

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA No. 3581/2015  
with  
OA No. 3026/2018, OA No. 1902/2016**

**New Delhi, this the 31<sup>st</sup> day of October, 2019.**

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

**1. OA No. 3581/2015**

G.P. Bhatia,  
Retd. Dy. Welfare Commissioner,  
R/o House no. 65 (single storey),  
Sector III-A, Vaishali (Ghaziabad),  
PIN-201010 (UP).

...Applicant in OA No. 3581/2015

**2. OA No. 3026/2018**

B. B. Bhatnagar,  
S/o late Shri G. L. Bhatnagar,  
Age – 61 years,  
Group 'A',  
Dy. Chief Labour Commissioner (Central) – Retd.,  
Ministry of Labour & Employment,  
House No. D-100, Sector – 47,  
Noida (UP)-PIN 201301.

...Applicant in OA No. 3026/2018

**3. OA No. 1902/2016**

V. K. Sharma,  
S/o Sham Lal Sharma,  
Age – 64 years,  
House No. 68, Sector – 21 C, Part-1,  
Faridabad (Haryana),  
PIN-0121001.

...Applicant in OA No. 1902/2016

(Advocate for applicants: Mr. G.P. Bhatia)

Versus

The union of India through

1. The Secretary,  
Ministry of Labour and Employment,  
Shram Shakti Bhawan,  
Rafi Marg, New Delhi – 110001.
2. The Secretary,  
Ministry of Personnel, PG & Pensions,  
Department of Personnel & Training,  
Ministry of Personnel, Public Grievances and Pension,  
North Block, New Delhi-1.

...Respondents (In all OAs)

(Advocates for respondents: Mr. Ashok Kumar in OA No. 3581/2015 and OA No. 1902/2016, Mr. A. K. Singh for Mr. Gyanendra Singh in OA No. 3026/2018)

**: O R D E R (ORAL) :**

**Justice L. Narasimha Reddy, Chairman :**

In these 03 OAs common questions of facts and law are involved. Hence, these are disposed of through a common order.

2. The Applicants in the 01<sup>st</sup> and 02<sup>nd</sup> OAs are officers of Central Labour Service of 1987 batch whereas the applicant in the 03<sup>rd</sup> OA is an officer of 1990 batch. It is an Organised Group 'A' service. On the basis of recommendation of the 6<sup>th</sup> CPC, the government framed the Non Functional Upgradation (NFU) scheme through OM dated 24.04.2009 issued by the

Ministry of Personnel, Public Grievances and Pensions, DOP&T.

According to that Scheme, whenever an IAS Officer of State or Joint cadre is posted at Centre to a particular grade, carrying a specific grade pay in PB-3 or PB-4, officers belonging to batch of officers of organised Group 'A' service that are senior by 02 years or more, to such IAS officer and have not so far been promoted to that particular grade, shall be entitled to the same, on NFU basis, from the date on which the IAS officer was posted in that particular grade. In the annexure appended to the OM, the terms and conditions are incorporated. One of the conditions contained in para-3 is that all the eligibility criteria and promotional norms, including benchmark, for upgradation to a particular grade pay under the relevant rules would apply at the time of screening for grant of higher pay scale under NFU. Other details are also provided.

3. The Applicant in the 1<sup>st</sup> OA was granted the benefit of NFU vide office order dated 27.02.2015 w.e.f. 05.04.2007 and the applicant in the 2<sup>nd</sup> OA was not extended the benefit since he was promoted to the higher post on 30.05.2013, by the time the scheme came into force; whereas the applicant in 3<sup>rd</sup> OA was denied the benefit on the ground that he retired from service in the year 2011 itself. In these 03 OAs, the applicants claim the benefit of NFU from the date on which the IAS officers who were 02 years junior to them were posted on central deputation. In

addition to that they challenge para-3 of the conditions incorporated in the annexure to the OM dated 24.04.2009 to the extent, it applied the norms of promotion to NFU also. The applicant contends that the OM provides for extension of benefit of the NFU with effect from the date on which the IAS officer who is 02 years junior to them was posted on central deputation and instead of extending that benefit straight away, a twisted interpretation was placed on relevant provisions and they were denied, what was otherwise due to them. It is also pleaded that the NFU is a phenomenon, which is extendable to the officers of the Organised Group 'A' service and once the IAS officers who are juniors by two years to them are posted on central deputation, linking it with eligibility criteria and promotional norms would have the effect of defeating the very purpose of the scheme.

