

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 11.08.2015
Date of Decision: 03.09.2015

+ **W.P(C) 153/2013 & CM Nos.3088/2013, 4134/2013, 9418/2015**

G.J. SINGH & ORS. Petitioners
Through: Mrs. Jyoti Singh, Sr. Advocate with
Ms. Tinu Bajwa, Mr. Vaibhav
Kalra, Mr. A.K. Trivedi, Mr.
Sameer Sharma & Mr. Amandeep
Joshi, Advocates

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4

+ **W.P(C) 4932/2012 & CM No. 18436/2014**

SURJIT SINGH GULERIA & ORS. Petitioners
Through: Mrs. Rekha Palli, Sr. Advocate with
Ms. Poonam Singh, Ms. Ankita
Patnaik, Mr. Nikhil Palli, Ms. Shruti
Munjal & Ms. Garima Sachdeva,
Advocates

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4

+ **W.P(C) 6286/2013**

S. BANDOPADHYAY & ORS

.... Petitioners

Through: None.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4

+ **W.P(C) 5418/2012 & CM No. 18434/2014**

KARUNANIDHAN & ORS.

.... Petitioners

Through: Mrs. Rekha Palli, Sr. Advocate with
Ms. Poonam Singh, Ms. Ankita
Patnaik, Mr. Nikhil Palli, Ms. Shruti
Munjal & Ms. Garima Sachdeva,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4

+ **W.P(C) 5620/2012 & CM No.18435/2014**

SANJEEV RAINA & ORS.

.... Petitioners

Through: Mrs. Rekha Palli, Sr. Advocate with
Ms. Poonam Singh, Ms. Ankita
Patnaik, Mr. Nikhil Palli, Ms. Shruti

Munjal & Ms. Garima Sachdeva,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4

+ **W.P(C) 8040/2012 & CM APPL. No.3415/2014**

JATINDER PAUL SYAL & ORS.

.... Petitioners

Through: Mrs. Jyoti Singh, Sr. Advocate with
Ms. Tinu Bajwa, Mr. Vaibhav
Kalra, Mr. A.K. Trivedi, Mr.
Sameer Sharma & Mr. Amandeep
Joshi, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4

+ **W.P(C) 520/2013 & CM No. 2597/2014**

ARUN CHIBBER & ORS.

.... Petitioners

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Advocate for
R-1 & 2 with Mrs. Mona Singh, Dr.
(CRD), DoPT

Mr. Ruchir Mishra & Mr. Mukesh
Tiwari, Advocates for R-3 to R-4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. These batch of writ petitions impugn the decision of the respondents whereby the petitioners' request for the grant of Non-Functional Financial Upgradation (for short '*NFFU*'), as applicable to other Group 'A' Officers of the Central Government was rejected.
2. During the pendency of these proceedings, vide an order dated 26.09.2013, the Court directed the respondents to re-examine the issue regarding grant of NFFU to Group 'A' officers of the Central Reserve Police Force, Border Security Force and Indo-Tibetan Border Police. However, vide an Office Memorandum (for short OM) No. F. No. P.I.1/21022-Pers.DA-Pay dated 28.10.2013 issued by the Ministry of Home Affairs, the issue was decided against the petitioners. Accordingly, the petitioners were given leave to file amended writ petitions to incorporate these subsequent events.
3. Hence, the petitioners seek a writ of mandamus to grant them, i.e., Executive Group-A officers of CAPFs, the benefit of NFFU with effect from 01.06.2006, as given to other Officers of Group-A Service under PB-3 & PB-4, as issued vide Office Memorandum (OM) dated 24th April, 2009.

4. The petitioners further pray that they be formally declared as an Organized Group 'A' Service with effect from 01.01.2006 with all consequential benefits. Finally, some of the petitioners also seek directions for amendment of the Recruitment Rules, i.e., CRPF Group-A (General Cadre Officers) Recruitment Rules, 2008 as notified on 10.08.2010 vide Notification No. GSR 679(E) issued by the Ministry of Home Affairs, Government of India.
5. The petitioners had represented to the respondents that the Government of India through order No. AB./14017/64/2008-Estt. (RR) dated 11.07.2011 issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, has granted NFFU to the Officers of Group-A Service in PB-3 and PB-4 after acceptance of the recommendations made by the 6th Central Pay Commission. The benefit has been conferred to such All India Service (AIS) officers who had been promoted after two years of service at the centre. However, it was not implemented in case of the petitioners although they were equivalent to the officers of corresponding status in the Government of India with respect to the all service conditions as per Rule 102 of CRPF Rules, 1955 which reads as under:

*“CHAPTER XIII - APPLICABILITY OF
CENTRAL GOVERNMENT RULES AND
ORDERS 102. Other conditions of Service: The
conditions of service of members of the Force in
respect of matters for which no provision is
made in these rules shall be the same as are for
the time being applicable to other officers of the
Government of India of corresponding status.”*

