

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No.7941/2015**

% **Reserved on:** 6th July, 2017
Date of Decision: 13th September, 2017

INSPIRE SRISHTI KUMAR & ORS Petitioner
Through Mr. Ankur Chhibber, Advocate.

Versus
UNION OF INDIA & ORS Respondent
Through Ms. Jyoti Dutt Sharma, Sr.
Panel Counsel for UOI with Mr. C.K. Bhatt,
Advocate.
Ms. Aakanksha Kaul, Advocate for R-6 to
69.

WRIT PETITION (CIVIL) No.7166/2016

% **Reserved on:** 13th July, 2017
Date of Decision: 13th September, 2017

GOURANGA MANDAL Petitioner
Through Mr. Aman Sinha, Sr. Advocate
with Mr. Pravesh Thakur, Advocate.

Versus
UNION OF INDIA & ORS Respondent
Through Ms. Sunieta Ojha, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J.

The petitioners, twenty three (23) in number, in Writ Petition (Civil) No. 7941/2015 have prayed for quashing of revised results dated 5th August, 2015 for selection and appointment to the post of

Assistant Commandants (General Duty/GD) in the Central Armed Police Forces (CAPFs) through Limited Departmental Competitive Examination (LDCE), 2013-2014. The said revised result was published by Ministry of Home Affairs vide ID 45013/01/2009/PERS-I dated 15th April, 2015. The petitioners have also prayed for Mandamus to the respondents to treat them as successful in the Physical Standard Test (PST, for short) and accordingly in view of the merit position, direction be issued to the respondents to appoint them as Assistant Commandants (GD) with all consequential benefits.

2. Gouranga Mandal, the writ petitioner in W.P(Civil) No. 7166/2016, has prayed for identical relief to quash the result dated 15th April, 2015 and for direction to the respondents to appoint him to the post of Assistant Commandant (GD) in the Scheduled Caste category in the Indo- Tibetan Border Police Force.

3. As contentions and issues raised are similar, the two writ petitions are being disposed of by this common judgment.

4. Directorate General, Sashastra Seema Bal vide advertisement dated 11th July, 2014 had invited applications from serving male and female Sub-Inspectors (GD) and Inspectors (GD) for the post of Assistant Commandant (GD) in CAPFs through LDCE. Vacancies in different CAPFs were specified. The upper age limit was stipulated as thirty five years as on 1st August, 2013. The applicants were required to appear in the written test consisting of Paper-I, II and III. The candidates qualifying in Paper-I and II were to be called for the Physical Standard Test (PST), and Physical Efficiency Test (PET). These tests were to be conducted by the Board of Officers, to be

constituted by the Nodal Agency namely Sashastra Seema Bal (SSB), at the training centre of any of the CAPFs. PST and PET were qualifying in nature and failure in any one event would result in disqualification.

5. Clause 7 of the said advertisement related to physical standards and had stipulated :-

“7. Physical Standards : ”

As applicable to Assistant Commandant (Direct Entry). Candidates should satisfy the following minimum physical standards as prescribed in respective RRs. They should also be in medical SHAPE-I (One).”

There was also another stipulation with regard to medical standards prescribed in clause 8 of the advertisement, the relevant portion of which reads:-

“8. Medical Standards

(i) Eye Sight

	Better Eye (Corrected Vision)	Worse Eye (Corrected Vision)
Distant Vision	6/6 6/9	6/12 06/09
	OR	
Near Vision	J I (Corrected)	J II (Corrected)
Types of correction permitted	Spectacles	
Limits of Refractive errors permitted	-4.00D (including cylinder) Non Pathological Myopia + 4.00D (including cylinder) Hypermetropia	
Colour Vision	High Grade	

(ii) The candidates must not have knock knee, flat foot, squint eyes and should possess high colour vision. The candidates will be tested for colour vision by Ishihara's test and well as Edrich-Green Lantern test. They must be in good mental and bodily health and free from any physical defect, which may interfere with the efficient performance of the duties.

(iii) Subject to (i) & (ii) above, the standard of medical fitness for the candidates would be the same as prescribed by the Govt. for Assistant Commandant (Direct Entry)."