4. Respondents filed separate counter affidavits opposing the OAs. It is stated that the OM dated 24.04.2009 confers an extraordinary benefit upon the officers of Organised Group 'A' service, enabling them to overcome the stagnation in service. It is also stated that the scheme is self contained, providing for all the guidelines and criteria. According to them, the particulars of the IAS officers who were posted at various levels subsequent to 01.01.2006 are furnished through OM dated 01.07.2010 and by applying the facts and figures therein, the applicant in the

first OA was extended the benefit and the applicants in OA No. 02 and 03 were denied the same, because they did not fit into the scheme.

5. We heard Mr. G.P. Bhatia, who not only advanced arguments in his own case, but also argued other OAs in his capacity as an Advocate; and Mr. Ashok Kumar in OA No. 3581/2015 and OA No. 1902/2016, Mr. A. K. Singh for Mr. Gyanendra Singh in OA No. 3026/2018, learned counsel for the respondents.

6. The Recruitment Rules (RRs) of concerned service provide for structure of cadres and promotional avenues. In the ordinary course, the employees have to take their chance for promotion within the department as per the RR. In certain cases, the promotions do not take place for quite some time, either on account of want of vacancy or want of promotional avenues. To avoid the situation of stagnation for employees, the Government evolved schemes, such as ACP, which later became as MACP, for officers of lower category. Benefit, on the same principles, for officers of Organised Group 'A' services are provided for under OM dated 24.04.2009. This was on the basis of recommendation of the 6<sup>th</sup> CPC. The OM is very brief in its content and it 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

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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

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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.

3. Hindi version will follow.”

7. It is also necessary to take note of certain conditions, subject to which, the scheme is operated as well as the illustrations provided in the annexure to the OM dated 24.04.2009. It reads as under:-

**“TERMS AND CONDITIONS FOR GRANT OF HIGHER PAY SCALE ON NON-FUNCTIONAL BASIS TO OFFICERS OF ORGANISED GR.' A' SERVICES**

1. The non functional up-gradation granted under these orders will be based on empanelment and posting of particular batch of IAS officer in the Centre. Such up-gradation would not be linked to the vacancies in the grade.
2. The up-gradation granted under these orders will be a purely non- functional up-gradation, personal to the officer and It would not bestow any right to the officer to claim promotion or deputation benefits based on non-functional up-gradation in such a manner.
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.
4. A screening committee would be formed by the Ministry for implementation of these orders. There would be three members in committee so formed and they would at-least be one level above the grade for which up-gradation is being considered. Secretary of the Ministry concerned would chair the committee.
5. All instructions concerning grant of non-functional upgradation presently applicable in the case of grant of NFSG to officers of Group 'A' Services would apply in the event of penalty, disciplinary proceedings, suspension etc.
6. Orders will be issued with the approval of the competent authority. Grant of higher pay scale on the non-functional basis would be from the date of posting of the first officer belonging to the particular batch of IAS officer at the centre.

In case of any delay in the issue of orders, financial benefits under these orders will be given from the due date.

7. (i) Pay fixation under on grant of non-functional upgradation under these orders will be done as per the provisions of CCS (RP) Rules ,2008 i.e. the officers will be granted one increment at the rate of 3% of basic pay and the difference of grade pay will be added to their basic pay.
- (ii) As far as similarly placed officers of organized Gr. A Services, who are posted under the Central Staffing Scheme are concerned, they will be granted one additional increment on account of the non-functional up-gradation, but their grade pay will remain unchanged on the ground that they are holding a particular post with a specific grade pay under the

Central Staffing Scheme. In such cases the officers granted nonfunctional up-gradation may continue to draw CDTA if admissible.

