Reserved On : 01/07/2025
Pronounced On : 04/08/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 976 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting Yes ✔ No

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[redacted]

Versus

UNION OF INDIA & ORS.

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Appearance:
MR SWAPNESHWAR GOUTAM(9051) for the Petitioner(s) No. 1
MR NANDESH DESHPANDE, DEPUTY SOLICITOR GENERAL assisted by MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. By means of the present petition, the petitioner, who is an employee of the Central Reserve Police Force (CRPF), is raising a serious issue of blatant discrimination being

carried out and unfair treatment being accorded to HIV/AIDS +ve persons in promotion and denial of promotion to the petitioner on Ministerial promotional posts, taking aid of the clauses 4.13 to 4.17 of the Standing Order No. 4/2008 as also Rule 5 of the Central Reserve Police Force, Assistant Commandant (Ministerial), Recruitment Rules, 2011, on the ground of falling in low medical category, i.e. not being in Shape-I.

2. The petitioner demonstrated discriminatory treatment accorded to her in the matter of promotion to the post of Inspector (Ministerial) from the year 2016 and further in rejection of her candidature for promotion to the post of Assistant Commandant (Ministerial) against the vacancy of the year 2024-25, in the promotion exercise which commenced vide communication dated 09.09.2024.

3. The validity of Rule 5 of the Central Reserve Police Force, Assistant Commandant (Ministerial), Recruitment Rules, 2011 (in short as the "Recruitment Rules' 2011") and the discriminatory clauses of the Standing Order No. 4/2008, is subject matter of challenge to the extent of requirement of being in Shape-I category for HIV/AIDS +ve persons for promotion to ministerial posts. The prayer is to declare these provisions *ultra vires* being inconsistent with the provisions of Section 3 of the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Prevention and Control) Act, 2017 (in short as the "HIV/AIDS (Prevention & Control) Act' 2017") and also Sections 3,

4 and 20 of the Rights of Persons with Disabilities Act, 2016, inasmuch as, the CRPF Rules and the Standing Order deny fair opportunity of being considered for promotion to the HIV/AIDS +ve incumbents in service and, thus, cause unfair treatment at the workplace.

4. The further prayer made in the Writ petition is to declare Rule 5 of the Recruitment Rules' 2011 and clauses 4.1 to 4.17 of the Standing Order No.4/2008 being contrary to the National HIV Counseling and Testing Guidelines, 2024 as also discriminatory and arbitrary being violative of Articles 14, 16 and 21 of the Constitution of India. A prayer is made to quash and set aside the decision of the Medical Board dated 03.02.2024, coming in the way of the petitioner seeking promotion to the post of Assistant Commandant (Ministerial) under the Recruitment Rules' 2011.

5. The, facts in brief, relevant to decide the controversy at hands are that the petitioner came to be appointed on the post of Assistant Sub Inspector (Ministerial) on 05.06.1991. In the year 2013-2016, she was diagnosed with HIV/AIDS +ve when she was in P1 Shape category condition having more than 200 CD4 blood cell counts. It is stated in the Writ petition that in the year 2013, the petitioner was subjected to Annual Medical Examination and was given a certificate of being in Shape II category. Thereafter, again the petitioner was recommended for review medical examination and even though she was having more than 200 blood counts in CD4 category, she

was given P3 (Shape III) certificate in the year 2015. In the year 2016, the petitioner became eligible and entitled for being considered for promotion to the post of Inspector (Ministerial) and the name of the petitioner was figured in the gradation list no. 449 as on 01.04.2015, whereas the DPC considered gradation list no. 473.

6. In the year 2017, the petitioner was allocated to Group center CRPF Battalion, Pune, wherein the petitioner was having 550 cells CD4 and was categorised in P1 (Shape I). Even at that point of time the petitioner's candidature for promotion to the post of Inspector (Ministerial) was not sent to DPC with the remark "medical category" and the petitioner was illegally dropped out being an HIV/AIDS +ve person. Again in the year 2018, her CD4 blood cells were 654 and the petitioner was categorised under P1 (Shape I). In the year 2018, the petitioner was allocated CRPF Neemuch. There too, her CD4 blood cell counts were 30.88% and the petitioner was categorised under P1 (Shape I) in the year 2020 as CD4 cell count were 678-32.76%. In the year 2022, the petitioner was categorised under P1 (Shape I). Again in the year 2024, the petitioner was allocated Gandhinagar and on 03.02.2024 though CD4 cell counts were 562, the petitioner was placed under P2 (Shape II) category.

7. It is, thus, categorically stated in paragraph '3.7' of the Writ petition that the petitioner was having more than

200 blood counts throughout, but has been put in different Shape I or Shape II category by the CRPF Doctors and there is no consistency in the medical examination, which is being carried out by the same Board governed by the Standing Order No. 04/2008, notified on 15.12.2008.

8. The categorical statement made in the said paragraph is that the petitioner has been superseded systematically and juniors to her have been promoted though she was always fit to work on the posts in question. The copies of the medical reports between the year 2015-2024 are appended as Annexure 'B' at pages '76-85' of the paper book, which substantiate the submission of the petitioner that the absolute CR4 was more than 200 throughout and on various aspects, such as psychological, hearing, appendage, physical capacity, eye sight, she was mostly in the category 1. The petitioner though was referred to in Shape III, but in all other aspects except physical capacity she was falling in Category 1 as is evident from the medical report dated 16.04.2015. However, the medical report of the year 2017 (page '80' of the paper book) shows absolute CD4 cells count being 550 cells, but there is no detailed analysis of all other parameters. In the reports dated 31.12.2018, 31.12.2019, 28.12.2020, 19.03.2022, the petitioner has been throughout in Shape I category being within the biological reference range and placed in P1 category, insofar as the physical capacity is

concerned, she was, thus, placed in Shape I category.

9. The medical report dated 03.02.2024 (page '85' of the paper book) further indicates that though in all other categories such as psycological, hearing, appendage, and eye sight, the petitioner was in S1, H1, A1, and E1 category; respectively, but in physical capacity she was placed in P2 category and, thus, brought in Shape II category for a temporary period of 12 weeks, as a result of the final categorisation. CD4 count dated 19.01.2024, however, is 562, which can be seen from the medical report, itself.

10. Taking note of the above, we are further required to record that the petitioner came to be promoted to the post of Inspector (Ministerial) on 08.01.2019 without extending any benefits from the date of her entitlement, i.e. the year 2017, as per the medical report dated 31.12.2018 (page '80 of the paper book) when she was placed in physical capacity P1. The categorical statement in para '3.9' of the Writ petition is that all juniors to the petitioner have been granted promotion to the post of Inspector (Ministerial) way back in the year 2017 and the petitioner has been discriminated only on the ground of being HIV/AIDS +ve person. The copy of the promotion order dated 08.01.2019 is at page '86' as Annexure 'C' to the Writ petition.

11. A further submission has been made in paragraph '3.10' of the Writ petition that the petitioner has been given

financial upgradation by according benefit of 3rd MACP scheme with effect from 05.06.2021 by an order dated 20.04.2023. On 09.09.2024, the respondent had published a list of 206 incumbents to be considered for promotion to the post of Assistant Commandant (Ministerial) for the vacancy of the year 2025. On 28.09.2024, the petitioner made a representation seeking for consideration of her case for promotion to the said post of Assistant Commandant (Ministerial) agitating that she was wrongly been declared unfit by the Departmental Promotion Committee held in the year 2016-17, 2017-18 and 2018 based on the medical report dated 16.04.2015. After the medical report of Shape I in the year 2017-18, once the petitioner was found fit, she could not have been denied promotion. The promotion granted to the petitioner after the medical report dated 31.12.2018 bringing her in the category of Shape I, declaring her fit by the Departmental Promotion Committee constituted in the year 2019, to the post of Inspector (Ministerial), resulted in denial of fair treatment in the matter of promotion to the petitioner.

