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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00887/2017

Thursday, this the 24th day of January, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Shri C.R.K.Nair,
S/o N.Ramakrishna Pillai,
Aged 61 years,
N.VII/4, Malabar Road,
Willingdon Island,
Kochi, Kerala-682009.
Retired as Additional Director General (HAG level),
Department of Health and Family Welfare,
Ministry of Health and Family Welfare,
New Delhi.Applicant

(By Advocate M/s. B.S.Krishna Associates)

V e r s u s

1. The Union of India
through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi – 110 001.

2. The Department of Personnel
Training, Represented by its Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block, New Delhi – 110 001.

3. The Ministry of Statistics & Programme
Implementation,
Represented by its Secretary,
Sardar Patel Bhawan,
New Delhi – 110 001.Respondents

(By Mr.K.C.Muraleedharan, ACGSC for Respondents)

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This application having been heard on 21st January, 2019 the Tribunal on 24th January, 2019 delivered the following :

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.894/2018 is filed by Shri C.R.K.Nair, challenging the order dated 29.05.2017 issued by 2nd respondent, by which the applicant is denied the grant of Non-Functional Upgradation of pay of Higher Administrative Grade (HAG) scale of Rs.67000-79000 with effect from 03.12.2009, the date of granting of such pay scale to his alleged juniors. The reliefs sought in the OA are as follows:

- i. Call for records leading to Annexure A1 order dated 29.05.2017 and quash and set aside the same;
- ii. Call for records leading to Annexure A2 office order dated 08.11.2012 and Quash and set aside the same only to the extent the Applicant has been granted the Non functional upgradation to HAG scale (Rs.67000-79000) only from 07.08.2012 instead of 03.12.2009;
- iii. Declare that the applicant is entitled to be granted the HAG scale (Rs.67000-79000) with effect from 03.12.2009, the date of granting of HAG scale under NFU to the juniors of the applicant.
- iv. Direct the respondents to grant the consequential benefit of the grant of HAG scale with effect from 03.12.2009 including arrears of salary, Leave encashment, revised pension fixation, arrears of revised pension etc, in a time bound manner.
- v. Award cost and incidental to this application; and
- vi. Pass any other orders or directions as may be deemed fit and proper in the interest of justice.

2. The applicant is a Group A officer belonging to the Indian Statistical Service (ISS), which is an organised Group A Service. He had appeared for the UPSC examination for induction into the ISS in the year 1979 and upon

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selection, joined the service in 1980, whereby he was categorised as being part of 1980 batch. He earned his first promotion to Senior Time Scale in January, 1984 and his second promotion to Junior Administrative Grade (JAG) in May, 1996. During his promotion to JAG, the applicant superseded some officers of 1977 and 1979 batches. The applicant claims that he continued to be senior to those officers of 1977 and 1979 batches whom he had superseded till retirement. The applicant got his next grade, his third promotion to Non-Functional Selection Grade in May, 1999 and continued to be ahead of the above mentioned officers as is evidenced at Annexure A3, which is an Office Order issued by the Ministry of Statistical & Programme Implementation, wherein he was placed at Sl.No.11 above the superseded officers.

3. In consequence to adoption of VI Central Pay Commission recommendations, the Government had introduced Non-Functional Upgradation (NFU) facility with a view to "alleviate the present level of disparity existing between promotion avenues available to different organised Group A services". By this scheme the Government granted Non-Functional Upgradation in Pay Bands PB-3 and PB-4 to STS, JAG, NFSG, SAG and HAG levels with effect from 01.01.2006 to the officers of organised Group A services, who are eligible. The principle was to grant higher pay scale on non-functional basis to officers belonging to organised Group A services other than the IAS, if their counterparts in the IAS cadre belonging to a particular batch had earned the scale at least two years or more before.

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4. After NFU scheme was approved the applicant was granted Non-Functional Upgradation to the grade of HAG vide Annexure A2 with effect from 07.08.2012, granting parity with IAS officers with lag of 2 years vide Ministry of Statistical & Programme Implementation Office Order dated 08.11.2012. At that point, the applicant came to realise that the upgradation to HAG had been granted with retrospective effect from 03.12.2009 for 1977 batch and 23.08.2011 for 1979 batch. The copy of the order of the cadre controlling Ministry is at Annexure A6. The three officers belonging to the 1977 batch and the two belonging to 1979 batch find a place in the list. Thus, the crux of the claim of the applicant is that NFU came to be granted to the officers belonging to senior batches, who had been superseded by the applicant from 1996 onwards, well before he himself was granted the same.

5.. The applicant continued to represent his case to Respondent-3 with no positive outcome. He filed OA No.4370/2014 before the Principal Bench of this Tribunal seeking remedy to his grievance. In order dated 10.12.2014 (Annexure A8), the Principal Bench disposed of the case with a direction to the Respondents to consider and pass orders on the representation of the applicant. The respondents thereupon issued the impugned order which is cryptic to the point of being non-speaking, stating that “for grant of NFU benefits, batch year should be the basis, irrespective of distortion created due to supersession etc.”

