

**Central Administrative Tribunal
Principal Bench**

OA No.3089/2013

New Delhi, this the 21th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Balbir Singh, D-104
Tagore Garden Extn.
New Delhi-110027.
2. Chandan Roy, 25-B
Supriya Appts
A-, Paschim Vihar
New Delhi-11003.
3. M.S. Kaushika, Neelachal 1323/7
Shambhu Dayal Mandir Marg
Sonapat, Haryana.
4. Rakesh Bhanot, B-21
Rana Pratap Bagh
Delhi-110007. ..Applicants

(By Advocates: Shri A.K. Ojha and Ms. Richa Ojha)

Versus

1. Secretary, Ministry of Power
Shram Shakti Bhavan
New Delhi-110001.
2. Chairman, Central Electricity Authority
Ministry of Power
Sewa Bhavan, RK Puram
New Delhi. ..Respondents

(By Advocate: Shri Ashok Kumar)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicants joined the service of Central Electricity Authority, Ministry of Power, New Delhi on various dates. Applicant Nos. 2, 3 and 4 became Group 'A' officers in the year 1991 and members of 1992 batch. Applicant No.1 became Group 'A' officer in the year 1992 and member of 1993 batch. They also held the positions of Deputy Directors in the organization from various dates, after becoming Group 'A' officers.

2. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoP&T for short) issued Office Memorandum dated 24.04.2009 to the effect that whenever an IAS officer of the State of Joint Cadre is posted at the Centre, to a particular grade carrying a specific grade of pay in Pay Band 3 or Pay Band 4, the officers belonging to batches of Organised Group 'A' services who are senior by two years or more and have not been promoted to that particular grade, as the I.A.S. officer was, would be entitled to be extended the benefit of that grade, on Non Functional Upgradation

(NFU for short). This was subject to the condition that the Screening Committee must examine the eligibility criteria of the persons becoming so eligible, including that of 'benchmark' for upgradation to a particular grade.

3. On 01.07.2010, the DOP&T issued an Office Memorandum furnishing the particulars of the IAS officers of various batches who have been appointed or posted as Directors and indicating the batches of organized Group 'A' Service, that are eligible to be considered for NFU. The applicants contend that according to the Memorandum dated 01.07.2010, Group 'A' officers of 1992 and 1993 batches became eligible to be extended the benefit of the post of Director or equivalent w.e.f. 01.07.2008 and 01.07.2009 respectively, but the same has not been extended to them.

4. On a representation submitted by the applicants, the concerned department informed them that their cases were not considered since, by the time the occasion has arisen, the applicants retired from service and accordingly were not extended the benefit of NFU.

One such communication is dated 23.07.2013 issued to one of the applicants by the name Rakesh Bhanot(Applicant No.4). The said communication is challenged in this OA, claiming the relief in the form of a direction to the respondents to extend the benefit of NFU to the applicants, with effect from the dates on which they became eligible.

5. The respondents filed counter affidavit, opposing the O.A. They contend that the DoP&T issued the Office Memorandum dated 01.07.2010 indicating the names of the IAS officers, who were promoted or posted to the post of Director, and the batch of Group 'A' officers, who are entitled to be considered. It is stated that the benefits of said Office Memorandum were not extended to the applicants since they retired from service. It is also stated that on an application of eligibility criteria, the applicants were found to be ineligible since they did not have nine years of service in the post of Deputy Director.

6. Heard Shri A.K. Ojha, learned counsel for the applicant and Shri Ashok Kumar, learned counsel for the respondents.

7. The entire claim of the applicants rests upon the Office Memorandum dated 24.04.2009 issued by the DoP&T, which reads as under:-

"No.AB.14017/64/2008-Estt.(RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
New Delhi, the 24th April, 2009

Office Memorandum

Subject:- Non Functional upgradation for Officers of Organised Group 'A' Services in PB-3 and PB-4

Consequent upon the acceptance of the recommendations of the Sixth Central Pay Commission, the following orders are issued:-

- (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.
- (ii) Grant of higher scale would be governed by the terms and conditions given in Annex-I.
- (iii) Appropriate amendments in the Service Rules may also be carried out.
- (iv) Establishment Division of this Department will issue orders from time to time, in consultation with the Establishment Officer, intimating the batch of the officers belonging to the Indian Administrative Service who have been posted at the Centre in the various grades of PB-3 and PB-4 as well as the date of posting of the first officers belonging to the batch.