12. The representations made by the petitioner have been rejected vide orders dated 25.11.2024 and 14.12.2024 for the same reasons illegally and arbitrarily. The copies of the Annual Performance Appraisal Report (APAR) of the petitioner on the post of Sub-Inspector (Ministerial) and Inspector (Ministerial) for various years have been brought on record as Annexure 'E'

(Colly.) to demonstrate that the petitioner has always received a positive assessment of performance of her work and shown good qualities in performance of work and has been reported as "very good" by the assessing officer.

13. The contention, thus, is that the denial of promotion to the petitioner on the post of Inspector (Ministerial) as per her entitlement and further denial to the post of Assistant Commandant (Ministerial), is a result of discriminatory and unfair treatment given to the petitioner solely for the reason of being HIV/AIDS+ve person. All Rules referred to in the order of rejection of the representation of the petitioner and the clauses of the Standing Order are discriminatory in nature and liable to be declared *ultra vires.*

14. On the factual aspects of the contentions made in the Writ petition in paragraphs '3.1' to '3.11', the reply in the affidavit of the respondents no.1 to 3 are as under :-

> "21. With reference to the contents of para 3.1 to para 3.6 of the Petition, the Respondent herein reiterates the contentions taken in earlier paragraphs.
>
> 22. With reference to the contents of para 3.7 of the Petition, the said contentions are denied and it is submitted that during the year- 2024, the Petitioner categorized as SHAPE-2 (T-12) i.e., Temporary for 12 weeks as on 03.02.2024. Further, the Petitioner was due for undergo the Review Medical Examination on 03.05.2024. But the Petitioner did not undergo RME for last 8 months

for the reasons best known to the Petitioner. It is further stated that CD4 count is always in-consistent which may give different readings even though patient is on regular treatment. The Petitioner mentioned in this para is different CD4 count values.

23. With reference to the contents of para 3.8 & para 3.9 of the Petition, the Respondent herein reiterates the contentions taken in earlier paragraphs.

24. With reference to the contents of para 3.10 of the Petition, the said contentions are denied and it is submitted that MACP and Promotion are two different stages. Medical category is not mandatory in MACP whereas it is mandatory in promotion.

25. With reference to the contents of para 3.11 of the Petition, the said contentions are denied and it is submitted that the Petitioner was no coming under the zone of consideration for assessing her suitability for promotion from Inspector (Min) to the rank of Assistant Commandant (Min) for the vacancy for the year - 23015, her candidature could not be assessed by the DPC."

15. With regard to the challenge to the communication dated 09.09.2024, it is stated in paragraph '28' of the affidavit of the respondents that vide the said letter issued by the CRPF, Headquarter, nomination in respect of All SM/Min existing in the force and Inspector/Min upto gradation list no. 369 as on 01.01.2023 of all category and reserved category for SC upto the gradation list 466 and ST category upto the gradation list 480 as on 01.01.2023, were forwarded. The petitioner falls under General category and was in gradation list no. 694 as on 01.01.2023 and, as such,

was not falling within the zone of consideration for assessing her suitability for promotion from Inspector (Ministerial) to the rank of Assistant Commandant (Ministerial) for the vacancy of the year 2025 and, as such, her candidature could not be assessed by the DPC.

16. As regards the denial of promotion to the petitioner on the post of Inspector (Ministerial) in the year 2017, as per her medical report, it is stated in paragraph '20' of the affidavit of the respondents that owing to permanent Low Medical Category since 16.04.2015, the petitioner was due for Review Medical Examination on 16.04.2017 followed by Annual Medical Examination, but she had appeared before the Medical Board only on 11.08.2017 and her medical category was upgraded from Shape P3 to P1. The contention is that the petitioner should have appeared for Annual Medical Examination after Review Medical Examination, but she did not do so inspite of several directions issued by the GC, CRPF vide letters dated 31.05.2018, 25.06.2018, 13.08.2018, 28.08.2018 and 11.10.2018. The petitioner got her Annual Medical Examination done on 31.12.2018 after a gap of 1 year and 4 months despite directions issued by GC, CRPF, Pune when she was medically categorised as Shape I on 31.12.2018 and was due for promotion to the rank of Inspector (Ministerial) for the vacancy of the year 2019. Her candidature was, thus, considered and she was assessed as fit by the DPC for the vacancy of the year 2019 and her promotion to the post of Inspector

(Ministerial) for the vacancy of 2019 was released on 23.08.2019 considering the Annual Medical Report dated 31.12.2018 for the petitioner being in the category Shape I. The petitioner took over the charge of the post of Inspector (Ministerial) on 11.09.2019.

17. From the above noted statement made by the respondents in their counter affidavit, it is to be noted that the medical category of the petitioner from the year 2014 to 2024 as indicated in paragraph '15' therein, was as under :-

i) 2014-Shape-P3(T-24) as on 28.04.2014.

ii) 2015-Shape-P3(P) as on 16.04.2015.

iii) 2017-P-1 as on 11.08.2017.

iv) 2018-Shape-1 as on 31.12.2018.

v) 2019-Shape-1 as on 31.12.2019.

vi) 2020-Shape-1 as on 28.12.2020.

vii) 2022-Shape-1 as on 19.03.2022.

viii) 2024-Shape-2(Temporary-12 weeks) as on 03.02.2024

18. The denial of promotion to the petitioner on the post of Inspector (Ministerial) is only on the ground that she was in Shape P3 category as on 16.04.2015, whereas from 2017 to 2022, she was falling in P1 (Shape I) category and only on 03.02.2024 she was categorised in

Shape II for a temporary period of 12 weeks.

19. Taking note of the above, suffice it to record that there is no inconsistency in the statement made by the petitioner in the Writ petition about her medical condition and her Annual Assessment Performance Report and there is no denial on the part of the respondents about the same.

20. In the rejoinder affidavit, it is reiterated by the petitioner that she has been discriminated due to wrong categorisation as a result of medical diagnosis as per the Standing Order No. 04/2008, otherwise she would have been in the list of promoted incumbents to the post of Inspector (Ministerial) and consequently in the list for consideration to the post of Assistant Commandant (Ministerial). In paragraph '5' of the rejoinder, there is a categorical statement with regard to the juniors to the petitioner who have been promoted to the post of Assistant Commandant (Ministerial) and have been kept in the list of consideration for promotion to the post of Inspector (Ministerial), though they were appointed together with the petitioner. It is, thus, categorically submitted by the petitioner in the Writ petition and the rejoinder that the petitioner has been discriminated all throughout due to medical reason, which is an outcome of the discriminatory provisions contained in clauses 4.13 to 4.17 of the Standing Order No. 04/2008 as well as Rule 5 of the Recruitment Rules' 2011.

21. We, therefore, proceed to examine the contention of the

petitioner that the Standing Order and the Recruitment Rules contain such provisions which are inconsistent and are violative of Articles 14, 16 and 21 of the Constitution of India as also HIV/AIDS (Prevention and Control) Act, 2017, which has been enacted to protect HIV/AIDS +ve persons from discriminatory treatment in employment and make them a productive part of the workforce.

