegal.

(2) Nobody had been appearing in the matter for the respondent Therefore, the Court directed Mr. Madan Lokur, Advocate, to appear in the matter.

(3) It is admitted that the petitioner was appointed as a "Naik" on 28.9.1959. Thereafter, he was promoted as Head Constable on 16.5.1961 and as Sub-Inspector on 8.10.1967. The petitioner was again promoted as "Subedar" (Inspector) on 13.11.1975. Thereafter, he was posted at Tin-Sukia on 14.6.1979. On account of certain charges of mis-conduct, the petitioner was removed from service vide order dated 26.6.1980 passed by the Deputy Inspector General of Police. Thereafter, the petitioner preferred a statutory appeal on 30.3.1981. It was also dismissed by the Inspector General of Police.

(4) Mr. R.P. Nautiyal. learned Counsel appearing for the petitioner, has argued that the removal from service of the petitioner by the Deputy Inspector General

was illegal. In support of his contentions, he has referred to Rule-7 (b) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as "CRPF Rules"). Mr. Nautiyal has contended that the Appointing Authority for the post of "Subedar" (Inspector) could not have been the Commandant as the prior approval of the Inspector General was necessary for such appointment. On the basis of same analogy, it has been argued by Mr. Nautiyal that the removal of the petitioner from service by the Deputy Inspector General without prior approval of the Inspector General was not in terms of rules and the same was illegal. Learned Counsel for the petitioner has also cited *Shiva Bhikshuk Mishra Vs. State of Bihar and Others*, and *Nawab Husain Vs. State of U.P.*, in support of his argument to the effect that where the Appointing Authority was Inspector General of Police, the dismissal order passed by the Deputy Inspector General was illegal.

(5) On the other hand, Mr. Madan Lokur, learned Counsel appearing for the respondent has argued that in case of "Subedar" (Inspector), i.e. the petitioner, the Commandant was empowered to remove him from the service and what was required under the rules was an approval, which was subsequently taken by the Commandant from the Inspector General,

(6) SUB-RULE (b) of Rule-7 of the Crpf Rules is as follows - "(b) The authority to make appointments to the various non-gazetted ranks shall be the Commandant, provided that in the case of Sub-Inspector and Subedar (Inspector) prior approval of the Deputy Inspector General of Police and of the Inspector General respectively shall be obtained."

(7) It is also important to refer to some other rules in this regard. The prior approval in case of promotion to the rank of "Subedar" (Inspector) of the Inspector General finds mention in Rule-55 of the Crpf Rules. Rule-55 (b) of the Crpf Rules is as follows :-

"55.Merit.-(a) All promotions, shall be governed by merit. Other things being equal seniority shall count for promotion. For promotion, a member of the Force must be qualified and recommended by the Commandant, Assistant Commandant or Company Commander, as the case may be. (b) For exception reasons the Commandant may promote an unqualified Head Constable to the rank of Sub-Inspector or an unqualified Sub-Inspector to the rank of Subedar (Inspector) with the prior approval of the Deputy Inspector General or Inspector General respectively provided that such promotions in either case do not exceed ten per cent of the sanctioned strength in such ranks."

(8) RULE-62 of the Crpf Rules relates with preparation of list of approved candidates. Rule-62(b)(5) deals with List "E" containing names of Head Constables for promotion to the rank of "Subedars" (Inspectors). Sub-Rule (e) of Rule-62 of the Crpf Rules makes it clear that entry of names in Lists "A", "B" and "C" shall be made by the Commandant and in Lists "D" and "E" by the Commandant with the approval of Deputy Inspector General of Police and

Inspector General of Police respectively. This rule makes it clear that in relation to "E" List the entry of names shall be made by the Commandant with the approval of the Inspector General of Police.

(9) Admittedly the petitioner falls in "E" List as he has filed the mark-sheet of "E" List test, which was held when the petitioner was promoted to the rank of "Subedar" (Inspector). When the scheme of rules is such that either in case of appointment or in case of promotion the prior approval of the Inspector General of Police is a requirement under the Rules for such post, the natural corollary, which follows, is that any termination without the approval of Inspector General of Police by the Commandant, i.e. Deputy Inspector General, would be bad in law. A Commandant cannot be the Appointing Authority as the Commandant cannot appoint on its own neither any person can be promoted by the Commandant to the rank of "Subedar" (Inspector) without the approval of Inspector General of Police.

(10) Therefore, there is considerable force in what has been argued before me that power to remove on the same analogy exercised by the Deputy Inspector General without the approval of the Inspector General is illegal. Nothing has been brought on record to show that approval of the Inspector General was taken subsequently.

(11) For the reasons stated above, I allow the writ petition and quash the order of termination. The petitioner shall be entitled for reinstatement and consequential benefits of promotion and increments in pay and in case the petitioner has superannuated, he shall be entitled for compensation in lieu of his termination with all back wages, other benefits, promotions and increments. The petitioner shall be paid all his outstanding dues within a period of three months. The rule is made absolute. The petition is disposed of in terms of the above order.