6. The petitioners were aggrieved that they have been deprived of parity in benefits when compared to other Group A Service Officers apropos status, house allotment, TA, DA, travel entitlements, retirement benefits etc. Accordingly, they sought grant of NFFU at par with other Group A Services under the Central Government with effect from 01.01.2006. However, by the impugned for OM No. F. No. P.I.1/21022-Pers.DA-Pay, the Government rejected the request on the ground that the grant of NFFU is applicable to those Group A Services who are placed under the Central Staffing Scheme and come under 'Organised' Group A Services to which the petitioners don't belong. Consequently, the line of argument in these petitions has broadly proceeded as under:

- (i) What is NFFU?
- (ii) What is 'Organised Group A Services' vis-a-vis 'Group A Services'?
- (iii) Whether the Government has regarded the petitioners as 'Officers of Organised Group A Services'?
- (iv) If yes, whether they would be entitled to NFFU?

Contentions of the Petitioners

7. According to Ms. Jyoti Singh, the learned Senior Advocate appearing for some of the petitioners, would submit that simply stated NFFU is upward mobility in terms of Financial Up-gradation without disturbing duties, post or seniority. She would argue that according to the current rule position, there is only Group 'A' Services and the introduction of the word 'Organised' is merely an innovation. The expression 'Organised Group-A Services' has no sanction of law because the law only recognises the term 'Group A Services'. She

refers to Rule 5 of Constitution of Central Civil Services (Classification, Control & Appeal) (for short CCS-CCA) Rules, 1965 which reads as under:

“5. Constitution of Central Civil Services

The Central Civil Services, Group 'A', Group 'B', Group 'C' and Group 'D', shall consist of the Services and grades of Services specified in the Schedule.”

8. Serial No. 8 in Part I of the Schedule to the said Rules refers to General Central Services Group A. Referring to various documents and the current position of the Government of India, Ms. Singh argues that the petitioners belong to Central Services Group ‘A’ and indeed, also within the so called ‘Organised Group ‘A’ Service’. She refers to a letter dated 31.01.1995 from DoPT to the BSF which states that the BSF (GD) Group ‘A’ Service is an Organised Group ‘A’ Central Service. However, the expression ‘Organised Group ‘A’ Civil Cadre’ means a Cadre which has the following attributes, namely:

“4.2.3 The various Civil Services at the Union and State levels can be classified in several different ways. Firstly, the Civil Services can be categorized into three broad groups – Central Civil Services, All India Services and the State Civil Services. The Central Services function under the Union Government and are generally engaged in administering subjects which are assigned to the Union under the Constitution, whereas the All India Services are common to the Union and the States and the State Services function only under the State Governments. Secondly, the Union and

State Services can be classified into Group A, B and C categories based on their role and responsibilities. Thirdly, these services can also be classified into technical and non-technical services.

9. Therefore, in its note of 10th February, 1995, the DoPT intimated the Ministry of Home Affairs (MHA) that:

“this department has received a references(sic) from the Border Security Force and the Central Reserve Police Force seeking clarification on the point whether these services are constituted as regular ‘Organised Services’. This clarification is required by them in connection with the proposals submitted by them to the 5th Central Pay Commission.

In the monograph on ‘Cadre Management of Group ‘A’ Central Services’ issued by this Department the BSF and the CRPF are included in the list of Central Services (Group ‘A’). However, it is found from our records that no notification constituting these Forces into ‘Organised’ Group ‘A’ Central Service available with us which may please be confirmed whether the above mentioned two organised forces have been constituted as ‘Organised Services’, and if yes, a copy of the clarification/order issued in this regard be furnished to this department.”

10. Through another communication of 23.02.1995, the DoPT noted that on the basis of a proposal received from the MHA, cadre review of BSF was conducted in the years 1980 and 1989 while the cadre review of CRPF was conducted in the years 1982 and 1999.

11. On 10th October, 1995, the 5th Central Pay Commission (for short CPC) communicated to the MHA as under:

“In the Memorandum submitted by the Central Reserve Police Force, one of the demands contained relates to the constitution of an organised service in which the Group ‘A’ posts of the Force could be en-cadred. The Commission had sought views on the Directors General, ITBP, BSF and CISF also on this demand of the CRPF, as this would also have relevance to other forces.

A perusal of the replies received, reveal that many Central Para Military Forces like BSF, CRPF, ITBP and CISF are deemed to be organised Group ‘A’ service as per para 2.7 of Monograph (3rd edition revised) on Cadre Management of Group ‘A’ Services published by DoP&T, Ministry of Personnel, Public Grievances and Pension. However, no gazette notification appears to have been issued so far.

