



2024:DHC:6134-DB



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

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Date of Decision: 13.08.2024

+ W.P.(C) 11133/2024 & CM APPL. 46023/2024 –Stay/Dir.

INSPECTOR TD CYRIL MIMIN ZOUPetitioner

Through: Mr. M.D. Jangra, Adv.

versus

UNION OF INDIA AND OTHERSRespondents

Through: Ms. Kriti Sinha, Adv for Mr. Jagdish
Chandra, CGSC.

Mr. Devender Singh, DC (JAG)

Mr. Deepan Tanwar, GP.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

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SHALINDER KAUR, J (ORAL)

1. The petitioner, who is currently working as an Inspector (General Duty) in the Indo-Tibetan Border Police (ITBP), has approached this Court under Article 226 of the Constitution of India, seeking the following reliefs:

- (a) *to quash and set aside impugned result dated 01.08.2024 (Annexure P-1) violative of relaxed standard for ST candidate of Height as prescribed in CAPFs for the post of Asst. Comdt. (GD) as 162.5 cms, whereas the petitioner's height is 164.1 cms in Physical Standard (PST) & Physical Efficiency Test (PET) for the post of Assistant Commandant*



(GD) through LDCE in CAPFs (CRPF, BSF, SSB & ITBP) for the vacancy year 2023;

(b) to declare the impugned action of the respondents in depriving the petitioner, an ST candidate from Manipur, of relaxed standards in height for participation in PST/PET for the post of Asst. Comdt. (GD) through LDCE for 2023 as illegal, arbitrary and unjustified.

2. At the outset, Mr. M.D. Jangra, learned counsel for the petitioner submits that the case of the petitioner, who has approached this Court with a grievance that he has not been granted the relaxation in height as is provided to the candidates of Scheduled Tribes (ST) from the State of Manipur, is precisely covered by the decision of this Court in ***Tholu Rocky v. Director General CISF and Ors*** W.P.(C) 9085/2011 and the present writ petition can be disposed of with same directions and there is no necessity to call for a reply. On the other hand, Ms. Kriti Singha, learned counsel for the respondents prays for time to file counter affidavit in this regard.

3. Notably, this Court in the present petition on 12.08.2024, after noting the stand of the petitioner, that he had been enrolled as a Sub-Inspector (GD) in the ITBP as an ST candidate from the State of Manipur after being granted the requisite relaxation in height, had granted time to the learned counsel for the respondents to obtain instructions in this respect.

4. Learned counsel for the respondents in this regard submits that the petitioner cannot be granted the requisite relaxation in terms of the Rules, as he is required to meet the same physical criteria as prescribed for direct recruits.



5. As a short controversy is involved in the present petition and the factual position is undisputed, we find no reason to call for a counter affidavit. We have heard the matter finally at this stage itself.

6. Before dealing with the rival contentions of the parties, it would be relevant to note the brief facts of the case. The petitioner, who is an ST candidate from the State of Manipur, had qualified the SSC examination and was selected to the post of Sub-Inspector (GD) in the ITBP. Later on, he was promoted to the post of Inspector (GD), at which he is currently working. Thereafter, upon an advertisement No. VI-1/2024- Rectt(AC/GD-LDCE-2023)-DA-6 dated 08.04.2024 having issued for selection to the post of Assistant Commandant (GD) CAPF through LDCE for the vacancy in year 2023, the petitioner, being a ST candidate and a domicile of the State of Manipur, had applied for the said post.

7. Subsequently, after qualifying the written examination in the LDCE, the petitioner appeared for the Physical Standard Test (PST) and Physical Efficiency Test (PET) on 01.08.2024. However, he was disqualified on the ground of his height i.e. 164.1 cms whereas, as per the petitioner the minimum requirement for the ST candidates stood at height of 162.5 cms. In this backdrop, the petitioner made a representation dated 05/06.08.2024 seeking relaxation in height from the respondents, which has not been responded to and it is in these circumstances, the petitioner was constrained to move the present writ petition before this Court.

8. The learned counsel submits that the petitioner had earlier moved a writ petition bearing no. WP(C) No. 2032/2023 wherein he had challenged his previous selection in the ITBP which was rejected by the respondents on



similar grounds. This Court vide order dated 17.02.2023 had permitted the petitioner to participate in the selection process without his height being taken into consideration in the selection process. However, the petitioner did not qualify the final selection on merits, consequently the writ petition was disposed of noting the aforesaid.

9. Learned counsel for the petitioner contends that the respondents should have granted relaxation to the petitioner in his height at the stage of PST/PET as per their own guidelines, whereby the ST candidates can obtain relaxation and can participate in the said physical tests/examinations.

