

**SHRI SHYAMKUMAR S/O PANDURANG WANKHEDE VERSUS UNION OF
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INTRODUCTION

Disability and discrimination are synonymous in context with India. Disability and their fight for inclusion in Indian society have continued since immemorial. Disability is defined in Section 2(s) of the Rights of Persons with Disability Act¹ 2016. Highlights the facets of non-discrimination, inclusivity in society, complete and effective participation, parity, respect, and acceptance. Most importantly it shelters the rights of the disabled. The parliament of India passed this to fulfil the obligation under the CRPD², which was ameliorated by India. It substitutes the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act³ 1995. This act also draws attention to discrimination against people with disabilities, and their inclusion in the educational system; the people with certain significant assistance requirements are also highlighted. Courts have been dealing with cases of inclusion and discrimination of disabled people. Recently, in the case of Shri Shyam Kumar S/o Pandurang Wankhede v. Union of India⁴, the High Court of Bombay was denied promotion because hinge upon the interpretation and application of disability rights under the law was challenged against CRPF.

BRIEF FACTS OF THE CASE

The case concerns a former member of the Central Reserve Police Force who was assigned as an Assistant Sub-Inspector to the 3rd Battalion on June 8, 1988. He further received a promotion to Sub-Inspector (Ministerial). The petitioner endured hospitalization at the CRPF base hospital-II in Hyderabad from 4th July 1999 to 19th July 1999. The diagnosis was of “Schizoaffective Psychosis”. On 12th June 2000, the petitioner was discharged from his active duty because he was declared 80 % disabled. Later, the petitioner contested the removal decision in the High Court of Guwahati and was ordered to be reinstated with pay allowance.

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¹ Rights of Persons with Disabilities Act 2016, s 2(s)

² United Nations Convention on Rights of Persons with Disabilities

³ Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995

⁴ Shri Shyam Kumar S/o Pandurang Wankhede v. Union of India

On 20th January 2016, he was brought back and assigned to the Nagpur division. The petitioner was not included in the list of the candidates promoted in the 2017 publication. He raised his concern and was asked to be present for an examination before the Medical Board. He was classified under SHAPE-III (T-24). The petitioner claimed his rights had been violated under Section 20 of the Act⁵ of 2016 and Section 47 of the Act⁶ of 1995. The medical reason for retraction from promotion and classification within CRPF is in question in this case.

ISSUES

Whether the petitioner's denial of promotion based only on their disability?

Whether the safeguard provided by Section 20 of the Act⁷ of 2016 or Section 47(2) of the Act⁸ of 1995 still in effect or has been removed by exemption notifications?

CONTENTIONS BY PETITIONER

In this case, the petitioner was denied promotion to the Assistant Commander (Ministerial) rank based only on his medical classification as SHAPE-III (T-24), according to the petitioner's attorney, Shri Shyam Kumar Wankhede. This is a clear violation of Section 20 of the Act⁹ of 2016. Further, what has been contended is that if an exemption from Section 47(2) of the Act¹⁰ of 1995 is made, it will be discriminatory and arbitrary as far as combatant personnel are concerned. It is brought to notice that, after his repudiation in the year 2000, the petitioner was reinstated into service and had a claim for promotion based on seniority. The categorization, henceforth, has been questioned by the Council who held that he was medically fit. It is submitted by the petitioner that given the fact, he was completely protected against any discrimination by persons with disabilities.

CONTENTIONS BY RESPONDENT

The respondent argues that the petitioner was denied a promotion to Assistant Commander (Ministerial) due to his medical categorization as SHAPE-III (T-24). The respondent claims that the medical category required for promotion was SHAPE-I, as per the rules framed under

⁵ Rights of Persons with Disabilities Act 2016, s 20

⁶ Persons with Disabilities (Equal Opportunities, Protection Rights and Full Participation) Act 1995, s 47

⁷ Rights of Persons with Disabilities Act 2016, s 20

⁸ Persons with Disabilities (Equal Opportunities, Protection Rights and Full Participation) Act 1995, s 47(2)

⁹ Rights of Persons with Disabilities Act 2016, s 20

¹⁰ Persons with Disabilities (Equal Opportunities, Protection Rights and Full Participation) Act 1995, s 47(2)

the CRPF Act¹¹ 1949. The contention put forth is that the petitioner was reinstated in the service in 2016 but was not promoted based on seniority and solely based on medical reasons alone. They cite a government notification dated 18th August 2021, which made an explicit exemption to all the posts of the Armed Police Forces Combatant Personnel which also included the CRPF, from the provisions of Section 47(2) of the Act¹² of the year 1995.