2. Grant of higher scale (i.e. pay band and/or grade-pay) under these instructions would be w.e.f. 1.1.2006, wherever due and admissible."

8. The Office Memorandum is to the effect that if an IAS officer of a particular batch has been posted to a grade, which carries the pay in Pay Band 3 and Pay Band 4, such of the Group 'A' officers, who are senior by two years or more in terms of batch, shall be eligible to be extended the NFU, subject to screening by the Committee. Even if a particular Group 'A' officer has figured in the batch, and is senior by two years or more to the IAS officer, who was posted to an office carrying the pay of Pay Band 3 or 4, he has to be cleared by the Screening Committee. This is evident from Clause 3 contained in Annexure A-1 attached to Office Memorandum dated 24.04.2009.

"3. All the prescribed eligibility criteria and promotional norms including 'benchmark' for upgradation to a particular grade pay would have to be met at the time of screening for grant of higher pay-scale under these orders."

9. For the purpose of extending the benefit of NFU to various Group 'A' officers, the authentic information has

been furnished by the DoP&T in this behalf. The gist thereof is as under:-

S. No.	Batch and Level in IAS	Date of posting of the officer in the grade in the Central Staffing Scheme	Batch of Organized Group 'A' Service to be considered for Non-functional upgradation
1.	1992 as Director	01.07.2006	1990 and earlier w.e.f. 01.07.2006
2.	1993 as Director	08.08.2007	1991 and earlier w.e.f. 08.08.2007
3.	1994 as Director	01.07.2008	1992 and earlier w.e.f. 01.07.2008
4.	1995 as Director	01.07.2009	1993 and earlier w.e.f. 01.07.2009
5.	1997 as Deputy Secretary	05.04.2007	1995 and earlier w.e.f. 05.04.2007
6.	1998 as Deputy Secretary	24.08.2007	1996 and earlier w.e.f. 24.08.2007
7.	1999 as Deputy Secretary	01.07.2008	1997 and earlier w.e.f. 01.07.2008
8.	2000 as Deputy Secretary	01.07.2009	1998 and earlier w.e.f. 01.07.2009

The table indicates that the officers of Group 'A' of 1992 and 1993 batches became eligible to be extended NFU from 01.07.2008 and 01.07.2009 respectively (Sl. Nos.3 and 4 of the table). It is not in dispute that three of the applicants belong to 1992 batch and one of them belongs to 1993 batch.

10. The plea raised in the counter affidavit is to the effect that the applicants retired from service by the

time their cases were considered and they did not have the stipulated length of service of nine years in the post of Deputy Director.

11. So far as the first objection is concerned, there is ample material to indicate that the benefit of NFU was extended to even such of the officers, who retired from service if they had acquired the eligibility while in service. The applicants acquired such eligibility before they retired. The applicants have also furnished the particulars of retired officers, who have been extended the benefit in various departments. Therefore, this plea cannot be accepted.

12. The second one is as regards the eligibility criteria. It is pleaded that according to the Recruitment Rules of the respondent-corporation, an officer would become eligible to be appointed as Director only on completion of nine years of service in the post of Deputy Director. Here again, the record does not support the contention of the respondents. Even in the concerned year, the respondents requested the DoP&T to relax the rules in this behalf and accordingly the Rule, which stipulated

nine years of service in the post of Deputy Director, was relaxed to the effect that it can be 13 years of service in Group 'A' that includes four years in the post of Deputy Director. It is not in dispute that the applicants fulfilled that condition. The plea that the relaxation was one time measure is also not true. The correspondence that has been undertaken in this behalf discloses that the relaxation was extended for the subsequent years also. Therefore, by the time the applicants became eligible to be considered for being extended NFU, the relaxation was very much in force. Accordingly, they became eligible to be considered for extension of that benefit. The only aspect that remains to be considered was an exercise by the Screening Committee, to assess their fitness.

13. We, therefore, allow the OA setting aside the impugned orders and directing the respondents to consider the cases of the applicants for extending the benefits of NFU in accordance with the DoP&T Office Memorandum dated 23.04.2009, duly constituting a Screening Committee for the purpose of assessing their fitness. Depending upon the outcome of such exercise, consequential benefits, shall also be extended. This

exercise shall be completed within four months from the date of receipt of this order.

14. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/

