



2024:DHC:8868-DB



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

Reserved on: 13.11.2024

Pronounced on: 18.11.2024

+ **W.P.(C) 15410/2024, CM APPL. 64604/2024**

NONGTHOMBAM HEROJIT MEITEIPetitioner

Through: **Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Sourabh and Mr. Ravi Ranjan Mishra, Advs.**

versus

UNION OF INDIA AND ANRRespondents

Through: **Mr. Jagdish Chandra, CGSC with Mr. Shubham Kumar Mishra and Mr. Vasuchit Anand, Advs. and Mr. G. S. Rathore, AC, CISF.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner, who is working as a Constable (General Duty) in the Central Industrial Security Force (CISF), has approached this Court under Article 226 of the Constitution of India, seeking the following reliefs:

“(a) Issue writ of Mandamus or any other appropriate Writ/Orders /Directions to the respondents to allow the petitioner to participate in the PET/PST.

(b) Pass Writ of Certiorari to quash Irrational, Unjustified and Ultra virus the required height of 165 cm in terms of the advertisement dated 29.12.2022 qua the petitioner.

(c) Pass any other further order/direction as the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”



2024:DHC:8868-DB



2. Before we begin with the narration of the facts, the learned counsel for the petitioner, at the outset, submitted that the case of the petitioner is squarely covered by the decisions of this Court in ***Tholu Rocky v. Director General CISF & Ors.*** W.P(C) 9085/2011, and ***Inspector TD Cyril Mimin Zou v. Union of India & Ors*** W.P(C) 11133/2024, wherein as per the guidelines set out by the Staff Selection Commission (SSC), the requisite relaxation in height had been granted to the petitioner.

3. However, to gain a holistic understanding of the dispute, we must provide a factual background. The petitioner applied to the post of Assistant Sub-Inspector [Executive] (ASI) pursuant to the advertisement issued by the respondent no.2 on 29.12.2022, through the Limited Departmental Competitive Examination (in short, 'LDCE'). Through this exam, 706 vacancies in the CISF for the recruitment year of 2022 were to be filled and only eligible candidates who had completed five years of regular service in their respective posts were allowed to appear for the LDCE.

4. The petitioner appeared for the LDCE on 09.04.2024 and scored a total of 139 marks, thereby qualifying the written examination. He was, thereafter, required to appear for the Physical Efficiency Test (PET) and the Physical Standard Test (PST) which were to be conducted at CISF 5th RB, Indirapuram, Ghaziabad from 26.06.2024 to 03.07.2024. However, on reaching the said destination, the petitioner was not allowed to participate in the PET and PST due to his height not being 165cms as required by the advertisement.



Aggrieved by the same, the petitioner made a representation to the appellate authority on 26.06.2024, stating therein that he was recruited in the CISF as a Constable (General Duty) in 2013 with a height of 163 cms, which was as per the eligibility criteria of recruitment.

5. In pursuance of the aforementioned representation of the petitioner, the competent authority of the Recruitment Board, after considering the petitioner's request, called the petitioner to CISF 5th RB, Indirapuram, Ghaziabad for a re-measurement of his height on 03.07.2024. However, in spite of explaining the shortfall in his height in the representation, he was issued a rejection slip, stating that his height was less than the required height of 165cms.

6. In this background, the petitioner submitted another representation to the respondent no.2 on 06.07.2024, praying therein that he be allowed to participate in the further round of the recruitment process. The said representation came to be rejected, constraining the petitioner to approach this Court.

7. The learned counsel for the petitioner, reiterating his stance taken in the petition, submitted that this writ petition be allowed in view of the decisions of this Court in **Tholu Rocky** (supra) and **Inspector TD Cyril** (supra). He submitted that the petitioner belongs to the North-Eastern state of Manipur and people hailing from the said State are genetically shorter than the average person from other parts of the country. Keeping this in mind, the SSC while issuing the advertisement for recruitment to various CAPFs, including the CISF, has kept the required height for recruitment of males from the North-



Eastern States as 162.5 cms.

