

(2018) 03 DEL CK 0301

In the Delhi High Court

Case No : Civil Writ Petition No. 7319 Of 2016, Civil Miscellaneous No. 30110 Of 2016

Ravinder Kumar

APPELLANT

Vs

Director General Indo Tibetan Border Police And Anr

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0301

Hon'ble Judges : Hima Kohli, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Vivek Sheel, Anshul Mahajan, Bharathi Raju, Rohit Saroj

Final Decision : Disposed Of

Judgement

1. The petitioner, who is presently working on the post of a Constable (GD), has filed this petition praying inter alia for quashing and setting aside an order dated 07.02.2014 (wrongly typed as 07.12.2014 in Annexure-P1), passed by the respondent No.1/DG, ITBP, cancelling his promotion to the post of Head Constable (GD).

2. A glance at the relevant facts of the case is necessary. In the year 2000, the petitioner had joined the respondent/ITBP in the cadre of Constable (Cook). On 03.04.2004, the petitioner was shifted from the cadre of Constable (Cook) to the Constable (GD), w.e.f. 04.04.2004. In the year 2012, the respondents permitted the petitioner to participate in a III-Tier selection process for promotion to the post of Head Constable (GD). On 05.04.2013, the respondents promoted the petitioner to the post of Head Constable (GD) on his successfully qualifying the test and completing the training course.

3. In December, 2014, as a bolt from the blue, the petitioner received the

impugned order dated 07.02.2014, issued by the respondent No.1/DG, ITBP, cancelling his promotion to the post of Head Constable (GD) on the ground that he did not have the requisite length of seniority in the cadre of Constable (GD). On 07.08.2015 (wrongly typed out in the body of the petition as 19.08.2015), the name of the petitioner was struck off from the rolls of Head Constable. This was followed by an order dated 28.03.2016, passed by the respondent No.2, directing the petitioner to surrender the Head Constable rank. The petitioner submitted a detailed reply in response to the Memo dated 28.03.2016 issued by the respondents, on 05.04.2016. On not getting any response, he filed a writ petition in this Court on 16.05.2016 [W.P.(C) No.4826/2016]. The said petition was permitted to be withdrawn to make up the deficient pleadings and the petitioner was granted liberty to file a fresh petition challenging the impugned orders dated 06.05.2015 and 28.03.2016.

4. The main thrust of the arguments addressed by the learned counsel for the petitioner to assail the impugned order dated 07.02.2014, is that the respondents did not issue a notice to show cause to the petitioner or afford him an opportunity to make his submissions before passing such a drastic order whereby his rank has been reduced from that of a Head Constable (GD) to Constable (GD).

5. On the last date of hearing, learned counsel for the respondents was directed to produce the relevant records for our perusal to verify if before passing the impugned order dated 07.02.2014, striking off the promotion granted to the petitioner, the respondents had issued him a notice to show cause and had elicited a response, thereby following the principles of natural justice.

6. Today, learned counsel for the respondents concedes on instructions that no show cause notice was given by the respondents to the petitioner before passing the impugned order dated 07.02.2014. If that be the position, we need not detain ourselves any further by examining the correctness of the impugned order. The respondents were under an obligation to have followed the principles of natural justice by issuing a notice to show cause to the petitioner before passing any order, much less an order, cancelling the promotion granted to him and that too, behind his back.

7. Accordingly, the order dated 07.02.2014, is unsustainable and is quashed and

set aside, with liberty granted to the respondents to issue a notice to show cause to the petitioner, calling upon him to explain as to why he should not be reverted from the rank of a Head Constable (GD) to Constable (GD). In the said show cause notice, the respondents shall fix a timeline for the petitioner to respond. After the petitioner submits his written representation in response to the said show cause notice, the competent authority shall consider the same and then pass a speaking order, under written intimation to him. If the petitioner is aggrieved of the order that may be passed by the competent authority, he shall be entitled to seek his remedy, as per law.

8. The petition is disposed of, along with pending application. Litigation cost of Rs.10,000/- shall be paid by the respondents to the petitioner within four weeks.