

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6345 OF 2018

Shri Shyamkumar S/o. Pandurang Wankhede,
(Sub. Inspector Ministerial, Central Reserve
police force, No.881530143), Aged Above- 54 years,
Occu- Service, R/o Plot No.46, Nilkant Baba
Vishwanath Nagar, Issasani, Waghdhara,
Vanadongari, Hingana, Dist. Nagpur. **PETITIONER**

...V E R S U S...

1. The Union of India, Through the
Secretary, Ministry Home Affairs,
New Delhi.
2. The Director General of Police,
Directorate General, Central Reserve
Police Force, CGO Complex,
New Delhi.
3. The Deputy Inspector General of Police,
Central Reserve Police Force, Golf Course
Area, Ajmer, Rajasthan.
4. The Director General of Police,
Directorate General, Central Reserve Police
Force, MIDC, Hingana, Dist. Nagpur. **RESPONDENTS**

Mrs. Rani G. Nitnaware, Advocate for Petitioner.
Mrs. Mugdha R. Chandurkar, Advocate for Respondents 1 to 4.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**
DATE: **2nd MAY, 2023.**

ORAL JUDGMENT: **(PER ROHIT B. DEO, J.)**

Petitioner who is superannuated from the Central Reserve Police Force (CRPF), is assailing, *inter alia*, the communication-cum-order dated 04-7-2018 (Annexure-A) whereby the petitioner is not extended the protective umbrella of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act of 1995) on the premise that all categories of posts of “Combatant Personnel” of the CRPF are exempted from the provisions of Section 47 of the Act of 1995 in view of the Government of India Notification dated 10-9-2002. The petitioner is held ineligible for promotion to the rank of Assistant Commander (Ministerial) on the premise that he does not satisfy the medical eligibility condition of SHAPE-1 category.

2. The litigation has a chequered history.

(a) The petitioner was appointed in the 3rd Battalion of CRPF as Assistant Sub-Inspector (Clerk) on 08-06-1988.

(b) The petitioner was hospitalized at the Base Hospital-II of the CRPF of Hyderabad from 04-7-1999 to 19-7-1999 and was diagnosed as suffering from “Schizoaffective Psychosis”.

(c) The petitioner was boarded out vide order 12-6-2000 on the ground that he was suffering from 80% mental disability.

(d) The petitioner challenged the order of removal from service in Writ Petition 4709/2007 filed at the High Court at Guwahati.

(e) The High Court quashed the order of removal by judgment dated 05-6-2012 and directed that the petitioner be reinstated in service with continuity and back-wages.

(f) The judgment of the High Court of Guwahati was assailed in Special Leave Petition (Civil) CC 14440/2013. The Apex Court was pleased to permit the Union of India to seek review.

(g) Union of India filed review petition before the High Court at Guwahati, which came to be dismissed on 04-4-2014.

(h) Union of India approached the Apex Court assailing the order of the High Court at Guwahati dismissing the review. The Apex Court, however, dismissed the challenge and upheld the order of the High Court.

(i) The petitioner was reinstated in service on 20-1-2016 and was transferred to the Nagpur Division.

(j) A list of promoted candidates was published by respondents 1 and 2 on 19-1-2017. According to the petitioner, considering his placement in the seniority list, he was entitled to promotion from the post of Subedar Major/Inspector (Ministerial) to Assistant Commandant (Ministerial) and was shocked to know that he was excluded from the list of promoted candidates.

(k) The petitioner refers to the seniority lists published on 10-1-2017 and 28-2-2018, and submits that he was erroneously excluded from the said lists. The petitioner then refers to the seniority list prepared for the promotion to the vacancies of the year 2017-2018 and submits that his name is recorded at Serial 4, and in the general list the petitioner is at Serial 5.

(l) The petitioner submits that he addressed several representations requesting that his claim to the promotional post be considered on the basis of seniority. It is further submitted that instead of deciding the representations, the petitioner was directed to appear before the Medical Board. The petitioner did appear before the Medical Board and was placed in the category of SHAPE-III (T-24).

