



GAHC010007822014



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

**Case No. : WP(C)/1755/2014**

ROCE NO. 850872588 SHRI PRATAP CHANDRA NAYAK  
HEAD CONSTABLE / GD, CENTRAL RESERVE POLICE FORCE, GROUP  
CENTRE, 9TH MILE, GUWAHATI, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY  
OF HOME AFFAIRS, NEW DELHI-01

2:THE DIRECTOR GENEAL  
CRPF  
CGO COMPLEX  
LODHI ROAD  
NEW DELHI-03

3:INSPECTOR GENERAL OF POLIE  
NES  
CRPF  
STONEY HEAVEN  
BISHOP COTTON ROAD  
SHILLONG  
MEGHALAYA-01

4:THE DY. INSPECTOR GENERAL OF POLICE  
CRPF  
GROUP CENTRE  
9TH MILE  
AMERIGOG  
GHY-23  
ASSAM



5:THE COMMANDANT  
164 BATTALION  
CRPF AT LOCATIO

**Advocate for the Petitioner** : MR.H BEZBARUAH

**Advocate for the Respondent** : MR.S SARMA

**BEFORE**

**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the petitioner : Mr. K. K. Mahanta.  
Senior Advocate.  
Ms. N. Begum  
Advocate.

For the Respondents : Ms. A. Gayan.  
Asstt.S.G.I.

Date of Hearing : 06.12.2021

Date of Judgement : 10.12.2021

**JUDGEMENT & ORDER (CAV)**

Heard Mr. K. K. Mahanta, the learned Senior Counsel assisted by Ms. N. Begum, the learned counsel for the petitioner. Also heard Ms. A. Gayan, the learned Asstt.S.G.I, for the respondents representing Union of India and Mr. Rakesh Kumar, Assistant Commandant, (Legal), CRPF, who has rendered his valuable assistance.

1. By way of instant writ petition, the petitioner has raised a grievance that he has been denied promotion from the post of Head Constable/GD,



though he was qualified in all aspects. His prayer in the writ petition is as follows:-

For a direction to the respondent authority to bring him on the Special Approved List AA/GD-06/2011 as per original seniority and to promote him as aforesaid with retrospective effect ahead of his juniors.

2. The case of the petitioner as projected as are under:-

- (i) The petitioner was dismissed from service on the ground of "unauthorized absent" in the year 2007, vide order dated 09.02.2007.
- (ii) On an appeal being preferred before the Departmental Appellate Committee, the said appellate authority modified the punishment by setting aside the punishment of dismissal from service and awarded punishment of stoppage of increment for one year without cumulative effect.
- (iii) In the year 2012, two of the persons similarly situated with the petitioner were granted promotion from the rank of Head Constable/ GD to the rank of Assistant Sub-Inspect.
- (iv) Being aggrieved, the petitioner preferred a representation on 08.08.2012. The respondent authority, vide its order dated 29.08.2012, informed the petitioner that the petitioner could not found suitable due to unsatisfactory record of service.

**Grounds of challenge by the petitioner:**



3. Mr. Mahanta, the learned Senior Counsel challenges the action of the respondent authorities on the following grounds:-

- (i) The Standing order No. 6/99 provides for the methods etc. for governing promotions of the NG (Executive; Trade and Technical including signal personnel) and the case of the petitioner comes under said Standing order.
- (ii) The Clause A (I) (e) of the said Standing Order No. 6/99, provides that for the purpose of promotion from Head Constable to Assistant Sub Inspector, the incumbent must not have had major punishment in preceding five years.
- (iii) Sub Clause II (a) to (e) of Clause A provides the requirements / qualifications for consideration for promotion to the next higher grade.
- (iv) The petitioner satisfies all the said criteria but taking the punishment inflicted upon the petitioner to be a major punishment, the respondent authority has denied the promotion to the petitioner, though stoppage of increment is a minor penalty. Thus, the respondent authority, according to Mr. Mahanta, the learned Senior Counsel, erroneously relied on the said Clause (e) for refusing his clients rightful promotion.
- (v) According to Mr. Mahanta, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is applicable, so far relating to service condition of the Central Reserve Police Force personnel and the Rule 11 (iv) mandates that the



withholding of increment of pay is a minor penalty. Therefore, according to him, the respondent authority cannot take recourse to clause A (II) (e) of the Standing order No. 6/99. More so, the major punishment i.e. dismissal from service was set aside and on the date of consideration of the promotion and there was no major punishment subsisting against the petitioner in the preceding 5 years.

- (vi) Therefore, Mr. Mahanta submits, that the present petition is required to be allowed and a direction should be issued to the respondent to grant him the promotion with effect from the date his juniors were promoted.