Clause 10 relating to medical examination had stipulated:-

"10. Medical Examination

The candidates who qualify the written examination, PST/PET and Interview of the LDCE shall be drawn in a list for undergoing medical examination to be conducted by the duly constituted Medical Board of concerned CAPFs. There would also be a provision for Right to Appeal as per the existing guidelines."

Marks of Paper III were to be announced after PST and PET. Candidates, who qualify, were to be interviewed by the Nodal Agency. No minimum qualifying marks were specified for the interview, but attendance was compulsory. Candidates who qualify as per clause 10, quoted above, were to undergo medical examination.

6. As per clause 11, merit lists for each force were to be prepared separately and category-wise on the basis of aggregate marks obtained in the written examination and interview. Finally selected candidates (force-wise) were to be sent to the Directorate General of their respective forces by the Nodal Agency for issuance of appointment letters.

7. On the basis of marks secured in Paper I and II, a list of four hundred and sixty two (462) candidates was published on 22nd September, 2014. The petitioners having qualified, along with others, had undergone PET on 23rd September, 2014. Three hundred and seventy six (376) candidates including the petitioners were declared as qualified in the PET. In the PST conducted on 24th September, 2014, two hundred and forty three (243) candidates were declared as qualified, while one hundred and thirty one (131) candidates, including the petitioners, were declared as disqualified primarily on the ground of being over-weight. Two (2) candidates were absent. The petitioners state that they had filed appeals before the Appellate Authority, challenging their disqualification. This number of two hundred and forty three (243) PST qualified candidates increased to two hundred and seventy one (271) after another twenty eight (28) candidates were declared as successful/qualified by the Appellate Authority on 24th October, 2014.

8. The official respondents in the counter affidavit admit that immediately upon declaration of the PST results, more than a hundred appeals by the disqualified candidates, both in writing and orally, were filed before the Appellate Authority. These appeals were on three different grounds, namely, (1) the weight recorded was wrong and thus they should be reweighed; (2) the weight stipulation being age specific, the weight and current age of the candidate on 24th September, 2014 when the PST was conducted should be the qualifying criteria. Criteria of weight as per age on 1st August, 2013, i.e. the date specified for determining upper age limit, was wrongly

applied and (3) weight was not a disqualifying criteria for PST. Weight should have been taken at the stage of medical examination to be conducted later.

9. There is a serious dispute on what had happened and transpired to the appeals preferred on 24th September, 2014. We would refer to the said dispute subsequently and at this stage, would like to refer to the relevant clauses of the Standard Operating Procedure (SOP) relating to physical and medical standards of candidates for the post of Assistant Commandant (GD) which had prescribed that the PST would be conducted as per standards prescribed for direct recruitment of Assistant Commandants(GD) in CAPFs.

10. It is not disputed that the physical standard required for direct entry to the post of Assistant Commandant(GD) is as under:-

" Male Average body Weights in Kilograms for Different Age Groups & Heights

Height in CMs	Age in years			
	18-22	23-27	28-32	33-37
156	44-54	46-56	47-58	48-59
158	45-55	47-57	48.5-59.5	49.5-60.5
160	46-56	47.7-58.5	49.5-60.5	50.5-61.5
162	47-58	49-60	50.5-61.5	52-63
164	48-59	50-61	52-63.5	53-65
166	49.5-60.5	51.5-62.5	53-65	54.5-66.5
168	51-62	52.5-64.5	54.5-66.5	56-68
170	52-64	54-66	56-68	57.5-70.5
172	54-66	55.5-67.5	57-70	59-72
174	55-67	57-70	59-72	61-74.5
176	56.5-69	58.5-71.5	60.5-73.5	62-76
178	57.5-70.5	60-73	61.5-75.5	63.5-77.5
180	59-72	61-75	63.5-77.5	65.5-80
182	61-74.5	62.5-76.5	65-79	66.5-81.5
184	63-77	64.5-78.5	66.5-81.5	68.5-83.5
186	63.5-77.5	65.5-80.5	68-83	70-86
188	65-79	67.5-82.5	70-85.5	71.5-87.5
190	66-81	68.5-83.5	70.5-86.5	72.5-88.5