In view of above, I would like to request you to kindly send us a background note on the subject along with your considered views regarding constituting the Group ‘A’ Services, in the above mentioned forces into organised Cadres.”

12.A Monograph published by the DoPT in 1986 regarding cadre management of Group ‘A’ Central Services lists such officers of BSF, CRPF, ITBP and the CISF, as Central Civil Services Group A. It further lists the three All India Services which are all Group ‘A’ Services, namely Indian Administrative Service, Indian Police Service and Indian Foreign Service. These are common to the Centre and the States. The manpower for performing the functions of the Central Government is, however, mainly provided by Central Service Cadres. The Central Group ‘A’ Services organised into regular cadres as explained above number a little over sixty and account for the bulk of the Group ‘A’ posts under the

Central Government i.e., about forty thousand out of a total of approximately sixty eight thousand Group 'A' posts. They are broadly classified into (i) non-technical service and (ii) technical service which include Engineering and Scientific services.

13.A typical unifunctional Group 'A' Service has a pyramidal shaped organisational cadre structure and its various layers correspond to different levels of responsibilities with no functional distinction. The pyramid starts with Junior Time Scale (Rs.700-1300), which is generally a probation-cum-training grade for direct recruits, and passes through Senior Time Scale (Rs.1100-1600), Junior Administrative Grade (Rs.1500-2000) and Senior Administrative grade which has two levels (i) Rs.2500-2750 and (ii) 2000-2250). In a few cadres, the Junior Administrative Grade is bifurcated into two separate grades viz. Rs.1500-1800 and 1800-2000.

14.Subsequently, in the 1993 Monograph of cadre management of Group 'A' Central Services (3rd Edition) issued by the DOPT, the following services under the MHA were classified as Central Civil Services Group 'A':

“MINISTRY OF HOME AFFAIRS

- 24. *Border Security Force*
- 25. *Medical Officers Cadre of BSF*
- 26. *Central Reserve Police Force*
- 27. *Medical Officers Cadre of CRPF*
- 28. *Indo-Tibetan Border Police (GD Executive Officers' cadre)*
- 29. *Medical Officers of ITBP*

30. *Central Industrial Security Force.”*

foot note to the said schedule of services records that:

“the orders regarding non-functional selection grade do not apply to the cadres named at the following serial numbers of the above list: - 5, 8, 19, 25, 27, 29, 34, 36, 47, 49 and 56. A few out of 11 cadres are scientific services to which the flexible complementing scheme applies. The others do not come within the definition of organised group ‘A’ Central Civil Cadres.”

15.Ms. Jyoti Singh, would argue that officers of the Medical Cadre of BSF, CRPF and the ITBP have been specifically excluded from the application of Non Functional Selection Grade. However, the corresponding officers of the Non Medical Cadre in these forces have been specifically included for application of Non Functional Selection Grade and have been regarded as Organised Group ‘A’ services. She submits that cadre review of the CAPFs have been undertaken time and again in terms of the recommendations pursuant to the Workshop on Cadre Review for Group ‘A’ Central Services dated October, 31, 1981. It is contended that the reason for the same is that at the end of the list, which includes three CAPFs there is a Note which stipulates that NFSG will not apply to cadres mentioned at serial Nos. 5, 8, 19, 25,27,29,34,36, 47, 49 and 56. The reason for the same is also given, i.e., a few were scientific services and a few did not come within the parameters of Organised Group ‘A’ Central Civil Services. It is evident that the three CMPFs did not find mention in the same. Therefore, they would be such officers therein would be Organised Group ‘A’ services.

16.Ms. Jyoti Singh would also argue that the First Administrative Reforms Committee was set up by the MHA by a resolution dated 05.01.1966 ; more than 20 reports containing 537 major recommendations were placed before the Parliament in November, 1977; on the basis of these recommendations, the DoPT had issued a monograph (3rd Edition) in 1993 on cadre management of Group 'A' Central Services; it would indicate that cadre reviews are done after in-depth research work by study teams and are based on the recommendations of the Committee. Para 1.12 thereof refers to 'regularly constituted Group 'A' Service' and it attributes. It further provides as under:

“Section 2 attempts to provide a working definition of Service concept. A complete list of regularly constituted Central Group 'A' Services is attached at the end of Section” (Annexure P-5 which starts at page no. 69 and the Section 2 is at page no.82 of WP(C) No.153/2013.)

17.Miss Singh further submits that the list shows BSF, CRPF and ITBP at serial nos. 24, 26 and 28 respectively. Clearly, all the three Forces were treated as part of Central Group 'A' Organised Services.

