

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 371/2016

Reserved on 22.11.2016
Pronounced on: 29.11.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri R.P.Saxena Age:66 years
S/o Shri R.B. Saxena
R/o E-33, South Extension-1,
New Delhi-110049.
Retired as Chief Engineer,
Central Water Commission,
Ministry of Water Resources, RD & GR,
Sewa Bhawan, R.K.Puram,
New Delhi-110066.

-Applicant.

(By Advocate: Shri R.N.Singh)

Versus

1. Union of India
Ministry of Water Resources,
RD & GR,
Shram Shakti Bhawan,
New Delhi-110001.
(Through: its Secretary)
2. Ministry of Personnel, PG & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001.
(Through: its Secretary)
3. Central Water Commission,
Ministry of Water Resources, RD & GR,
Sewa Bhawan, R.K.Puram,
New Delhi-110066.
(Through: its Chairman) -Respondents.

(By Advocate: Shri Rajeev Kumar)

O R D E R**Mr. P.K.Basu, Member (A):**

The applicant was appointed to the grade of Assistant Director/Assistant Executive Engineer of the Central Water Engineering (Class-I) Service (CWES) vide order dated 18.09.1975 and joined on 24.09.1975. He thus belonged to the 1975 batch. Subsequently, he got promoted to the Senior Administrative Grade (SAG) of CWES in the pay scale of Rs.18400-500-22400/- (pre-revised), which was re-fixed in the Pay Band PB-4 : Rs.37,400-67,000 plus Grade Pay Rs.10,000/- upon the recommendations of 6th Pay Commission. The applicant retired from Government service on attaining the age of superannuation on 31.10.2009.

2. The applicant is claiming the benefit of Office Memorandum dated 24.04.2009 which introduced Non-Functional Upgradation (NFU) for Officers of Organized Group 'A' Services vis-a-vis IAS Officers. This Resolution, *inter alia*, provides as follows:

"(i) Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to **batches** of Organized Group A Services that are senior by **two years or more** and have not so far been promoted to that particular grade would be granted the same grade on non functional basis from the date of posting of the Indian Administrative

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Service Officers in that particular grade at the Centre.

(ii) Grant of higher scale would be governed by the terms and conditions given in Annex-I.”

3. Annexure-I to the Resolution provides that such upgradation would not be linked to the vacancies in the grade; would be a purely Non-Functional upgradation, personal to the officer; all the prescribed eligibility criteria and promotional norms, including 'benchmark' would have to be met; Screening Committee would be formed to screen these cases of NFU.

4. The applicant states that he was placed in the pay scale of Rs.37400-67000 plus Grade Pay Rs.10,000/- vide Office order dated 29.09.2008 and an IAS Officer of 1977 Batch (i.e. two years junior to the applicant) was appointed as Additional Secretary in Government of India in the pay scale of Rs.67000-79000 on 26.12.2007. Therefore, in view of the OM dated 24.04.2009, the applicant being two Batches earlier than the IAS Officer, the applicant claims that he is entitled to be placed in the revised pay grade Rs. 67000-79000 with effect from 26.12.2007.

This OA has been filed with the following prayers:

“(ii) declare the order/letter No.15/02/2013-Estt.I/495-96 dated 10th March 2015 (Annexure-A Impugned) and Office Memorandum No.AB.14017/64/2008-Estt.(RR) dated 24.04.2009 (Annexure-A-1 impugned) to the extent the same requires fulfillment of the

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eligibility criteria for regular promotion applicable for the benefit of non-functional upgradation in terms of Resolution dated 29.8.2008 as illegal, arbitrary and discriminatory;

- (iii) declare that the applicant is entitled for upgradation in HAG pay scale of Rs.22,400-525-25,500 (Pre-revised) (revised to Rs.67,000-79,000) w.e.f 26.12.2007 in view of the conscious policy decision of the Government through Ministry of Finance and respondent No.2 vide Resolution dated 29.08.2008 (Annexure A-2);
- (iv) direct the respondents to re-fix the pay of the applicant in HAG pay scale of Rs.22,400-525-25,500 (Pre-revised) (revised to Rs.67,000-79,000) w.e.f 26.12.2007, consequently re-fix his pension, etc. and pay the arrears of pay, pension and retiral benefits thereof with interest @ 12% p.a;
- (v) order exemplary cost against the respondents and in favour of the Applicant."

