

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00240/2016

Date of Order: This, the 20th day of February 2020

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Shri Sudipta Lahiri
Deputy Director General (Retired)
Geological Survey of India, ZOREM
Nongrim Hills, Shillong – 793003.

...Applicant

By Advocates: Mr. M. Chanda, U. Dutta & A.K. Das

-VERSUS-

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Steel & Mines
Department of Mines, Shastri Bhawan
New Delhi – 110001.
2. The Director General
Geological Survey of India
27, Jawaharlal Nehru Road
Kolkata – 700016.
3. The Secretary to the
Government of India
Ministry of Personnel, Public Grievances
& Pensions, Department of Personnel & Training
3rd Floor, Lok Nayak Bhavan, Khan Market
New Delhi – 110003.

... Respondents

By Advocate: Sri S.K. Ghosh, Addl. CGSC

O R D E R (ORAL)

MANJULA DAS, MEMBER (J):

Being aggrieved for non-granting the entitled benefit of pay parity being a Member of Organised service, the applicant has preferred the instant O.A. seeking the following main reliefs:-



“8.1 That the Hon’ble Tribunal be pleased to declare that the applicant is entitled to get the benefit of organised service from 1982.

2. That the Hon’ble Tribunal be pleased to direct the respondents to grant the benefit of pay scale of Additional Secretary Level w.e.f. 30.01.2006 in the grade pay of Rs. 67000-79,000/- when the same was granted to the 1974 batch of IAS officers, who is junior to the applicant by two batches, as such the applicant is entitled to benefit of pay parity in the light of the DOPT O.M. dated 24.04.2009 read with clarificatory O.M. dated 25.09.2009 with a further direction to grant five increments in the scale of Joint Secretary (Grade Pay of Rs. 10,000/-) upto 01.01.2006 since IAS Officer of 1974 batches has accrued five increments in the scale of Joint Secretary as on 01.01.2006 with all consequential benefit including arrear monetary benefit.”

2. Facts of the applicant in the present case are that following selection through the Union Public Service Commission (UPSC) in 1972 batch, the applicant was initially appointed to the post of

Geologist (Junior) in Class-I scale in the Geological Survey of India (GSI) w.e.f. 21.03.1974. He was promoted to the post of Geologist (Senior) in 1985 and subsequently after 15 years he was promoted to the post of Supdt. Geologist (earlier known as Director) on 28.02.2000. Again he was promoted as Director [earlier known as Director (Non-Functional)] w.e.f. 01.09.2003.



Thereafter, he was promoted to the post of Deputy Director General (SAG Grade) w.e.f. 02.02.2009. He retired from service on superannuation on 30.04.2010.

3. Main grounds of the claim of the applicant is that the services of Geologists in Geological Survey of India has been recognized as organized Group 'A' service vide O.M. dated 31.07.1982 and as such he is legally entitled to get the benefit of Group 'A' organized service w.e.f. 1982. According to him, officers who were similarly situated to the applicant were granted the benefit of Group 'A' organized service from 1982 (claimed by applicant) and as such, denial of the same benefit to him is arbitrary, malafide, unfair, discriminatory and opposed to the provisions of

Article 14 and 16 of the Constitution of India. The judicial pronouncements lend support to the claims of the applicant regarding his benefit of organized service from 1982 and the consequential benefits thereafter. As per DOPT notification, the applicant is entitled for further benefit of pay parity by way of non-functional upgradation (NFU) to the status of



Additional Secretary in the scale of Rs. 67000/- to 79000/-.

4. Applicant further contended that due to non-consideration for grant of the benefit of Group 'A' organized service to the applicant w.e.f. 1982 (which has been granted to his juniors), the applicant has suffered heavy financial loss and serious civil consequences in terms of his service prospect and thus he has been denied natural justice. Accordingly, 1980 batch IAS Officer has been granted the benefit of Joint Secretary level w.e.f. 01.01.2006/03.01.2006 in the grade pay of Rs. 10,000/- as per DOPT, O.M. dated 01.07.2010 and as per DOPT, O.M. dated 04.01.2011, thereby applicant has acquired a valuable legal right



for pay parity on non functional basis with all consequential benefit in terms of DOPT O.M dated 24.04.2009. In view of that, the respondents be directed to grant the benefit of pay scale of Additional Secretary Level w.e.f. 30.01.2006 in the grade pay of Rs. 67,000-79,000/- when the same was granted to the 1974 batch of IAS Officers, who are junior to the applicant by two batches as well as pay parity in the light of the DOPT OM dated 24.04.2009 read with clarificatory O.M. dated 25.09.2009 with a further direction to grant five increments in the scale of Joint Secretary (Grade Pay of Rs. 10,000/-) upto 01.01.2006 since IAS officer of 1974 batches has accrued five increments and scale of Joint Secretary as on 01.01.2006 with all consequential benefits within reasonable time.