(m) The petitioner is questioning the assignment of the medical category. The petitioner questions the categorization by the Medical Board. The petitioner contends that the High Court at Guwahati recorded finding that he is medically fit. The petitioner submits that in any event, he is protected by the provisions of Section 47 of the Act of 1995, and denial of promotion is contrary to the mandate of Section 20 of the said enactment.

(n) It is on these broad facts that the relief is sought.

3. Affidavit-in-response dated 20-2-2019 is filed on behalf of the respondents which is affirmed by Mr. Sanjay Kumar, Deputy Inspector General of Police, CRPF.

(a) It is submitted that the petitioner was appointed as Assistant Sub-Inspector (Ministerial) on 08-6-1988 and was promoted to the rank of Sub-Inspector (Ministerial) with effect from 09-10-1996. It is submitted that in 1994 the petitioner was diagnosed as suffering from “Schizoaffective Psychosis” and he was treated at various CRPF and Civil Hospitals. The Medical Board found the petitioner unfit, which finding culminated in order dated 12-6-2000 invalidating out from service.

(b) Elaborate reference is made to the litigation before the High Court at Guwahati, and the Apex Court, and it is submitted that in compliance with the judicial orders the petitioner was reinstated in service by order dated 20-1-2016. It is submitted that the intervening period is regularized as duty for all purposes.

(c) It is further submitted that after the reinstatement, the Unit Medical Board categorized the petitioner as SHAPE-I. The petitioner submitted application dated 06-2-2016 requesting the promotion due be released in view of the seniority.

(d) It is submitted that the case of the petitioner was examined, and it was found that the categorization as SHAPE-I by the Unit Medical Officer was unilateral. Inasmuch as, the order of invalidating out from service was in view of the opinion of the Medical Board, the petitioner was examined by the Board of Medical Officers on 15-4-2017 and was assigned category SHAPE-III (T-24).

(e) It is emphasized that when the petitioner was invalidated out, SHAPE-I Policy was not in force. Medical Categorization Policy was introduced on 20-12-2000 and SHAPE-I category, which is essential condition for promotion, was introduced on 28-4-2003. It is further submitted that all promotions for Combatised Ministerial Staff are released on fulfilling the eligibility criterion of SHAPE-I medical category.

(f) A reference is made to the representations preferred by the petitioner and to the findings of the Review DPC which assessed the petitioner "Fit" for promotion to the rank of Inspector (Ministerial) subject to regaining the medical category SHAPE-I. As on 18-12-2017 the medical

category of the petitioner was SHAPE-SIII (T-24). The review medical examination was conducted on 04-8-2018 and the petitioner was categorized as SHAPE-III (T-24). Since the petitioner was not in the SHAPE-I medical category, he was not found eligible for promotion to the rank of Inspector (Ministerial).

(g) The affidavit-in-response then refers to the application dated 24-5-2018 preferred by the petitioner seeking the benefit of Section 47 of the Act of 1995. It is submitted that the petitioner was apprised of the exemption of all posts of Combatised Personnel of the CRPF from the provisions of the said Section. It is ascertained that since the petitioner was holding the Combatised post, the provisions of Section 47 of the Act of 1995 do not come into play.

(h) Broadly, the stand of the respondents in the affidavit-in-response is that since the provisions of the Act of 1995 do not apply, and the petitioner did not satisfy the eligibility condition of medical category SHAPE-I, the denial of promotion is justified.

(i) The respondents then refer to the provisions of the Rights of Persons With Disabilities Act, 2016 (Act of 2016) and submit that Section 20 is the provision which corresponds with Section 47 of the Act of 1995. It is further submitted that inasmuch as the Notification dated 10-9-2005 which is issued under the Act of 1995 exempts the Combatants in CRPF, Section 20 of the Act of 2016 would not apply.

4. The petitioner filed rejoinder affidavit dated 14-10-2020 which emphasizes that the ministerial post holders are not expected to wield or operate arms and ammunition much less to be deputed on combat duty. The respondents have filed sur-rejoinder dated 07-1-2021 which to a certain extent is repetitive.