5. The letter dated 10.03.2015 issued by the Central Water Commission addressed to the applicant, which is sought to be quashed is a letter rejecting the applicant's prayer for NFU and quoted below:

"I am directed refer to your letter dated 13.02.2015 on the subject above, and to say that DoPT's OM dated 15.12.2009 calls for **amendment of service rules** by cadre authorities in the light of 6th CPC recommendation for bringing uniformity **in eligibility criteria across various organized Group A Services for promotion**. There was another OM dated 18.01.2011 from DoPT whereby the cadre controlling authorities were

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requested to amend the service rules with reference to **promotion to SAG/HAG Grade in Organized Group A Engineering Services**. In conformity with DoPT guidelines applicable to organized Group 'A' Engineering Services, action was initiated by CWC/MoWR for amendment to the Service Rules which were finally notified in November, 2013. However, with the approval of DoPT amended provision has been implemented retrospectively with effect from 18.01.2011 and a proposal for grant of NFU to 37 CWES officers from SAG to HAG for the years 2011-12, 2012-2013 and 2013-14 has been sent to MoWR, RD and GR. Since you retired from government service on 31.10.2009, your name does not qualify for grant of NFU from SAG to HAG. "

6. Learned counsel for the applicant has placed before us three orders of this Tribunal, which are as follows:

(i) OA No.761/2012 pronounced on 23.10.2013 in
Dr.Badri Singh Bhandari & Another vs. Union of India & Others.

The issue before this Tribunal in this case was that the applicants were Members of the Indian Economic Service belonging to the 1982 and 1983 Batches. They had claimed the benefit of NFU as Shri Atanu Chakraborty and Shri P.Raghvendra, both IAS officers of 1985 Batch, were appointed at the level of Joint Secretary with the Government of India with effect from 08.11.2005 and 27.10.2005 respectively. Both these officers were granted

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benefit of upgradation in PB-4 with effect from 01.01.2006, whereas the applicants were granted the said benefit with effect from 03.01.2006. The OA was allowed and the respondents were directed to grant PB-4 to the applicants with effect from 01.01.2006.

(ii) OA No.2143/2014 pronounced on 23.12.2014 in **Tushar Ranjan Mohanty vs. Union of India & Another.**

The applicant in this case was a Member of the Indian Statistical Service and again the issue was whether the applicant who had been granted the NFU with effect from 03.01.2006 should be granted the benefit on 01.01.2006 as an IAS Officer two years junior to him had been granted the benefit of upgraded 6th CPC pay scale from 01.01.2006. The OA was allowed keeping in view of the decision of the Tribunal in OA No.761/2012 in **Dr.Badri Singh Bhandari & Another vs. Union of India & Others** (supra).

(iii) OA No.3065/2014 pronounced on 25.04.2016 in **Shri Rakesh Kumar & Others vs. Union of India and Another.**

This OA was also filed by the Members of Indian Statistical Service and the applicants had cited both the orders decided

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by this Tribunal in OA No.2143/2014 and OA No.761/2012

and OA was disposed of with the following orders:

"MA No.2626/2014.

In view of the averments made in the MA, applicants are permitted to file joint OA. MA stands disposed of.

OA No.3065/2014.

It is not in dispute that the relief claimed in the present Application is squarely covered by judgment dated 23.10.2013 passed in OA No.761/2012 titled Dr. B. S. Bhandari and Others vs. Union of India, followed in subsequent judgment dated 23.12.2014 passed in OA No.2143/2014 titled Shri T. R. Mohanty vs. Union of India & ors. This Application is accordingly disposed of in terms of the aforementioned judgments. The applicants shall be entitled to the same relief as granted in the aforementioned OAs.

2. Learned counsel for the respondents has brought to the notice of this Tribunal that the above mentioned two judgments are subject matter of challenge before Hon'ble Delhi High Court in W.P. (C) No.8193/2015 and W.P. (C) No.3730/2015, which are pending disposal.

3. In view of this situation, it is further observed that the present order shall be governed by the outcome of the judgments by the Hon'ble High Court of Delhi in the abovementioned writ petitions.

