

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1356 of 2019

In
Civil Writ Jurisdiction Case No.16708 of 2019

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Pankaj Kumar Rai, Son of Late Janardan Rai, Resident of Village- Thora, Post
Central Jail Buxar, P.S. and District- Buxar.

... .. Appellant/s

Versus

1. The Union of India through Director General of Police, CRPF, DIGP
Administration, CGO, Complex, Lodhi Road, New Delhi.
2. The Commandant, 181, Battalion, Central Reserve Police Force, Marfat 56,
Jammu Kashmir.
3. The Deputy Inspector General of Police, CRPF, Mokama, District- Patna.
4. The Inspector General, Sri Nagar Sector, Central Reserve Police Force,
Jammu Kashmir.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Arvind Kumar Sharma
For the Respondent/s	:	Mr.S.D.Sanjay (Adsg)
For the UOI	:	Mr.Awdesch Kr. Pandey Sr. C.G.C. Mr. Arvind Kumar, C.G.C Mr. Lokesh Kumar Advocate Mr. Chandra Mohan Kumar, Sub-inspector(Min) CRPF

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-05-2024

The appellant has assailed the order of the learned single
dated 28.08.2019 passed in CWJC No. 16708 of 2019. Core issue
involved in the present lis is whether appellant is entitled to be
consider for compassionate appointment on account of the fact
that his father died in harness in the year 2012, when his father



was holder of Class-IV Post/Class III Post. The Official-respondents have examined the eligibility of the appellant and found that he do not fulfill the physical standard of height to the post of Constable/Constable Peon and similar post. Non-consideration of appellant's name for compassionate appointment was a subject matter of CWJC No. 16708 of 2019. The learned single judge has not appreciated the relevant policy decision of the official-respondent insofar as Standing Order No. 01/ 2012 notified on 09.01.2012 in respect of Recruitment of Constable (Daftry/Peon/Safai Karamchari (Min) Farash/Library Attendant) in C.R.P.F. Physical standards prescribed for the open competition/recruitment to the various posts cited (supra) are as under:

(c)	Physical Standards	HEIGHT(For Male Candidates only)		
		For General/OBC/SC Candidates		165 Cms
		For ST candidates including Adivasis of all States/ Union Territory.		162.5 Cms
		HEIGHT (For Female Candidates only)		
		For General/OBC/SC including Gorkhas/Garhwalies/ Kumaonese/Dogras and Marathas candidates		155 Cms
		For ST candidates including Adivasis of all States/ Union Territory		154 Cms
		CHEST (Male Candidates)	Unexpanded	Expanded
		For General/OBC/SC candidates	77 Cms	82 Cms
		For ST candidates including Adivasis of all States/Union Territory.	76 Cms	81 Cms
(d)	Weight	Proportionate to height and age as per medical standards for Male & Female.		

2. Standing Order No.05/2001 relates to compassionate appointment. Compassionate appointment will be made against



direct recruitment quota of group 'C' and group 'D' post only.

Eligibility is as under:

I. Eligibility

Widow, son or daughter including adopted son/daughter of the Govt servant who dies in harness including death by suicide, missing and medically invalidated personnel will be eligible for compassionate appointment. However, real brother or sister, where the deceased was not married and the parents were dependent upon him and have no other means of livelihood, are also eligible. Compassionate appointment will be considered, provided no other earning members of the deceased family is already in service and that condition of the family is penurious.

The competent authority (ADG/IGP) should be satisfied that the case is justified having regard to the number of dependents, the assets and liabilities left by the deceased, the income of the earning members and whether they are residing with the family of the deceased Government Servant.

Applications for compassionate appointment should be appointed only if they are eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules. Each case will be considered on definite merit as compassionate appointment is not a vested right. The authority concerned has to examine the financial condition of the family of the deceased and if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible



member of the family. Recruitment under these instructions has to be need based.

While considering compassionate appointment, amount of grant of LPA and Ex-gratia payment and pecuniary conditions of the applicant should be taken into account. NOK whose pecuniary condition is worst compared to other will be given preference.

3. Standing Order No. 5/2001 cited (supra) do not stipulate physical standards. Whereas office memorandum-subject scheme for compassionate appointment under the central government-revised consolidated instructions dated 09.10.1998 issued by the Ministry of Personal, Public Grievances and Pension (Department of Personal and Training). Official Memorandum dated 09.10.1998 was notified by the DOPT. The Respondents are relying on para 5. It relates to eligibility, it reads as under:

5. Eligibility

(a) The family is indigent and deserves immediate assistance for relief from financial destitution;

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respect under the provisions of the relevant Recruitment Rules.