5. Additional affidavit dated 12-9-2022 is filed bringing on record the Government Notification dated 18-8-2021 which exempts all categories of posts of Combatant Personnel of the Armed Police Forces including the CRPF.

6. An additional affidavit dated 11-10-2022 is filed on behalf of the respondents. It is emphasized that the petitioner was working in Combatised post. In view of the policy decision of the Government of India dated 28-2-1981, the civilian posts (Non-Gazetted) Ministerial Staff were Combatised by conversion, after seeking mandatory option. It is submitted that after combatisation, the personnel are governed under the CRPF Act, 1949 and the Rules framed thereunder. Combatised Ministerial Staff is obligated to wear uniform, undergo basic training, to undergo musketry training and annual range classification firing and are required to maintain SHAPE-I medical category for promotion. It is submitted that there is no non-combatised post available in CRPF. A reference is made to uniform allowance and other facilities including washing allowance, ration money, free accommodation and enhanced earned leave. It is submitted that in exercise of powers under Section 18 of the CRPF Act and in supersession of the earlier Rules, the CRPF Sub-Inspector (Ministerial), Inspector (Ministerial) and Subhedar Major (Ministerial) Recruitment Rules, 2010

(Recruitment Rules 2010) are framed which mandates that the promotion shall be subject to the eligibility condition of medical category SHAPE-I.

7. The respondents then refer to the amendment to the Recruitment Rules of 2010 and emphasize that the promotion is subject to the satisfaction of the eligibility of medical category SHAPE-I.

8. The respondents then refer to the CRPF Combatised Group "C" Ministerial Posts Recruitment Rules, 2021 which govern the method of recruitment, age limit, qualifications, etc. The respondents emphasize that for the post of Assistant Sub-Inspector (Ministerial) for promotion from Head Constable (Ministerial), Post of Assistant Sub-Inspector (Ministerial) SHAPE-I category is prerequisite.

9. The respondents then refer to the CRPF Assistant Commandant (Ministerial) Group "A" Post Recruitment Rules, 2011 and particularly to Clause-5 thereof which provides that

the medical eligibility is SHAPE-I category. Respondents then refer to the Recruitment Rules concerning the Post of Deputy Commandant (Ministerial) and Assistant Commandant (Ministerial) Recruitment Rules, 2017.

10. The endeavour of the respondents is to highlight that SHAPE-I category is a prerequisite for promotion to a Combatised post.

11. The petitioner has filed affidavit dated 29-11-2022 and we may extract paragraphs 5 to 10 thereof.

*“5. It is submitted that the petitioner is holding a combatised (Ministerial) post which is Non-Gazetted (Civilian) as per the establishment manual of Central Reserve Police Force, 1976, the petitioner has assigned the duties of all the executive personnel which is not related with the arms and forces, but equivalent to the post of executive personnel (general duty), the copy of establishment manual of Central Reserve Police Force, 1976 is annexed as **Annexure-BB-4**, which clearly shows that the combatised (Min) staff is not related with arms and force.*

6. *It is submitted that the petitioner is entitled for the promotion of Inspector (Min) in the year 2005 and Assistant Commandant in the year of 2015, and Deputy Commandant (Min) in the year 2018, and petitioner cannot be discriminated and denied promotion on the ground of medical categorization as it is contrary and ultra vires to the provisions of Section 20(3) of Rights of Persons with Disabilities Act, 2016.*

Parawise reply to the submission filed by the respondent in affidavit.