18.She further refers to an OM dated 16th July, 1990 bearing OM no. 22/3/90-CRD on the subject Recommendation of the 4th Pay Commission orders apropos the Selection Grade in Group 'A' Service. While referring to its own OM 19/1/86- PP dated 14.08.1987, as amended by the said Office Memorandum, whereby orders had been issued for introduction of Non-Functional Selection Grade in the revised pay scale of Rs.4500-5700 in Group 'A' Central Services as per the recommendations of the 4th Pay Commission, the DoPT stated that the question of applicability of these

orders to isolated Group 'A' cadres/posts has been the subject of litigation before the Central Administrative Tribunal. In order to remove any ambiguity on this subject, it was clarified that apart from other factors, these orders were intended to be made applicable to such Services/Cadres which have an element of direct recruitment of 50% or above at the level of Junior Time Scale posts, i.e., posts sanctioned in the revised pays scale of Rs.2200-4000. A list of the Services/Cadres to which the said order is applicable was also enclosed. The orders for introduction of Non Functional Selection Grade have also been made applicable to Central Police Organisation upon completion of 16 years service in Group 'A' after cadre review exercises were conducted by the Ministry concerned. A list of such organisations was also annexed. Further, it was clarified that the said OM was applicable to BSF, CRPF, IRPF, ITBP and SSB.

19. Table 4.1 of the report of the Administrative Reforms Committee lists all the Organised Group 'A' Central Civil Services in the Government of India in which the paramilitary forces are shown as under:

S.No.	Name of Service	Parent Organisation/ Ministry
7.	Indian Foreign Service	Ministry of External Affairs
22.	Border Security Force	Ministry of Home Affairs
23.	Central Industrial Security Force	- Do -
24.	Central Reserve Police Force	- Do -

25.	Indo Tibetan Boarder Police	- Do -
35.	Boarder(sic)Security Force Health Service	- Do -
36.	Central Reserve Police Health Service	- Do -

Source: Department of Personnel & Training

20. Vide an OM dated 20.11.2009, the DOPT issued the following clarification:

“Office Memorandum

*Subject: Attributes of Organised Group ‘A’ Central Services –
Clarification regarding.*

The Department of Personnel and Training has been receiving a number of references seeking clarifications about the attributes and definition of the Organised Group ‘A’ Central Services. Many service associations have also filed applications in various courts claiming the status of an Organised Group ‘A’ Service and the consequential benefits. It appears that the difference between an Organised Group ‘A’ service and other Services/Cadres has not been appreciated in its true sense. The attributes of an Organised Group ‘A’ Service are clearly laid down in the existing Monograph on Cadre Management published by this Department. In order, however, to remove any doubt, the same are reiterated below:

- (i) The highest cadre post in such services is not below the level of Rs.37400-67000 plus Grade pay of Rs.10000 (SAG);*
- (ii) Such services have all the standard grades namely, Rs.15,600-39100 plus Grade pay Rs.5400 (JTS), Rs.15600-39100 plus Grade pay Rs.6600 (STS), Rs.15600-39100 plus Grade pay Rs.7600/Rs.37400-67000 plus Grade pay of Rs.8700 (JAG/NFSG) and Rs.37400-67000 plus Grade pay of Rs.10000 (SAG);*

- (iii) *At least 50% of the vacancies in Junior Time Scale (JTS) in such services are required to be filled by direct recruitment;*
- (iv) *All the vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade;*
- (v) *While a service may comprise one or more distinct cadre (s), all such cadres should be governed by composite Service Rules facilitating horizontal and vertical movement of officers of a particular cadre at least upto SAG level. The cadre posts of an Organised Service expressly belong to that service. The posts not belonging to any service are classified as General Central Service and, therefore, an Organised Group 'A' Service cannot have posts/grades classified as General Central Service; and*
- (vi) *Such a service consists of two distinct components, namely Regular Duty Posts and Reserves. The reserves are generally of four types, viz (i) Probationary Reserve, (ii) Leave Reserve, (iii) Training Reserve and (iv) Deputation Reserve. The various types of reserves are usually created and accounted for in the Junior Time Scale.*

Note: The existing Organised Group 'A' Services have evolved over a period of time and may have minor deviations owing to their respective functional requirements. The services already declared as such need not, however, be reviewed.

The above are certain basic attributes of An Organised Group 'A' Service. There is, however, nothing to suggest that the services/cadres fulfilling these criteria would be automatically conferred the status of an Organised Group 'A' Service. An Organised Group 'A' Service is not which is constituted consciously as such by the Cadre Controlling Authorities and such a service can be constituted only through the established procedures.

Sd/-`

(Under Secretary to Government of India.)

21. Ms. Singh would contend that all the six attributes are fulfilled by the CAPFs. Indeed, it has been so recognised in the monograph issued by the DoPT in the year 2010 regarding cadre review of Group 'A' Central Services. Which, while discussing the definitions notes in its Section 5:

“5. There are three All-India Services which are all Group 'A' Services, namely, the Indian Administrative Service, Indian Police Service and Indian Forest Service. These are common to the 6 Centre and the States. The manpower for performing the functions of the Central Government is, however, mainly provided by Central Services and cadres. The Central Group 'A' Services account for the bulk of the Group 'A' posts under the Central Government. They are broadly classified into (I) Non-Technical service, (II) Technical Service (which include engineering services), (III) Health Services and (IV) Other Services (which include some engineering and scientific services).”