22. Considering the above, we may note clauses 4.13 to 4.17 of the Standing Order No. 04/2008 & Rule 5 of the Recruitment Rules' 2011 :-

Clauses 4.13 to 4.17 of the Standing Order No. 04/2008 :-

"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 CPMFs. 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 along with 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.

4.14 The Force personnel above the age of fifty-five years placed in the lower medical category of S1H2A1PIE1(Without hearing aid), S1H1A1P1E2 (dominant eye should not be worse than 6/9 with correction) and SIHIA1P2E1 (for dental reasons only) will be treated at par with medical category SHAPE-1 and will be eligible for promotion to the higher ranks in a normal manner.

4.15 As regards officers, who have been put in lower medical classification by the medical board/review medical board of S1H1A2P1E1 and S1H1A1P2E1, who are otherwise fit for promotion, their suitability for promotion will be re-assessed by a board consisting of the Home Secretary as the Chairman, DG of the concerned Force, ADG(Med), MHA and a Specialist nominated by DGHS, as Members. The Board will assess the suitability of the officer, who is otherwise fit for promotion, but is in the above mentioned medical categories, in consideration of the following parameters:-

a. The Officer is capable of performing the normal duties of the rank to which he is being promoted.
b. Any defect, disability or discomfort which the officer is suffering from is not likely to be aggravated by the service conditions.
c. The officers, assessed fit for promotion by the Board will be promoted to the next higher rank as per the recommendations of the DPC.
d. The Board's assessment will be final.

4.16 If the actual promotion of Force Officer is delayed because of his/her low medical category and he/she is required to regain medical category SHAPE-I, the person below him can be promoted, but the officer will regain his/her seniority immediately on his/her, promotion, if he regains SHAPE-I medical category within the validity period of the recommendations of the DPC.

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) SIH1A2PIE1 (ii) SIHIA1P2E1 (iii) SIH2A1PIE1 (iv) SIHIAIPIE2 (v) S1H2A1P1E2"

Rule 5 of the Recruitment Rules' 2011 :-

"Rule 5. Medical Fitness - Notwithstanding any thing contained in these rules, only those persons who are in medical category SHAPE-I, shall be eligible for appointment under the provisions of these rules"

23. We may also take note of the provisions of Section 3 of the HIV/AIDS (Prevention & Control) Act' 2017, which

reads that :-

> "3. Prohibition of discrimination.—No person shall discriminate against the protected person on any ground including any of the following, namely:—
>
> (a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with—
>
> > (i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and
> >
> > (ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;
>
> (b) the unfair treatment in, or in relation to, employment or occupation;
>
> (c) the denial or discontinuation of, or, unfair treatment in, healthcare services;
>
> (d) the denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof;
>
> (e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, whether or not for a fee, including shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort;

(f) the denial, or, discontinuation of, or unfair treatment with regard to, the right of movement;
(g) the denial or discontinuation of, or, unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;

(h) the denial or discontinuation of, or, unfair treatment in, the opportunity to stand for, or, hold public or private office;

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a person may be;

(j) the denial of, or unfair treatment in, the provision of insurance unless supported by actuarial studies;

(k) the isolation or segregation of a protected person;

(l) HIV testing as a pre-requisite for obtaining employment, or accessing healthcare services or education or, for the continuation of the same or, for accessing or using any other service or facility:

Provided that, in case of failure to furnish the written assessment under sub-clause (i) of clause (a), it shall be presumed that there is no significant-risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship."

24. Section 2(d) & (s) of the HIV/AIDS (Prevention & Control) Act' 2017 define "discrimination" and "protected person" in the following manner :-

"2..
(d) “discrimination” means any act or

omission which directly or indirectly, expressly or by effect, immediately or over a period of time,—

(i) imposes any burden, obligation, liability, disability or disadvantage on any person or category of persons, based on one or more HIV-related grounds; or

(ii) denies or withholds any benefit, opportunity or advantage from any person or category of persons, based on one or more HIV-related grounds, and the expression “discriminate” to be construed accordingly.

Explanation 1.—For the purposes of this clause, HIV-related grounds include—

(i) being an HIV-positive person;

(ii) ordinarily living, residing or cohabiting with a person who is HIV-positive person;

(iii) ordinarily lived, resided or cohabited with a person who was HIV-positive.

Explanation 2.—For the removal of doubts, it is hereby clarified that adoption of medically advised safeguards and precautions to minimise the risk of infection shall not amount to discrimination;

"(s) “protected person” means a person who is —

(i) HIV-Positive; or

(ii) ordinarily living, residing or cohabiting with a person who is HIV-positive person; or

(iii) ordinarily lived, resided or cohabited with a person who was HIV-positive;"

25. Section 55 of the Central Reserve Police Force Rules, 1955, which provides general rules for promotion in Chapter IX, reads as under :-

> "55. Merit.-(a) All promotions shall be governed by merit. Other things being equal seniority shall count for promotion. For promotion, a member of the Force must be qualified and recommended by the Commandant, Assistant Commandant or Company Commander, as the case may be.
>
> (b) For exceptional reasons, the Commandant may promote an unqualified Head Constable to the rank of Sub-Inspector or an unqualified Sub-Inspector to the rank of Subedar (Inspector) with the prior approval of the Deputy Inspector-General or Inspector-General respectively, provided that such promotions in either case do not exceed ten per cent. of the sanctioned strength in such ranks."

26. Clause 5 in Part II of the Standing Order No. 04/2008 provides procedure for medical categorisation. Clause 5.3, 5.4, 5.5 and 5.7 are relevant to be extracted hereinunder :-

> "**5.3 CLASSIFICATION PRINCIPLES.**
>
> Medical classification/reclassification of combatised serving personnel be made after assessing his/her fitness under 5 sectors of health status, in terms of the code letters SHAPE' as under:
>
> S - Psychological
> H - Hearing
> A - Appendages
> P - Physical Capacity

E -Eye sight.

5.4 FUNCTIONAL CAPACITY

Functional capacity for duties in the CPF under each factor will be graded in the scale from 1 to 5 indicating declining functional efficiency and increasing employability limitations (For detail guidelines, please refer to Part-IV)

5.5 Functional Capacity Scale

1. Fit for all duties any where

2. Fit for all duties except with limitations in duties involving severe physical/mental strain. They would also required perfect acuity of vision and hearing.

3. Except S Factor, fit for routine or sedentary duties but have limitations of employability; both job wise and Terrain wise as spelt out in classification against each factor as specified in Part-IV.

4. Temporarily unfit for duties in the force on account of hospitalization/sick leave.

5. Permanently unfit for service for any type in the force.

5.7 Demonstrated Physical capacity :

Physical capacity of performance of LMC individual shall be suitably endorsed upon in the health column of ACR by the initiating officer.

27. Clause 7 contained in Chapter II provides the manner in which the medical board will record its proceeding in proforma given in appendix 'C' and reads as under :-

7. Recording of medical board proceedings:

Due care should be taken in recording al types of

> medical board proceedings as prescribed in proforma given in appendix-'C'. The board will ensure that all columns are appropriately and completely filled in unambiguous terms. In permanent LMC cases, assessment of disability percentage shaft be reflected on each occasion, including known aggravating or attributing factors, findings of COI if any. In confirmed, fresh IHD cases admitted to hospitals, last 14 days charter of duties shall be obtained from the concerned unit commandant immediately and placed before the subsequent classification board. When ever any personnel under going medical examination refuses to sign on the report/ board papers, the contents shall be read over to him/her by the PO in the presence of two witnesses, different from board members and their signatures obtained in confirmation thereof. At the same time. The Commanding Officer of the concerned unit shall be informed in writing.

