

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/1494/2014

HYDERABAD, this the 3rd day of March, 2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Ashwani Kumar Gupta,
S/o. Sri late G.D. Gupta,
Aged about 65 years,
Occ: Retd. Chief Architect CPWD,
R/o. Flat No.204, N.B. Residency,
H.No.3-5-170, Narayanaguda,
Hyderabad – 500 029.

...Applicant

(By Advocate : Sri J. Sudheer)

Vs.

1. Union of India rep. by its
Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi – 110 011.
2. Central Public Works Department through
Director General (Works),
Nirman Bhavan,
New Delhi – 110 011.

....Respondents

(By Advocate : Smt. K. Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

2. The OA is filed aggrieved by the order of the 2nd respondent dt. 23.09.2013 rejecting grant of Non-Functional Selection Grade (NFSG) to the applicant w.e.f. 01.01.1996 on par with Smt. Suhasini Juneja.



3. Brief facts of the case are that the applicant joined the 2nd respondent organisation as Asst. Architect in 1975 and rose to the rank of Architect in 1983. The 5th CPC granted the Non Functional Selection Grade of Rs.12000- 16500, which is an intermediary scale between Architect and Sr. Architect. Though the applicant worked for 17 years he was not granted NFSG. In the meanwhile, the applicant was promoted as Sr. Architect in 2001. For grant of NFSG, applicant and 18 others filed OA 936/2002 before the Hon'ble Principal Bench wherein it was directed to amend the recruitment rules since the respondents completed the restructuring of the Architect cadre and for grant NFSG notionally w.e.f. 01.01.1996 and for the benefit of pay etc. from 2.4.2001. Accordingly, Recruitment rules (RR) were revised on 27.2.2004 and 29 Architects were given the benefit. The junior to the applicant Smt. S. Juneja was also granted the benefit, but not to the applicant. The applicant retired as Chief Architect on 30.6.2009 without the benefit of NFSG being extended to him and hence the OA.

4. The contentions of the applicant are that the respondents have not taken prompt action to grant the NFSG though the respondents have accepted the recommendations of the 5th CPC in 1997. Only on the intervention of the Hon'ble Principal Bench things started moving. Junior

to the applicant Smt. S. Juneja was granted the benefit and denying the same to him, is unfair and irregular. By grant of NFSG which was due, he would have gained monetarily in pay and allowance and some enhancement in the pension.



5. Respondents in the reply statement state that the RRs were revised in 2004 to grant NFSG for 30% of the total senior duty posts of Architects.

The applicant was promoted as Sr. Architect on 13.7.2001 prior to the introduction of revised RR. As per DOPT OM dated 20.12.2000 the orders of NFSG will have prospective effect and hence the applicant is not eligible. Further, only for 30% of the senior duty Architect Posts, NFSG can be granted and hence 29 eligible Architects were given the benefit vide memo dated 9.3.2004. Respondents admit that the junior to the applicant Smt.S. Juneja was granted the benefit on her approaching the Hon'ble Principal Bench in OA 549/2005 w.e.f 1.1.1996 notionally and with monetary benefits from 2.4.2001.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard non grant of NFSG to the applicant. In this regard, we observe from the facts that the 5th CPC has granted the NFSG scale of Rs.12000 – 16,500 which is an intermediate scale between Architect and Sr. Architect, more as a measure to offset stagnation in the cadre of Architect. Though the recommendations were effective from 1.1.1996, respondents accepted the recommendations as late as on 21.10.1997. The applicant along with 18 others, peeved over the inaction of the respondents, filed OA 936/2002 before the Hon'ble Principal Bench, wherein respondents were directed to frame revised recruitment rules to

grant NFSG w.e.f. 2.4.2001. Respondents complied with the order by revising the RR on 27.2.2004 and granted NFSG to 29 eligible Architects w.e.f. 5.3.2004 vide order dt.9.3.2004. Being aware of this development, a junior to the applicant Smt. S. Juneja has filed OA 549 of 2005 to grant NFSG claiming that juniors to her were granted the benefit and denied the same to her though eligible. Hon'ble Principal Bench has directed the respondents to grant the NFSG benefit to Smt. S. Juneja on a notional basis with arrears to be paid w.e.f. 2.4.2001. Respondents implemented the judgment on 22.9.2009 by granting the scale w.e.f. 1.1.1996 notionally and monetary benefits released w.e.f. 2.4.2001. The applicant, when he represented for a similar benefit it was denied vide letter dated 23.9.2013, on the grounds that he was promoted as Sr. Architect before the RR were revised and that there is also a ceiling of 30% of Sr. duty Architects to be granted NFSG. Further, they have averred that the benefit of NFSG can be extended prospectively as per DOPT memo 20.12.2000. However, the same objections apply to the case of Smt. S. Juneja, who is junior to the applicant and when she is granted the benefit, the applicant cannot be denied the same. Similarly placed employees have to be granted the benefit, which was directed to be given by a judicial fora, without forcing the employees to approach the courts for similar relief, as observed by the Hon'ble Supreme Court in the judgments referred to hereunder. The reason being that, if the administrative authorities discriminate amongst persons similarly situated, in matters of concessions and benefits, the same directly infringes the Constitutional provisions enshrined in Articles 14 and 16 of the Constitution.



a. Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :

“We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.”

**b. Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:**

“...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court.”

The applicant being similarly placed like Smt. S. Juneja, and thus he is entitled for NFSG with consequential benefits, as has been granted to his junior colleague, as per the above legal principle. More so, when the respondents have admitted that they have granted the relief to Smt. S. Juneja in the reply statement.

II. Further, a Coordinate Bench is binding on us, as laid down by the Hon'ble Supreme Court in ***S.I. Rooplal And Anr vs Lt. Governor Through Chief Secretary, Delhi on 14 December, 1999 in Appeal (Civil) No.5363-64 of 1997***, as under:

This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

III. In view of the legal principles cited supra, the respondents are directed to grant relief to the applicant, as per his eligibility, on similar lines as has been granted to Smt. S. Juneja by the Hon'ble Principal Bench in OA

549/2005. Consequential benefits also be extended in regard to payment of arrears of pay and allowances/ pension and re-fixation of pension. However, the arrears of pay and allowance/ pension shall be restricted to three years prior to the date of the filing the OA, as observed by the Hon'ble Supreme Court in para 5 of its judgment in *Union of India v. Tarsem Singh* in Civil Appeal Nos. 5151-5152 of 2008.



IV. With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/