7. **Reply to Para No. 1 to 4** – *It is not disputed fact that the post of Sub-Inspector (Min) 03, Inspector (Min), Assistant Commandant (Min) and Deputy Commandant (Min) is the combatised posts are available in CRPF and the petitioner is also recruited in combatised (Min) i.e. Assistant Sub-Inspector (Min) and avail combatised posts pay and allowances in his services.*

8. **Reply to Para No. 5 to 7** – *It is the factual position that, the Government of India vide MHA letter No.O-IV-57171 (Adm—3)/FP/IV dated 28-2-1981 the civilian posts (Non-Gazetted) ministerial staff were conversed in combatization posts, the copy of letter dated 28-2-1981 issued by Government of India Ministry of Home Affairs to the Director General, CRPF Delhi is annexed as **Annexure-BB-5**. As per the letter clause-d all other concession and benefits presently available as may be given from time to time to the member of the force shall be equally applicable to the combatised rank. That as per the CRPF Act 1949 and Rule 1955 the combatised (Min) staff has to wear uniform*

twice in a week fro half day i.e. on Monday and Friday from 09-00 a.m. to 01.00 p.m. and the basic training provided for period 3 months, but it is denied that the annual range classification will be allowed to the combatised (Min) staff, the petitioner has already stated in his submission that the standing order of the administration cannot override the settle principle of law, therefore SHAPE-I medical category for gaining promotion is abolished by the Section 20(3) of Right of Persons with Disability Act, 2016.

9. **Reply to Para No.8 to 13** – *The submission made in these paras only in respect of the rules and regulations of the manual and notification issued by the Ministry of Home Affairs is matter of fact and said rules and regulations and all the notification does not specify that the petitioner is not entitled for due promotion, however in para No.9-a and b, 10, 11, 12 and 13 the submission made by the non-applicant that the post of Inspector (Min) and Subhedar (Min), Assistant Commandant (Min) and Deputy Commandant (Min) in case of requirement by promotion or deputation or absorption grade from which promotion, deputation or absorption to be made subject to medical category shape-I shall be substituted, all the recruitments procedure and rules and regulations and notification introduced by the Ministry of Home Affairs is contrary with the provision of Section 20(3) of Right of Personnel with Disability Act, 2016.*

10. **Reply to Para No.14 and 15** – *The submission made in the paragraphs No.14 and 15 is in respect of the nomenclature, duties and responsibilities of*

persons of combatised (Min) personnel which does not specify that the combatised (Min) staff is related with Arms and Forces their duties and responsibilities are only in respect of administrative work assigned to them as per their rank. The affidavit filed by the non-applicant is only talking about the requirement procedure, but failed to demonstrate and specify the requirement rules of promotion in combatised (Min) staff, hence the entire affidavit does not specify that the petitioner is not entitled for the due promotion, only not gaining SHAPE-I category does not discriminate the petitioner for getting promotion as per Section 20(3) of Right of Persons with Disability Act, 2016.”

12. The respondents have filed an additional affidavit dated 01-2-2023, which is repetitive and broadly reiterates the contentions and the pleas incorporated in the earlier affidavits-in-response.

13. The petitioner then filed another affidavit dated 20-2-2023 endeavouring to explain the distinction between “Combatant” and “Combatised”. We may extract the decisions, which in perception of the petitioner, are significant.

Sr. No.	Combatant	Combatised
1	Meaning – Combatant means :	Meaning – Combatised

	A person who takes part in fighting especially in war.	means : A person essential for good administration.
2	Duties – The Combatant staff posted at border/line of control.	Duties – Combatised Ministerial Staff posted in Group Centre, Duty Battalions, attached Bns. And Training Institute and different dealing assistant etc.
3	The Combatant staffs are deal with Arms and Ammunition.	Combatised Ministerial Staff are not related with the Arms and Ammunition.
4	The Combatants are provided special 1 year training and special training for using fire and arms.	The Combatised Ministerial Staff has provided 3 months training without fire and arms.
5	Combatant staff pay scale is higher than Combatised.	Combatised pay scale is less than Combatant.

14. The respondents have filed affidavit dated 06-5-2023 which is styled as reply to the affidavit filed by the petitioner. It is once again emphasized that the provisions of the Act of 1995 are not applicable to Combatised Personnel. An attempt is made to demonstrate that the distinction between ‘Combatant’ and ‘Combatised’ which the petitioner has highlighted, is untenable and indeed non-existent. A reference is made to the judgment of the Delhi High Court in *Sandeep Singh V. Union of India*.

