



2024-0001-2052-00



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: March 4, 2024

+ W.P.(C) 16405/2022

(59) BABU SHETTY

..... Petitioner

Through: Mr. Anilendra Pandey, Advocate

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Radhika Bishwajit Dubey,  
SPC for UOI

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**SAURABH BANERJEE, J. (ORAL)**

1. The petitioner, after appointment on 25.05.1988 as Constable (GD) in Central Reserve Police Force<sup>1</sup>, completed his Armor course and shifted to the Armor Division, where he was promoted to Head Constable, Armor Division in 2004. Later, in the year 2015, the petitioner completed his training for the rank of Sub-Inspector.

2. On 03.08.2018, the Ministry of Home Affairs<sup>2</sup> vide memo no. O.VI-7/2013-PERS-II, introduced creation of the post of Assistant Sub Inspector<sup>3</sup> for General Duty personnel within CRPF, which was later accepted by the Directorate General i.e. respondent no.1, through order no.O.VI-7/2013-ORG-DA-III dated 21.12.2018, specifically for CRPF Armor Division.

<sup>1</sup> Hereinafter referred to as 'CRPF'

<sup>2</sup> Hereinafter referred to as 'MHA'.

<sup>3</sup> Hereinafter referred to as 'ASI'.



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3. On 18.03.2021, the petitioner while in service with CRPF in an unfortunate incident lost consciousness and sustained a head injury, whereafter, he was first transported to CRPF Composite Hospital, Hyderabad and then referred to Care Hospital, Nampally for treatment, where he was detected with a fracture to the Bifrontal area. Soon thereafter in April, 2021, he was again hospitalised, when due to sudden injury, he lost his left eyesight. Thereafter, on 23.06.2021, the petitioner was placed under P3 (T-24 wks), E3(T-12 wks) medical category due to optic neuropathy.

4. It was then on 13.09.2021, the petitioner was promoted from Head Constable/ Armor to Assistant Sub Inspector (ASI)/ Armor, vide Directorate Letter No. P.VII.39/2021-Estt(04/2020)-DA-6.

5. However, since the promotion of the petitioner was revoked vide Directorate letter no. P.VII.39/2021-Estt-DA-6(P/Cell) on 22.07.2022 and though a Legal Notice was issued to the respondents on his behalf for reconsidering their decision but no response thereto was received.

6. Hence, the petitioner has filed the present petition under Article 226 of the Constitution of India seeking a direction to the respondents for promoting him to the rank of ASI (Armour) with immediate effect, along with back wages.

7. Learned counsel for the petitioner, relying upon ***Ravinder Kumar Dhaliwal & Anr. vs. Union of India and Ors.***<sup>4</sup> and ***Union of India vs. Devendra Kumar pant and Ors.***<sup>5</sup>, submits that a proportionality analysis for a right-limiting measure is mandated and a person, otherwise eligible,

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<sup>4</sup> (2023) 2 SCC 209

<sup>5</sup> (2009) 14 SCC 546



will not be denied promotion merely on the ground that he suffers from a disability.

8. Thereafter, relying upon *Atul Kumar Sharma vs. Delhi High Court*<sup>6</sup>, learned counsel submits that rules prescribing eligibility criteria cannot stand in the way of directing promotions in favour of those unfairly denied such relief on account of inaction or wrong action of the State agency.

9. Learned counsel, then relying upon *Section 20(3)* of the Right of Persons with Disability Act, 2016<sup>7</sup>, submits that the petitioner is well and truly protected by the same and the respondents cannot deny him promotion.

10. Learned SPC for the respondents submits that for promotion in CRPF, Medical Categorization of SHAPE-I is mandatory as per Clause 4.13 of the Standing Order No. 04/2008 relating to '*Combined Low Medical Factors*', however, the only relaxation to this is provided under Clause 4.17(ii)(b) of the said Standing Order No. 04/2008 relating to '*Combined Low Medical Factors-Relaxation in SHAPE-I Medical Category*', wherein it is stated that Officer/men who are wounded/ injured during field firing/ accidental firing/ explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion, the petitioner fell down in marker (*standing position*) which was held in Quarter Guard, he does not get covered under the aforesaid provision(s).

