

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1514/2013

Reserved on : 24.02.2016
Pronounced on : 08.03.2016

**HON'BLE MR. JUSTICE SYED RAFAT ALAM, CHAIRMAN
HON'BLE MR. P.K. BASU, MEMBER (A)**

A.K. Valsalan,
A-61, Vrindaban Apartment,
Plot No.1, Sector-6, Dwarka,
New Delhi-110075.

.. Applicant

(By Advocate : Shri A.K. Ojha)

Versus

1. Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan, New Delhi.

2. Chairman,
Central Water Commission,
R.K. Puram, New Delhi.

3. Secretary,
Department of Personnel and Training,
North Block, New Delhi.

.. Respondents

(By Advocate : Shri Piyush Gaur)

ORDER

By Hon'ble Mr. P.K. Basu

The applicant was a Group 'B' Gazetted Officer in the Central Water Engineering (Group 'A') Service of Central Water Commission till 20.03.1981, when he was promoted on ad hoc basis as Assistant Executive Engineer in Grade 'A' post. He was appointed as Assistant

Director on regular basis w.e.f. 05.04.1984 in junior time scale of CWE (Group 'A') service. He was later promoted to senior time scale w.e.f. 07.02.1994 and further to the Junior Administrative Grade (JAG) w.e.f. 20.10.2004. The applicant retired on 30.06.2008, and filed the present O.A. seeking the following relief(s):

- “8.1 To quash and set aside the impugned order dated 25.06.2012 passed by the respondent No.1 by which the Respondent has rejected the representation of the applicant for grant of Non-functional upgradation (N.F.U.) to the Senior Administrative grade being irrational, arbitrary, unjust, unreasonably harsh, illegal and unconstitutional violating Article 14 and 16 of the Constitution of India.
- 8.2 To direct the respondent to grant N.F.U. to the applicant in the Senior Administrative Grade with grade pay of Rs.10,000/- with effect from 19.11.2007, in personam, N.F.U. being personal to the applicant with all consequential benefits.
- 8.3 To direct the respondent to treat the applicant's Batch for grant of N.F.U. from 01.01.1984 the date of entry of the applicant in Central Water Engineering group 'A' Service or in the alternative the applicant's Batch may be reckoned from 01.01.1986 being the date from which he has been accorded seniority and clubbed with the direct recruits of 1986 examination.
- 8.4 To set aside clarification given at points no. 7 & 9 of DOP&T dated 1st August 2012 being arbitrary, unjust, unreasonably harsh, illegal and unconstitutional so far as it determines the batch of the applicant to 1987.
- 8.5 To quash the OM dt. 19.1.2011 and 30.3.2012 issued by the respondents No.I & II with regard to batch year 1987.
- 8.6 To direct the Respondent to grant the applicant 1986 batch year from which the seniority has been accorded to the applicant as per the civil list of CWE group 'A' service.
- 8.7 To direct the respondent to grant the applicant pension in the S.A.G. grade with all benefits of commutation and arrears thereon with effect from 01.07.2010.
- 8.8 To grant any other relief/remedy as this Hon'ble C.A.T. may deem fit & proper in the circumstances & facts of the case.”

2. The applicant's case is that since he was appointed on regular basis w.e.f. 05.04.1984 in the CWE (Group 'A') Service, **his Batch should be considered as 1984**. Why and how this question of Batch arises, would be explained presently.

3. According to O.M. dated 24.04.2009, officers belonging to Organised Group 'A' Services were to be granted Non-Functional Upgradation(NFU) with reference to a particular Batch of IAS. The relevant paragraph of this O.M. is quoted below:

“(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 Organised 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 Service Officers in that particular grade at the Centre.”

4. The applicant made representation that he be considered along with the direct recruit officers of 1984/1985 Batch for parity in granting of NFU as he held the post on regular basis in the CWE (Group 'A') Service w.e.f. 05.04.1984. The respondents replied vide letter dated 19.01.2012 (erroneously typed as 19.01.2011) by which the applicant's prayer was rejected stating that the applicant was eligible to be considered for grant of NFU w.e.f. 18.02.2009 for the vacancy year 2008-09 along with 1987 Batch of the CWE (Group 'A') Service Cadre officers. Since the applicant retired on 30.06.2008, i.e. before the date of eligibility for grant of NFU, the

applicant was not considered for grant of NFU by the Screening Committee Meeting held on 29.11.2011. Subsequently, vide letter dated 30.03.2012, Central Water Commission informed the applicant as follows:

“The seniority of Shri A.K. Valsalan who is a promotee officer has been fixed with 1986 batch and as per DoPT O.M. dated 10.6.2010, his batch has been considered as 1987. As per the terms and conditions governing the grant of Non-Functional Upgradation (NFU) to next higher grade to officers of organized Group ‘A’ Service, the officers of 1987 batch are eligible for grant of NFU w.e.f. 18.02.2009. Shri Valsalan has retired from government service on superannuation w.e.f. 30.6.2008 i.e. before the date of grant of NFU, thus, he is not eligible for grant of NFU w.e.f. 18.02.2009.”

5. Vide Office Memorandum dated 01.07.2010, subsequent clarification was issued in which it was clearly indicated as to which batch of Organised Group ‘A’ Service would be considered for non-functional grade in relation to which batch of IAS and from which date. In this Chart the entry regarding 1986 to 1989 Batch of IAS are as follows:

Sl.No.	Batch and Level in IAS	ACC order issued on	Batch of Organised Group ‘A’ Service to be considered for Non-Functional Upgradation
8.	1986 as Joint Secretary	26.10.2006	1984 and earlier w.e.f. 26.10.2006
9.	1987 as Joint Secretary	15.2.2007	1985 and earlier w.e.f. 15.2.2007
10.	1988 as Joint Secretary	19.11.2007	1986 and earlier w.e.f. 19.11.2007
11.	1989 as Joint Secretary	18.02.2009	1987 and earlier w.e.f. 18.2.2009

6. The applicant’s argument is that he was appointed on regular basis in 1984 in Junior Time Scale of the CWE (Group ‘A’) Service

and has lawful claim of 1986 Batch under rule. However, he was not eligible for NFU for SAG in 2006 since he had not rendered three years of service in JAG as on 26.10.2006, a crucial date when 1986 Batch officers were posted in SAG at the Centre. According to the applicant, he completed three years of residency in JAG on 20.10.2007 and became eligible to be granted NFU w.e.f. 19.11.2007. IAS of 1988 Batch were posted as SAG at the Centre as per DoPT P.M. dated 01.07.2010 referred to above. According to the applicant, he cannot be pushed down to 18.02.2009 by the respondents by treating him on parity with 1989 Batch of IAS for grant of NFU.

7. The applicant also drew our attention to Clarification Nos.14 and 15 of DoPT O.M. dated 01.08.2012, which states as follows:

S.No.	Point of doubt	Clarification
14.	What is the due date of upgradation if found unfit on the date assigned to a batch?	If an officer is not found eligible during a vacancy year and is found fit in the next vacancy year, NFU may be granted from the 1 st April, i.e. the 1 st day of the next vacancy year.
15.	How to consider cases where the officers do not meet the qualifying service in the vacancy year in which the batch is covered for non-functional upgradation?	If an officer does not meet the eligibility requirement as on the 1 st January of the corresponding vacancy year then such officer is to be considered for grant of NFU in subsequent vacancy year on completion of qualifying service w.e.f. 1 st April, i.e. 1 st day of the next vacancy year.

Based on the above, it is stated that he was eligible for grant of NFU on 20.11.2007 as per O.M. dated 24.04.2009 para 1(i) before

01.01.2008 and consequently he was due for grant of NFU to the Senior Administrative Grade from 01.04.2008 as per Clarification No.14 and 15 of DoPT O.M. dated 01.08.2012.

8. The learned counsel for the applicant further reiterated that the concept of Batch has neither been defined nor provided in the CWE (Group A) Service Rules/IAS Seniority Rules, 1987 and other related rules. It is stated that Batch in IAS is decided separately for IAS direct recruits and departmental candidates. However, this procedure of allocation of allotment year is absent in the CWE (Group A) Service Rules. Therefore, the Batch of the applicant is to be treated as the date of joining or the date of seniority. Hence, the Batch year of the applicant is 1984 or in the alternative 1986, the date of joining/year of seniority.

9. It is emphasised that the applicant cannot be assigned Batch later than 1984/1986 for imparting the batch/allocation year of direct recruit IAS under Rule 3(3) of IAS (Regulation of Seniority) Rules 1987, which provides as follows:

“3.(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be as follows:-

- (i) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:

Provided that if a direct recruit officer is permitted to join probationary training under rule 5(1) of the IAS (Probation) Rules, 1954, with direct recruit officers of a subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment.