15. We have heard the learned counsel for the petitioner Mrs. Rani Nitnaware and the learned counsel for the respondents Mrs. Mugdha Chandurkar. The prolix and repetitive pleadings apart, the pivotal issues which arise for our determination are (i) whether in the factual matrix, the petitioner is entitled to the protective umbrella of Section 47 of the Act of 1995 or Section 20 of the Act of 2016. The answer would depend on whether the petitioner is denied promotion **only on the ground of disability** [emphasis supplied]. (ii) whether, if the protection of Section 47 of the Act of 1995 or Section 20 of the Act of 2016 is available, is the protection taken away by the exemption notifications.

16. The record is burdened by the parties filing affidavits, counter affidavits, rejoinders and sur-rejoinders. The respondents have placed on record the recruitment rules, as amended from time to time, which envisage that every combatised post holder shall have to maintain medical category SHAPE-1 in order to be eligible for promotion. It is not even argued before us, by the learned counsel for the

petitioner, that the service conditions do not require that a combatised personnel shall have to be in category shape medical category SHAPE-1 for inclusion in the zone of consideration for promotion. The submissions canvassed by Mrs. Nitnaware center on the difference between 'combatised' and 'combatant'. The endeavour is to demonstrate, that the exemption notifications which speak of 'combatant' do not come into play, inasmuch as the petitioner was not a combatant and was combatised. Mrs. Nitnaware would argue, that while a combatant is required to discharge combat duty, notwithstanding the confusing or similar nomenclature, a combatised employee of the CRPF is not expected to answer the call of combat duty. Mrs. Nitnaware would invite our attention to the 1981 policy which introduces the concept of 'combatised' to emphasis that a combatised employee, which may include Clerks, Accountants, Cook etc. are expected to focus and concentrate on the core duty in the office or elsewhere and are not expected to be deputed in combat situations.

17. Mrs. Nitnaware would argue that inasmuch as any exemption notification is to be strictly interpreted, the word combatant cannot be confused with combatised, and the exemption notifications do not dilute much less obliterate the protective umbrella of Section 47 of the Act of 1995 or Section 20 of the Act of 2016.

18. The submission of Mrs. Nitnaware that exemption notifications will have to be interpreted strictly, and that ordinarily the word combatant cannot be confused with the word combatised, in principle, does appeal to us. However, even if we accept *arguendo*, that the exemption notifications do not apply to a combatised posts, the path to relief is still blocked by a major obstacle, and which is, whether the protection available under Section 47 of the Act of 1995 or Section 20 of the Act of 2016 respectively was available to the petitioner.

19. Section 47 of the Act of 1995 reads thus:

“47. Non-discrimination in Government employments -

(i) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability :

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

We are not required to delve deeper in the broader question whether Section 20 of the Act of 2016 is a corresponding provision. We find that there is no difference in the relevant provision to the extent the protection as regards promotion.

20. Sub-section (2) of Section 47 mandates that no promotion shall be denied to a person **merely** on the ground of his disability [emphasis supplied].

21. The legislative intent is clear. It is not every denial of promotion that attracts the rigors of the statutory provision. The promotion to a disabled person may as well be denied in order to ensure that the safety and security of the other personnel of the paramilitary force, and indeed the personal safety and security of the disabled employee, is not jeopardized. The service rules which mandate that the promotion shall be subject to maintaining medical category SHAPE-1 serve a salutatory purpose. The petitioner is admittedly suffering from 80% mental disability, and if this be so, then denial of promotion to the post of Inspector (Ministerial), and the next promotion to the post of Assistant Commandant (Ministerial) cannot, in our considered view, be considered as denial of promotion only on the ground of disability.

22. We are conscious of the judgment of the Gauhati High Court which directed that the petitioner be reinstated in service. The petitioner was as a fact reinstated in service in view of the said decision of the High Court against which the CRPF preferred Special Leave Petition (SLP) which was not entertained by the Apex Court.