28. Part IV of the Standing Order No. 04/2008 contained the Detailed guidelines on Technical Standards to Medical Officers for Classification of Serving Combatised Personnel in the CPFs. Clause 22 contains tables about Functional Capacity and Employability pertaining to (i) "S" Factor (Psychological); (ii) "H" Factor (Hearing); (iii) "A" Factor (appendages); (iv) "P" Factor (Physical Capacity); (v) "E" Factor (Eye Sight) acuity in clause 22.1 to 22.6. Relevant table pertaining to " S" Factor contained in clause 22.1, "H" Factor in clause 22.2, "A" Factor in clause 22.3 and "P" Factor in 22.4, for our purposes is to be extracted hereinunder :-

"S" FACTOR (PSYCHOLOGICAL)

This factor denotes Psychological aspect and other personality defects, mental acuity, emotional stability and psychiatric diseases

Numeral Grading	Functional Capacity	Employability limitations
S-1	Can withstand severe mental stress. May have fully recovered from a psychological condition with no likelihood of further breakdown.	Fit for all duties any where
S-2	Can withstand moderate stress. Had suffered from Psychoneurosis, but now fully stabilized. Likelihood of breakdown under severe mental stress can not be ruled out.	Fit for all duties any where except at high altitude, solitary locations and operational duties during IS duty and hostilities. Not fit for independent Command and duty with live fire-arms.
S-3	Has limited tolerance to stress, recently recovered from Psychoneurosis or toxic/ confessional state; or acute psychotic reaction of temporary nature as a result of external causes, un-related to alcohol or drug addiction.	Fit for only sedentary duties with limited/ restricted responsibilities under close supervision in peace/ field area but only where hospitals with psychiatric facilities are available nearby. Not fit for operational duties during war or peace on IS duty or duties with arms.
S-4	On sick leave/ in hospital	Temporary unfit for force duties.
S-5	Mentally unstable on account of psychological/psychiatric disorders or having psychopathic personality.	Permanently unfit for service.

22.2 "H" Factor (Hearing)

This factor covers auditory acuity, ability to hear spoken voice or auditory signals often against considerable background noise are important in certain trades and operational situations.

Numeral Grading	Functional Capacity	Employability limitations
H-1	Has excellent hearing in both ears viz. With back to examiner can hear forced whisper at a distance of 6 meters, each ear tested separately.	Fit for all duties any where
H-2	Has excellent hearing in one ear with impaired acuity in the other, partial or complete. With back to the examiner, can hear forced whisper at 6 meters with one ear (+/- 10 decibels) and conversational voice at 1.2 meters or less with the other ear (60 decibels).	No limitations in physical capacity and fit for duties in peace or field areas including IS duties and war any where except as under:- a) Not fit for patrol, scout and laying ambush. b) Not fit for duties which demand keen hearing acuity in both ears.
H-3	Is partially deaf in both ears. With back to the examiner can hear conversational voidce at 3 meters with both ears (40 decibels), each one tested separately.	No limitations in physical capacity and fit for duties in peace or field areas including duties during IS duty and war anywhere except as under. a) Not fit for patrol, scout and laying ambush in noisy surroundings. b) not fit for duties which demand keen hearing acuity of both ears.
H-4	On rest/Leave on medical ground/in hospital	Temporary unfit for Force duties
H-5	Hearing acuity below H-3 standard	Permanently unfit for Force duties.

'A' Factor (appendages)

This covers the functional efficiency of upper and lower

limbs (including amputees, loss of fingers and toes) shoulder girdle, pelvic girdle and associated joints and muscles. A personnel who may be placed in Grade"2" or "3" of A factor, depending on whether their disability pertains to upper limbs or lower limbs, totally difference employability restrictions will be applicable. Hence the person placed in grade 2 or 3 of this factor will be further divided into classification A-2(U) or A-3(U) if this disability is in the upper limb(s) and A-2(L)/A-3(L) if this disability is in the lower limbs. This will give a clear picture of the individual to the administrative authorities to determine his/her suitable placement.

Numeral Grading	**Functional Capacity**	**Employability limitations**
A-1	Has full functional capacity though may be having minor impairments eg.-	Fit for all duties any where
A-1(U)	(a) Loss or disability of the terminal Phalanx of anyone of 5th,4th or 3rd fingers of dominant hand with other hand being normal OR, (b) Loss of terminal Phalanges of 3rd, 4th fingers of non dominant hand with grip in same hand being very good and other hand being normal	-do-
A-1(L)	Loss of terminal Phalanges of 3rd and 4th toe of any one foot	Fit for duties any where except operational/IS duties/during hostility.
A-2(U)	Has moderate defects in function of upper limbs e.g.- (a) Deformity/Disease/Loss of index finger of dominant hand leading to its functional disability, Or (b) Loss terminal 2 Phalanges of 3rd and 4th fingers of non-dominant hand, with reasonable grip retained, and the other hand being normal OR, (c) Any other minor disease/disability in no	Fit for all duties which do not involve crawling, running, jumping long marching, hill climbing and handling of weapons.

	dominant hand	
A-2(L)	Has a defect/disease or disability of a moderate nature in one limb below knee capable of marching up to 8 KM and standing for 2 hours.	- do -

Note: In case the individual is placed in A2(L), each person's functional capacity in terms of employability has to be assessed on the basis of his disability e.g. a person having classical Symes operation with a good prosthesis is fit for crawling but NOT for jumping.

An individual who is placed in this classification due to an injury/disability/disease will be fit for duties anywhere except at hilly terrain (Where he has to go up and down the frequently).

A-3 A-3 (U)	Has major disability or disease in upper limb like complete loss of hand including fingers, or amputation through metacarpals, or a disease/disability of shoulder in one side	Not fit for operational/ Counter insurgency duties. Can do IS duties without fire-arm. Area restriction not applicable.
A-3 (L)	Has a disease or disability above knee on one side, including pelvic girdle but should be able to walk up to 5 Km at his own pace.	Fit for sedentary duties only. Not fit for high altitude/ operational / CI / IS duties.
A-4	Sick in hospital/rest on medical ground	Temporarily unfit for Force duties.
A-5	Severe derangement of functional efficiency	Permanently unfit for Force duties.

22.4 **"P" FACTOR PHYSICAL CAPACITY)**

This factor shall cover to describe in details about the physical capacity, strength, endurance, conditions and those which are not covered under other factors. Concessions are embedded as process without any

obvious pathology being visible.

Numeral Grading	Functional Capacity	Employability limitations
P-1	Has full functional capacity and physical stamina Minor impairment fully under control, but has full physical stamina.	Fit for all duties any where Fit for all duties any where but under medical observation, having no employability restrictions.
P-2	Has moderate physical capacity and stamina. Suffered from constitutional metabolic/infective disease/operative procedures, but now well stabilized.	Fit for duties not requiring severe stress. May have restrictions in employability at high altitude (above 2,700 meters/9,000 feet in hilly terrain and extreme cold areas).
P-3	Has major disablement with limited physical capacity and stamina	Fit for sedentary duties not involving undue stress. May have restricted employability as advised by medical authorities such as:- a. To avoid places with high humidity level 75% round the year. b. Have access to specialist services near by. c. To avoid driving/handling of weapons near water, fire or heavy machinery. d. Restricting physical excess, work in desert/snow bound areas etc. e. Restricting active participation in hostilities, counter insurgency operations etc. (excluding staff,

		logistics and allied support duties.)
P-4	On sick/ leave on medical ground in hospital	Temporarily unfit for force duties
P-5	Gross limitations on physical capacity and stamina	Permanently unfit for Force Service.