22. An OM dated 14th December, 2010 on the issue of Consolidation of Guidelines on cadre review of Central Group 'A' Services states as under:

“The undersigned is directed to say that provisions governing the process of cadre review of Central Group 'A' Services are contained in various Office Memoranda issued by the Department of Personnel and Training and the Department of Expenditure. As a part of this Department's endeavour to keep the personnel policies relevant to current and future needs, these provisions have been reviewed in consultation with various stakeholders and it has been decided to issue a consolidated and revised set of guidelines on cadre review. The revised guidelines are given below. Besides, the broad issues concerning cadre review have been elaborated in the revised Monograph of Cadre Review of Central Group 'A' Services enclosed herewith. The list of existing Central Group 'A' Services is at Annex-I.”

23.Ms. Singh would point out that Annexure – I thereof includes the ITBP, CISF, BSF, CRPF at serial nos. 50, 51, 52 and 53 respectively. She would further argue that in reply to an RTI application, the DoPT by its letter dated 26th October, 2012 has stated that *“this Division does not maintain any separate list of Organized Group ‘A’ Services. However, a copy of the list of such Central Group ‘A’ Services issued with this Deptt’s O.M. No. 22/3-CRD dated 16.07.1990 containing order regarding Selection Grade in Group ‘A’ Service is enclosed. No further list has been issued. It may be noted that NFSG is meant for Organized Group ‘A’ Services only.”*

24.In compliance of the order dated 26th September, 2013 passed by the Court in these proceedings, the Government re-examined the issue of grant of NFFU to Group – A Executive Officers of BSF, CRPF, SSB, CISF and ITBP and concluded Group ‘A’ officers in the said forces are not Organized; due to the existing organizational structure, command and control set up of the CAPFs, it was not possible to grant NFFU or any other financial scheme to Group ‘A’ officers of the CAPFs apart from the benefits and allowances already being provided to them; however, they may place their demand for the grant of NFFU to them before the 7th Central Pay Commission which has already been constituted by the Government.

25.In view of the above, Ms. Singh would argue that the word ‘Organized’ has no legal status apropos identification of Central Group ‘A’ Services and at best, the word has been introduced by someone over a period of time for administrative convenience which has resulted in confusion. The list includes 58 services which have been categorized as Non-Technical

Services, Technical Services, Health Services and other services, i.e., ITBP, CISF, BSF and CRPF at serial nos. 50, 51, 52 and 53 thereof. No other qualification is known or has been classified by the Government and introduction of the word 'Organized' has no legal basis.

26. Attention of the Court is also drawn to Para 4.1 of the same Monograph reads as under:-

“In Organised Group 'A' Central Civil Services, there is non-functional selection grade between pay scales corresponding to JAG and SAG.”

27. It is further submitted that Para 4.2 states four attributes of Organised Group 'A' Civil Cadre. The three CPMFs were granted the NFSG way back in 1990 which clearly proves that they were treated as Organised Group 'A' Services. It is admitted by DoPT that NFSG was given only to organised services in 1990.¹ There was no system of notifying any service as organised. Even services like Indian Legal Service and Indian Trade Service not fulfilling the so-called attributes were also treated as organised.

28. On the above analogy, DoPT carried out cadre review of these forces and sent two notes to MHA seeking notification to formally declare them as Group 'A' services. The first UO note No.21/1/95-CRD dated 10.2.1995 reads as under:

“In the monograph on cadre management of Group 'A' Central Services issued by this department, BSF and CRPF are included in the list of Central Services Group 'A'. However, it is found from our records that no

¹ Letter of DoPT no.11019/8/2012 CRD dated 26.10.2012

Notification constituting these forces into 'Organised' Group A Central Service is available with us.”

29. The second UO No. 21/1/95-CRD is dated 23.2.1995 and records that the cadre reviews of BSF were conducted in 1980 and 1981 and that of CRPF in 1982 and 1989. The third Cadre review for CRPF was conducted in 2004 and the fourth which is still under process and recommendations have already been sent to MHA for necessary action.

30. Two important facts that emerge are that even the DoPT has no dispute with the three forces being Organised Group 'A' Service but a mere modality of a formal Notification remains pending on the part of Cadre Controlling Authority, i.e., MHA though it is not a mandatory requirement as per DoPT Monograph, 1993. The DoPT is not maintaining any separate list of Organised Services and this is only a laxity on the part of MHA in not issuing a notification which has resulted in chaos. Secondly, cadre reviews are done only of Organised Group 'A' Services which is clear from page 8 of file no. P-I-1/2012 Pers DA- Pay. Admittedly, the three Forces have had their cadre reviews and the last one is in progress with reference to DoPT letter No. I-1101/1/2009-CRD dated 14/12/2010.