10. Learned counsel for the petitioner further contends that the height relaxation provided in PST for all candidates belonging to Male ST candidates hailing from North-Eastern States including State of Manipur, of which the petitioner is a domicile of, is 162.5. Moreso, the respondents have been promoting the candidates to the post of Assistant Commandant (GD) in the ST category from Manipur and other States, however, they are not promoting the petitioner who also belongs to the ST category.

11. Learned counsel submits that the actions of the respondents have deprived the petitioner of his fundamental rights under Article 14 and 16 of the Indian Constitution inasmuch as they have disqualified the petitioner in further participation in the selection process as he, being a ST candidate, has not been provided with the relaxation in height as per the notification issued by the Government of India. Even though, the petitioner who was selected, to the post of Sub-Inspector in the ITBP through SSC, under relaxed standards. Therefore, the said relaxation ought to have been granted to the



petitioner in the PST/PET pursuant to qualifying LDCE as it can be legitimately expected from the respondents.

12. *Per contra*, the learned counsel for the respondents refuting the submissions of the petitioner contends that LDCE should not be treated at par with the promotes, who get promotion in due course at a much later stage in their career, and not with the direct recruits, who are of similar age as the LDCE candidates.

13. Taking into account that the issue raised in the present petition has already been decided by a Coordinate Bench of this Court vide its decision in **Tholu Rocky** (supra), it may be apposite to note the observations made therein, which are reproduced as under:

“3. The petitioner now aspires to become Assistant Commandant in the CISF. There is a provision for Limited Departmental Competitive Examinations (LDCE) for those working as Sub-Inspector/Executive. To appear in this examination as a fast track mode for recruitment to the post of Assistant Commandant, the UPSC invited application for the LDCE 2010-2011 for the post of Assistant Commandant vide notification dated 16.4.2011. The petitioner, otherwise eligible in all respect applied for this post. However, the minimum height prescribed is 165 cms as mentioned above. The petitioner does not fulfill this height requirement. He accordingly sent representation dated 10.5.2011 giving him relaxation insofar as aforesaid requirement is concerned stating that he had joined the service in CISF also in the rank of Sub Inspector/Executive under the relaxed standards. Though, no reply to the said representation was given to the petitioner, at the same time, the petitioner was allowed to appear in the written examination which was conducted on 19.6.2011. The petitioner emerged successful in the said written examination. Accordingly called for undergoing PER and MET. On the basis of this examination process undertaken by the



respondent, the name of the petitioner appeared at sl. No. 142 of the provisionally qualified candidates. Thereafter, the petitioner appeared for Physical Efficient Test and Medical Test on 14.9.2011. However, his candidature was rejected on the ground that his height was less than 165 cms. It is in these circumstances the petitioner challenges Clause (1) of the Appendix-II(a) of the Notification dated 16.04.2011 prescribing the minimum height of 165 cms. for appointment to the post of Assistant Commandant in CISF as contained in the Central Industrial Security Force, Assistant Commandant (Executive), Recruitment Rules, 2009. The schedule attached to these Rules inter alia prescribes physical standards in the following manner:-

"(b)Physical standard: -

	<i>Men</i>	<i>Women</i>
<i>Height</i>	<i>165 cms</i>	<i>157 cms</i>
<i>Chest</i>	<i>81 cms</i>	<i>N.A.</i>
	<i>(unexpanded)</i>	
	<i>86</i>	<i>N.A.</i>
	<i>(expanded)</i>	
<i>Weight</i>	<i>50 Kgs</i>	

According to height but not less than 46 Kgs."

Rule 5 of the aforesaid Rules gives power to the Central Government to relax any of the provisions of these Rules with respect to any clause or category of persons.

4. The facts disclosed above would demonstrate that a per schedule tribe of Mizo's and Naga's community is given relaxation in physical standards and the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 provide for height of 162.5 cms. only as against candidates belonging to other categories where the height required is 170/165 cms. Therefore, we do not find any justification or rationale in not extending the same benefit to this tribe at the



stage of their promotion to the post of Assistant Commandant. The purpose of inserting different standards for Mizo's and Naga's in the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, was recognition of the fact that normally the persons belonging to these communities/tribes are of short heights. That fact is given due recognition by making the aforesaid provision and on that basis, the petitioner was allowed to enter the service in CISF. Once this aspect is recognized and requisite provision made at the entry level, we fail to understand as to how it becomes a bar when it comes to further progression in his service. Not only it is irrational and arbitrary, it would also amount to stagnating a person at the present post without giving him chance to seek promotion to a higher post.