29. There is a separate table in clause 22.4 (g) for HIV/AIDS+ve persons, which reads as :-

P-1	HIV Positive Asymptomatic Not on ART CD4,CD8 Count normal Other Parameters like Viral load Normal	Fit for all duties anywhere
P-2	HIV Positive Weight Loss more than 10% CD4(Above 200 Cells/Microlitre) CD8, Count within normal range Total Lymphocyte Count above 1200/mm3 Minor Mucocutaneous Manifestations/minor infections With or without ART	Fit for all duties anywhere except at difficult and solitary locations, preferably where ART facilities are available
P-3	HIV Positive Weight loss more than 10% CD4 Count less than 200 Cells/Microlitre Viral load more than 50,000 copies, Unexplained chronic, Diarrhea/fever more than 1 month. Opportunistic infections:- (1) Pulmonary TB (2) Oral thrush (3) Herpes Zoster more than 1 month (4) Leukoplakia etc on ART	Fit for sedentary duties only and only at locations where advance medical facilities are available.
P-4	Hospitalization/leave due to HIV related diseases/AIDS	Temporary UNFIT for Force duties.
P-5	Unsatisfactory response to ART, (CD4 count less than 200 cells/microlitre with ART) HIV wasting syndrome Disabiling	Permanently UNFIT for any type of service, invalidation.

	Neurological/Psychiatric problems Disseminated Tuberculosis Poor Physical endurances Malignancies associated with AIDS Functional disability more than 50%	

30. A perusal of the said tables indicate that the persons diagnosed with HIV/AIDS +ve, on psychological aspect, including those with hearing capacity, appendages etc. who are kept in category P5 only, are permanently unfit for force services, whereas, the persons categorised in S-4, H-4, A-4, & P-4 category who are on sick or on medical leave or in hospital are temporarily unfit for force duties. The HIV/AIDS +ve persons categorised in S-3 and P-3 are fit for sedentary duties only at locations where advance medical facilities are available. However, all those kept in S-1, S-2 or H-1, H-2 or P-1, P-2, are fit for all duties anywhere except at difficult and solitary locations, i.e. such duties would not require severe stress and at locations preferably where ART facilities are available. There is absolutely no restriction for P1 category as they are fit for all duties anywhere.

31. We may also note that the 'combatised personnel' in the CRPF mean personnel who are posted in field duties. However, on a query made by the Court, it was submitted by the learned counsel for the respondents that the same criteria is being adopted for the personnel employed in the CRPF on ministerial posts, though they

may not have to be posted in the field duties. It was contended that it would be difficult for the forces to distinguish between the ministerial staff and combatised personnel (employed for field duties), as there may be some requirements of posting of the ministerial staff at difficult positions.

32. Be that as it may, from a reading of the detailed guidelines contained in Part IV of the Standing Order No. 04/2008 itself, at least it is clear that HIV/AIDS +ve persons who are facing some psychological or physical limitations and kept even in category S-2, A-2, P-2 or H-2 cannot be denied employment as they are otherwise fit for all duties except few limitations such as solitary location and preferably where ART facilities are available.

33. A perusal of the clauses 4.14 to 4.17 further indicates that there is some relaxation in Shape I medical category admissible to certain categories of persons and some criteria has been adopted for placing officers/force personnel in the lower medical category.

34. Be that as it may, a reading of clause 4.13 of the Standing Order and Rule 5 of the Recruitment Rules' 2011 in CRPF, noted hereinbefore, makes it clear that applying the medical category Shape I as an essential (pre-requisite) condition for promotion of the force personnel in all groups/ranks/cadres in the CPMF and, thus, denying promotion to HIV/AIDS +ve persons who

are "protected persons" within the HIV/AIDS (Prevention & Control) Act' 2017 resulted in arbitrary exercise of powers at the ends of the respondents.

35. A perusal of Rule 55 of the Central Reserve Police Force Rules, 1955, noted herein above, indicates that all promotions shall be governed by merit and other things being equal, seniority shall count for promotion. A member of the Force must be qualified and recommended by the DPC to be entitled for promotion. On a comprehensive reading of the Standing Order No. 04/2008, once it is clear that even the personnel categorised in S-2, H-2, A-2, P-2 category are fit for all duties not requiring much stress, it is difficult to comprehend that promotion can be denied to "protected persons" being HIV/AIDS +ve persons on the ground that they are not in Shape I category. The blanket directions contained in Clause 4.13 of the Standing Order 04/2008 and Rule 5 of the Rules for promotion to the post of Assistant Commandant (Ministerial) Group A in CRPF are clearly discriminatory, being violative of Articles 14, 16 and 21 of the Constitution of India as also the provisions contained in the HIV/AIDS (Prevention & Control) Act' 2017.

36. Upon reading of clause 4.16, it is further pertinent to note that if the actual promotion of a Force Officer is delayed because of his/her low medical category and he/she is required to regain medical category Shape-I, the person below him can be promoted, but the officer

will regain his/her seniority immediately on his/her promotion, if he/she regains Shape-I medical category within the validity period of the recommendations of the DPC. This provision, thus, shows that on regaining of the better medical condition, the person who has been recommended by the DPC for promotion, but actual promotion could not be given to him/her will be able to regain his seniority on promotion, once he/she regains Shape-I medical category within the validity period recommended by the DPC.

37. Reading of the above provisions clearly show that they are contradictory to each other. Clause 4.13, makes it mandatory for the medical category Shape-I being an essential condition (pre-requisite) for promotion to all combatised personnel in all groups/ranks/cadres for the CRPF and further provides that whose illness is of permanent nature and who are not in Shape-I, they will be considered for promotion by DPC, but will be declared unfit for promotion, even though they are otherwise fit for promotion. This provision itself puts an embargo upon the discretion to be exercised by DPC in the matter of assessment of performance of a candidate not in Shape I category, for promotion purposes. It seems that HIV/AIDS +ve persons are being treated in the force as the persons suffering from illness of permanent nature and, as such, they are either being declared unfit by DPC even though they are otherwise fit for promotion or not even included in the list placed

before the DPC for consideration for promotion on the ground that they do not fall in Shape-I category. This is what has exactly happened with the petitioner herein.

38. As noted hereinabove and is clear from the affidavit filed on behalf of the respondents, the petitioner was in Shape-I category throughout from the year 2017 till 2022. In the medical examination held on 16.04.2015, she was placed in Shape III being in P-3 category and was denied promotion to the post of Inspector (Ministerial) in the DPC held for the vacancy of the year 2016-17 and also 2017-18 and 2018-19. It is clear from the contents of the affidavit filed by the respondent and page '73' of the paper book, which is the communication dated 14.12.2024 of rejection of the case of the petitioner that the petitioner was denied promotion in three DPCs held in the years 2016-17, 2017-18 and 2018-19 only on the basis of the medical report dated 16.04.2015 wherein she was kept in Shape III category, whereas subsequent medical reports of the year 2017, 2018, 2019 puts her in Shape I category. There is an admission on the part of the respondents that in the medical report dated 03.02.2024, the petitioner was kept in Shape II category for a temporary period of 12 weeks.

39. From the above, it is more than evident that the petitioner being HIV/AIDS +ve person, has been discriminated throughout in the matter of grant of promotion to the post of Inspector (Ministerial) and

consequent promotion to the post of Assistant Commandant (Ministerial). This was made possible because of the flaw in the Recruitment Rules and the Standing Order, which are the guidelines framed in consultation with the Central Government governing the service conditions of the CRPF personnel.

