

**Central Administrative Tribunal
Principal Bench**

OA No.1640/2017

New Delhi, this the 5th day of February, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Shri Arun Kumar Jain
s/o Late Jagdish Prasad Jain
aged about 62 years,
retired Chairman,
Ganga Flood Control Commission,
R/o Flat No. B-602, Kesarvani C.G.H.S. Ltd.,
Plot No.4, Sector-5, Dwarka,
New Delhi 110 075. ... Applicant.

(By Advocate : Shri A. K. Srivastava)

Vs.

1. Union of India
Through Secretary
Ministry of Water Resources,
RD & GR, Sharam Shakti Bhawan,
Rafi Marg,
New Delhi 110 001.
2. The Secretary
Department of Personnel and Training
Ministry of Personnel, Public Grievances and Pension
North Block,
New Delhi 110 001.
3. Chairman
Central Water Commission
3rd Floor, South Wing,
Sewa Bhawan, R. K. Puram,
New Delhi 110 066. ... Respondents.

(By Advocate : Shri S. N. Verma)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman:**

The applicant belongs to 1978 batch of Central Water Engineering Service (for short, CWSE). He was promoted to the post of Chief Engineer in the Senior Administrative Grade on 16.09.2008, and he retired from service on 31.07.2014 on attaining the age of superannuation.

2. The Government introduced Non-Functional Upgradation (for short, NFU) Scheme, through OM dated 24.04.2009. According to this, if an IAS Officer of State or Joint Cadre is posted at the Centre to a particular grade, carrying a specific grade pay in Pay Band PB-3 or PB-4, the officers in the organized Group-A service, who are seniors by two years to the IAS Officer so appointed, shall be entitled to be extended the same grade pay, on NFU basis. This, however, is subject to assessment of the eligibility criteria by a Screening Committee. Provisions in this behalf were amended from time to time.

3. Through Office Memorandum dated 15.12.2009 revised eligibility criteria was stipulated. The Government issued specific directions through OM dated 19.11.2011 requiring the concerned departments and organizations to amend the service rules pertaining to organized Group-A

Engineering Service, duly indicating the criteria mentioned therein.

4. The applicant was extended the benefit of NFU w.e.f. 01.04.2011. However, he wanted the extension of NFU w.e.f. 26.10.2010. He pleaded that had his case been dealt with in accordance with OM dated 15.12.2009, that would have been possible, and he was wrongfully denied the benefit on account of application of the procedure contained in OM dated 18.01.2011. The representation made by him in this behalf was rejected through an order dated 12.01.2016. The same was reiterated through communication dated 03.05.2016. In this OA, the applicant challenged those two orders, and sought directions to the respondents to extend him, the benefit of NFU from 26.10.2010.

5. The respondents filed counter affidavit opposing the OA. It is stated that the case of the applicant is governed by the OM dated 18.01.2011, inasmuch as the rules that govern the service of the applicant have been amended in pursuance of the said OM. It is also stated that the OM dated 15.12.2009 is general in its purport, and that once a specific order is issued in respect of service of the applicant, he cannot fall back upon the general OM.

6. We heard Shri A. K. Srivastava, learned counsel for the applicant and Shri S. N. Verma, learned counsel for the respondents.

7. The controversy in this OA is as to whether the applicant is entitled to be extended the benefit of NFU from 01.04.2011 or 26.10.2010. As mentioned in the introductory paragraphs, several OMs were issued in the context of implementation of NFU. While general instructions are issued in the OM dated 15.12.2009, specific instructions, referable to Group-A Engineering Services were issued on 18.01.2011. It is not in dispute that the criteria under these two OMs are different.

8. The applicant would have got the benefit from 26.10.2010 if the provisions of OM dated 15.12.2009 were applied to him. By the time, the applicant became eligible for being extended the benefit of NFU, service rules were amended as required under OM dated 18.01.2011. It emerged that the applicant became eligible for grant of NFU from 01.01.2011. The Official Memorandum has also provided that if the date of eligibility for NFU falls in any particular year, it would be effective from 1st of April of that year. Accordingly, he was extended the benefit of NFU from 01.04.2011. The applicant did not challenge any of the

orders issued by the Government. He is not able to satisfy the Tribunal as to how he is governed by a different set of rules, once there exists a set of rules prescribed for the service in which he was working. The specific order prevails over the general.

9. We do not find any merit in the OA. It is accordingly dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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