31. It is further submitted that during inspection of file no. I-11011/12/2008-CRD, it was found that DoPT before issuing O.M. dated 20.11.2009 in the shape of clarification on the issue of 'Attributes' of Organised Group 'A' Services, has admitted in its note at page 56 in para (9) that *“It is evident from the above that the attributes mentioned there are too generic and could be applied even to the isolated cadres. Further, there is hardly any provision to suggest that the services not conforming to these attributes*

could not be recognised as organised Group A services. It would be relevant to mention here that there are many organised Group A services with provisions for appointment at higher level through modes other than promotion which are contrary to the attributes mentioned above. This makes it difficult to accept or deny the claims of other Group A Services for similar benefits and has resulted in unending litigations. In one such case, the court has expressed its surprise over the term 'organised' stating that any services under the government of India has to be organised. Various streams of Geological Survey of India, the Civil Construction Wing of the Ministry of Information & Broadcasting are some of such examples. The department is also flooded with RTI applications from individual officers in this regard."

32.Hence, it is submitted that the OM dated 20.11.2009 was issued overriding the above note subsequent to the judgment dated 6/5/2004 in the matter of ***State of Mizoram v. Mizoram Engineering service in Appeal (Civil) no. 793 of 1998*** by the **Supreme Court**, to deliberately deny the benefits for organisations such as CRPF, BSF, ITBP etc. who already stand organised since 1990.

33.The concept and genesis of Cadre Review has been explained in the DoPT Monograph, 1993 which reads as under:

“It is clearly evident from reading of these paras that the Cadre Reviews are synonymous to organised services and carried out for scientific management of various cadre posts.”

34. According to the petitioners, the contention of the respondents that the three CPMFs do not meet the 'attributes' of an Organised Group 'A' Service as laid down in OM dated 20.11.2009 is completely misconceived. Attribute (iv) not being met, i.e. "all vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade" is baseless and frivolous. The dictionary meaning of the word 'attribute' is trait or characteristic. Neither the DoPT Monograph nor the O.M. dated 20.11.2009 prescribes that the attributes mentioned therein are pre-conditions of a regularly constituted cadre/service. These are mere characteristics which flow out of a service and are merely indicators. Since right from the year 1990, the three Forces have been classified as Organised Group 'A' Service, hence, the OM of 2009 cannot take away that status. The OM can at best be prospective. Even assuming that the OM applies, there is a Note to the said OM which reads as under :-

Note :- The existing Organised Group 'A' Services have evolved over a period of time and may have minor deviations owing to their respective functional requirements. The services already declared as such need not, however, be reviewed."

35. By virtue of this note, the DoPT itself has conceded to the fact that some minor deviations could arise over a period of time but this cannot take away the status of a Organised Service which existed for a long time and there will be no review on that ground. If the attributes prescribed were so sacrosanct there was no need to provide an exception by way of a Note. In fact, in another case pertaining to Indian Trade Service, the GoI through its

ASG has categorically stated that the OM itself recognises the deviation from the attributes and therefore, these attributes are merely indicative and not mandatory. It is obvious that this OM adding two more attributes has been issued subsequently only with the aim to deny benefits of NFFU to the CPMFs.

36. The word 'organised' has not been defined anywhere. The 1993 Monograph in para 2.3 defines 'the service concept 'to mean Civilian Posts grouped into distinct homogenous cadre. 'Cadre' has been defined to comprise persons who have been adjudged suitable and recruited to hold group of positions requiring similar skills. Para 2.5 stipulates that Central Group 'A' Service represents a Group of posts belonging to distinct functional areas arranged in hierarchical order representing different grades or levels of responsibility. The hierarchical arrangement of posts with different pay scales constitutes a cadre and the arrangement itself is a 'cadre structure'.
37. Admittedly, in all the three Forces, there is a clear hierarchy of posts, sufficient cadre strength with promotional avenues and hence, they meet all the necessary requisites of an organized service. The file bearing no. I – II45027/2009 – Pers would show that in 2001, during the third cadre review proposal of BSF, it was listed as Organised Group 'A' Service. Even earlier, in the letter dated 31.01.1995, the DoPT confirmed that BSF was an organised Group 'A' Service and the same finds mention in the letter dated 10.10.1995 written by 5th CPC to respondent no.1 that all 4 CPMFs are deemed to be Organised Group 'A' Services as per para 2.7 of the 1993 Monograph.

