

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1513 of 2013
Arising out of
Civil Writ Jurisdiction Case No. 2047 of 2012**

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1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi
2. The Group Commandant, C.R.P.F., Mokamaghat, Patna
3. D.I.G.P. Group Centre, C.R.P.F., Mokamaghat, Patna

.... Respondents / Appellants

Versus

Aarti Kumari, Wife of Azad Viveka Nand, Daughter of Laxmi Mandal, Resident of Village - Khankitta, P.O. And P.S. - Sabour, District - Bhagalpur

.... Writ Petitioner / Respondent

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Appearance:

For the Appellant/s : Mr. S.D. Sanjay, Addl.S.G. and
Mr. Rajesh Kumar Verma, CGC.

For the Respondent/s : Mr. Dharendra Natha Ojha and
Mr. Chandra Shekhar Sharma, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-08-2017

Heard learned counsel for the appellants and learned counsel for the respondent.

2. The Union of India is aggrieved because in relation to an advertisement issued in the year 2009 for recruitment on the post of Constable (General Duty) in C.R.P.F., a direction was issued by the learned Single Judge on 08.03.2013 to re-measure the weight of the candidate before deciding whether she is ineligible due to under-weight which was the reason for rejection of her candidature initially. As per the learned Additional Solicitor General of India appearing in



the appeal, at the time of recruitment when the respondent was put through physical measurements, she was found under-weight in her height of 159.1 Cms, her weight was 43.7 Kgs, whereas as per the requirement for a candidate of height of 159.1 Cms. she should be at least 47.01 Kgs.

3. The private respondent, due to such rejection, filed a Writ Application which was registered as CWJC No. 15305/2010. The learned Single Judge, vide order contained in Annexure-1 to the Memo of Appeal, directed the concerned authority to consider the representation and pass an appropriate order. The representation was considered and rejected being devoid of any merit and the reasons thereof is in detail, which is Annexure-2 to the Memo of Appeal.

4. The second round of litigation started when yet another Writ Application, namely, CWJC No. 2047/2012 was filed. The learned Single Judge, vide order dated 08.03.2013, passed a direction upon the respondents/appellants to re-weigh the private respondent and pass an appropriate order. The Union of India assails the order and, therefore, the appeal.

5. Learned Additional Solicitor General for the Union of India submits that the recruitment related to the year 2009, the exercise was completed many years ago, thereafter many rounds of recruitments have happened, as such there may not be any occasion



now to consider the claim of the private respondent for appointment at this belated hours.

6. The Court is not much impressed with this line of argument because if the respondent authorities had been found to be irrational or arbitrary in denying a candidate's right of appointment or consideration, delay may not come in the way, in appropriate cases.

7. However, in the present appeal, it seems that when a grievance was raised in the previous round of litigation in the first writ, there was no direction for re-measurement. The direction was to consider the representation. The representation was taken into consideration and a detailed order, contained in Annexure-2, has been passed. The Court has gone through the same. In matters of such kind, re-measurement cannot be ordered after so many years to find out whether the initial measurement, which was done, was in any manner erroneous. Adding weight over a period of time is a possibility and, therefore, the eligibility of a candidate cannot be re-worked on the basis of the current situation but as it was at the time of recruitment. A changed situation, therefore, cannot form the basis for coming to a conclusion that the previous decision was erroneous in any manner, especially when facts may have changed.

8. The Court is, therefore, convinced that the decision of the learned Single Judge to pass a direction for re-measurement by



virtue of his order dated 08.03.2013, i.e., almost after four years of earlier exercise for such recruitment, is an uncalled for direction.

9. The appeal, therefore, succeeds and the impugned order dated 08.03.2013 is required to be quashed and is quashed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR.

AFR/NAFR	NAFR
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