*5. In the case of **Council of Scientific and Industrial Research and Anr. K. G.S. Bhatt and Anr.** AIR 1989 SC 1972, though in different context, the Supreme Court commented upon the need to get the promotion in the service career which is the legitimate expectation of an employee. This was reiterated by the Supreme Court in the case of **O.Z. Hussain Vs. UOI** AIR 1990 SC 311.*

7. We are, therefore, of the opinion that the provision of he provided in the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 needs to be incorporated in the Central Industrial Security Force, Assistant Commandant (Executive), Recruitment Rules, 2009 as well.

8. Present writ petition is accordingly allowed and the rule made absolute. The order dated 19.9.2011 is hereby quashed. We also issue mandamus to the respondents to incorporate the provision in similar lines as contained in the Central Industrial Security Force (Subordinate Ranks) Recruitment Rules, 1999 within four weeks.

9. Insofar as the petitioner is concerned, once it is found that he has qualified the LDCE, in all respect, he shall be promoted to the post of Assistant Commandant from the date other candidates who had qualified the examination were give the promotion, with



all other consequential benefits.”

14. The decision of this Court in ***Tholu Rocky*** (supra) was unsuccessfully challenged before the Hon’ble Supreme Court in ***Special Leave Petition (Civil) No. 9619/2013***, which was dismissed with the following observations:

“Delay Condoned.

We are not inclined to interfere with the impugned order of the High Court. The Special Leave Petition is dismissed.

However, in the facts and circumstances of the case, the competent authority may consider the amendment of the rules, if necessary.”

15. In the present case, the petitioner is an aspirant belonging to the ST category hailing from the State of Manipur. The Ministry of Home Affairs vide its notification dated 01.12.2021 provided relaxation to the ST candidates with the minimum height requirement being 162.5 cms to the post of Assistant Commandant in Central Industrial Security Force (CISF) i.e. one of the sister Forces of the CAPF. The relevant portion from the notifications reads as under:

PHYSICAL AND MEDICAL STANDARDS FOR THE CANDIDATE FOR THE POST OF ASSISTANT COMMANDANTS IN THE CISF SELECTED THROUGH LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION-2022

(1) Physical Standards:

The Minimum requirements for the candidate (for all categories) are as follows:

	Men	Women
Height	165 cm (Gen & SC)	157 cms (Gen & SC)
	162.5 cms (ST)	154 cms (ST)
Chest (unexpanded)	81 cms (with 5 cm minimum expansion)	Not applicable
Weight	Corresponding to height	Corresponding to



		<i>height</i>
<i>Medical</i>	<i>SHAPE-I</i>	<i>SHAPE-I</i>

(Emphasis supplied)

16. In these circumstances, we find no reason as to why the said benefit regarding the relaxation, pertaining to which has been made applicable to the aspirants seeking to join CAPF, cannot be extended to the petitioner who is similarly placed in the ST category in the ITBP. Hence, there is no justification for not providing the relaxation in height, absence of which only becomes an impediment in the petitioner's aspiration to move up the ladder in his service career.

17. Even otherwise, viewed from this angle as well, the aspect as noted hereinabove is squarely covered by the decision of this Court in ***Tholu Rocky*** (supra) which has attained finality. The petitioner, if not granted the relaxation, will suffer stagnation without an opportunity to seek promotion to ascend in the hierarchy.

18. We also find that the petitioner had earlier filed a similar petition being W.P.(C) 2032/2023 wherein a Coordinate Bench of this Court vide its order dated 17.02.2023 had made the following observations:

“7. The respondents are directed to allow the petitioner to proceed in the selection process, however, the result shall be kept in a sealed cover and that will be subject to the outcome of the present petition.

8. It is made clear that his height in question shall not be taken into consideration while allowing the petitioner to participate in the selection process”



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19. However, since the petitioner could not qualify the selection process on merits, the said writ petition was disposed of on 16.11.2023 without rendering any finding qua the petitioner's claims.

20. Accordingly, we direct that the respondents, subject to the petitioner qualifying the other parameters of the selection process and verification by the respondents of the petitioner's claim that he was granted relaxation in height at the time of his induction in the ITBP as a Sub-Inspector (GD), will permit him to take part in the ongoing selection process after granting him the necessary relaxation for considering his case for the post of Assistant Commandant (GD) through LDCE.

21. The writ petition stands allowed in the aforesaid terms. Pending application also stands disposed of.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 13, 2024
KM/ab