38. It is further contended on behalf of the petitioners that they meet all the attributes of an organised service and insofar as attribute (iv) is concerned, a deputationist can only come against ex-cadre posts, by virtue of their own Cadre Rules, therefore, all the vacancies from JTS to SAG levels are only filled by promotion from the cadre officers. Rule 11 of the IPS (Cadre) Rules, 1954 do not permit an IPS Officer to hold two cadre posts or a cadre post and an equivalent post simultaneously, except for a period not exceeding 6 months and in any case, not beyond 12 months and that too with prior approval of the Central Government. Therefore, as a corollary, when they come to CPMFs, they can only come on ex-cadre posts. The Monograph defines 'ex-cadre posts' as posts having more or less similar functional duties and responsibilities as cadre posts and can be manned by both cadre and ex-cadre officers. The submission that these can only be ex-cadre is further substantiated from the IPS Tenure Policy which clearly provides in para 2. Insofar as it is relevant, it reads as under :-

“The cardinal principle is that an IPS officer so appointed will be available to serve on central deputation for a stipulated tenure and thereafter return to his/her parent cadre. The movement of Officers from State to the centre and back is of mutual benefit to the State to the centre and back is of mutual benefit to the States and the Government of India on the one hand and to the Officers concerned on the other. No posts so filled by a member of IPS on deputation can be deemed to be a cadre post of the parent State.”

39. The DoPT issued an O.M. No. 36/77/94-EO (SM-I) dated 05.01.1996 under the Central Staffing Scheme to lay down procedures for selection and appointment of Officers to Senior Administrative Posts at the Centre. Relevant portions are reproduced as under :-

“3. The Central Staffing Scheme has been in operation for over 30 years. It provides Systematic arrangement for selection and appointment of Officers to senior administrative posts at centre, excluding posts which are specifically encadred within the organised Group A Services or filled by recruitment through UPSC.” ”All Officers who are so borrowed will serve the Govt. Of India for a stipulated tenure on deputation and, thereafter, return to their parent cadre. Their growth, development and career prospects will be mainly in their own services.”

5. The scope of Central Staffing Scheme is bound by following parameters-

(i).....

(ii).....

(iii). Every State cadre of each of these services (IAS, IPS and IFS) provides for a Central deputation quota which in turn requires additional recruitment to be made to these services.....

However, no post so filled by a member of any All India Service on tenure deputation can be deemed to be a cadre post of that service.”

40. It is argued that by virtue of their own Rules and Policies, the IPS Officers are holding only ex-cadre posts while on deputation. Moreover, the concept of 'deputation' itself means that it is temporary in nature and at the end of the tenure, the officer would have to go back to the parent cadre. The purpose of Central deputation is for mutual benefit of the two services and therefore, the IPS deputation cannot operate to the disadvantage of the CAPFa officers. Surely, the Government cannot take a stand that while an IPS Officer will come on deputation to help the CAPFs with their experience but this would also cause a dent in the status of the CAPFs so as to take away one of their attributes. In fact, the petitioners have taken a clear stand in the petition that the IPS officers come on ex-cadre posts and this has not been denied in the counter affidavit. It is also pointed out that three Forces have a large strength of about 10,000 Officers in Group 'A' and are fully eligible for promotion. They are in fact, stagnated for prolonged periods even after meeting all the requisites of the extant promotion rules. The data given in the appendix would make the position clear. The noting of the Government in one of its own files bearing no. P-I-1/2012 Pers-DA-Pay notices the fact that non-fulfilling the attributes cannot be attributed to the Force and it is not as if the Force is short of officers to fill up the vacancies upto IG Rank. The note also records that the cadre officer should not be in a disadvantageous position in terms of delay in promotional avenues.

41. One Sh. J.P. Syal, DIG (Retd.) had applied under RTI and in response, the DoPT has stated that it does not maintain a separate list of Organised Group 'A' Services and or of those with minor deviations. The DoPT can't

wash off its hands on the issue as per guidelines mentioned in paras 1,4 to 1.7 of the DoPT Monograph 1993.

42. In order to overcome the stagnation problems, the 6th CPC recommended NFU to all group A officers in various organised Group 'A' Services. The purpose of granting NFU is to give relief to Group 'A' Officers facing the problem of stagnation as a fall back option when regular promotions do not come due to various factors. It is thus, logical to conclude that benefit of NFU is required to be given to organisation/cadres facing the problem of acute stagnation. It is submitted that the CPMFs are facing huge problem of stagnation and thus non grant of NFFU is most arbitrary.
43. In support of their contentions, the petitioners rely upon a judgment dated 6 May, 2004 passed by the Hon'ble Supreme Court in .Appeal (Civil) 793 of 1998 in the matter of State of Mizoram v. Mizoram Engineering Service wherein it was observed as follows:

“Great stress was laid on the fact that Engineering Service in the State was not an organized service and therefore, it did not have categorization by way of entrance level and senior level posts and for that reason the higher scale of Rs. 5900-6700 which was admissible for senior level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules ? Are the members of the Engineering Service responsible for it ? The answer is clearly 'No'. For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of

organized service, the engineers can not be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganised service so far as Govt. Service is concerned in Govt. Service such a distinction does not appear to have any relevance. Civil Service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words 'organized service' and 'unorganized service'. Nothing has been pointed out in this behalf. The argument is wholly misconceived."