40. Section 3 of the HIV/AIDS (Prevention & Control) Act' 2017 completely prohibits "discrimination" against a "protected person" in employment or occupation. The "discrimination" and denial of employment opportunities to the "protected persons" within the meaning of Sections 2(d) and 2(s) of the Act' 2017 resulted in unfair treatment to such persons. The denial or discontinuation or unfair treatment in relation to employment is clearly prohibited under Section 3 of the HIV/AIDS(Prevention & Control) Act' 2017. The Act' 2017 has been enacted to ensure equal opportunity of employment and with the need to protect and secure the human rights of persons who are HIV/AIDS +ve. India being signatory of the Declaration of Commitment on Human Immunodeficiency Virus (HIV) and Acquire Immune Deficiency Syndrome (AIDS) (2001) passed in the General Assembly of the United Nations to address the problems of HIV/AIDS in all its aspects and to secure a global committent to enhancing coordination and intensification of national, regional and international efforts to combat it in a comprehensive manner, the Parliament has enacted the Act named as Human

Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Prevention and Control) Act, 2017, to give effect to the said declaration.

41. With the commitment made by the Parliament to the people of India suffering discrimination at the hands of employers or any other person, with the enactment of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Prevention and Control) Act, 2017 with effect from 20.04.2017, there was an imminent requirement to amend the Rules and Regulations as also the Standing Order prevailing in the matter of governing service conditions of CRPF personnel. No such exercise has been conducted till date. Even in the joint affidavit filed on behalf of respondents no.1 to 3 (including on behalf of Union of India), assertions have been made by the deponent who is Deputy Inspector General of Police, Group Centre, CRPF, Gandhinagar that the Standing Order No. 04/2008 was issued in consultation with the Ministry of Home Affairs and the object of the same is for timely detection of any disease and infirmity that may still be in a latent stage for early intervention and preventive and curative measures to promote positive health.

42. It is sought to be stated that Rule 5 of the Recruitment Rules' 2011 for Assistant Commandant (Ministerial) Group 'A' post are framed to ensure that the persons who are in combat forces have to be perfect in medical state and reliance placed by the petitioner on the

provisions of the HIV/AIDS (Prevention & Control) Act' 2017 is of no aid. The CRPF Act and Rules framed thereunder as also the Standing Order operate in a very specialised field which require special provisions and they cannot be said to be contrary to the statute, viz, the HIV/AIDS (Prevention & Control) Act' 2017. This type of response where the validity of the statutory provisions and rules framed are subject matter of challenge being violative of Articles 14, 16 and 21 of the Constitution of India, cannot be appreciated. The affidavit dated 25.03.2025 jointly filed on behalf of respondents no. 1 to 3, without brining any specific response of the Union of India inspite of the specific order dated 12.02.2025 passed in the present petition highlighting the importance of the matter, is really disappointing.

43. Mr. Nandesh Deshpande, learned Deputy Solicitor General of India appearing for the Union of India could not dispute the above noted facts and the law laid down in the decision of the Allahabad High Court in **Shailesh Kumar Shukla vs. Union of India [2023 SCC OnLine All 429]** decided on 06.07.2023, further relied by the Delhi High Court in **Hoshiar Singh vs. Union of India** in its judgment and order dated 13.01.2025. Both the matters before the Allahabad High Court and Delhi High Court have dealt with the similar issues of denial of promotion to the HIV/AIDS +ve CRPF personnel on the basis of clause 4.13 of the Standing Order.

44. The observations made by the Allahabad High Court in

Shailesh Kumar Shukla (supra) on the provisions of the Standing Order No.04/2008 are relevant to be extracted hereinunder :-

> **55.** Perusal of the Annual Medical Examination dated 17.05.2013 reveals that the grading of the medical condition of the appellant was S-I, H-I, A-I, P-2, E-I, which reflects that the appellant was found to lack only 'P' factor relating to physical capacity. However, 'P-2' as contained in Clause 22.4 of Part-IV of the Standing Order No. 04/2008, which deals with procedure for medical categorization, corresponds to "***Fit for duties not requiring severe stress***" in the tabular chart. The said categorization is extracted as follows:

Numerical Grading	**Functional Capacity**	**Employability limitations**
P-2	Has moderate physical capacity and stamina. Suffered from constitutional metabolic/infective disease operative procedures, but now well stabilized.	Fit for duties not requiring severe stress. May have restrictions in employability at high altitude (above 2,700 meters/9,000 feet in hilly terrain and extreme cold areas)

> **56.** The aforesaid grading of medical condition of the appellant indicates that although he has been placed in SHAPE-2, but he is physically fit for duty and the employability limitation indicates that he may have restriction in employability at high attitude.
>
> 5**7.** This Court finds that CRPF was sensitive and alive to the fact that HIV positive recruits could not be treated differently from their other recruits, who

did not suffer from this disability as far as promotion and other conditions of the service were concerned. Clause 22.5 (g) of the Standing Order No. 04/2008 deals with the case of HIV/AIDS cases, which invariably says that "**P2" category of HIV Positive recruit would be fit for all duties anywhere except at difficult and solitary locations, preferably where ART facilities are available**. Although, Clause 4.13 and Clause 22.5(g) are borne out of the same Standing Order, however they are at stark difference, as on the one hand the General Clause 4.13 prescribes a recruit to be in SHAPE-1, whereas the special provisions related to HIV positive says that a personnel having even SHAPE-2 medication conditions is fit for duties.

58. Further, this Court finds that the Director General CRPF has also issued a Standing Order No. 06/2006 on 03.09.2006, laying down the action plan on HIV/AIDS for awareness, prevention, detection, treatment and rehabilitation of the members of the force. Under the caption 'Management of HIV/AIDS cases' in the aforesaid Standing Order No. 06/2006, it has been specifically stated in Clause (b) that **adequate policy should be made in consultation with the Government of India, so that there is no discrimination in posting/promotion and social activities of these HIV infected employees**."

"60. This Court cannot be oblivious to the fact that it is common knowledge that once a personnel moves higher up in hierarchy in the service, the requirement of his physical endurance relatively reduces and in that sense it could be well construed that the appellant who is presently performing and is found fit physically for the post of Constable can be always be found fit for a less physically enduring

duties of Head Constable. The said analogy has been drawn keeping in mind the peculiar fact that in the AME of the appellant, only the physical endurance of the appellant has been categorized as 'P-2', whereas all other requirements in SHAPE have been given one (1) and most importantly the said medical conditions has been consistent as can be found from medical examination held on 30.01.2016, 13.04.2019 and 24.06.2021.

61. Further, this Court is of the view that protection against discrimination is a fundamental right guaranteed to Citizen of India. No one can be discriminated on the basis of his HIV/AIDS status in India. Even the CRPF Standing Orders issued from time to time reverberate their belief to provide equal status and opportunity to these affected personnel. HIV/AIDS patients have a right of equal treatment everywhere and they cannot be denied job opportunity or discriminated in employment matters on the ground of their HIV/AIDS status. Even in case of promotion, the said non-discrimination is echoed in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act of 1995), which inter-alia states:

> "**47. Non-discrimination in Government employments**-
>
> (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;
>
> Provided further that if it is not possible to adjust the employee against any post, he may

be kept on a supernumerary post until suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

62. A perusal of the aforesaid section reveals that sub-section (2) of Section 47 mandates that no promotion shall be denied to a person merely on the ground of his disability."