(ii) The year of allotment of a promotee officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year for which meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

- (a) for the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;
- (b) he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years.

Explanation- For the purpose of calculation of the weightage under this clause, the fractions, if any, are to be ignored:

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list:

(iii) the year of allotment of an officer appointed by selection shall be determined with reference to the year for which the meeting of the Committee to make the selection to prepare the select list, on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in a post equivalent to the post of Deputy Collector or a higher post, up to the 31st December of the year immediately before the year for which the meeting of the Committee to make the selection was held to prepare the select list on the basis of which he was appointed to the service, in the following manner:-

- (a) for the service rendered by him up to twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;

(b) he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years.

Explanation- For the purpose of calculation of the weightage under this clause, the fractions, if any, shall be ignored:

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the Service on the basis of an earlier select list:

Provided further that he shall not be allotted a year earlier than the year of allotment assigned to an officer already appointed to the service in accordance with sub-rule (1) of rule 8 of the recruitment rules, whose length of Class I continuous service in the State Civil Service is equal to or more than the length of Class I continuous service of the former in connection with the affairs of the State.

Explanation-The length of the relevant Class I continuous service in either case shall be with reference to the 31st day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to prepare the select list on the basis of which appointments were made in the respective cases.”

10. According to the applicant, the clarification given by the DoPT in Point No.7 and 9 of DoPT O.M. dated 01.08.2012 for granting the batch following the year of competitive examination for direct recruits and the same batch to departmental candidates to whom the seniority of departmental candidates has been clubbed as it contradicts the provisions of O.M. dated 24.04.2009. The relevant clarifications of this O.M. are quoted below:

S.No.	Point of doubt	Clarification
7.	What is the definition of the term Batch?	For the purpose of grant of NFU the ‘Batch’ for direct recruit officers in the induction grade shall be the year following the year in which competitive exam

		was held. In subsequent grades the 'Batch' would remain the same provided the officer is not superseded due to any reason. In case an officer is superseded the officer would be considered along with the 'Batch' with which his seniority is fixed.
9.	Whether the benefit is available to Group B officers inducted into the Organised Group A service?	Yes, Such officers shall be assigned the benefit of 'Batch' corresponding to the batch of the 'direct recruit' officers with whom their seniority is clubbed.

The above clarifications are, therefore, alleged to be irrational, arbitrary, discriminatory, illegal, unjust, unreasonable and unconstitutional violating Articles 14 and 16 of the Constitution of India and, therefore, clarification No.7 and 9, as claimed by the applicant, deserves to be quashed and set aside.

11. According to the applicant, the Recruitment Rules provide for seniority on the basis of rota quota as laid down in the seniority rules issued by the DoPT vide O.M. dated 03.07.1986 and the respective recruitment rules. The batch in CWE (Group A) Service is, therefore, to be calculated on the basis of select list or from the year of select list, either on promotion or on direct recruitment.

12. It is argued that the respondents in clarification No.7 issued vide O.M. dated 01.08.2012 clarified that the batch of direct recruit candidates of CWE (Group A) Service to be the year following the year of competitive examination and those of departmental inductees as the year of batch with whom the seniority have been

clubbed following IAS (Regulation of Seniority) Rule 3(3)(iii) meant for direct recruits, which is arbitrary and unreasonable as unlike the IAS Rules in CWE (Group A) Service Rules, there is no weightage of one year for each three years of service rendered in Group ‘A’. Thus, the Rule 3(3)(iii) of IAS (Regulation of Seniority) Rules, 1987 cannot be imported in the CWE (Group A) Service Rules.

13. The learned counsel for the applicant also referred to O.M. dated 25.09.2009 which are certain clarifications to O.M. dated 24.04.2009. Specific reference was made to clarification No.1, which is as follows:

S.No.	Point of doubt	Clarification
1.	This Office Memo refers to the term ‘Batch. In Central Civil Services and Indian Engineering Services, the definition of the batch is, the year in which the exam is conducted. In some other services, the recruitment is done through interview only. Where recruitment is done through interview only, the Batch is the year in which the Advertisement is issued by the UPSC or the year of interview for recruitment.	Since different services have different criteria for defining ‘Batch’, the term ‘Batch’ in the OM refers to the year of joining the service.