Female Average body Weights in Kilograms for Different Age Groups & Heights

Height in CMs	Age in years			
	18-22	23-27	28-32	33-37
148	34.5-42.5	37-45	38.5-47	39.5-48.5
150	36.5-44.5	37.5-45.5	39-48	40.5-49.5
153	38-46	39-48	41-50	42-51
155	38.5-47.5	40-49	41.5-50.5	43-52.5
158	40.5-49.5	42-51	43-53	44.5-54.5
160	41.5-50.5	43-52.5	44-54	45.5-54.5
163	43-52.5	44-54	46-56	47-57
165	44-54	45.5-55.5	47-58	48.5-59.5
168	45-55	47-57	48.5-59.5	49.5-60.5

”

The body weights are given in this chart corresponding to only certain heights (in cms). In respect of height in between, the principle of ‘Average’ may be utilized for calculating body weights.

For calculating average weight beyond the heights tabulated, 0.71 Kg for every one cm of increase or decrease in height may be added or subtracted respectively.”

11. Reference is also required to be made to the SOP issued by the Ministry of Home Affairs vide ID Note No. 45013/01/2009/Pers.I dated 1st July, 2014 which laid down the scheme/modalities for selection of Assistant Commandants (GD) through the LDCE for BSF, CRPF, SSB and ITBP, the relevant paragraphs of which read:-

" 1. ELIGIBILITY CONDITIONS

1.1 Both Sub-Inspectors and Inspector will be eligible to appear in LDCE for Assistant Commandant (GD) as per Recruitment Rules of respective Forces. Other eligibility conditions are given below:-

XXXX

(d) Physical Standards

As applicable to Assistant Commandant (Direct Entry). Candidates should satisfy the minimum physical standards as prescribed in respective RRs. They should also be in medical category SHAPE-I (One).

XXXX

4. PHYSICAL STANDARD TEST & PHYSICAL EFFICIENCY TEST

4.1 The candidates who qualify in Papers-I and II (written examination) will only be called for Physical Standard Test and Physical Efficiency Test by the Nodal Agency at one Training Centre of any Forces by comprising a board of officers by the Nodal Agency. The Physical Standard Test will be conducted as per the standards prescribed for direct recruitment of Assistant Commandant (GD) in CAPFs. Physical Efficiency Test shall comprise the following items. It will be qualifying in nature by failure even in one item of the test will amount disqualification:-

XXXX

4.2 COMPOSITION OF BOARD FOR PST & PET

- (i) Presiding Officer : Commandant
- (ii) Member-I : Commandant
- (iii) Member-II : Commandant
- (iv) Member-III : Lady Officer of the rank of Dy. Commandant

Note: Senior most Commandant will be the Presiding Officer. Besides one DIG will be detailed as Appellate Authority at PST/PET venue to dispose of PST/PET appeal, if any, of candidates on the same day.

XXXX

6. MEDICAL EXAMINATION

6.1 A list will be drawn for those candidates who qualified in both the stages-II and III of the LDCE. Thereafter, they will undergo medical examination to be conducted by Forces concerned in their respective hospitals by detailing a medical examination board. There should also be a provision for Right to Appeal as per the existing guidelines.

(Emphasis supplied)"

12. As recorded above, in the PST examination conducted on 24th September, 2014 as many as one hundred and thirty one (131) candidates out of three hundred and seventy six (376) candidates, who had qualified in the Paper I and II of the written examination as also the PET, were declared to be overweight and were disqualified. The

weight requirement/criteria mentioned and required to be met was as per the standards prescribed for direct recruitment at the post of Assistant Commandants(GD) in CAPFs. It was also stipulated that the candidates should also be in medical shape-I.

13. In paragraph 8 above, we have referred to the three grounds raised in the appeals preferred before the Appellate Authority on 24th September, 2014. The second ground related to the age and weight criteria to be applied. The Assistant Commandant (Rectt.) vide fax message dated 24th September, 2014 followed by the letter by the Dy. Inspector General dated 25th September, 2014, had raised the following query:-

"The SOP/Scheme for selection of Assistant Commandant (GD) LDCE issued by MHA dated 1st July, 2014 has prescribed physical standards as applicable to Assistant Commandant (Direct Entry). The SOP is silent on considering PST standards of the candidates on the date of conducting PST. Accordingly, 1st August, 2013 has been considered as crucial date for all practical purposes. However, several candidates disqualifies in PST have appealed for considering their age on the date of conducting PST instead of cut-off date i.e. 1st August, 2013, mentioned in the advertisement."

