

Office of the Election Authority

Under J&K Panchayati Raj Act, 1989

(Chief Electoral Officer, J&K)

“Greater Participation for a Stronger Democracy”

Subject: Appeal titled Chamail Singh versus Returning Officer, Panchayat Chinkah, Block Thakrakote, District Reasi.

ORDER No. CEO/Pyt/2018/735

DATED 27-11-2018

Whereas, the appellant namely Chamail Singh has filed the instant appeal seeking quashment of order dated 14-11-2018 passed by the concerned Returning Officer whereby his nomination for Sarpanch seat in Panchayat Halqa Chinkah has been rejected on the ground of his having been removed from service, thus attracting disqualification under section 6 of J&K Panchayati Raj Act, 1989; and

Whereas, the case has been examined and the appellant has also been provided opportunity of hearing through his Counsel; and

Whereas, the Ld. Counsel has contended that the appellant has been ‘removed’ and not ‘dismissed’ from the service, as such he does not attract the disqualification laid down under section 6 (h) of J&K Panchayati Raj Act, 1989 since the clause specifically mentions dismissal only and removal is at an altogether different footing. He argued that removal does not bar a person from future employment and, further, in support of his contention, also presented the relevant extracts of the Police Manual as well as the CCA Rules of the State Government pointing out that under the Chapter of punishment, the two – removal and dismissal are distinct terms. The Ld. Counsel also placed on record Supreme Court Judgment in Dr. Dattarya Mahadev Nadkarni versus Municipal Corporation of Greater Bombay, AIR 1992 SC 786; and

Whereas, the case has been examined vis a vis the legal provisions in the given factual matrix and it is noted that while indeed the two terms ‘removal’ and ‘dismissal’ have different consequence for future employment, for the purpose of the matter at hand, the two terms are equivalent, both signify that the person is not fit for continuing in the government service and hence attract the disqualification under section 6(h) of J&K Panchayati Raj Act, 1989; in fact, the perusal of the Police Manual (Chapter XI – Punishment, item no. 337 and 339) brings out that removal is also intended to terminate for continued misconduct. This finds support from the citation quoted above, wherein at para 6, it has been observed that “....We find force in the contention raised by the appellant. In *Shyamal v. State of Uttar Pradesh* while dealing with the provisions of Article 311 of the constitution of India it was held that under the Constitution removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal.....” Though the Act (J&K Panchayati Raj Act, 1989) uses the term ‘dismissed’ under section 6 but it has to be given interpretation that is consistent with the legislative intent, viz; disqualifying a person not fit to be in Government service from holding an office which has the duties/responsibilities of a Sarpanch or Panch;

Now, therefore, in view of the above, the rejection of nomination of the appellant has been done correctly, therefore the plea raised in the instant appeal is hereby rejected.

(Shaleen Kabra) IAS
Election Authority

Under J&K Panchayati Raj Act, 1989
(Chief Electoral Officer, J&K)

Dated: 27-11-2018

No. 6463/CEO/Pyt/2018/4020-21

Copy to:

1. District Panchayat Election Officer (Deputy Commissioner) Reasi for information and n/a.
2. R.O concerned for information and n/a.