JUDGMENT

According to the court the promotion was denied not only based on disability being the sole reason and further, having regard to his medical categorisation, he was not entitled to the postings of NCOs. It was further held that the protection under Section 47(2) of the Act¹³ of 1995 read with Section 20 of the Act¹⁴ of 2016 is obliterated by the exemption notifications since the petitioners here were holding a combined post and thus had to maintain SHAPE-I medical category to get promotion, as per the CRPF Act¹⁵, 1949. Hence, the promotion was denied.

ANALYSIS OF ISSUES

Whether The Petitioner's Denial Of Promotion Based Only On Their Disability?

The court in the above issue has analyzed whether the petitioner has been not given a promotion only on the grounds of disability being the sole reason. The observation made in the same comes that the petitioner was denied promotion due to his medical categorization which is not eligible for promotion and not solely on his disability. In the case of *Union of India v/s Devendra Kumar Pant and others* ¹⁶(2009) 14 SCC 546, where the latter has held that “the prescription of minimum medical standard for promotion cannot be seen as a denial of promotional opportunity to a person with a disability.”

The court has been highly impressed with the argument and claims that the crux is to assist individuals who are disabled so that they can lead an independent life, embraced with dignity as well as freedom. Focus has been made on not compromising public safety and security in addition to the security and safety of self, co-workers, and the property or equipment of the

¹¹ Central Police Reserve Force Act 1949

¹² Persons “with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47(2)

¹³ Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47(2)

¹⁴ Rights of Persons with Disabilities Act 2016”, s 20

¹⁵ Central Police Reserve Force Act 1949

¹⁶ Union of “India v. Devendra Kumar Pant and others (2009) 14 SCC 546.

employer. Under this system, the petitioner is not eligible for advancement and thus the denial of promotion is not discriminatory because it is based on medical categorization and not just handicap.

The court has also referred to provisions under Section 20(3) of the Rights of Persons with Disabilities Act¹⁷, 2016, which forbids any type of discrimination against any person with a disability in line with the provision of goods, facilities, or services. The court has noticed that denial of promotion, in the instant matter is not violative of Section 20(3) of the Act¹⁸ of 2016 since the petitioner was denied promotion owing to his medical categorization being an incompetent categorization to hold or be promoted to category 'A' post and it is not solely on the ground of his disability. Ultimately, it was held that the refusal to be promoted could not be said to be on the sole ground that he was a disabled person, as on the grounds of his entitlement to promotion by his clinical classification, he was due for promotion under the CRPF Act¹⁹, 1949.

Is the Safeguard Provided By Section 20 Of The Act²⁰ Of 2016 Or Section 47(2) Of The Act²¹ Of 1995 Still In Effect Or Has Been Removed By Exemption Notifications?

Unsustainable in an essential part of the case is the decision of whether the protective umbrella of Sec 47(2) of the Act²² of 1995 or Sec 20 of the Act²³ of 2016 was given or deprived of adding to the exemption notifications. The court has taken pains in analyzing minutely and the recorded conclusion is as follows:

On further consideration, it is found that exemption notifications issued under the Act²⁴ of 1995 exempt combatised posts in the CRPF from the provisions of Section 47(2) of the Act²⁵ of 1995. It is further gauged that the petitioner was required to maintain the SHAPE-I medical category in order to be eligible for promotion according to the rule of the CRPF Act²⁶ 1949. The court gave the analysis that the legislative intent behind the same was to help the disabled to lead a life with self-reliance in addition to dignity and freedom. On the contrary, the court also

¹⁷ Rights of Persons with Disabilities Act 2016, s 20(3)

¹⁸ Rights of Persons with Disabilities Act 2016, s” 20(3)

¹⁹ Central Police Reserve Force Act 1949

²⁰ Rights “of Persons with Disabilities Act 2016, s 20

²¹ Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47(2)

²² Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47(2)

²³ Rights of Persons with Disabilities Act 2016, s 20

²⁴ Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995.