14. Ministry of Home Affairs vide note dated 25th September, 2014 clarified that physical measurements were to be done with reference to actual date of measurement. Accordingly the Appellate Authority was informed by the Assistant Director (Rectt.) vide fax message dated 25th September, 2014.

15. The Assistant Director (Rectt.), vide subsequent letter dated 1st October, 2014 to the Ministry of Home Affairs had enquired and asked for clarification on another ground. They had received

representations stating that as per the policy/guidelines and SOPs maintained by the BSF, CRPF, SSB, and ITBP, weight was not to be considered as disqualification at the PST stage but was a disqualification at medical examination stage. The disqualified candidates had enclosed a proforma in support. However it was unclear which CAPFs had used the proforma, and in which examination. This proforma had not been circulated with the SOP dated 1st July, 2014, for LDCE to be conducted for Assistant Commandant (GD). This letter also made reference to earlier LDCE conducted for Assistant Commandant (GD) stating the "same procedure had been adopted". Ministry of Home Affairs was required to clarify whether weight would be a ground for disqualification at the PST stage or the medical examination stage. Another clarification sought was, whether an appeal would lie before a Review Medical Board, which would consider cases of error of judgment. The letter indicated that the clarifications were required for disposal of the representations or appeals of the candidates.

16. Ministry of Home Affairs vide letter dated 13th October, 2014 clarified that the weight would be considered for disqualification at the PST stage. Another letter dated 14th October, 2014 followed reiterating the said position. It was also stated that the decision of the Appellate Authority would be final and no second appeal would lie.

17. Consequent to the said clarification, the Assistant Director vide letter dated 14th October, 2014, had asked CAPFs to direct candidates disqualified in PST due to weight to report to Appellate Authority on 21st October, 2014 for re-measurement of weight.

18. One hundred and three (103) candidates, who were disqualified on the ground of being overweight in the PST, were recalled for weight measurement on 21st October, 2014. On this occasion, sixty six (66) candidates were declared qualified, twenty three (23) were declared disqualified and fourteen (14) had absented.

19. Thereafter, results of paper-III written examination in respect of the qualified candidates, three hundred and thirty seven (337) in number, including sixty six (66) who had qualified PST on 21st October, 2014, were declared. Nine (9) candidates did not qualify in paper-III. The successful candidates, three hundred and twenty eight (328) in number, were called for interview. One candidate did not report for the interview. Thereafter, medical examination of the candidates was conducted by the concerned CAPFs in the respective hospitals. Two hundred and seventy (270) candidates were declared 'fit', fifty five (55) were declared as 'unfit' and two (2) had absented. On review medical examination conducted by the concerned CAPFs in the respective hospitals, forty four (44) candidates were declared 'fit'. Accordingly, three hundred and fourteen (314) candidates were declared as provisionally selected for the post of Assistant Commandant (General Duty) in the LDCE 2013-2014. The service wise break-up of these candidates, who had qualified, is as under:-

“

SI No.	Name of Force	Candidates declared fit in Medical
1.	SSB	22
2.	BSF	183
3.	CRPF	91
4.	ITBP	18
Total		314

”

The total number of vacancies being less, Force wise merit list was prepared. The break-up of the said list is as under:-

“

SI No.	Name of Force	Vacancy				Provisionally Selected				Shortfall
		Gen	SC	ST	Total	Gen	SC	ST	Total	
1.	SSB	06	02	01	09	06	01	01	08	01 SC
2.	BSF	52	09	04	65	52	09	04	65	Nil
3.	CRPF	11	02	01	14	11	02	01	14	Nil
4.	ITBP	07	01	02	10	07	01	01	09	01 ST
Total		76	14	8	98	76	13	7	96	02

”

One Scheduled Caste category vacancy in Sashastra Seema Bal and one Scheduled Tribe category vacancy in Indo-Tibetan Border Police Force could not be filled due to non-availability of eligible candidates from the respective reserved categories.