5. In response to the submission made by the applicant, the respondents have filed their written statement on 17.01.2016. They have contested the applicant's contention as here under:-



Both the issues are untenable in the eyes of law. The Geological Survey of India has acquired the status of Organised Group-A Service w.e.f. 29.09.2010 i.e. when the Service Rules in the pattern of Organised Service formulated and notified. Prior to 29.09.2010, the services were classified as General Central Services (GCS). Therefore, after a lapse of 34 years, the applicant is seeking the benefit of Non-functional Selection Grade (NFSG in short) of Organised Service is barred by delay & latches and liable rejection. Regarding consideration of NFU to the HAG scale w.e.f. 30.01.2006, it is to state that as per terms & conditions laid down in the DOPT OM dated 24.04.2009 for consideration of NFU for all the Organised Group – A Services that – all the prescribed eligibility criteria and promotional norms including 'benchmark' for up-gradation to particular grade pay would have to be met at the time of screening for grant of higher pay scale under NFU scheme. The applicant got the promotion to the post of Dy. Director General i.e. the feeder grade of Additional Director General (HAG scale) w.e.f. 30.01.2006 prior to the date of his promotion to the post of DDG (SAG) which is not supported by the extant Govt. Rules. Vide DOPT OM No. AB. 14017/64/2008-Estt. (RR0 dated 24.04.2009, the NFU scheme has been introduced for Organised Gr. 'A' Service effective from 01.01.2006. As such, in terms of DOPT OM dated 24.04.2009, the applicant was not eligible for NFU to the HAG scale i.e. equivalent to the post of Additional Director General on the grounds of non-fulfilment of eligibility criteria as prescribed in the DOPT OM dated 24.04.2009 at point 3 under terms & conditions.

In addition, the respondents have also pointed out as follows:

That it is not possible to use Batch together with eligibility, since the Eligibility criteria flowed from RRs, while in Batch concepts flowed from the DOPT guidelines for the purpose of NFU and rules take precedence, as such, it is not possible to ignore eligibility and give preference to Batch. No such non-functional up-gradation under NFU scheme was issued by this office in compliance of any Court Orders. Therefore, the statement made by the applicant that the benefit of NFU extended to some officers under NFU scheme in compliance of Court Order is not correct.



6. In response to the above, rejoinder has been filed by the learned counsel for the applicant on 15.07.2019. Apart from the point wise arguments, the applicant had brought additional information regarding grant of NFU to the Indian Revenue Service Officers as notified by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs dated 02.09.2011 containing list of officers who have been granted HAG indicating the year of service batch and date of granting NFU in HAG. It is seen that Sri P.S. Pruthi at SI. No. 18 and another three officers of 1978 are indicated to have been granted NFU in HAG with effect from 26.10.2010.

7. During hearing, Sri M. Chanda, learned counsel appearing on behalf of the applicant submitted that in a similar case, after thorough discussions, this Tribunal had passed an order in favour of the applicant vide order dated 09.05.2019 in O.A. No. 043/00373/2015. Accordingly, learned counsel prayed for similar order in the case of the present applicant also.

8. Sri S.K. Ghosh, learned Addl. CGSC for the respondents, at the outset of his argument, submitted that the present O.A. is barred by limitation.

9. We have heard the learned counsel for both the parties. We found that the submission made by Sri S.K. Ghosh, learned Addl. CGSC for the respondents on the 'limitation point' is not tenable in view of the decision of Hon'ble Apex Court rendered in the case of **M.R. Gupta Vs. Union of India and Ors.**, reported in **(1995) 5 SCC 628**.



10. We have perused the cited case No. 043/00373/2015 wherein this Tribunal vide order dated 09.05.2019 had passed an order in favour of the applicant as follows:-

"7. We have carefully gone through the submissions made by both the parties. We have also given detailed hearing on 20.02.2020. After going through all the submissions made by the parties, it is clear from the order of the DOPT dated 24.04.2009 that as and when an IAS Officer is posted to the Centre Deputation Organized Group 'A' Services who are senior by two years or more are entitled to be granted NFU in PB-3 and PB-4. This benefit has also been further extended to level of HAG vide order dated 04.01.2011. The dates for eligibility for JS level has been indicated as 03.01.2006 for Group 'A' services of 1983 and earlier batches and for HAG as 26.10.2010 for 1978 and earlier batches.