23. However, the High Court was considering sub-section (1) of Section 47 which mandates that no employee who acquires disability during his service shall be removed or reduced in rank. Situations such as obtaining in the present case are taken care of by the proviso which articulates that if an employee is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefit. The further proviso speaks that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier.

24. The schematic difference in the statutory regime, as regards removal or reduction of rank and promotion is clearly discernible. A disabled employee cannot be removed or reduced in rank. The first option available is to adjust the employee against any other post, if the disability prevents the employee from discharging the duty of the present post. If such an option is not available, the disabled employee is to be kept on a supernumerary post until suitable post is available or he attains the age of superannuation.

25. The legislative intent and anxiety is that the disability acquired during the service must not result in termination or reduction of rank. However, the aspect of promotion is dealt on a different pedestal. The legislative mandate is that the promotion cannot be denied only on the ground of disability. The legislative intention will have to be respected and the jurisprudential and pragmatic logic clearly explains why removal or reduction is treated differently than promotion. Promotion is not a vested right. While a disabled employee may be protected, if necessary by creating a supernumerary

post and ensuring that he receives regular emoluments, even without discharging duty, till he superannuates, it is only if the disabled employee is discriminated in the sense that the promotion is denied because he is disabled, that the protective mechanism is triggered.

26. In our considered view, if the case of the petitioner is considered on the touchstone of the recruitment rules which are brought to our notice, the submission that the denial of promotion falls foul of the legislative mandate of Section 47 of the Act of 1995 or Section 20 of the Act of 2016, which is worded identically must be rejected.

27. We are fortified in the view which we have taken by the decision of the Apex Court in *Union of India v. Devendra Kumar Pant and others* (2009) 14 SCC 546.

28. In *Union of India v. Devendra Kumar Pant* the factual matrix was that the employee was appointed as Laboratory Assistant in the Research Designs and Standards Organisation

(RDSO), Ministry of Railways and he was promoted as Junior Research Assistant and Senior Research Assistant in 1977 and 1983 respectively. While he was promoted as Chief Research Assistant, the condition was that he should submit certificate of B1 medical category.

The petitioner failed to maintain the medical category prescribed as eligibility condition, and he was informed by the Railways that in view of the requirements of the job, as also the safety and welfare of the public, the colleagues and the employee himself, he is not entitled to promotion. The petitioner approached the Central Administrative Tribunal (CAT), which dismissed the Original Application (OA). Before the High Court the disabled employee took shelter of the provisions of Section 47 (2) of the Act of 1995. The High Court agreed with the submission and allowed the petition. The Union of India approached the Apex Court. The Apex Court *inter alia* observed that prescription of a minimum medical standard for promotion should not be viewed as denial of promotional opportunity to a person with disability. The Apex Court particularly referred to, as

illustration, the medical eligibility conditions in police and paramilitary forces. The Apex Court concluded that the limited mandate of Section 47 (2) of the Act of 1995 is that a person who is otherwise eligible for promotion shall not be denied promotion merely on the ground of disability. We may extract the relevant observations of the Apex Court in *Union of India v. Devendra Kumar Pant and others*:

32. *Where the employer stipulates minimum standards for promotion keeping in view safety, security and efficiency, and if the employee is unable to meet the higher minimum standards on account of any disability or failure to possess the minimum standards, then section 47(2) will not be attracted, nor can it be pressed into service for seeking promotion. In other words where the disability is likely to affect the maintenance of safety and security norms, or efficiency, then the stipulation of standards for maintaining such safety, security and efficiency will not be considered as denying a person with disability, promotion, merely on the ground of his disability.*

33. *When invoking or applying the provisions of the Act, it is necessary to keep in view that the intention of the Act is to give a helping hand to persons with disability so that they can lead a self-reliant life with dignity and freedom. But the intention of the Act is not to jeopardize the safety and security of the public, co-employees, or the employee himself or the safety and security of the equipments or assets of the employer nor to accept reduced standards of safety and efficiency merely because the employee suffers from a disability. In this case, office order No.4/1990 makes it clear that the minimum medical standards have been fixed taking into account the requirements in the medical manual with reference to interest of public safety, interest of the employee himself and fellow employees and in the interest of the administration.*