20. The result prepared by the Nodal Agency was sent to the Ministry of Home Affairs for according approval. Ministry of Home Affairs vide letter dated 19th March, 2015 observed that the SOP had detailed the Appellate Authority to dispose of the appeals on the same date. The Appellate Authority should not have conducted re-weighment of disqualified candidates on 21st October, 2014 whereby sixty six (66) candidates were declared as qualified. These sixty six (66) candidates, contrary to the SOP, were given 25 days' time to reduce excess weight instead of disposing of the appeal on the same date. As this letter is of some importance, we would like to reproduce the same:-

“2. The matter has been examined in accordance with Standing Operating Procedure-2014 on the subject and observed following:-

i) As per SOP, for conduct of PST & PET senior most Commandants will be the Presiding officer. Besides one DIG will be detailed as Appellate Authority at PST/PET venue to dispose of PST/PET appeal, if any of candidates on the same day.

ii) Physical Standard Test (PST) of 376 candidates was conducted on 24.09.2014. Out of 376 candidates, 105 were declared disqualified/absent. On 21.10.14 the Appellate Authority conducted re-measurement of 103 candidates who appealed against disqualification in weight and declared 66 candidates qualified after more than 25 days contrary to the instructions provided in SOP for disposal of the appeal on the same day. Thus the disqualified candidates were given more than 25 days time to correct their deficiency in weight instead of disposing the appeal on the same day.

3. SSB is requested to re-examine the issue keeping in view above observations and submit revised result and final merit list as per SOP on subject immediately please.”

21. In spite of the objections raised by the Ministry of Home Affairs, results were re-submitted by the Nodal Agency on 30th March, 2015 for according approval. Ministry of Home Affairs, again declined approval on policy ground.

22. In view of the repeated rejection by the Ministry of Home Affairs, the Appellate Authority and the Board of Officers for Assistant Commandants (LDCE) had supplementary proceedings and new results were prepared enlisting candidates who were successful and had been declared qualified in the PST measurement as on 24th September, 2014. In other words, sixty six (66) candidates, who were

initially declared as disqualified in the PST on 24th September, 2014 and were declared as qualified on 21st October, 2014 were excluded even if they had secured better marks and were higher up in the order of merit. As a consequence, twenty (20) candidates who were in the earlier select list sent vide letter dated 19th March, 2015, were treated as disqualified and were replaced by eighteen (18) candidates who were initially lower down in the merit list. The deficiency had increased by two because of the unfilled vacancy of one Scheduled Caste and Scheduled Tribe candidate in Sashastra Seema Bal and Indo- Tibetan Border Police Force respectively. The results declared by the Nodal Agency were forwarded to the respective CAPFs.

23. This has prompted the petitioners to file the present writ petition. We may note here that Gouranga Mandal, who belongs to Scheduled Caste category, was treated as disqualified as he was declared overweight in the PST held on 24th September, 2014. However, he was found to be within the permissible weight in the re-measurement done on 21st October, 2014.

24. This brings us to the core issue, i.e. whether or not the re-weighment done on 21st October, 2014 was in accordance with law. We have quoted the letter of the Ministry of Home Affairs dated 19th March, 2015, which recorded that re-weighment on 21st October, 2014 by the Appellate Authority was contrary to the SOP which required the Appellate Authority to conduct re-weighment on the same date. This delay by the Appellate Authority in conducting the review PST had given undue advantage and benefit to the disqualified candidates, who had more than 25 days to correct and reduce their weight.

Appeals should have been disposed of on the same date i.e. 24th September, 2014. In support of the said reasons, counsel for the respondents has highlighted that the Appellate Authority had disposed of the appeals preferred by sixty six (66) candidates on 24th September, 2014. Others including the petitioners, it was submitted, deliberately did not attend the appellate proceedings, for they were overweight and would have certainly been disqualified. Re-measurement chart dated 21st October, 2014 would show that there was drastic reduction in weight, as high as 8 to 10 kgs. in some cases. This is abnormal and significant.

25. The petitioners, on the other hand, have submitted that on 24th September, 2014, the Appellate Authority was confused and did not conduct the proceedings which was why they had left from the venue. Their appeals had remained pending and undisposed.