8. As and when the normal vacancies in the grade arise, the officer will be considered for regular promotions as per the normal DPC guidelines, based on the provisions of the recruitment rules. UPSC will be consulted wherever the rules provide for the same. However at the time of promotion, the pay in the grade will not be fixed again for officers who have been granted up-gradation under these orders.

9. Officers on deputation / study leave or any other duly sanctioned leave would also be considered and granted higher pay-scale on non-functional basis according to the prescribed procedure.

10. Non-functional up-gradation to the next higher grade pay granted under the scheme is a fall back option only, to be applied in cases where officers of a particular Service have not been granted promotion to a particular grade in normal course according to the due procedure.

11. ILLUSTRATION:- If officers of 1987 batch of IAS are empanelled as Joint Secretary in the grade pay of Rs. 10,000/in PB-4 and an officer of the batch gets posted in the Centre (**under Central Staffing Scheme**) on 15th January 2008, all the officers of the 1985 batch of organized Gr. A Central Services who have not been promoted to the Joint Secretary or equivalent grade and who are eligible for the same on 1/1/2007 for the panel year 2007-08, would be appointed to the same grade on non-functional basis under these instructions w.e.f. 15/1/2008. Same would be the case in the event of posting of an officer of particular batch as Deputy Secretary/ Director under Central Staffing scheme."

8. From a reading of the OM as well as the annexure it becomes clear that whenever an IAS officer of a State or Joint Cadre is posted in the Centre, to a particular grade, carrying a specific grade pay in PB-3 or PB-4, such of the Organised Group 'A' officers who are senior by two years to the IAS officer shall be entitled to get the same benefit. This, however, is subject to their meeting the eligibility criteria and promotional norms, including benchmark for upgradation. Since the scheme became operative on 24.04.2009 and it is w.e.f. 01.01.2006, the



DOP&T furnished the particulars of such IAS officers vide OM dated 01.07.2010.

9. In the normal course, the OM dated 24.04.2009 is implemented simply by taking note of the date on which an IAS officer of a batch is posted on central deputation and all the Organised Group 'A' officers, who are 02 years senior to such a IAS officer are extended the benefit, duly ascertaining their eligibility and promotional norms. For example, if an IAS officer of 2008 batch is posted as Director on central deputation, an officer of Organised Group 'A' service of 2010 batch shall be entitled to be extended the benefit. Normally it is at the level of Directors. What happens to the IAS officer so posted, at subsequent stage will not be a matter of comparison for the Group 'A' officer, in the normal course of implementation. However, in the context of implementation of the scheme w.e.f. 01.01.2006 the posting at various levels subsequent to 01.01.2006 were taken note of. Obviously, the year of the batch, in a way, becomes not so relevant. The particulars furnished in OM dated 01.07.2010, reads as under:-

“NO. AB.1401716412008-Estt.(RR)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

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New Delhi, the 1<sup>st</sup> July, 2010

## Office Memorandum

Subject:- Non-Functional upgradation for Officers of Organized Group 'A' Services in PB-3 and PB4

A reference is invited to this Department OM of even No. dated 24.04.09 on the above subject. The details of 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 PB4 w.e.f. 01.01.2006 was circulated in this Department OM of even No. dated 21.05.2009.

2. The matter has further been considered in this Department. As there is a slight change in the date of posting of first officer of IAS cadre in the Center after 01.01.2006 in the grades of Additional /Joint Secretary, a revised list in supersession of the list issued in OM dated 21.05.2009, giving the batch of the IAS officers who have been posted in the Centre in the various grades as well as the date of posting of the first officer belonging to the batch is annexed. Necessary action may be taken for grant of higher scale for the Officers belonging to batches of Organized Group A Services that are senior by two year or more and have not so far been promoted to that particular grade in accordance with the provisions of this Department OM of even number dated 24.4.2009.