"65. This Court is of the view that since a person, who is otherwise fit, could not be denied employment only on the ground that he or she is HIV positive and this principle also extends to grant of promotion. In any case, a person's HIV status cannot be a ground for denial of promotion in employment as it would be discriminatory and would violate the principles laid down in Articles 14 (right to equality), 16 (right to non-discrimination in state employment) and 21 (right to life) of the Constitution of India."

45. The Allahabad High Court has relied upon the judgment of the Punjab and Hariyana High Court in **Bishamber Dutt v. Union of India[(2010) 2 LLR 228]**, in paragraphs '63' and '64' as under:-

"63. Appellant has relied upon a judgment passed by the Hon'ble Punjab & Haryana High Court in

> "Bishamber Dutt v. Union of India" reported in (2010) 2 LLR 228 Punjab & Haryana, wherein a Single Judge of Punjab & Haryana High Court was called upon to decide the issue of promotion of an identically placed personnel of ITBP as that of the appellant herein. The learned. Single Judge in that judgment after recording the various contention as well as the departmental instructions as applicable to ITBP, observed that the policy and the rules provided for continuance of HIV positive personnel in the job of Para Military forces except those falling in unfit category. The learned. Single Judge found in that case that although the petitioner had been detected with HIV positive in the year 1995, he continued to be in service till the passing of the order on 2010 and as such concluded that there was no reason to deny him the promotion.
>
> 64. In the facts of the present case, this Court does not have even an iota of doubt that the aforesaid judgment has a persuasive effect. The appellant was detected with HIV positive in the year 2008 and he was promoted in the year 2013 and he was reversed from the promotion in 2014 and even today after close to 9 years, the appellant continues to be employed as Constable with the respondents and is in the same medical condition of SHAPE-2. This Court finds that the aforesaid judgment relied upon by the appellant contains a similar chart of physical endurances similar to clause 22.4 of Part-IV of the Standing Order No. 04/2008, which deals with procedure for medical categorization. Since, the appellant has been found for fit for duties, this Court also finds no reasons as to why his promotion could not have been granted."

46. The Delhi High Court in its judgement and order dated 13.01.2025, relying upon the Allahabad High Court Judgement in **Shailesh Kumar Shukla (supra),** Punjab and Hariyana High Court in **Bishamber Dutt (supra),** has further noted the judgment of the High Court of

Uttarakhand in **Pancham Singh v. Union of India & Ors. [Special Appeal No.911/2018]**, wherein again while dealing with a case where promotion had been denied to the petitioner therein as he was placed in the P2(P) Medical Category, directed the Government of India to exercise its power under Section 50(1) of the HIV Act and to consider if the same can be exercised to remove the difficulties in effecting the promotion to the Assistant Sub- Inspectors, who have tested HIV positive, to the post of Sub-Inspector (GD). We quote from the Judgment as under: -

> "43. The High Court of Uttarakhand in Pancham Singh (supra), while again dealing with a case where promotion had been denied to the petitioner therein as he was placed in the P2(P) Medical Category, directed the Government of India to exercise its power under Section 50(1) of the HIV Act and to consider if the same can be exercised to remove the difficulties in effecting the promotion to the Assistant Sub- Inspectors, who have tested HIV positive, to the post of Sub-Inspector (GD). We quote from the Judgment as under: -
>
> > "—14. Shri Vinay Kumar, Learned counsel for the petitioner, would submit that, while the petitioner has achieved SHAPE-I physical fitness with ART, the Medical Board recommendation, for SHAPE-I physical fitness without ART, is impossible to comply as the petitioner must continue Anti-Retroviral Therapy (ART) for his survival. As the petitioner claims to have achieved SHAPE-I medical fitness with ART, we consider it appropriate to direct the Government of India-respondent no.1 to examine the petitioner's case, and to consider whether the power to remove difficulties, under Section 50(1) of the

> 2017 Act, and the power to relax the rigor of the 2009 Rules under Rule 11 of 2009 Rules, can be exercised with respect to the category of persons, to which the present petitioner belongs. i.e. Assistant Sub-Inspector suffering from HIV. As the power to remove difficulties, under Section 50 (1) of the 2017 Act, can only be exercised within two years from the date on which 2017 Act came into force, i.e. on or before 24.04.2019, the first respondent shall consider whether or not the 2009 Rules should be relaxed, and power under Section 50(1) of the 2017 Act, should be exercised to remove the difficulties in effecting promotion of Assistant Sub-Inspectors. who have tested HIV-Positive, to the post of Sub-Inspectors (GD). This exercise shall be undertaken, and a decision shall be taken with utmost expedition and, in any event, not later than 31.03.2019."

47. Noticing the judgment of the Apex Court in **Union of India v. Devendra Kumar Pant & Ors. [2009 SCC OnLine SC 1273]**, while considering Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, it was noted by the Delhi High Court that the prescription of a minimum medical standard for promotion should be considered as such, and should not be viewed as denial of a promotional opportunity to a person with disability. A person who is otherwise eligible for promotion shall not be denied promotion merely on the ground that he suffers from disability.

48. It was noted that even disabled persons who are in employment are required to be accommodated on the principle of reasonable accommodation based on their individual capacity, which is one of the means for

achieving substantive equality. The Apex Court **in Ravinder Kumar Dhariwal & Anr. v. Union of India & Ors. [(2023) 2 SCC 209]** has held that reasonable accommodation should be provided to such persons to comply with the full scope of the equality provisions under the Constitution of India. The relevant paragraph '45' of the Delhi High Court Judgment which takes note of the decision of the Apex Court in **Ravinder Kumar Dhariwal (supra)** is to be noted hereinunder :-

> "45. The provision of the above Act also came up for consideration before the Supreme Court in Ravinder Kumar Dhariwal & Anr. v. Union of India & Ors., (2023) 2 SCC 209. The Supreme Court highlighted that the principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which a person with a disability must be reasonably accommodated based on their individual capacities. Reasonable accommodation should be provided to such persons to comply with the full scope of the equality provisions under the Constitution of India. It further held as under: - —
>
> > "125. On the basis of our discussion of the above-mentioned jurisdictions, the following conclusions emerge:
> >
> > xxx
> >
> > 125.2. The duty of providing reasonable accommodation to persons with disabilities is sacrosanct. All possible alternatives must be considered before ordering dismissal from service. However, there are accepted defences to this principle. The well-recognised exception to this rule is that the duty to accommodate must not cause undue hardship or impose a disproportionate burden on the

> employer - the interpretation of these concepts may vary in each jurisdiction. In the US, the duty to accommodate is also to be balanced with ensuring the safety of the workplace (the direct risk defence) provided that the threat to safety is based on an objective assessment and not stereotypes. In Canada, the PART C minority concurring opinion in Stewart (supra) observed that accommodating a person with substance dependency would cause undue hardship to the employer in a safety-sensitive workplace. The Court of Justice of EU also recognised workplace safety as a legitimate occupational requirement for imposing certain occupational standards. However, it ruled that the standard should be proportionate to the objective of workplace safety that is sought to be achieved. In this context, it will be useful to refer to the minority opinion in Stewart (supra) which emphasizes that the duty to accommodate is individualized. The employer must be sensitive to how the individual's capabilities can be accommodated. The Committee on the Rights of Persons with Disabilities in General Comment Six expressly notes that the duty to accommodate is an —individualised reactive duty‖ and —requires the duty bearer to enter into dialogue with the individual with a disability‖. Thus, a blanket approach to disability-related conduct will not suffice to show that the employer has discharged its individualized duty to accommodate. It must show that it took the employee's individual differences and capabilities into account."