8. He submitted that once the petitioner had been recruited as a Constable (GD) with the CISF in 2013, fulfilling all the eligibility criteria, including the physical standard, the relevance of the height criteria in the LDCE ceases to exist. The learned counsel urged that it would be arbitrary to insist on the petitioner, who has already been inducted into the Force, the increased parameter of height to gain promotion through the LDCE. While placing reliance of the decision of this Court in *Ajay Panday v. Union of India & Ors.* W.P(C) 1938/2011, the learned counsel submitted that there should not be a distinction between those appointed through LDCE and those appointed by regular promotion in due course.

9. Concluding his arguments, the learned counsel urged that the respondents should have granted the petitioner relaxation in his height at the stage of PET/PST as per their own guidelines, under relaxed standards, pursuant to his qualifying LDCE.

10. *Per contra*, the learned counsel for the respondents seeking dismissal of the writ petition, contended that the LDCE could not be treated at par with the regular promotions as candidates who are promoted through the LDCE are promoted sooner than those getting promoted with the due course of time. He submitted that the advertisement gave a relaxation of height standard to the candidates from North-Eastern States, including Manipur, however, the petitioner failed to meet the same.

11. Having considered the submission of parties and perused the



2024:DHC:8868-DB



record, we may begin by noting that it is not disputed that the petitioner was appointed as a Constable (GD) extending due relaxation in the minimum height requirement provided to the candidates hailing from North-Eastern States in the Notice for Recruitment of Constables (GD) in CAPFs and Rifleman (GD) in Assam Rifles, 2013 which prescribed the minimum height of 162.5 cms for a male candidate from the North-Eastern States. In fact, same standard has been prescribed even in the Notice for Recruitment of Constables (GD) in CAPFs, SSF, and Rifleman (GD) in Assam Rifles Examination, 2024 issued on 24.11.2023.

12. It is not denied by the respondents that the petitioner, with the same height, shall be eligible in normal course as per his seniority to be promoted to the post of ASI. The only issue to be determined therefore, is as to whether the respondents can deny an accelerated promotion to the petitioner if the petitioner clears the LDCE. In our view, denying the petitioner of this avenue of accelerated promotion would be totally arbitrary. There cannot be two standards prescribed, one for the regular promotion while one for the promotion through LDCE, when both streams would lead to promotion to the same post. Such differential prescription shall be arbitrary and violative of Article 14 of the Constitution of India.

13. It is relevant to note that the issue raised in the present petition has already been decided by a Co-ordinate Bench of this Court in the case of **Tholu Rocky** (supra), holding as under:

“4. The facts disclosed above would demonstrate that a person of 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 height as 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 given the promotion, with all other consequential benefits.”

14. The above judgment was unsuccessfully challenged before the 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. The decision in ***Tholu Rocky*** (Supra) was also followed by this Court in ***Inspector TD Cyril Mimin Zou*** (supra), reiterating that there is no justification for not providing the relaxation of height to the petitioner therein, as if the same is not granted, the petitioner will suffer stagnation without an opportunity to seek promotion to ascend in the hierarchy.

16. Keeping in view the aforementioned decisions of this Court, we are of the view that the petitioner be granted the requisite relaxation in height as well.

17. We, accordingly, allow the writ petition. The impugned rejection Orders dated 03.07.2024 and 18.07.2024 are hereby set aside. The respondents, subject to the petitioner qualifying all the other criteria of the selection process, are directed to permit the petitioner to take part in the ongoing selection process after granting



2024:DHC:8868-DB



him the necessary relaxation in height and thereafter, consider his candidature for promotion through the LDCE.

18. In above terms, the writ petition is disposed of along with the pending application.

SHALINDER KAUR, J

NAVIN CHAWLA, J

NOVEMBER 18, 2024/ss/f/as