**Contention of the respondents:**

4. The respondent Union of India contends as follows:
- (a) That the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is not applicable to CRPF personnel. The service condition of CRPF persons are governed by the Central Reserve Police Force Act, 1949 and the Rules framed thereunder namely, the Central Reserve Police Force Rules, 1955.
- (b) The Section 27 of the Central Reserve Police Force Rules, 1955 provides that, to impose a punishment of stoppage of increment formal departmental enquiry is required to be preceded.
- (c) Accordingly, the petitioner was departmentally preceded under the provision of Rule 27 of CRPF Rules, 1955 and not under any



provision of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Appellate order itself clarifies such factual position.

- (d) According to the learned counsel, as the stoppage of increment, is a major punishment, therefore, it is mandated for a departmental proceeding/ enquiry before imposition of such punishment. Therefore, the same cannot be treated as minor penalty.
- (e) According to the Union of India, to regulate the procedure of promotions, penalty etc., the Ministry of Home Affairs published a Manual called, "Establishment Manual of Central Reserve Police Force, 1976". It was published on 21.04.1976. It is also contended that such Manual has been time to time been corrected by issuing addendum depending upon fact situation.
- (f) As per Clause 11.29 (6) of the said Establishment Manual, the stoppage of increment was categorized as minor punishment till 13.05.2009. Subsequently, vide an addendum issued on 13.05.2009, the stoppage of increment was categorized as major punishment. Accordingly, Counsel submits, the respondent has not committed any error in not bringing the petitioner under the Special Approved List AA/GD-06/2011. However, the respondent submits that subsequently, the petitioner was granted his due promotion on 14.11.2016 during the pendency of this writ petition, as by elapse of time the disqualification under Clause A (I) (e) was wiped out.

**Reply by the petitioner:**

5. While countering the argument of the Union of India, Mr. Mahanta, the



learned Senior Counsel submits the following:-

- (i) The punishment, "minor" and "major" has not been defined either in the CRPF Act or the CRPF Rules. Therefore, the authorities cannot bring this new categorization of major and minor punishment by way executive instruction. Therefore, such executive instructions are liable to be discarded while deciding the present case.
- (ii) Mr. Mahanta further argues that since major and minor punishment has not been defined, either in the CRPF Act, 1949 or in the Rules, 1955, the meaning assigned in Rule 11 (iv) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, should be given in relation of the CRPF personnel also inasmuch as, the services of CRPF and those under CCS (CCA) Rules are under the Union of India
- (iii) Alternatively, Mr. Mahanta submits that Sections 9 and 10 of the CRPF Act, 1949, makes distinction between "more heinous offences" and "less heinous offences". Section 10 (m) categorizes absence without leave, or without sufficient cause overstaying, as "less heinous offence". Therefore, according to Mr. Mahanta, for all meaning and purport, petitioner's case is needed to be treated as minor penalty, he being punished for overstaying leave/ unauthorized absent.
- (iv) Therefore, Mr. Mahanta submits that the contention of the respondent Union of India is liable to be rejected.



6. I have heard the learned counsels for the parties. Perused the materials available on record. The admitted fact in the case in hand, is that the petitioner was not brought under the Special Approved List AA/GD-06/2011 on the ground of he being not found suitable due to unsatisfactory record of service and the said unsatisfactory service relates to the punishment of the petitioner inflicted upon him vide award dated 09.02.2007, read with the order of the Appellate Authority dated 04.03.2008.

7. In view of the aforesaid admitted fact, the whole determination of the writ petition revolves around the issue whether the stoppage of increment can be treated as major penalty or a minor penalty under the relevant Laws and Rules.

8. The Rule 3 (1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, provides that the Rule,1965 is applicable to every Government servant, including every Civilian government servant in the defense Services. Sub Rule 3(1) of the said Rule, provides that Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall not be applied to, amongst others, to any person for whom special provision is made, in respect of matters covered by this Rules, by or any law for time being in force etc., in regard to matters covered by such special provision.

9. The Central Reserve Police force Act, 1949 was enacted to provide for organization, control and regulation of the Central Reserve Police Force by the Central Government.

10. Section 18 of the Central Reserve Police Force Act, 1949 empowers the Central Government to make Rules for carrying out the purpose of the CRPF



Act. Sub Section 2 of Section 18 of the CRPF Act, 1949, empowers the Central Government to make Rules regarding the condition of services of the CRPF personnel and Sub section 2 (d) of the CRPF Act, 1949 empowers the central government to make Rules regulating the award of minor punishment under Section 11 etc.

Section 11 prescribes 5 types of the Minor punishments but the stoppage of increment does not find a place amongst it.

11. In view of the aforesaid provision of both the Rules and Act i.e. The Central Civil Services (Classification, Control and Appeal) Rules, 1965 and The Central Reserve Police force Act, 1949, it is clear that, the service condition of the Central Reserve Police Force personnel shall be covered under the provisions of the Central Reserve Police force Act, 1949 and the Central Reserve Police Force Rules, 1955 in as much as the Act, 1949 is a special enactment made for CRPF personnel.