14. Learned counsel also relied on the Hon’ble Supreme Court’s judgment in **S.L. Sachdeva & Ors. Vs. Union of India & Ors.** 1981 (1) AISLI 115, wherein it has been held as follows:

“Apart from this consideration, we are unable to understand how the Director General could issue any directive which is inconsistent with the Recruitment Rules of 1969 framed by the President in the exercise of his powers under [Article 309](#) of the Constitution. Those rules do not provide for the kind of classification which is made by the Director General by his letters to the Heads of respective Circles of the new organisation. It may be recalled that the Recruitment Rules only provide for a classification on the basis of the length of service in the new organisation. Any directive which goes beyond it and superimposes a new criterion on the Rules will be bad as lacking in jurisdiction. No one can issue a direction which, in substance and effect, amounts to an amendment of the Rules made by the President under [Article 309](#). That is elementary. We are unable to accept the learned Attorney General's submission that the directive of the Director General is aimed at further and better implementation of the Recruitment Rules. Clearly, it introduces an amendment to the Rules by prescribing one more test for determining whether U.D.Cs. drawn from the Audit Offices are eligible for promotion to the Selection grade/Head Clerks Cadre.”

Based on this, it is claimed that clarification No.7 of DoPT O.M. dated 01.08.2012 is arbitrary, unreasonable, illegal and unconstitutional.

15. It is further argued that in **MRF Limited Vs. Manohar Parrikar and Others** (2010) 11 SCC 374, the Hon'ble Apex Court in para 92 has held as under:

“92. As observed by us earlier, these observations apply equally to the case on hand and in light of this view, we have no difficulty in holding that the Business Rules framed under the Provisions of [Article 166 \(3\)](#) of the Constitution are mandatory and must be strictly adhered. Any decision by the Government in breach of these Rules will be a nullity in the eyes of law. It is in this legal background that the issues raised before us have to be dealt with.”

Therefore, it is argued that since the recruitment rules have been framed under Article 309, they cannot be overruled by clarification

dated 01.08.2012. He further argued that the scheme of NFU had been cleared by the Cabinet and, therefore, any clarification, that the respondents had to issue, had to be with the approval of the Cabinet and the clarification, therefore, cannot be overruled without the decision of the Cabinet.

16. Learned counsel for the applicant further relies on judgment in **Kichha Sugar Co. Ltd. Through G.M. Vs. Tarai Chini Mill Majdoor Union** (2014) 2 SCC 51, wherein the Hon'ble Supreme Court has held as follows:

“8. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning.”

and according to the learned counsel, since Batch is not defined, it should be taken in the case of CWE (Group A) Service as the date of first appointment as a Group 'A' officer of the service.

17. According to the learned counsel for the respondents, the DoPT vide O.M. dated 01.08.2012 has clarified the definition of 'Batch' as already quoted above and the department had followed that definition. Learned counsel also placed before us the seniority list of officers of CWE (Group A) Service in the Junior Administrative Grade (JAG) as on 01.01.2005 in which the applicant's name is shown at Sl.No.167 and date of regular appointment to JAG as 25.10.2004, and Shri P.K. Saxena is at Sl.No.141 with date of appointment to JAG as 20.10.2004, who

came as direct recruit through an examination in 1987. Therefore, the applicant's Batch has been placed as 1987 as per O.M. dated 01.08.2012.

18. Learned counsel further placed before us a photocopy of bio-data of the applicant maintained in the department in which the following entry has been made:

“Appointed to the grade of AEE in CWE service on the result of CESE 1986 vide CWE letter No.1/14/89-E III, dated 09.05.1989.”

19. It is reiterated that the prime criteria to grant NFU is batch parity with the batch of IAS officer joining the Centre who are two years junior. By virtue of this interpretation, since his seniority was fixed and the batch of the applicant is 1987, he has to be considered for NFU on parity with IAS of 1989 batch. The applicant joined as JAG on 25.10.2004 and thus completed three years in the grade on 25.10.2007, but mere completion of 3 years regular services does not qualify an officer to get NFU in SAG. As per Govt. instructions, to be eligible for NFU, he must have completed at least 3 years service as on 01.01.2007, which he does not. Thus the applicant is not eligible for NFU w.e.f. 25.10.2007. The learned counsel also referred to table quoted above in O.M. dated 01.07.2010, in which it is indicated that 1987 batch of IAS of Organized Group 'A' Service would be considered for NFU with respect to 1989 batch of the IAS and w.e.f. 18.02.2009. However,

since the applicant retired on 30.06.2008, he is not eligible for NFU benefit. Further, the NFU guidelines specifically state in sub-para 3 of Annexure-I as follows:

“3. All the prescribed eligibility criteria and promotional norms including ‘benchmark’ for up-gradation to a particular grade pay would have to be met at the time of screening for grant of higher pay-scale under these orders.”

