

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6655 OF 2014

Anand s/o Manika Nikhate

Age: 32 Yrs., occu. Service,

R/o At Post Mendka, Tq.Mudkhed,

District Nanded

Force No. 001376096

- **PETITIONER**

VERSUS

1) The Union of India

Through Secretary,

Home Department,

Parliament, Delhi.

2) Director General of Police

(D.G.P.) CRPF, CGO Complex,

Lodhi Road, New Delhi-100003.

3) Inspector General (IG)

(Western Sector), CRPF,

CBD, Belapur,

Navi Mumbai 400614.

4) District Inspector General

of Police (DIGP),

Hingna Road, CRPF Camp,

Group Cener, Nagpur.

- **RESPONDENTS**

Mr.Dhananjay Shinde, Advocate for Petitioner;

Mr.S.B.Deshpande, Asstt. Solicitor General of India
for the respondents.

CORAM : S.S.SHINDE &
P.R.BORA,JJ.

DATE OF RESERVING JUDGMENT : 17th April, 2015.

DATE OF PRONOUNCING JUDGMENT: 30th JUNE,2015.

JUDGMENT (PER:- P.R.BORA,J.)

1) Heard. Rule. Rule made returnable forthwith
by consent of parties.

2) Against denial of the promotion to the post
of Head Constable, the petitioner has filed the
present petition, invoking jurisdiction of this court
under Article 226 of the Constitution of India.

3) After undergoing due selection process, the
petitioner was appointed on the post of Constable
(GD) in CRPF, w.e.f. 14.07.2000. As per the
Departmental Circular No.18/1987, height for the male
candidates to be recruited as constables was
prescribed as minimum 170 cms. except the categories,
which were set out in the said Circular. As per the
said Circular for Men belonging to Kerala, Tamilnadu,

Karnataka, Andhra Pradesh, Maharashtra, Pondicherry, Goa, Andaman and Nicobar and Lakshadweep, the height was prescribed as 167.5 cms. The petitioner is possessing the height of 169 cms. Because of the relaxation provided, vide Circular No.18/1987, the petitioner was selected to the post of Constable in CRPF.

4) In the year 2011, the respondents issued Standing Order No.5/2011 dated 22.7.2011 for recruitment to the post of Head Constable, wherein the vacancies were distributed amongst three categories, viz. 85% were to be filled in by way of promotion.; 10% from the limited departmental examination; and remaining 5% were to be recruited directly from sport category. In the said Standing Order, requirement of height was prescribed as minimum 170 cms for male from general category.

5) The petitioner applied for the promotional post vide his application dated 31.8.2011. The petitioner though succeeded in passing the departmental examination and all other tests, he was denied promotion on the ground that he was not

possessing the prescribed height of 170 cms. Though the petitioner made several representations to the higher authorities to consider his case on the basis of the criterion, which was in vogue at the time of his recruitment as constable,, his request/representations were rejected by the higher authorities. Last of such application/representation was filed by the petitioner in March-2014 and the same came to be rejected on 23.5.2014 by the respondent/authorities.

6) It is the contention of the petitioner that one Pramod Rai from CRPF , was also initially declared unfit for promotion on the ground that he did not possess the prescribed height. Said Pramod Rai was also initially appointed as Constable in the year 1999 by extending benefit of relaxation in height to the extent of 167.5 cms. as provided vide Circular No.18/1987. After the promotion was refused to said Pramod Rai on the ground that he was possessing height less than 170 cms, he filed a writ petition, bearing Writ Petition No.5322/2006 in the High court of Zarkhand at Ranchi and the same came to be allowed. As stated in the petition, Letters

Patent Appeal preferred by the respondents against the decision of the Zarkhand High Court in favour of said Pramod Rai in Writ Petition No.5322/2006, has been dismissed on merits. It is further stated that ultimately, said Pramod Rai was promoted to the promotional post in view of the order passed in Writ Petition No.5322/2006.

7) Shri Dhananjay Shinde, learned Counsel appearing for the petitioner, submitted that the case of the present petitioner is similar to the case of said Pramod Rai and in the circumstances, the decision of the High court of Zarkhand in Writ Petition No.5322/2006 will be squarely applicable to the case of the present petitioner. The learned Counsel, therefore, prayed for allowing the writ petition.

8) Shri R.T.Paramhans, DIGP in the office of Group Center, CRPF, Talegaon, Pune, has filed affidavit in reply on behalf of the respondents. In the affidavit in reply, it is the contention of the respondents that since the Rules in regard to promotion subsequently undergone change, wherein now

height is prescribed as not less than 170 cms, the request of the petitioner for promotion cannot be accepted. It is further contended that the decision in the case of Pramod Rai rendered by the Zarkhand High Court, may not be of any help to the petitioner in view of subsequent change in the Rules. The respondents, have, therefore, prayed for dismissal of the petition.

9) Shri Deshpande, learned ASGI, appearing for the respondents, submitted that any change in the Rules of promotion, will not tantamount to alteration in conditions of Service. The learned ASGI further argued that "promotion" does not fall within the expression of "condition of service".

10) After having carefully considered the submissions advanced by the respective parties, we are apparently of the opinion that the case of the petitioner is squarely covered by the judgment of High court of Zarkhand delivered in Writ Petition No. 5322/2006. As observed by the High court of Zarkhand in the said judgment, the only question for consideration in the aforesaid writ petition was

'whether candidature of those candidates, who have been given benefit of Circular No.18/1987, can be rejected saying that although they have been selected as Constable under the circular No.18/1987, but they will not be permitted for the departmental competitive examination for departmental promotion quota'. As earlier mentioned the petitioner in the said matter, viz. Pramod Rai was appointed as Constable in CRPF in 1999 giving benefit of Circular No.18/1987, since said Pramod Rai was belonging to State of Maharashtra. His candidature was rejected for the promotional post of Sub Inspector under the departmental promotion quota saying that he was not possessing minimum height of 170 cms. In view of the facts, as aforesaid, the Zarkhand High court held that once relaxation in the height was granted to the candidate belonging to a particular State while admitting him in service as Constable, he should not be denied departmental promotion saying that he is not having minimum height of 170 cms. The Zarkhand High court has further observed that, if such plea is accepted, it would amount to discrimination and the same would be violative of Articles 14 and 16 of the Constitution of India. It is further observed that

as per Article 16 of the Constitution of India, there should be equality of opportunity. The Zarkhand High court has further observed that, in its opinion, the change subsequently brought in regard to physical requirement should be read along with the relaxation of height, vide Circular No. 18/1987. The Zarkhand High court, therefore, set aside the order denying promotion to said Pramod Rai and directed the respondents therein to consider candidature of said Shri Pramod Rai for promotional post of Sub Inspector if he is otherwise eligible in accordance with law.

11) We find that the case of the present petitioner is as similar to the case of said Pramod Rai and in such circumstances, the decision rendered by the High court of Zarkhand will squarely apply to the case of the present petitioner. We are, therefore, inclined to allow the present petition.

12) In the result, the impugned orders dated 2nd August, 2012 and 23rd May, 2014 issued by Respondent Nos.2 to 4, are quashed and set aside. The respondents are directed to consider the candidature of the present petitioner for promotional post of

Head Constable, if he is otherwise eligible in accordance with law. Rule is made absolute in above terms with no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/

fldr 24.6.15