

GAHC010030362017



2025:GAU-AS:756

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/4128/2017

LAKHIRAM TAI
S/O- LATE GOLAP TAI, R/O- VILL- TEOK SONARI MISING GAON, P.O-
JAKHARIA, P.S- TEOK, DIST- JORHAT, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, GOVT OF INDIA, NEW
DELHI

2:THE DEPUTY INSPECTOR GENERAL CISF
NEZ
41 KOTOYA ROAD
PARK CIRCUS
KOLKATA- 17

3:THE GROUP COMMANDANT

CENTRAL INDUSTRIAL SECURITY FORCE
CISF GROUP HEAD QUARTER H.Q. 11 MRD ROAD
BAMUNIMAIDAN
GUWAHATI-21.

4:THE DEPUTY COMMANDANT

CISF UNIT
NRL
NUMALIGARH
DIST. GOLAGHAT
ASSAM.

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri KK Phukan, Advocate.

For the Respondents : Mrs. R Devi, CGC.

Date of Hearing : 23.01.2025.

Date of Judgment : 23.01.2025.

JUDGMENT & ORDER

Approach to this Writ Court by invoking Article 226 of the Constitution of India has been made with the following reliefs:

“In the premises aforesaid, it is respectfully prayed that Your Lordships would be pleased to admit this petition, issue notice to the respondent, call for records, issue rule calling upon the respondents to show cause as to why a direction shall not be issued commanding directing the respondent authority to fix grade pay of Rs. 2400/- from the month of April, 2003 and Rs. 2800/- from the month of April, 2013 and to fix pension with the grade pay of Rs. 2800/- and upon fixing grade pay to pay arrear and to reconsider the promotion of the petitioner and to give promotional benefit to the petitioner as admissible and/or to pass such other order or orders or direction as your Lordships may deem fit and proper and upon hearing the parties perusal of records and show causes, if any, your Lordships be pleased to make the rule absolute.”

2. The case has a checkered history. The petitioner was appointed as a Constable in Central Industrial Security Force (CISF) on 11.03.1993 and was posted at Guwahati. While in service, a departmental proceeding was initiated against him which resulted in an order of penalty dated 30.10.2000 by which he was removed from service. The departmental appeal which was preferred by the petitioner was also rejected on 19.07.2001 whereafter, the petitioner had approached this Court by filing a writ petition, being WP(C)/4648/2003. The aforesaid writ petition was allowed vide judgment and order dated 11.08.2011 whereby the penalty of removal was interfered with and was substituted by stoppage of increment for 2 years without cumulative effect. It was also directed that for all purposes, other than back wages, the continuity of the service of the petitioner would be maintained. An application for review filed by the respondent authorities against the aforesaid order dated 11.08.2011 was also rejected and ultimately, vide an order dated 22.03.2012, the petitioner was reinstated. After such reinstatement, the petitioner was given one Grade Pay upgradation and on 30.11.2016, he had retired from service upon attaining the age of superannuation. The grievance of the petitioner, as would be reflected from the relief claimed which has been extracted above is with regard to a claim for upgradation of two Grade Pays. The petitioner has also claimed payment of pension at the appropriate rate after upgradation of the aforesaid Grade Pay. The claim is also with regard to promotion which, according to the petitioner, was wrongly denied to him.

3. I have heard Shri KK Phukan, learned counsel for the petitioner. I have also heard Mrs. R Devi, learned Central Government Counsel (CGC) for the respondents.

4. Shri Phukan, learned counsel for the petitioner has submitted that the initial order of removal from service dated 30.10.2000 was interfered with by this Court vide judgment and order dated 11.08.2011 and the said judgment and order has attained

finality as the review filed against it was also rejected. He submits that there is a clear direction for maintaining the continuity of service of the petitioner. It is submitted that in view of such direction, it was incumbent upon the respondent authorities to give all benefits arising out of such continuous service, except back wages which was specifically mentioned by this Court.

5. By drawing the attention of this Court to the reason cited for such deprivation, Shri Phukan, learned counsel has submitted that the ACR for the last year has been taken into consideration for holding him ineligible for the upgradation of Grade Pay. He submits that the concerned Rules itself prescribe that to be eligible, an incumbent is required to secure minimum 3 "Good" gradings in the ACR and he submits that the petitioner meets the said requirement. He submits that the upgradation of Grade Pay subsequently is for the second phase which would not take care of his entitlement for the first phase.