26. We find that there is substantial merit in the contention raised by the petitioners. We have already noted the first communication sent at the behest of the Appellate Authority to the Ministry of Home Affairs on 24th/25th September, 2014, to clarify whether weight with reference to age was to be checked on the date when the PST was undertaken i.e. 24th September, 2014 or on the cut-off date fixing the upper age limit as thirty five years, viz. 1st August, 2014. The clarification by the Ministry of Home Affairs, that weight was to be checked on the current date when PST was undertaken by considering the candidates' age on that date itself, was received on the next date, i.e. 25th September, 2014. Not only this, the Appellate Authority was also confused and unsure whether weight was to be taken at the time

of PST or was to form part of the medical examination. This is apparent from the letter dated 1st October, 2014 written by the Assistant Director (Rectt.), Sashastra Seema Bal to the Ministry of Home Affairs who had responded to this letter vide communication dated 13th October, 2014, stating that the candidates, who had failed to meet the weight criteria would be disqualified at the PST stage itself.

27. The petitioners have also filed on record several letters/representations made by them on 25th September, 2014, highlighting the confusion which had prevailed on 24th September, 2014. The Appellate Authority had assembled at 4 P.M. However, the Board of Officers had announced that no review of weight would be undertaken as the weight had been taken and ascertained with modern gadgets. Candidates were told to leave. Several candidates had waited till 7.30 P.M. and when they did not receive any response from the Board of Officers, they left the campus. On the following day, they had learnt that review PST was conducted after 8 P.M. Some candidates claim that they had approached the Appellate Authority on 25th September, 2014 for review as was done in the case of other candidates, but the Appellate Authority did not consider their prayer.

28. The official respondents in the counter affidavit have contested the said assertion by again referring to the fact that the Appellate Authority had examined sixty six (66) candidates and twenty eight (28) candidates were declared as qualified. However, a candid and forthright admission is to be found in the counter affidavit filed by the official respondents in W.P. (C) 7166/2016 filed by Gouranga Mandal. In this affidavit, the official respondents have admitted as follows:-

“4. I state that on 24-09-2014, more than 100 appeals had been made by the candidates to Appellate Authority. That the Appellate Authority could not dispose off their appeals on the same day as it was fag end of the day till completion of PST formalities quite dark and many candidates who had appealed had already left the venue. It is submitted that the SOP was silent regarding the crucial date for measurement of weight.”

29. This factual assertion is also corroborated by contemporaneous documents, i.e. the communication addressed at the behest of the Appellate Authority on 24th September, 2014 to the Ministry of Home Affairs quoted in paragraph 13 above. We would also like to refer to the second clarification letter dated 1st October, 2014 written by the Deputy Inspector General (Trg.), FHQ, to the Ministry of Home Affairs, which reads:-

“PET/PST Board conducted PST on 24-09-2014 in which 103 candidates were found not qualified in weight. Candidates not qualified in PST made appeals with request to re-consider their weight on the actual date and time when the measurement was being done. As specific instructions on the matter were not available and SOP was also silent on the issue, clarification was sought from FHQ vide Fax Message No. Nil dated 24-09-2014.

FHQ, SSB vide Fax message No.269/RC/SSB/AC(LDCE)/2014/4125 dated 24-09-2014 intimated that matter would be clarified from MHA as SOP was silent on the issue and clarification as and when received from MHA shall be intimated.

On 25-09-2014 at 1800 hours, FHQ SSB vide Fax message No.269/RC/SSB/AC (LDCE)/2014/4126 dated 25-09-2014 clarified that physical measurements were to be done with reference to actual date and time when the measurement was being done.

In the absence of clarification, appeals of candidates could not be considered on the same day of PST i.e. 24-09-2014 and many of candidates who had preferred appeal left the recruitment venue on 24-09-2014.

In view of the above and in order to give fair opportunity to all the candidates who appealed to Appealed Authority in the recruitment process, it is proposed to re-call all 103 not qualified candidates in PST for re-measurement by the appellate authority at 25th Bn, Delhi on 16-10-2014. ”

This communication does show that the Appellate Authority was unclear about the procedure to be followed as per the SOP. It was accepted that several candidates had left the venue on 24th September, 2014. Though not directly, it was admitted and stated that to give fair opportunity to the one hundred and three (103) disqualified candidates, it was proposed to re-call them for re-weighment.

