

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.901 of 2017

In
Civil Writ Jurisdiction Case No.290 of 2016

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Murari Kumar @ Muraree Kumar, Son of Shri Ram Pravesh Prasad, resident of Village - Kokarsa, P.O. - Bhagwanpur, P.S. - Hulasganj, District - Jehanabad.

... .. Appellant/s

Versus

1. The Union of India through the Director General, Border Security Force HQR DG BSF Block No. 10 CGO Complex, Lodhi Road, New Delhi 110003.
2. The Director General, Border Security Force HQR DG BSF Block No. 10, CGO Complex, Lodhi Road, New Delhi 110003.
3. The Inspector General, Head Quarter North Bengal, Frontier Border Security Force Kadam Tala, District Darjeeling, West Bengal.
4. The Commandant 09 BN BSR (NDRF) Bihta, Patna.
5. The Assistant Commandant (MIN) Border Security Force HQR North Bengal Frontier Kadam Tala, District Darjeeling, West Bengal.
6. The Senior Medical Officer, Border Security Force Khangra BSF Campus Kishanganj, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kishore Kumar Thakur, Advocate
For the Respondent/s	:	Mrs. Nivedita Nirvikar, CGC
		Mrs. Punam Kumari Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-12-2018

Re: I.A. No. 6457 of 2018

Heard Shri Kishore Kumar Thakur, learned counsel for the appellant and Mrs. Nivedita Nirvikar, for the respondents.

2. The appeal is reported to be delayed by 14 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has



been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 6457 of 2018 stands allowed accordingly.

Re: L.P.A. No. 901 of 2017

Heard Shri Kishore Kumar Thakur, learned counsel for the appellant and Mrs. Nivedita Nirvikar and Mrs. Punam Kumari Singh for the respondents.

2. Learned counsel for the appellant submits that the issue was very trivial, namely, consideration of the appellant for being recruited as a Constable, which has been denied to him only because there was an alleged shortage in the height of the appellant by 1 cm. Learned counsel submits that this shortage was even otherwise liable to be ignored inasmuch as the appellant did not suffer from any other infirmity.

3. The question of extending our powers under Article 226 of the Constitution of India so as to stretch the height which has been recorded by the authorities would be in violation of Article 16 of the Constitution of India as the equality of opportunity in matters of employment have to be viewed from the point of view that if this contention is accepted, then such candidates who were even short of a lesser length would be denuded of their opportunity to participate in the selection and get recruited. This principle, therefore, on equity



cannot be applied on the facts presently involved as equity has to follow law and not otherwise.

4. Sri Thakur, learned counsel for the appellant then contended that the appellant was entitled to the relaxation keeping in view the recital contained in Board's proceedings, that was conducted between 11th of April and 22nd of April, 2011. He has invited the attention of the Court to Annexure R-1 to the counter affidavit filed on behalf of the respondents in this appeal. The recital against Clauses A, B and C read with Clause 4 and the Chart appended thereto has been stressed upon. Clauses A, B and C are extracted herein under :

“A) List of medically **“FIT” & “UNFIT” candidates belongs to General category of Naxal affected area of Bihar state- Appendix – A & A-I.**

B) List of medically **“FIT” & “UNFIT” candidates belongs to OBC category of Naxal affected area of Bihar state- Appendix – B & B-I.**

C) List of medically **“FIT” & “UNFIT” candidates belongs to SC category of Naxal affected area of Bihar state- Appendix – C & C-I.”**



Clause 4 of the same document together with Chart 3 is
extracted herein under :

“4. Candidates who were entitled for relaxation in
age and other measurements but not availed the same are
identified by “NAR” in remarks column against each.