8. On going through the submissions made by the learned counsel for the applicant, it has also been observed that this particular date of 03.01.2006 has been struck down by Central Administrative Tribunal, Principal Bench vide judgment and order dated 23.10.2013 in O.A. No. 761/2012 in respect of Dr. Badri Singh Bhandari Vs. Union of India and Ors. Another issue



raised by the respondent authorities in their submission is that the effective date for declaring this particular service of the applicant was notified in the Gazette dated 29.09.2010 and for that the benefit of NFU cannot be given to officers by counting the service rendered prior to 29.09.2010. Accordingly, the applicant along with others have been granted correctly w.e.f. 01.04.2011 in the Grade Pay of Rs. 10000/- In this context, the learned counsel for the applicant has submitted a copy of the judgment and order of Central Administrative Tribunal, Ernakulam Bench dated 26.10.2016 in O.A. No. 283/2013 in respect of Geological Survey of India Scientific Officers' Association and another Vs. U.O.I. & Ors. He also has submitted a copy of the judgment and order of Central Administrative Tribunal, Bangalore Bench dated 19.03.2012 in O.A. No. 404/2009 in respect of M.N. Ramachandra Rao Vs. U.O.I. & Ors. wherein the officers of Geological Survey of India have been declared as Organized Services w.e.f. 31.07.1982.

9. It is observed from the records submitted by the learned counsel for the respondents and also during the hearing that the respondent authorities do not have any other order which are contrary to the orders/judgments as quoted by the learned counsel for the applicant. The respondent authorities also have not elaborated the basis on which the applicant was granted NFU in the Grade Pay of Rs. 10000/- w.e.f. 01.04.2011.

10. During the hearing, Mr. A. Chakraborty, learned Addl. CGSC was specifically asked whether these judgments of CATs in regard effective date for granting NFU with effect from 01.01.2006 and the judgment that the Geological Survey of India would be deemed organized Group 'A' Service with effect from 31.07.1982 have been challenged and whether these orders have been struck down by any higher court. He informed that he was not aware.

11. Keeping in view of the above, we are of the considered opinion that the applicant is entitled to get NFU in the pay scale of Rs. 10000/- w.e.f. 01.01.2006 and also HAG w.e.f. 26.10.2010 provided he fulfills the criteria as stipulated by order of DOPT in their order dated 24.04.2009. Accordingly, we hereby direct the respondent authorities to consider his case for grant of NFU in the Grade Pay of Rs. 10,000/- w.e.f. 01.01.2006 and HAG w.e.f. 26.10.2010 within a period of four months from the date of receipt copy of this order. If he is granted, his pay will be fixed as per orders/rules specified by the Government of India i.e. provisions of CCS (RP) Rules, 2008 and benefits of arrear of pay etc. however, if any should be subject to the judgment of the Hon'ble Supreme Court in **Union of India & another Vs. Tarsem Singh, reported in (2008) 8 SCC 648** as

quoted by Co-ordinate Bench of CAT, Ernakulam Bench in O.A. No. 283/2013 dated 26.10.2016.

13. With the above observations and directions, O.A. stands disposed of accordingly. No order as to costs."

11. We have carefully gone through the aforesaid cited case (supra). Keeping in view of the above, we are of the considered opinion that the applicant is entitled to get NFU in the grade pay of Rs. 67,000-79,000/- w.e.f. 30.01.2006 provided that he fulfils the criteria as stipulated by order of DOPT in their order dated 24.04.2009. Accordingly, we hereby direct the respondent authorities to consider his case for grant of NFU in the Grade Pay of Rs. 67000-79,000/- w.e.f. 30.01.2006 within a period of four months from the date of receipt copy of this order. If he is granted, his pay will be fixed as per orders/rules specified by the Government of India i.e. provisions of CCS (RP) Rules, 2008 and benefits of arrear of pay etc. however, if any should be subject to the judgment of the Hon'ble Supreme Court in **Union of India & another Vs. Tarsem Singh, reported in (2008) 8 SCC 648** as quoted by Co-ordinate Bench of CAT, Ernakulam Bench in O.A. No. 283/2013 dated 26.10.2016.



12. With the above observations and directions, O.A. stands disposed of. No order as to costs.

(NEKKHOMANG NEHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

