



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.1311/2020
(S.W.P. No. 743/2004)

Monday, this the 24th day of May, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Tarun Shridhar, Member (A)**

Kareeb Akhtar
S/o Akaram Din
R/o Fazalabad
Tehsil Surankote
District Poonch, Aged 27 years.

... Applicant

(Ms. Surinder Kour, Senior Advocate)

Versus

1. State of J&K through
Chief Secretary to Government
Civil Sectt. Jammu/Srinagar
2. Commissioner/Secretary to Government
Home Department
J&K Government, Civil Sectt. Jammu/Srinagar.
3. Director General of Police
J&K Government, Jammu.
4. Inspector General of Police
J&K government, Jammu.
5. Additional Director General of Police
(Armed), J&K, Jammu.
6. Commandant
7th BN. JKAP
Channi Himmat, Jammu.



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7. Sh. Qaiser-ud-Din
S/o Abdul Khaliq Hajam
R/o Gangbug, Kupwara.

... Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

O R D E R (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant states that he was selected and appointed as Water Carrier in the Police Department in the year 1997. Thereafter, the selections for the post of Constable were made. He states that he fulfilled all the criteria but he was not selected on the ground that he was short by one inch in height. When a proposal was mooted for relaxation of the same, an order was passed on 23.02.2004, stating that the stipulation as to height cannot be relaxed in view of the judgment of the Hon'ble Supreme Court dated 28.04.2000 in the case of **Suraj Parkash Gupta v. State & others**. The applicant filed SWP No. 743/2004 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 23.02.2004.

2. According to him, the benefit of relaxation in height was extended in favour of respondent No. 7 to the extent of $\frac{3}{4}$ centimeter and there was absolutely no justification in denying such a benefit to him. It is stated that the judgment of the



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Hon'ble Supreme Court in the said case does not apply to the facts of his case.

3. The respondents filed a detailed counter affidavit. It is stated that the case of the respondent No. 7 was considered in special drive, whereas the selection of the applicant was under the regular process. According to them, the height is one of the important factors, to be taken into account for selection of Constables and the same cannot be relaxed. Reliance is also placed upon the judgment of Hon'ble Supreme Court in **Suraj Prakash Gupta** (supra)

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.1311/2020.

5. Today, we heard Ms. Surinder Kour, learned senior counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.

6. Though the applicant states that he is working as Water Carrier in the Police Department, that would not make much of difference in the context of selection and appointment to the post of Constable. Separate Rules govern such appointment. A



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perusal of the order dated 23.02.2004 discloses that the applicant was otherwise fit to be appointed as Constable, but he fell short of height by one inch. Maybe on account of prevailing practice, the concerned authority was otherwise inclined to relax the shortfall of height of the applicant. However, the Hon'ble Supreme Court, in its judgment dated 28.04.2000, made some observations against the indiscriminate relaxation of the parameters for selection. Citing that judgment, the respondents have passed the impugned order.

7. Had the state of affairs remained the same, there would not have been any necessity to proceed further. The reason is that the Tribunal cannot issue any direction, which runs contrary to the judgment of the Hon'ble Supreme Court. However, across the Bar, it is brought to our notice by the learned senior counsel for applicant that in **Abhay Kumar Singh & others v. State of Bihar & others**, (2014) 7 SCC 6, the Hon'ble Supreme Court held that selection of a candidate for the post of Constable cannot be denied solely on the ground of his shortfall in the height. If that is so, the applicant can make a representation, enclosing the said judgment.

8. We, therefore, dispose of the T.A., leaving it open to the applicant to make a representation, enclosing the copy of



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judgment of Hon'ble Supreme Court in **Abhay Kumar Singh** (supra). If such a representation is made, the concerned authority shall pass appropriate orders thereon, within a period of two months from the date of receipt of a copy of the same.

There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 24, 2021
/sunil/jyoti/ns/sd/