Thus, as per NFU instructions, he must have completed at least three years as on 01.01.2007, which he did not. Thus, he cannot be granted NFU w.e.f. 19.11.2007. Moreover, the applicant has not challenged the fixation of seniority from 1986 and he cannot rake up the issue now, i.e. after 29 years since his seniority was fixed.

20. The learned counsel for the respondents, therefore, have also raised the question of delay by the applicant and, in this regard, relied on the judgment of Hon’ble Apex Court in **State of Karnataka & Ors. S.M. Kotrayya & Ors.** (1996) 6 SCC 267, wherein it has been held as follows:

“Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of [Section 21](#), but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.

21. Similarly, the respondents relied on the judgment of Hon'ble Apex Court in **Union of India & Ors. Vs. M.K. Sarkar** (2010) 2 SCC 59, where again the same view was reiterated as follows:

“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute.”

22. Heard the learned counsel for both the sides and perused the respective pleadings and judgments.

23. The whole issue revolves around the question of which ‘Batch’ the applicant will be assigned to. The applicant claims 1984/1986 Batch, whereas the respondents have fixed his Batch as 1987. It is a fact that when the seniority list of JAG officers were circulated, the applicant was adjusted as per recruitment rules with direct recruit candidates who pertain to 1987 examination. The applicant had not challenged the seniority list and nor has he challenged it now. The applicant’s case is that since he got into Group ‘A’ service on 05.04.1984, his seniority should be considered from 1984.

24. The NFU Scheme was introduced for a particular purpose of providing some kind of compensation for other Organised Group ‘A’ services who were posted to the Centre with designations lower than that of IAS officers of the same batch or even junior batch, who got posted at the Centre. The Govt., therefore, took a decision

to keep a gap of 2 years and on an IAS officer getting posted at the Centre, the officers belonging to other Organised Group 'A' service, who were senior to him by two years or more, were granted the NFU.

25. The question obviously, therefore, revolves around the 'Batch' of the officer which was not specifically mentioned in O.M. dated 24.04.2009 and, accordingly, clarifications were issued later vide O.M. dated 25.05.2009 and further clarification vide O.M. dated 01.08.2012, in which clarification No.7 and 9 clearly indicate how the Batch will have to be defined. This does not supersede the previous Recruitment Rules of the CWE (Group 'A') Service at all. This clarification particularly relates to a scheme of NFU introduced by the respondents which crucially depend on the 'batch' to which the officer belongs and since the original O.M. dated 24.04.2009 had not specified the term 'Batch', this was clarified subsequently. Therefore, we do not accept the contention of the learned counsel for the applicant that since the Recruitment Rules have been framed under Article 309 and since the NFU was approved by the Cabinet, no clarification can be issued without the Cabinet's approval, which provide for certain clarification on a scheme which is quite distinct from the Recruitment Rules. Moreover, we also do not agree with the contention of the learned counsel for the

applicant that the term 'Batch' has not been defined and, hence, question of application of **Kichha Sugar Co. Ltd.** (supra) does not arise. As explained above, the term 'Batch' has been clearly defined by the DoPT O.Ms. from time to time.

26. There is no doubt that according to the seniority list, the applicant belongs to 1987 batch and according to the instructions and subsequent clarification of NFU, 1987 Batch would get parity with 1989 batch of IAS and, therefore, his promotion became due on 18.02.2009. Since he retired on 30.06.2008, he missed the chance. Furthermore, as rightly pointed out by the respondents, this O.A. is barred by limitation and hence not maintainable.

27. In the totality of facts and circumstances, we are of the opinion that apart from the non-maintainability of the O.A. on the ground of delay, denial of NFU to the applicant is also as per rules and no irregularity has been committed by the respondents. The O.A. is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/Jyoti/