²⁵ Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47(2)

²⁶ Central Police Reserve Force Act 1949

emphasized that it didn't intend to be prejudicial to the public safety and security. It supported the idea of safety and security to the co-workers, self, and the property or assets of the employer.

The court also used the precedent of the SC in *Union of India v/s Devendra Kumar Pant and others*²⁷ (2009) 14 SCC 546 it was held that the “prescription of minimum medical standard for promotion cannot be viewed as a promotional opportunity denial to a person with a disability”. Henceforth, the court has held that the protective umbrella of Section 47 of the Act²⁸ of 1995, or even, located within Section 20 of the Act²⁹ of the year 2016, does not extend to the petitioner in the case at hand for the simple reason that the petitioner was working in a combined post and has been necessary for maintaining the SHAPE-I medical category for promotion as per the CRPF Act³⁰, 1949 and the Rules framed thereunder.

CONCLUSION

This case features complexities between institutional requirements and individual rights. The researcher, therefore consultancy concludes that the petitioner is not being deprived of promotion only on the grounds of disability but because of his medical categorization which is not eligible for promotion at all under the regulations of the CRPF Act³¹, 1949, and the Rules framed thereunder. The court's decision underlines how the balance has to be maintained between keeping up operational standards within critical institutions and human rights and human dignity in the case of persons with disabilities.

What is emphasized here is that the intention of the legislature in this regard is to extend help to the disabled have and no prejudice towards public safety and security in addition to the co-workers and the assets of the employer. Recent examples, in support of this stance, can be borrowed from the *Cascade v Patel* discrimination case³². The author is also quick to point out that the refusal to offer a promotion is not discriminatory since it is based on the medical categorization, which is not eligible for a promotion and not because of his disability alone. Faults the judgment for failure to take into account the far-reaching implications of the exemption notifications issued exempting combatised posts in CRPF from the provisions of

²⁷ *Union of India v. Devendra Kumar Pant and others* (2009) 14 SCC 546

²⁸ *Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47”(2)*

²⁹ *Rights of Persons with Disabilities Act 2016, s 20*

³⁰ *Central Reserve Police Force Act 1949*

³¹ *Central Police Reserve Force Act 1949*

³² *Cascade v. Patel*

Section 47(2) of the Act,³³ 1995, and therefore removing the protection which is meant to enable the provision of equal opportunities and engulf maximum participation of people with disability in India. Thus, the Rights of Persons with Disability Act³⁴ of 2016, had been enacted to “protect non-discrimination, inclusion, and equal opportunities for persons with disabilities”.

However, the case of *Shri Shyam Kumar Wankhede Versus Union of India*³⁵ elaborates on how these legislatively protected provisions are met with stiff institutional requirements. Conclusively, it elucidates that an intricate approach is still required while dealing with questions of disability rights. In this lies what, therefore, the examiner concludes respecting the intent of the law to promote equality and inclusion. The constructive requirement of various institutional rules, since India will continue to pilot these complexities, keeps amending policies and practices to better correspond. This consummates the case calling forth nuanced insight into employment rights and organizational requirements. These sometimes compete with priority, ensuring that everybody, irrespective of their abilities, leads a dignified and self-reliant life.

The Court strikes a balance between the rights of the petitioner and the operational necessities of the CRPF, shedding light on the continuing challenge of thoughtful integration of disability rights within the demanding job environments in Indian society.

³³ Persons with Disabilities (Equal Opportunities, Rights of Protection and Full Participation) Act 1995, s 47(2)

³⁴ Rights of Persons with Disabilities Act 2016

³⁵ *Shri Shyam Kumar Wankhede Vs. Union of India* 2023 0 Supreme (Bom) 690