6. On the aspect of promotion, the learned counsel for the petitioner has submitted that though it is a matter of fact that the petitioner did not attend the PCC, such offer was made at the fag end of his career as he was to retire in the year 2016. He submits that such offer was a mechanical one which should not stand on the way for consideration of his promotion. He accordingly submits that the writ petition should be allowed and the relief claimed should be granted.

7. *Per contra*, Ms. Devi, learned CGC, by referring to the affidavit-in-opposition filed on 12.09.2017 has submitted that the petitioner was treated in a reasonable, fair and transparent manner and no injustice has been caused to him. She submits that against the judgment and order dated 11.08.2011 passed by this Court in WP(C)/4648/2003, a review petition was filed which was, however, rejected and after such rejection, the said judgment was honoured and the petitioner was reinstated on

22.03.2012. On the aspect of upgradation of Grade Pay, she has submitted that it is not only the mere completion of 10 years in service which will entitle a personnel to get the Grade Pay, he has to be found eligible which is assessed by the gradings in the ACRs. It is submitted that since the petitioner was practically not in service for the period from 30.10.2000 to 22.03.2012, the ACR of the last year was taken into consideration which was found to be "Average" and accordingly, the Grade Pay could not be granted. She, however, submits that after the reinstatement, another exercise was done in the year 2015 and by taking into consideration, the gradings of the petitioner for the years 2012, 2013, 2014 and 2015, the upgradation in the Grade Pay was granted to him. The learned CGC submits that in the aforesaid years, the gradings were Good, Very Good, Good and Very Good, respectively and therefore, the petitioner was found to be eligible.

8. On the aspect of promotion, Ms. Devi, learned CGC has drawn the attention of this Court to the pleadings made in paragraph 18 of the said affidavit-in-opposition as per which, the petitioner had showed his unwillingness to attend the PCC of CT/GD to HC/GD which is a mandatory requirement. It is submitted that when an incumbent is not willing to fulfill the aforesaid requirement which is mandatory in nature, a promotion cannot be given. She submits that the action has been taken by following the due process in law and in a fair and transparent manner which would not require any interference.

9. The rival submissions have been duly considered and the materials on record have been carefully examined.

10. It is not in dispute that the petitioner, who had joined his service in the year 1993, was removed on 30.10.2000 and the said removal was the subject matter of challenge in the earlier writ petition, being WP(C)/4648/2003. The said writ petition

was allowed by this Court vide the judgment and order dated 11.08.2011 whereby the imposition of penalty of removal from service was set aside and the same was replaced by a penalty of stoppage of increment for 2 years without cumulative effect. This Court had also directed that the petitioner would be reinstated and his continuity in service would be maintained, except the back wages. It is also not in dispute that though a review was filed before this Court by the respondent authorities against the aforesaid judgment and order, the same was rejected and the petitioner was ultimately reinstated on 22.03.2012. The question, therefore, arises is with regard to the validity of the claim of the petitioner, both relating to the upgradation of Grade Pay as well as his promotion.

11. The materials on record, including the CISF Circular No.9/2016 which has been circulated on 05.10.2016 (annexed with the affidavit-in-opposition) would show that the guidelines for upgradation of Grade Pay have been laid down. As per the guidelines, one should have a minimum of 3 "Good" ACRs/APARs which includes the ACR/APAR of the year preceding the year of the DPC for granting financial upgradation. For ready reference, the aforesaid condition is extracted hereinbelow:

"(i) One should have a minimum of 3 Good ACRs/APARs which includes the ACR/APAR of the year preceding the year of DPC for granting financial upgradation."

12. To examine the claim regarding upgradation of Grade Pay, it is seen that the same would be available after 10 years of service. The petitioner had joined his service on 11.03.1993 and would have been eligible for such consideration in the year 2003. However, in the intervening period, on 30.10.2000, he was removed from service which, however, was interfered with by this Court on 11.08.2011. While interfering with the same, this Court had made a specific direction regarding

maintaining continuity in service. For ready reference, the relevant aspect of the judgment is extracted hereinbelow:

“28. Upon setting aside the order of removal from service with the imposition of penalty of stoppage of two increments from the date of imposition of the order of penalty of removal from service i.e. 30.10.2000, the petitioner shall now be reinstated in service maintaining continuity in service for all the purposes other than any back wages. The petitioner being out of employment from the date of imposition of penalty of removal from service and considering the matter in its entirety including the fact that he has been imposed with the penalty of stoppage of two increments for the omission attributed to the charge No.2, the petitioner would not be entitled to any back wages for the period of absence.”