30. All candidates being in service, the respondents accept, had undergone the annual medical examination, in which they were weighed on the same criteria/standard, as was required for the post of Assistant Commandant. It is not the case of the official respondents that the petitioners were then found to be overweight. Thus, the petitioners had met the weight requirement stipulation to be in shape-I. The said requirement was not a new or first time stipulation, which was required to be met in the PST.

31. Lastly, we would like to deal with the contention regarding the difference in weight recorded on 24th September, 2014 and on 21st October, 2014. Substantial difference in weight is to be similarly noticed in weight recorded by the PST Board and the Appellate Board on 24th September, 2014 in as many as twenty five (25) cases out of

sixty six (66) cases. In these cases, on re-weighing, weight of almost all candidates had come down. In two cases, the weight had come down by 5.2 kgs. and 4 kgs. In four cases, weight had come down by 3 kgs. Substantial variation of this nature is somewhat perplexing and difficult of understand, and it reflects lapses and faults at the first stage of PST.

32. The submission of the official respondents that there was no weight variation, albeit the Appellate Authority had applied the correct criteria to measure weight with reference to the age of the candidate when the PST was undertaken on 24th September, 2014, is factually incorrect. There are two-fold reasons for the same. As noticed above, the Appellate Authority as on 24th September, 2014 was baffled and unclear as to the age and weight criteria to be applied. Secondly, had the Appellate Board applied the criteria of age and weight as on the date of measurement, results of sixty six (66) candidates declared by the Appellate Authority on 24th September, 2014 would have been differently worded. The details or chart would not have recorded the reduced weight on the basis of re-measurement in twenty eight (28) cases, who were declared as qualified. As noticed above, in two cases weight had come down by 5.2 kgs and 4 kgs and in four cases, by 3 kgs. The reduction was substantial.

33. Nevertheless, we are confronted with a situation, where on re-weighment of 103 candidates on 21st October, 2014, the weight reduction was more than 10 kgs in some cases and in other cases as high as 8-9 kgs. This manifestly extraordinary weight reduction in a rather short span of time, does support the assertion of the

respondents. This list of one hundred and three (103) candidates includes thirty eight (38) candidates who were reweighed on 24th September, 2014 by the Appellate Authority but were found to be overweight. Thirty eight (38) candidates cannot be given relief, except if the wrong age and weight criteria was applied and on correct criteria they had qualified.

34. Given the aforesaid mess and confusion, the official respondents would have to find a just and fair solution to the problem which is largely on account of fault and failure of Appellate Authority to apply the correct criteria and lack of understanding about the SOP. The Ministry, it is obvious to us, was not conscious and was unaware of the confusion and incertitude that had prevailed on 24th September, 2014. Proper guidance and information was not available and forthcoming. Many candidates who had filed appeals and sought re-weighment were left bewildered and denied benefit of appellate remedy. We do not think that the petitioners should suffer where the appeals had remained undecided in the uncertainty and confusion. Yet it should be ensured that those who were overweight on 24th September, 2014 should not be bestowed benefit, so as to deny appointment to others who were not overweight.

35. In the aforesaid circumstances, we would direct the Ministry of Home Affairs in consultation with the CAPFs and in particular Sashastra Seema Bal to re-examine the entire issue and devise a formula which is just and fair to the candidates, who were declared as disqualified on account of being overweight on 24th September, 2014 and had filed appeal, which were not disposed of on 24th September,

2014. While considering and devising the formula or the criteria, the respondents would keep in mind that the Appellate Authority on re-weighment on 24th September, 2014 had found that there was difference in weight of almost 4-5 kgs in some cases and lesser deviation in other cases. Thus, there were erroneous and wrong weight recording by the PST Board, which is quite apparent. They will also keep in mind and take into consideration the annual medical report of the candidates before and after the PST examination. Obviously, in cases where wrong age and weight criteria was adopted, the correct criteria would be applied. The last verification exercise would be also undertaken in cases where appeals were disposed of on 24th September, 2014. In other cases where appeals were not disposed of, and where the deviation in weight was not substantial, candidates could be considered and treated as fit, subject to good grounds or reasons to hold otherwise. Cases where weight difference is substantial between the two dates i.e. 24th September, 2014 and 21st October, 2014, the candidates may have to be treated as unfit unless there are good and cogent reasons given by the candidates.