6. The respondents have filed Counsel statement followed by detailed reply statement. They have disputed the contentions raised in the OA. As regards the eligibility of the applicant for obtaining NFU before his batch seniors, it is true that the officer superseded some officers of 1977 and 1979 batches. This was possibly owing to specific issues regarding the eligibility in respect of these officers. NFU was adopted by the Government for an altogether different purpose. It was in order to implement a certain parity between IAS and other Group 'A' services. The disparity in promotions between the IAS and other Group 'A' service were sought to be restricted to two years or so that the benefit gained by an IAS officer would be made available to an officer of Group A service, at least with a time lag of two years. NFU is entirely on batch basis and adopted with a view to mitigate stagnation and erosion of morale among services. It is a benefit extended to officers, who despite being eligible, are not getting promotions due to lack of vacancies. In the case of the applicant he had been a beneficiary of accelerated promotions and also superseded not only his batchmates but also seniors of 1977 and 1979 batches. His demand is that the applicant's NFU should be advanced to 1977 than the original 1980 which would mean that the officer would over take even IAS officers as the time lag prescribed is two years, which is not the intent of the scheme.

7. As per the guidelines/terms and conditions issued by the DOPT, the

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batch of a direct recruit officer would remain till his retirement. It is undisputed that the batch of the applicant is 1980. The applicant has quoted the case of one Davi Lal Meena, IAS officer of 1985 batch who was granted NFS to SAG along with officers of 1983 batch. His was a distinct case as he belonged to ST category and the special benefit allowed was due to the then reservation policy of the Government. It cannot be quoted in favour of the applicant as that instance was a one-off instance.

8. We have heard Shri Joseph Sebastian Parackal, learned Counsel representing M/s.B.S.Krishna Associates on behalf of the applicant and Shri Sinu G. Nath, learned Counsel for Shri. K.C.Muraleedharan, ACGSC on behalf of the respondents. All pleadings and documents were examined.

9. As has been maintained, the batch in the case of All India Service officers relates to the year in which he entered service. Invariably this will be the year following the year in which the officer had sat for the competitive examination except in the year 1977 of ISS officers, who joined in the same year that they participated in the examination. The promotions and the grant of higher grades are governed by guidelines issued by the DOPT from time to time. The applicant had participated in the competitive examination conducted by the UPSC in 1979 and joined the Indian Statistical Service in 1980. For all practical purposes, he came to occupy a position in the 1980 batch. Possibly due to certain deficiencies in their eligibility, three officers of 1977 and two officers

of 1979 batch came to be overtaken by the applicant while getting Junior Administrative Grade in May, 1996. This continued, according to applicant, till their respective retirement.

10. But there are two factors at play here to the detriment of the applicant's claim. Firstly, his batch was never reworked and he was not allotted an earlier batch to the one he was initially posted for his claim to be considered as being 'senior' to the referred officers of the 1977 and 1979 batches. It can be admitted only to the limited extent that he had earned the respective grades ahead of them. He was never allotted to 1976 or 1977 batch above those officers in the cadre. The inadmissibility of his claim would also be clear when we understand that the applicant is claiming to be assigned a batch before having even sat for the competitive examination for selection to the service. Secondly the NFU for which he is raising a claim for pre-dating was specifically an anti-stagnation measure to be given to the officers in relation to their IAS counter parts who had earned the particular grade at least two years before. Such a decision for NFU is available batchwise on the basis of the years of service they have put in. Thus the grade is available only for the officers of 1977 and 1979 batches and will not be available for 1980 batch as the latter group had put in significantly less service. If he is granted his prayer he would essentially be given the grade even before the IAS officers of his own batch and even seniors, which was never envisaged in the scheme.

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11. It is argued in the OA that under the Frequently Asked Question at Annexure A5, the 'batch' has been defined as follows:

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.
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In our view this has application only to those who had been superseded and not in respect of the applicant who has in fact been granted the benefit of accelerated promotion.

12. After carefully considering all aspects of the case, we are of the view that the OA lacks merit and is liable to be dismissed. We proceed to do so. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER
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(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures in O.A. No.180/00887/2017

1. **Annexure A1** – True copy of the order dated 29.05.2017 of the 2nd respondent.
2. **Annexure A2** – True copy of the Office Order dated 08.11.2012 of the 3rd respondent.
3. **Annexure A3** – True copy of the Office Order No.12016/8/SAG/06-07/2005-ISS dated 26.07.2006.
4. **Annexure A4** – True copy of the Office Memorandum dated 24.04.2009 issued by the 2nd respondent along with the Annexure.
5. **Annexure A5** –True copy of Frequently Asked Questions on NFU.
6. **Annexure A6** – True copy of the Office Order No.12016/7/2009-ISS(Pt.) Vol III dated 16.08.2012.
7. **Annexure A7**– True copy of the representation dated 18.10.2010 and 10.06.2011 to 3rd Respondent.
8. **Annexure A8** – True copy of the order dated 10.12.2004 of the Cat Principal Bench in OA No.4370/2014.
9. **Annexure A9** – True copy of relevant extract of seniority list of SAG officers as on 01.04.2011.
10. **Annexure A10** - True copy of Office Order No.12016/9/2009-ISS dated 06.12.2010.
11. **Annexure A11** - True copy of the Office Memorandum No.AB 14017/64/2008-Estt.(RR) dated 1st July, 2010.
12. **Annexure R1** - Copy of DOP&TID Note No.1097880/16/US(RR) dated 23.09.2016.
13. **Annexure R2** - Copy of interim Reply dated 26.03.2015 and 24.06.2015.