12. By virtue of Rule 3(1) (e) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and for the reason that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is a special enactment for CRPF personnel, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall not be applicable to the CRPF personnel. In view of the above finding, the argument of Mr. Mahanta, learned Sr. Counsel that the Rule 11(iv) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall be applicable to the CRPF personnel is not sustainable.

13. Now let the court decide the next contention Mr. Mahanta, Sr. Counsel, that Section 10(m) of the Central Reserve Police Force Act, 1949 provides that



when a personnel of the force absents himself without leave, or without sufficient cause overstays leave granted to him, then the offence will be treated as less heinous offence. Therefore, by natural corollary, the same needs to be treated as minor punishment, when it relates Departmental Proceedings.

14. It is a fact that the unauthorized absence without leave or overstaying leave granted without sufficient cause are treated as less heinous offences. The Rule 36 of the Central Reserve Police Force Rules, 1955 provides that all trials in relation to any one of the offences specified in section 9 or 10 shall be held in accordance with the procedure laid down in the Code of Criminal procedure. Rule 36 of CRPF Rules, 1955, read with Sections 9 and 10 of the CRPF Act, 1949, clarifies that the offences given in Sections 9 and 10 are for the purpose of trials and the absence without leave or overstaying beyond leave granted, without sufficient cause invites imprisonment which may, extend to one year or with fine which may extend to three months or with both.

15. The Section 11 of the said Act of 1949, though categorizes certain punishments as Minor punishments, the stoppage increment has not been categorized under the said Section 11.

16. In view of the aforesaid legal provisions holding the field, this Court is of the view that the Section 10 (m) of the CRPF Act, 1949 is for the purpose of criminal trial and not for departmental proceeding.

17. Therefore, the contention of Mr. Mahanta that reading down the Section 10(m) of the Central Reserve Police Force Act, 1949, the punishment of stoppage of increment should be treated as minor penalty, is rejected.

18. In view of the aforesaid legal position, it is apparent that so far relating



to departmental proceeding, neither the CRPF Act, 1949 nor the Rules framed thereunder provides for categorization of minor and major penalty. Accordingly, the Ministry of Home Affairs notified Establishment Manual of Central Civil Service Force vide U.O.No.1390/76-Pers-1, dated 21.04.1976.

19. The said Establishment Manual, till 31.05.2006, categorized stoppage of Grade increment as minor punishment under Clause 11.29(6) (b) (iii). However, by way of an addendum to the Establishment Manual vide No.S.XII-1/2006-09/Adm-3 dated 13.05.2009, categorized the stoppage of increment as major punishment and such categorization was holding the field on the date of consideration of case of the petitioner for promotion.

20. It is by now well settled that the Act or any Rules framed thereunder cannot be modified by way of executive instruction. The law is also well settled that the statutory rules can be supplemented by way of executive instructions, in conformity with the Acts and Rules. Such executive instruction cannot supplant.

21. A Constitution Bench of the Hon'ble Apex Court while dealing with issue, Sant Ram Sharma v. State of Rajasthan & Ors., AIR 1967 SC 1910, held:

*“It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed.”*

22. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory Rules.



However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions.

23. The law is also well settled that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions. In this regard, this court can safely rely on the decision of the Hon'ble Apex Court in *Naga People's Movement of Human Rights v. Union of India.*, reported in AIR 1998 SC 431.

24. As discussed herein above, in the case in hand, no definition of the minor or major penalties, have been provided either in the CRPF Act, 1949 or the Rules thereunder, except categorization of five penalties under Section 11 (1) of the CRPF Act, 1949, wherein the penalty of "Stoppage of increment" does not find a place.

25. The Chapter VI of the CRPF Rules, 1955 provides for discipline. Rule 27 under Chapter VI provides for procedure of the award of punishment. Rule 17 depicts a table, wherein under Serial No.7, column No.2, the stoppage of increment finds a place.

26. Thus from above; it seems that the CRPF Act, 1949 is silent regarding the penalty of "Stoppage of Increment". But it categorizes some minor punishment. The CRPF Rule 1955 brings stoppage of increment under the category of Punishment. Thus both the CRPF Act, 1949 and The Rules, 1955 is silent whether stoppage of increment, is a minor punishment or a Major punishment. In such a situation, this court cannot find fault with the Ministry of



Home Affairs, who in its wisdom has decided to categorize the punishment of stoppage of increment, in the shape of the Establishment Manual, which is necessarily an executive instruction.

27. Therefore, the contention of Mr. Mahanta, the learned Senior Counsel that the categorization of minor and major penalty by way of the executive instruction in the shape of Establishment Manual is bad, is not accepted by this court.

28. Having coming into the aforesaid findings, this court is of the view that the respondent authority has not committed any wrong while not bringing the petitioner in the Special Approved List AA/GD-06/2011. The rejection of the petitioner's claims, on the ground of he being found not suitable due to the punishment inflicted upon him in the shape of stoppage of increment, therefore, cannot be faulted with.

29. Accordingly, this writ petition is dismissed, however no order as to cost.

**JUDGE**

**Comparing Assistant**