11. Learned SPC also submits that since the petitioner, who was promoted vide letter dated 13.09.2021, was placed under the Low

<sup>6</sup> W.P. 4077-84/2004 decided on 23.10.2009

<sup>7</sup> Hereinafter referred to as the '**RPD Act**'



Medical category of permanent nature with effect from 11.11.2021, his promotion was cancelled subsequently vide letter dated 22.07.2022.

12. Learned SPC then, drawing the attention of this Court to Notification No.3114 dated 18.08.2021 issued by the respondents submits that as neither *Section 20(1)* nor *Section 34(1)* of the RPD Act are applicable to the CRPF, the petitioner cannot seek protection for being considered under the said RPD Act.

13. This Court has heard the learned counsel for the petitioner and the learned SPC for the respondents and perused the documents as also the judgments relied upon by the counsel(s).

14. There is no dispute to the fact that the petitioner herein was a serving personnel of the CRPF when he suffered an unfortunate incident due to which he lost consciousness and sustained a head injury. As such, the petitioner was governed by the CRPF Act, 1949 and the CRPF Rules, 1955 and Standing Orders or like issued by the respondents herein from time to time. The relevant extracts of one such Standing Order No.04/2008 issued by the respondents, involved herein and relied upon by learned counsels appearing for both sides, are reproduced as under:-

***“4.13 Mandatory for the purpose of promotion***

*Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMEs. In case of those whose illness is of **permanent nature** and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion. In case of those personnel, **whose illness is of temporary nature**, after considering their cases for promotion alongwith others, if they are otherwise fit, the DPC will grade them as ‘fit’ for promotion subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However, they will retain their seniority.”*



***“4.17. Relaxation in SHAPE-I Medical Category***

*The relaxation in SHAPE-I Medical Category will be admissible to the following two categories of CPMFs personnel to the extent detailed below:-*

*a. Official/Personnel wounded/injured during war or While fighting against the enemy/militant/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification:-*

*i) Individual Low Medical Factors*

*(aa) H2 or E2 or P2 (Dental) which will be considered at par with SHAPE-I, and;*

*(ab) A2 or P2 or A3*

*ii) Combined Low Medical Factors*

*(aa) H2 and E2 combined and*

*(ab) H2 or E2 combined with A2, A3 or P2*

*b. Officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE Categories:-*

*(i) SIH1A2P1E1 (ii) SIH1A1P2E1 (iii) SIH2A1P1E1 (iv) SIH1A1P1E2 (v) SIH2A1P1E2”*

15. As per above, since the petitioner herein fell down in marker (*standing position*) which was held in Quarter Guard, the same cannot be attributable to his active service. Moreover, since his injury has been categorised as E3, he cannot claim any benefit under E3 category, being excluded from promotion and the same cannot be considered as such.

16. Thus, unfortunately this Court cannot go beyond what is contained in the Standing Order No.04/2008 and carve out an exception for the petitioner as the petitioner is to mandatorily abide by the terms and conditions stipulated therein.

17. Additionally, since the petitioner was serving with the CRPF and furthermore since the respondents have also issued a Notification No.3114 dated 18.08.2021 qua the applicability of the RPD Act, the relevant provision thereof, on which the learned counsel for the petitioner



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wishes to rely upon, is not applicable to the facts herein. The relevant extract of the said Notification No.3114 dated 18.08.2021 is reproduced as under:-

*“S.O. 3367 (E).- In exercise of the powers conferred by the proviso to sub-section (1) of section 20 and the second proviso to sub-section(1) of section 34 of the rights of Persons with Disabilities Act, 2016 (49 of 2016), the Central government, in consultation with the Chief Commissioner for Persons with Disabilities, having regard to the nature and type of work, hereby exempts all categories of posts of combatant personnel of Central Industrial Security Force, Indo-Tibetan Border Police, Sashastra Seema Bal and Assam rifles from the provisions of the said section.”*

18. Under the afore-stated facts and circumstances involved and the aforesaid discussions coupled with the reasonings thereto, this Court is unable grant the reliefs sought by the petitioner in the present petition.

19. Accordingly, the present petition is dismissed, leaving the parties to bear their respective costs.

**SAURABH BANERJEE, J.**

**V. KAMESWAR RAO, J.**

**MARCH 4, 2024/akr**