4. With the above order, the OA stands disposed of."

7. It is the case of the learned counsel for the applicant that the present OA may also be disposed of on the same lines as decided by this Tribunal in OA No.3065/2014.

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8. The learned counsel for the respondents states that at the time of grant of NFU to the applicant, the Recruitment Rules of 2004 was prevailing which provided that for promotion from SAG to HAG, three years' service in the grade of SAG was essential. Therefore, the eligibility of all the candidates was considered according to the provisions of the Recruitment Rules of 2004 for grant of 'Non-functional upgradation in HAG for the year 2007-08. In the case of the applicant, since he had joined in Senior Administrative Grade w.e.f. 27.04.2006, he completed three years' service in the Senior Administrative Grade on 26.4.2009. As per the guidelines concerned for grant of Non Functional Upgradation, applicant's date of eligibility was 01.01.2010. However, before attaining the eligibility, the applicant retired from Government service on 31.10.2009 on attaining the age of superannuation. Therefore, he was not eligible for grant of Non- Functional Upgradation.

9. It is pointed out that the NFU guidelines clearly stipulate that normally all prescribed eligibility criteria and the promotional norms, including 'benchmark' for upgradation to a particular grade pay would have to be met for grant of higher pay scale under NFU. Vide OM dated 18.01.2011 (Annexure R-3) DoPT

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withdrew the earlier provision of three years regular service in the SAG (PB-4 Grade Pay Rs.10000) and provided as follows:

“Officers in the SAG (PB-4 Grade Pay Rs.10000) with 3 years’ regular service in the grade OR Officers with 25 years regular service in Group ‘A’ posts in the service out of which at least 1 year regular service should in the SAG. ”

10. It is stated that this provision has become effective only on 18.01.2011 and the applicant had retired before that date, namely on 31.10.2009. At that time, the Recruitment Rules of 2004 was applicable which required three years service in the grade of SAG for promotion to HAG. Moreover, the NFU Scheme came into with effect from 01.01.2006 and this is clearly stated in OM dated 24.04.2009.

11. We have heard the learned counsel for the parties and perused the pleadings as well as judgments cited by the applicant.

12. The NFU guidelines are crystal clear and there is no need for elaboration. The applicant’s case is that the IAS Officer of 1977 Batch (two years junior to him) was posted at the Centre on 26.12.2007. Therefore, he should be granted the NFU in the pay scale of Rs.67000-79000, which was being drawn by the IAS Officer, with effect from the date the IAS Officer joined at the

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Centre on 26.12.2007. At the time the applicant's case was to be considered, the Rules provided that the applicant should have had three years regular service in lower scale i.e. SAG (Rs.37,400-67,000) and only then he could be granted the scale of HAG (Rs.67000-79000). According to the respondents, the applicant had got SAG on 27.04.2006 and on completion of his three years service in SAG he was to be considered for promotion of NFU in HAG with effect from 01.01.2010. Unfortunately, he retired from Government service on 31.10.2009. Therefore, he cannot be granted NFU from SAG to HAG.

12. The issue in this OA is, therefore, quite different from the issue in aforesaid OAs cited by the learned counsel for the applicant, because, in this case, the applicant, unfortunately, does not fulfill the eligibility criteria which is mandatory in accordance with OM dated 24.04.2009. Therefore, the relief sought for by the applicant in this case cannot be granted as it violates the provision of OM dated 24.04.2009.

13. The applicant has also challenged the provisions of OM dated 24.04.2009 that requires fulfillment of the eligibility criteria for regular promotion applicable for NFU upgradation on the ground that Resolution dated 29.08.2008 stipulates no such condition. The Resolution dated 29.08.2008 contains just the bare

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recommendations of the 6th CPC and the fact of its acceptance by the Government. Based on this recommendation the Government has issued OM dated 24.04.2009, which contains elaborate instructions on how NFU will be implemented and certain conditions have been incorporated. There is no element of illegality, arbitrariness and discrimination in this policy decision. Therefore, there is no question of this Tribunal interfering with that.

14. The OA, therefore, has no merit and is dismissed. There shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(P.K.Basu)
Member (A)

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