36. Counsel for the respondents during the course of arguments had submitted that in the recruitment process, the authorities could rectify and correct any error or mistake in the selection list. The beneficiaries of illegalities or irregularities cannot claim any right to appointment. Issue of wrong selection list is not a justification to deny appointment to meritorious and selected candidates. Reference was made to decisions in *Man Singh Vs. Commissioner, Garhwal Mandal, Pauri and Others*, (2009) 11 SCC 448, *Union of India and Ors. Vs. Rajesh*

P.U., Puthuvalnikathu and Anr., (2003) 7 SCC 285, *UOI and Ors. Vs. N.R. Banerjee & Ors.*, (1997) 9 SCC 287 and judgment of the Bombay High Court in *Desale Kiran Sureshrao; Kashid Vijay Balwant; Pathan Shahidkha Basaharathka; Kadu Ramdas Anantha Vs. State of Maharashtra; Pune Municipal Corporation Shivaji Nagar*, 2014 Law Suit (Bom) 2199.

37. In the facts of the present case, these decisions are of no help and provide no assistance to the respondents. There was an error and lapse by the Appellate Authority. In fact, even the PST Board erred by applying the wrong criteria on the question of weight. The Appellate Authority was equally confused and also did not decide the appeals on 24th September, 2014. As ignorance and muddled understanding prevailed, candidates who had filed appeals were not given proper guidance, and were asked to go away. The error was that of the respondents. The said error has to be corrected and rectified so that no prejudice or harm was caused to the candidates who met the weight criteria. The effort is not to declare an unfit or disqualified candidate as fit or qualified, but to ensure that no injustice or harm is done to those who would have qualified, but because of the lapses and errors on the part of the Appellate Authority/PST Board.

38. As noticed above, there was substantial difference in the weights taken by the Appellate Authority on 24th September, 2014, which is indicative of error made by the PST Board. Ministry of Home Affairs has also committed an error in their decision as they did not examine full and relevant facts before giving their opinion and

direction vide letter dated 19th March, 2015. This has denied and deprived qualified "fit" candidates from being considered.

39. The writ petition is accordingly disposed of, with the following directions:-

1. Cases of the candidates, who were re-examined by the Appellate Authority on 24th September, 2014, would not be entitled to benefit of revised results dated 24th October, 2014. However, their cases would be re-examined to ascertain whether the correct age and weight criteria was applied and those qualifying and meeting the eligibility norms would be cleared.
2. Similarly, for other candidates, the correct age and weight criteria would be applied and candidates entitled to benefit would be cleared.
3. Other candidates, whose appeals were not considered or disposed of by the Appellate Authority on 24th September, 2014, would be examined on the basis of formula to be devised by the Ministry of Home Affairs in consultation with the CAPFs and in particular, Sashastra Seema Bal. While devising the formula or criteria, the respondents would keep in mind the following:-
 - i. Weight difference between PST examination on 24th September, 2014 and 21st October, 2014.
 - ii. The weight of the candidate as recorded in the Annual Medical Examination before and after PST examination

on 24th September, 2014/21st October, 2014. The time difference and other attending circumstances.

- iii. The Appellate Authority on 24th September, 2014 had found that there was difference of weight 4-5 kgs in some cases and lesser deviation in other cases.

40. Cases of the petitioners would be accordingly processed. In case, they are higher up in the merit list, they would be issued offer of appointment letters in accordance with law and those lower down in the merit list would have to forgo their appointments. The petitioners would not be entitled to back wages but would be treated as notionally appointed from the date their immediate junior in the concerned CAPF was so appointed and the date of appointment and increments payable will be accordingly fixed.

41. In case any party has any grievance, they would be entitled to challenge and question non-appointment or appointment resulting in deprivation of appointment etc. in accordance with law.

42. In the facts of the present case, there will be no order as to costs.

**Sd/
(SANJIV KHANNA)
JUDGE**

**Sd/
(NAVIN CHAWLA)
JUDGE**

**September 13th, 2017
NA**