13. As mentioned above, though Review Petition No. 119/2011 was filed by the respondents, the same was rejected by this Court on 28.02.2012 and it appears that only thereafter on 22.03.2012, the petitioner was, ultimately reinstated.

14. Since a categorical direction was given by this Court to maintain continuity in service for all purposes, other than back wages, it was incumbent upon the respondent authorities to consider the aspect of claim for upgradation of Grade Pay which the petitioner would have been entitled to in the year 2003. From the materials available on record, including the affidavit-in-opposition of the respondents dated 12.09.2010, it appears that an exercise was indeed done and the petitioner was declared to be “Not Yet Fit/Not Eligible”. The reason which has been cited in paragraph 5 (IV) is that the petitioner had secured “Average” gradings in the last ACR and therefore, was declared not eligible. The guidelines holding the field which is in the form of CISF Circular No. 9/2016 itself lays down that to be eligible, an incumbent should have a minimum of 3 “Good” ACRs. The gradings obtained by the petitioners in the various years have been put in the tabular form in the said affidavit-in-opposition

against paragraph 5 (VIII) which is extracted hereinbelow:

YEAR	GRADING	YEAR	GRADING
1993	Good	2000	Average
1994	Good	2001 to 2011	NA (Removed)
1995	Very Good	2012	Good
1996	Good	2013	Very Good
1997	Good	2014	Good
1998	Good	2015	Very Good
1999	Below Average	2016	Outstanding

15. It clearly appears that from the date on which the petitioner was removed from service, he had secured gradings in the following manner out of which, five are "Good", one "Very Good", one "Below Average" and one "Average". In view of the same, it would be unfair to take the grading of the year when he was removed from service and since the said grading was "Average", the petitioner has been held to be not eligible. The explanation given that subsequently, the upgradation has been given to the petitioner in the year 2015 would not be a sufficient explanation inasmuch as the Circular holding the field itself makes it clear that such financial upgradation would be possible on three occasions, namely, at the interval of 10, 20 and 30 years of regular service.

16. So far as the aspect of promotion is concerned, the reasons cited in the

affidavit-in-opposition against the paragraph 18 are as follows:

“18. That the averment made by the Petitioner in Para-16 of the Writ Petition is not true as his case for promotion to the rank of HC/GD has been considered during the year 2015 and 2016. But, he was found "Not Eligible" due to his own unwillingness to attend PCC of CT/GD to HC/GD, which is a mandatory requirement for promotion to the next higher rank as per CISF HQ Circular No 16/2000 dated 18.02.2000. The reasons with regard to non-fixing of Grade Pay of Rs 2400/- after completion of 10 years of service and Rs. 2800/- after completion of 20 years of service have already been explained in aforesaid Paragraphs.”

17. It may be mentioned that the aforesaid pleadings have not been refuted by the petitioner by filing any rejoinder affidavit. In any case, it is only the consideration for promotion which is a matter of right and not the promotion itself and for such consideration, it would be necessary for an incumbent to undergo the procedure which has been laid down. It is the pleaded case of the respondent authorities that the petitioner had showed unwillingness to attend the PCC of CT/GD to HC/GD which has been stated to be a mandatory requirement.

18. In view of the aforesaid facts and circumstances, this Court is of the opinion that the claim for promotion cannot be held to be legitimate claim.

19. As a sequel to the aforesaid discussions and upon consideration of the material facts and hearing the parties, this Court accordingly directs that the first initial upgradation in Grade Pay which has been declined to the petitioner stands interfered with and he is entitled to be given such upgradation on the date of completion of 10 years from his initial service and the consequential benefits be given to the petitioner. The upgradation given in the year 2015 shall remain intact and shall be construed to

be the second upgradation in terms of the aforesaid Circular No. 9/2016. Consequently, the pension which is now being paid to the petitioner is to be recalculated and the correct pension be paid, including the arrears of pension since the date of his retirement i.e. 30.11.2016.

20. The writ petition accordingly stands allowed in the manner indicated above.

21. Cost made easy.

JUDGE

Comparing Assistant