4. According to the official-respondent if it in accordance with recruitment rules means Standing Order No. 01/2002 notified on 09.01.2012 in terms of Standing Order No. 01 of 2012 for various posts of Constable (Daftry/Peon/Safai Karamchari(Min)/Farash and for Constable (Library Attendant) physical standards as cited



(supra) in others words invariably even for compassionate appointment physical standard is mandatory in the light of DOPT official memorandum dated 09.10.1998.

5. It is to be noted that once the C.R.P.F/organisation issued a compassionate appointment Standing Order No. 05/2001 question of invoking DOPT official memorandum dated 09.10.1998 read with eligibility clause in terms of recruitment rules is not applicable to the case in hand for the reasons that an organization cannot have two sets of compassionate appointment rules or standing orders. In the present case, C.R.P.F is governed by Standing Order No. 05 of 2001 but such standing order cannot be mixed up with the official memorandum issued by the DOPT dated 09.10.1998. In the Standing Order No. 05 of 2001, there is no prescription of physical standard insofar as compassionate appointment is concerned. Hon`ble Supreme Court in the case of ***Nair Service Society v. Dr. T. Beermasthan, (2009) 5 SCC 545*** in para 48, it is held as under:

48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the



communal rotation has to be applied taking 20 vacancies as a block.

6. In the light of the principle laid down by the Hon'ble Supreme Court what is required to be taken note of is relevant statute or relevant executive order for the purpose of case in hand. In the present case, appellant's grievance is against the C.R.P.F organization in seeking compassionate appointment. They have to follow Standing Order No. 05 of 2001 in which there is no prescription of physical standard for the post of Constable(Daftry/Peon/Safai Karamchari(Min)/Farash) and for Constable (Library Attendant). On the other hand, Standing Order No. 01 of 2012 notified on 09.01.2012 by the Director General C.R.P.F is concerned it is for the direct recruitment and it does not relates to compassionate appointment. Therefore, the official respondents cannot insist that the appellant was required to fulfil the physical standard for the purpose of Constable/ Peon/Safai Karamchari(Min)/Farash. It is to be noted that compassionate appointment is a social legislation, therefore, employer must be fare in considering the family members who are facing harness in the family. Moreover, for the post of Safai Karamchari and related works to be extracted from such Safai Karamchari physical standard of height may not be relevant. It may be relevant for Constable post. Therefore, the learned single judge has not



appreciated the above three documents namely Standing Order No. 01 of 2012 notified by the Director General of CRPF dated 09.01.2012 Standing Order No. 05 of 2001 issued by the office of the CRPF read with official memorandum issued by the DOPT dated 09.10.1998. Official memorandum of the DOPT dated 09.10.1998 would not assist the respondent (C.R.P.F) in the view of the fact that they have their own Standing Order No. 05 of 2001 insofar as governing the compassionate appointment, therefore, the official respondents cannot take any material from the official memorandum dated 09.10.1998 issued by the DOPT. One can understand if the C.R.P.F have adopted the official memorandum dated 09.10.1998 of DOPT in such circumstances para 5 eligibility would have been invoked for the purpose of denial of selection and appointment on compassionate ground only on this score that appellant does not fulfil the physical standard of height. Accordingly, the appellant has made out a case to interfere with the order of the learned single judge dated 28.08.2019 passed in CWJC No. 16708 of 2019 stands set aside. CWJC No. 16708 of 2019 is allowed. Official respondents are hereby directed to revisit the entire matter of the appellant and proceed to consider afresh within a period of three months from the date of receipt of this order without insisting height standard



for the post of Safai Karamchari.

7. With the above observations, LPA stands allowed.

8. At this stage, Mr. Rahul Chauhan, Assistant Commandant, C.R.P.F. who is present in the Court submitted that even in the Standing Order No. 05 of 2001 similar eligibility criteria mentioned in the DOPT standing order is reflected in item No. 01-eligibility to the extent that whatever the conditions stipulated for the purpose of recruitment it is required to be followed.

9. Be that as it may, for the purpose of providing compassionate appointment to the post of Safai Karmchari one cannot insist physical standard of height. Imposing such condition may not be meeting the social justice insofar as providing compassionate appointment. Therefore for the present case prescription of physical standard in particularly specific height stands read down.

10. Accordingly, the aforesaid submission of Mr. Rahul Chauhan, Assitant Commandant, C.R.P.F, stands rejected.

(P. B. Bajanthri, J)

vashudha/-

(Alok Kumar Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
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