49. The Delhi High Court, thus, has read down the provisions of clause 4.13 of the Standing Order No. 04/2008 dated 18.11.2008, insofar as HIV Positive personnel are concerned, to give effect to the objectives

of the HIV/AIDS(Prevention and Control) Act, 2017, and its prohibition against 'discrimination' in the following manner :-

> "46. Applying the above precedents to the facts of the present cases, we find that the petitioners in W.P.(C) 4736/2023 and W.P.(C) 13547/2023 have been placed in the P2 Medical Category. The P2 Medical Category is one where the personnel are found to be „fit" for all duties anywhere, except at remote and solitary locations, and preferably where ART facilities are available. Therefore, the petitioners can perform all works and duties, with the only limitation being on their posting. Although, in terms of para 4.13 of the Office Memorandum dated 18.11.2008 (O.M.), the personnel are required to be in SHAPE-I Medical Category for promotion, the said provision has to be read in consonance with the HIV Act and its objectives. Section 3 of the HIV Act states that no person shall be discriminated against in matters of employment, which would, inter alia, result in the denial of a benefit, opportunity or advantage based on one or more HIV-related grounds. The exception is where the employer can certify the administrative or financial hardship for not providing such person reasonable accommodation in terms of other work.
>
> 47. To give effect to the objectives of the HIV Act and its prohibition against discrimination, Para 4.13 of the OM dated 18.11.2008 has to be read down as far as HIV-positive personnel are concerned, in a narrow sense, and an obligation is cast on the respondents to show that such person, on being granted promotion, would not be able to be accommodated in any other work. Once the medical condition of the HIV personnel is confined only to his/her placement for the performance of the duty, it should be considered as SHAPE-1 for the purposes of para 4.13 of the above O.M., and they cannot be denied promotion only because technically they are not in the SHAPE-1 Medical

> Category because of them suffering from HIV. To hold otherwise, will defeat the protection granted under the HIV Act. A narrow reading of Para 4.13 of the above O.M. is, therefore, required to make it withstand the challenge that it would otherwise face of being violative of Section 3 of the HIV Act and the Constitution of India."

50. Considering the above, we find that ignoring the statement of law made by various High Courts of the country in the matter of discrimination in promotion to the HIV/AIDS +ve persons, from time to time, taking recourse to the provisions of the Standing Order No. 04/2008, repeated discriminatory treatment is being accorded to the HIV/AIDS +ve persons employed in CRPF and the response before us is that the Standing Order No. 04/2008 made in consultation with the Ministry of Home Affairs, Government of India are binding in nature. No efforts seem to have been made to bring the Standing Order and the Rules governing the services of CRPF personnel in line with the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Prevention and Control) Act, 2017 so as to remove "discrimination" against the "protected persons" within the meaning of Sections 2(d) and 2(s) read with Section 3 of the HIV/AIDS (Prevention and Control) Act, 2017.

51. No such efforts having been made on the part of the Ministry of Home Affairs, Government of India, has been brought before us, inasmuch as, there is no response of the Union of India though it is impleaded through the

Secretary, Ministry of Home Affairs on the question of the validity of the Rule 5 of the Rules' 2011 and the offending clauses of the Standing Orders, which are subject matter of challenge herein being violative of Article 14, 16 and 21 of the Constitution of India.

52. This case, thus, presented a very sorry state of affairs at the ends of the respondent authorities including the Ministry of Home Affairs, Government of India in perpetuating discrimination by not bringing necessary amendments in the Standing Order No.04/2008 and the recruitment/appointment Rules which prescribe blanket restriction for promotion or appointment to persons who are not kept in medical category Shape I, specifically HIV/AID +ve personnel. As a result of this inaction on the part of the concerned Ministry, the HIV/AIDS +ve CRPF personnel have faced consistent discrimination, which is sought to be justified with the response in their affidavit that the Standing Order No.04/2008 have been framed in consultation with the Ministry of Home Affairs and being in place, are binding in the matter of governing services of the CRPF personnel.

53. With the above, we reach at an irresistible conclusion that the petitioner has been discriminated in denial of promotion to the post of Inspector (Ministerial) from the date of her entitlement on the premise that she was in Shape III category in the medical report dated 16.04.2015. The consequent denial for consideration for promotion on the post of Assistant Commandant

(Ministerial) in view of Rule 5 of the Recruitment Rules' 2011, which provides for the incumbent being in Shape I category for consideration for appointment on the post of Assistant Commandant (Ministerial), is discriminatory. The juniors to the petitioner have been promoted to the post of Inspector (Ministerial) and have been kept above the petitioner in the seniority list, as she was promoted to the post of Inspector (Ministerial) only on 23.08.2019 with the recommendation of the DPC on the basis of the medical report dated 31.12.2018.

54. We, therefore, direct the respondent authorities to grant promotion to the petitioner to the post of Inspector (Ministerial) with effect from the date the junior(s) to the petitioner were/was promoted. The petitioner shall be entitled to full benefits including continuity of service to the post of Inspector (Ministerial) from the date the juniors to the petitioners were/was promoted. The petitioner shall also be considered for promotion to the post of Assistant Commandant (Ministerial) by placing her in the gradation list along with her juniors and a special DPC be conducted to consider the candidature of the petitioner to the said post. Upon consideration, if the petitioner is found fit on all other aspects, she shall be given promotion to the post of Assistant Commandant (Ministerial) from the date the junior(s) to her have been promoted against the vacancies of the year 2024-25 as mentioned in the communication dated 09.09.2024.

55. It is further clarified that the respondent authorities

shall be required to revise pay and re-fix the pay-scale of the petitioner from the date of her entitlement to promotion on the post of Inspector (Ministerial) and further on the post of Assistant Commandant (Ministerial) and shall pay the arrears including all consequential benefits to the said posts. The entire exercise shall be completed within a period of two months from the date of filing of the copy of this order, failing which the petitioner shall be at liberty to bring her action before this Court.

56. The Clause 4.13 of the Standing Order No. 04/2008 dated 18.11.2008 and Rule 5 of the Central Reserve Police Force, Assistant Commandant (Ministerial), Group "A" Post, Recruitment Rules, 2011, are hereby declared *ultra vires* to Articles 14, 16 (equality in employment) and 21 (right to life) and being in contravention of the HIV/AIDS (Prevention & Control) Act' 2017 insofar as the matter of employment (appointment and promotion) of the HIV/AIDS +ve persons are concerned in the Central Reserve Police Force (CRPF). The other clauses 4.15 to 4.17 of the Standing Order No. 04/2008 are also required to be suitably amended to remove any kind of discrimination, directly or indirectly, expressly or by effect which denies or withholds any benefit, opportunity or advantage from any person or category of persons being HIV/AIDS +ve person(s). Such a discrimination is to be completely ruled out from the provisions of the Recruitment Rules' 2011 as well as the Standing Order

No. 04/2008 by brining suitable amendments as early as possible. For the purpose of medical assessment of HIV/AIDS +ve persons, the amendments shall be brought in the relevant clauses of the Standing Order keeping in mind the National HIV Counselling and Testing Guidelines' 2025.

57. The compliance of this order to bring the amendments in the relevant Rules and the Standing Order to remove any kind of discrimination within the meaning of Section 2(d) of the HIV/AIDS (Prevention & Control) Act' 2017 to the "protected persons" within the meaning of Section 2(s) of the HIV/AIDS (Prevention & Control) Act' 2017, shall be reported to this Court through the Registrar General of the High Court. The compliance report shall be submitted on the administrative side to the High Court by the Registrar General, as soon as the same is received.

58. With the above observations and directions, the present Writ petition stands allowed. No order as to costs.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BIJOY B. PILLAI