BIHAR

		FIT	UNFIT		
Category	Normal Area	Naxal affected area	Normal Area	Naxal affect ed area	
Gen	-	137	-	282	
OBC	-	107	-	125	
SC	10	54	13	88	
Total	10	298	13	495	

5. On the strength thereof, the attention of the Court
was drawn to the list of candidates belonging to the naxal affected
area, who were stated to be medically unfit and of the S.C.
category. In the said list, the name of the appellant appeared at Sl.
No.56 and Sri Thakur submits that it stands admitted in the said
document that the appellant belongs to the naxal affected area of
the State of Bihar. Consequently, being of the Scheduled Caste
category, he was entitled to such relaxation, particularly in the
physical standard measurement of height for the purpose of being
selected.



6. The contention is that the aforesaid recital in the proceedings of the Board's meeting amounts to an acceptance of the status of the appellant of being a Scheduled Caste candidate of the naxal affected area of the State of Bihar and consequently, the mentioning of the aforesaid category implies that the appellant was entitled to such relaxation.

7. We have also perused the stand taken in the counter affidavit of the respondents in the writ petition and the reply given by the appellant-petitioner in his rejoinder to the writ petition. Paragraph 3 thereof deserves to be extracted and which is quoted hereinunder :-

“That with regard to the statements made in paragraph No. 4 and 6 of the Counter-affidavit under reply, it may be relevant to refer to the Medical Board Proceedings, appended as Annexure- R-1 to the counter-affidavit under reply. Clause 4 of the said proceedings **impliedly demonstrates** that the petitioner being an SC category candidate and belonging to Naxal affected area was **entitled to relaxation in age and other measurements.**”

Thus, on the issue of entitlement of relaxation, the document, which has been relied on by the appellant, is the abovementioned Board proceeding.

8. Learned counsel for the respondents has produced a copy of the notification of the Government of India, whereunder the advertisement was issued for such recruitment dated



15.09.2010. The provision for relaxation in the minimum standard in height is contained in the said advertisement, which is as follows :

“ PHYSICAL STANDARDS – CONSTABLE (GD)

- | | |
|--------------|---|
| (i) Height | 170 Cms |
| (ii) Chest | Unexpanded -80 Cms |
| | Expanded - 85 Cms |
| (iii) Weight | Proportionate to height and age as per Medical standards. |

NOTE:-

The minimum standard in **height** may be relaxed to **165 Cms** and **chest unexpanded to 78 Cms and expanded to 83 Cms** in respect of candidates falling in the categories of Garhwalis, Kumaonis, Gorkhas, Dogras, Marathas and candidates belonging to the State of Sikkim, Nagaland, Arunachal Pradesh, Manipur, Tripura, Mizoram, Meghalaya, Assam, Himachal Pradesh, Kashmir and Leh & Ladakh regions of J & K.

The minimum standard in **height** may be relaxed to **162.5 Cms** and chest **unexpanded** to 76 Cms and **expanded to 81 Cms** in respect of **Scheduled Tribes** of all States and UTs.

Govt. has reduced the requirement of height of candidates of **Tirap and Changlang** districts of Arunachal Pradesh belong to **Scheduled Tribes** from **162.5 Cm to 157.5 Cms** for the recruitment being made in 2010 only.

Govt. has reduced the requirement of height of candidates of **Mizoram State** belonging to **Scheduled Tribes** from 162.5 to 160 Cms with effect from 1st Aug'2010 for a period of one year.”

9. Thus, the eligibility for relaxation in the physical standard of height is clearly confined to the categories referred to in the advertisement, as extracted herein above.

10. The contention of the learned counsel for the appellant that since the appellant belongs to a naxal affected area



of the State of Bihar and is a Schedule Caste candidate, therefore, he is entitled to the same relaxation, does not appear to be borne out from the provisions under the advertisement and such an implied inference cannot be drawn on the basis of the Board’s proceedings inasmuch as there is no such indication of the extension of such relaxation to a candidate belonging to the naxal affected area of the State of Bihar, to which category the appellant claims himself to be belonging to.

11. In the absence of any such material which would entail us to extend any such benefit, even otherwise the appellant has been unable to make out any case for interference. The appeal is, accordingly, consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/NH

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

