

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.300/2013

Dated Wednesday, the 22nd day of January, 2020

PRESENT

Hon'ble Mr.P.Madhavan, Judicial Member

&

Hon'ble Mr.T.Jacob, Administrative Member

K.V.Mohandoss,

Joint Commissioner of Central Excise (Retd),

A-32, Water Tank Road,

MMDA Colony, Arumbakkam,

Chennai 600 106.

... Applicant

By Advocate Mr.R.Syed Mustafa

Vs

1.Union of India, Rep., by its

Secretary, Ministry of Finance,

Department of Revenue,

North Block, New Delhi 110 001.

2.Commissioner of Central Excise,

Central Excise-I,

Nungambakkam High Road,

Chennai 600 034.

... Respondents

By Advocate Mr.K.Umesh Rao

(Order: Pronounced by Hon'ble Mr.P.Madhavan, Member(J))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"To direct the respondents either to promote the applicant as Additional Commissioner in NFSG scale notionally or upgrade his pay as per rules and regulations framed by Government with all consequential retirement benefits and pass such other orders as this Hon'ble Tribunal deems fit and necessary under the circumstances of the case and thus render justice."

2. The applicant's case is that he was promoted to the post of Assistant Commissioner w.e.f 16.09.1994 and he was further promoted as Deputy Commissioner w.e.f 16.09.1998 and he retired from Central Excise Department, Chennai on attaining superannuation on 31.10.2008. He was also given notional promotion as Joint Commissioner w.e.f 29.04.2005.

3. On the acceptance of the VI Central Pay Commission's recommendations, the Government of India has issued orders on 24.04.2009 and 21.05.2009 for giving Non Functional Selection Grade (NFSG) for officers of Organized Group A service who are seniors by two years or more to IAS batch and have not so far been promoted to that particular grade would be granted the same grade on NFSG from the date of posting of such IAS officers in that particular grade at the Centre. The DOPT has issued an OM dated 01.07.2010 showing that an IAS officer of 1992 batch was posted as Director under Central Staffing Scheme on 01.07.2006 and also showed that 1990 Batch Organized Group A are to be considered for NFSG to the Director's scale. In the said OM. Thus, the applicant who is a 1994 Group A officer is eligible for NFSG scale w.e.f 01.01.2007. The order clarifies that the same will be applicable to retired officers also as per the OM dated 25.09.2009. The applicant had sent a representation on 01.03.2012 requesting the department to upgrade his pay

to the Additional Commissioner scale (NFSG) w.e.f 01.07.2007 and to enable the Chief Accounts Officer, Chennai to draw the arrears of pay and allowances along with other consequential financial benefits. The department has also granted NFSG to all eligible officers of 1990, 1991, 1992, 1994 of Group A Assistant Commissioners on 27.02.2012. The officers under CBEC who were promoted to the post of Assistant Commissioners during 1994 were given the post of Additional Commissioner Scale (NFSG) from 01.01.2007. It is pertinent to mention that Shri T.H.Rao who is a junior to the applicant was promoted as Additional Commissioner as per order dated 30.11.2010 on completion of 12 years of service and before the completion of 13 years of service as required by the notification. According to the applicant he is entitled to get promotion as Additional Commissioner in NFSG scale or upgradation to the higher scale as a 1994 promotee as his juniors were given the benefit of such promotion after completion of 12 years of service as Assistant Commissioners. So he had filed this OA.

4. The respondents appeared before the Tribunal and filed a detailed reply statement denying the benefit stating that the applicant has already retired and he is not entitled to get NFSG. It was also contended that the upgradation can be given only on the basis of the vacancies in the grade.

5. We have heard both parties and perused the pleadings.

6. Learned counsel for the applicant had invited our attention to Annexure A-4 OM dated 24.04.2009 wherein it is clearly mentioned that the NFSG granted under the orders will be based on empanelment and posting of a particular batch of IAS officers in the Centre. Such upgradation would not be linked to the vacancies in the grade. In view of the said OM, there is no merit in the contention of the respondents that there were no vacancies. Another aspect which has come out in evidence is that even as per the order of the DOPT, the NFSG can be claimed even by retired officers. So the

contentions of the respondents are not maintainable. The counsel for the applicant also invited our attention to the order of the CAT, Principal Bench in OA 1746/2010 dated 13.12.2010 which clearly states that the date of eligibility of NFSG is the criteria to be adopted for granting NFSG. The relevant portion of the order is extracted as under:

2. The grievance of the applicant is that he has been given NFSG with effect from the date when the order was passed i.e. 30.07.2009 whereas he was eligible for the same w.e.f. 01.01.2008. As to whether such a Grade, as mentioned above, has to be given from the date when the order has been passed or from the date of eligibility, has been decided in the OAs referred to above by a positive finding that it has to be from the date of eligibility.

3. Confronted with the position aforesaid, Mr. Singh, counsel defending the respondents, states that he does not find any good reason to state that the matter in hand is different from the OAs referred to above.

4. For parity of reasons given by us in OA No.1255/2010 along with OA No. 1392/2010 decided on 14.09.2010 in the matter of Dr. Prem Verma V/s. Union of India & Ors., we allow this Original Application to the extent that the applicant is entitled to the grant of NFSG w.e.f. 01.01.2008. There shall be no order as to costs. “

7. Considering the above, it can be seen that the applicant has clearly succeeded in showing that he is entitled to get the NFSG on the basis of his eligibility. **Hence, we hereby allow the OA and the respondents are directed to consider granting of NFSG to the applicant from the date on which he became eligible for the same with all consequential benefits within a period of three months from the date of receipt of a copy of this order.**

(T.JACOB)
MEMBER (A)

.01.2020

(P.MADHAVAN)
MEMBER (J)

M.T.