3. Hindi version will follow.

Department of Personnel & Training

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No. AB.14017/64/2008-Estt. (RR)

Dated the 1<sup>st</sup> July, 2010  
Annexure

Sl No.	Batch and Level in IAS	ACC Order issued on	Batch of Organized Group 'A' Service to be considered for Non-functional upgradation
1.	1974 as Additional Secretary	30.1.2006	1972 and earlier w.e.f. 30.01.2006
2.	1975 as Additional Secretary	31.03.2006	1973 and earlier w.e.f. 31.03.2006
3.	1976 as Additional Secretary	28.11.2006	1974 and earlier w.e.f. 28.11.2006
4.	1977 as Additional Secretary	26.12.2007	1975 and earlier w.e.f. 26.12.2007
5.	1978 as Additional Secretary	7.10.2008	1976 and earlier w.e.f. 7.10.2008

6.	1979 as Additional Secretary	3.12.2009	1977 and earlier w.e.f. 3.12.2009
7.	1985 as Joint Secretary	3.1.2006	1983 and earlier w.e.f. 3.1.2006
8.	1986 as Joint Secretary	26.10.2006	1984 and earlier w.e.f. 26.10.2008
9.	1987 as Joint Secretary	15.2.2007	1985 and earlier w.e.f. 15.02.2007
10.	1988 as Joint Secretary	19.11.2007	1986 and earlier w.e.f. 19.11.2007
11.	1989 as Joint Secretary	18.2.2009	1987 and earlier w.e.f. 18.2.2009
12.	1990 as Joint Secretary	24.5.2010	1988 and earlier w.e.f. 24.5.2010

Department of Personnel & Training

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No. AB.14017/64/2008-Estt. (RR)

Dated the 1<sup>st</sup> July, 2010

Sl 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	01.07.2009	1998 and

	Secretary		earlier w.e.f. 01.07.2009
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10. A perusal of the particulars furnished above discloses that the concentration was more on the dates of postings subsequent to 01.01.2006, and was not on the batch of the IAS officer. Taking note of those dates and particulars, the respondents have fitted the officers of Group ‘A’. It is also important to note that the particulars are not confined to the post of Director alone. They are in respect of Director, Deputy Secretary, Joint Secretary and Additional Secretary also. The corresponding benefits were extended, depending upon the eligibility of the Organised Group ‘A’ officers of the concerned batch, under relevant rules. For eg., If the extension of benefit is for the post of Deputy Secretary, only such of the Group ‘A’ officers who have becomes eligible for that, are extended. In other words, if he did not qualify under his service, to the equivalent level, the question of extending the benefit does not arise. It is in this complex situation that the applicant in the 01<sup>st</sup> OA was extended the benefit of NFU w.e.f. 05.04.2007, referable to the post of Deputy Secretary, which is one step above the initial induction, i.e. Director.

11. Since, the figures are taken only subsequent to 01.07.2006, comparison with a batch of IAS officers virtually becomes secondary. It is not the case of the applicant that he

became eligible to be promoted to the level of Deputy Secretary earlier to 05.04.2007. Since the accumulated figures are taken into account subsequent to 01.07.2006, the fitment was done accordingly.

12. It is also necessary to mention that the applicant in the 1<sup>st</sup> OA got the benefit of NFSG w.e.f. 01.03.2012 and he retired in the year 2013. Even after his retirement, the benefit was extended through order dated 27.02.2015. Such a situation was not available for the applicants in other two OAs. Therefore, it cannot be said that there was any illegality on the part of respondents.

13. The challenge to the para-3 of the annexure to the OM dated 24.04.2009 is virtually without any basis. Once the OM itself is an extraordinary measure to help the officer to overcome the stagnation the applicants cannot insist that it shall be without reference to their eligibility to be promoted. When schemes such as ACP and MACP are enforced by applying the norms of promotion and by subjecting the employees to screening, the question of extending the benefit of higher level, such as NFU without subjecting to promotional norms is unthinkable. Though the applicant in the first OA made a plea for extending the benefit of Director w.e.f. 01.07.2006, we are not inclined to acceded to his request. The

reason is that he is not able to show that he acquired the eligibility for that. What was extended to him was the one, referable to the post of Deputy Secretary. Unless he is able to demonstrate that he acquired eligibility for being promoted to the post equivalent to Director he cannot get the benefit. At any rate, comparison with the IAS officer of particular batch, becomes necessary.

14. We do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs. MAs, if any, shall stand disposed of.

**(Mohd. Jamshed)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

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