34. *If any employee or group of employees are of the view that a particular minimum medical standard prescribed does not serve the interest of public safety, interest of the employee and fellow employees or the interest of administration, but has been introduced only with the intention of keeping a*

person with disability from securing the promotional post, it is always open to him or them to give a representation to the employer to review/revise the minimum medical standards. On such representation the employer will refer the issue to a committee of experts to take appropriate decision, if that was not already done. But once a decision regarding medical standards has been taken by the management bonafide and in the usual course of business on the report/recommendation of an expert committee, the same cannot be found fault with on the ground that it affects the right of a person with disability for promotion.

35. *As noticed above, in this case the higher medical standard of B1 was prescribed not only for the post of Chief Research Assistant but for Senior Research Assistants and Junior Research Assistants. As the respondent with a B2 medical category clearance, had already been appointed as Senior Research Assistant, he cannot be reduced from that rank merely on the ground that under the revised guidelines, the post requires a B1 medical standard clearance.*

But when the issue of promotion comes up, the requirement of B1 medical standard cannot be dispensed with.

36. *It should be remembered that for Chief Research Assistant, the minimum medical standard was B1 even before the revision of standards whereby the medical standard for even Senior Research Assistant was revised from B2 to B1. The said standard having been fixed in the interest of the public safety, as also interest of the employee concerned, co-employees and administration, the respondent cannot, by relying upon section 47(2) of the Act, avoid subjecting himself to medical examination for ascertainment of B1 medical category fitness.*

37. *Prescription of a minimum medical standard for promotion should be considered as such, and should not be viewed as denial of a promotional opportunity to a person with disability. We may illustrate. When an advertisement for the post of a police inspector prescribes a minimum height or a minimum chest measurements or a minimum physical stamina, a person who lacks the same and*

therefore denied appointment, cannot contend that he is discriminated on the ground of physical disability. Firstly being short or very thin or lacking stamina is not a physical disability but a physical characteristic. Therefore in such a situation the question of applicability of the Act does not arise at all. If a person not having a colour perception is denied appointment to the post of a driver, he cannot complain that he is discriminated on the ground of his disability. Same would be the position where the colour perception is a required minimum standard for a particular post. A person not possessing it is not being denied appointment or promotion on the ground of disability. The denial is on the ground of non-fulfillment of a minimum required standard/qualification. Viewed accordingly, it will be seen that section 47(2) is not attracted at all.

38. *Therefore we are of the view that the section 47(2) only provides that a person who is otherwise eligible for promotion shall not be denied promotion merely on the ground that he suffers from disability. The use of the words “merely on the ground” shows that the*

section does not provide that if the disability comes in the way of performing the higher duties and functions associated with the promotional post, promotion shall not be denied. In other words promotion shall not be denied to a person on the ground of his disability only if the disability does not affect his capacity to discharge the higher functions of a promotional post.

29. We are respectfully bound by the authoritative pronouncement of the Apex Court in *Union of India v. Devendra Kumar Pant and others*.

30. In our view, the denial of promotion is not merely on the ground of disability. We have referred to the recruitment rules in extenso in paragraph *supra*. We are more than satisfied, that considering the fact that the respondents CRPF is a paramilitary force, it is all the more necessary that the medical eligibility conditions which are statutorily prescribed for promotion, shall have to be satisfied. If unfortunately, due to disability it is not possible for an employee to satisfy the

benchmark, no inference can be drawn that the employee is discriminated and that the denial of promotion is only due to the disability.

31. We, therefore, hold that the petitioner employee was not entitled to the protective umbrella of Section 47 (2) of the Act of 1995 or Section 20 of the Act of 2016 respectively.

32. In the light of our answer to the first issue formulated, we are not inclined to delve deeper in the question whether the exemption notifications apply, or otherwise, to a combatised personnel. We leave that question open for consideration in an appropriate case.

33. The petition is dismissed.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

PMA/NSN