44. The petitioners further reply upon a judgment of a learned Single Judge of this Court ***Union of India and others V/S. J.R. Chobedar WP(C) 20065/2004, 20066/2004, 20067/2004***, whereby vide judgment dated 25/01/2005, it was held that a cadre comprising of reasonable number of persons having specific rules of recruitment and promotion and even if certain scales were missing, it will not take away the trait of an organized cadre. The judgment is stated to have been upheld in SLP (CC 6923-6925/2005) by the Hon'ble Supreme Court and the SLP was dismissed in favour of Sh. J.R. Chobedar. The judgment to the extent relevant reads as under:

"Similarly, on 7th December, 1995, the BSF, Pay and Accounts Division also taking into consideration the rejection by the Ministry of Finance disposed of the application of the respondent that it cannot be treated as an organized accounts service. On the basis of the aforesaid, it was contended before us that the finding of the learned Tribunal in the impugned order is not as per the report of

the Pay Commission and BSF and there was no cadre of the Accounts Officer in the BSF and the anomaly has come up in view of the re-structuring of the cadre. In our view the reliance by the petitioner on the letter dated 6th September, 1995(supra) is misplaced. The point raised by the learned counsel for the petitioner was considered in depth by the Tribunal and on the basis of the material before the Tribunal, the Tribunal gave the opinion that if certain scales were missing that will not take away the trait of the organized cadre. It was also considered that the method and manner of promotion has nothing to do with a cadre being organized or not. If it has other traits that it is a cadre comprising of reasonable number of persons, they have specific rules in this regard and there is no other factor which prompts one to conclude that it is an unorganized cadre. Relying upon the judgment of this Court in T.N. Natarajan and Ors. v. Union of India and Ors. in CWP 176/1979 decided on 3rd September, 1980 which also dealt with a similar controversy, it was held by the Tribunal by a reasoned order that the cadre of the respondent was an organized cadre”

45. Thereafter, the petitioners rely upon a Division Bench judgment of this Court in K.L. Noatay v. UOI & ORS., WP(C) NO. 4377/2003 which held that due to non encadrement of officers cadre as an organized service, the promotion prospects cannot be denied and such patently arbitrary, discriminatory policy decision of the State can be interfered with by the Court and the Administrative cadre officers of BRO were directed to be encadred as an organized cadre. The relevant parts of the said judgment reads as under:

“The first two reasons given by the department to refuse to encadre the administrative officers cadre as an organized cadre are wholly fallacious. The department has not correctly appreciated the tenor of the grievance raised by the officers working in administrative officers cadre in respect of non- encadrement of their cadre as an organized cadre. The grievance raised was that due to non-encadrement of the administrative officers cadre as an organized cadre there is lack of promotional prospects in the said cadre. It was not the grievance of the officers working in administrative officers cadre that they are being discriminated against their counterparts in the two engineering cadres and thus their cadre should also be encadred as an organized cadre like the two engineering cadres. The career progression of the officers working in the said two engineering cadres has only been referred to by the officers working in administrative officers cadre to demonstrate the lack of promotional prospects in their cadre. Thus, the approach of the department in drawing a comparison between administrative officers cadre and the two engineering cadres and thereby refusing encadrement to administrative officers cadre is totally non-focused. In any case, it is not correct to say that the administrative officers cadre does not play an important role in the working of BRO. BRO has a task force of approximately 42,000 personnel. The administrative officers cadre is responsible for assisting, advising and operating matters of discipline, administration and other matters relating to human behavior and motivation in personnel of BRO. The administrative officers cadre is also responsible for the

general safety of unit lines, maintenance of regimental institutions, general administration matters, preservation of resources and liaison with other units on matters connected with execution of tasks assigned to them.

18. As regards the application of the Modified Assured Career Progression Scheme (MACPS) to the officers working in the administrative officers grade is concerned, relevant would it be to note that in order to remove stagnation, the Fifth Central Pay Commission recommended Assured Career Progression Scheme (ACPS) to all the general employees in the Central Government. The scheme of ACP recommended by the Fifth Central Pay Commission envisaged three time-bound promotions for Group A posts after 4, 8 and 13 years of service. For posts in Groups B, C and D, two time-bound promotions were to be provided on completion of 8 and 16 years of service for Group B, 10 and 20 years for Group C and 12 and 24 years for Group D. The Government accepted the said scheme in a modified manner and introduced the ACPS for Groups B, C and D and isolated posts in Group A where two financial upgradations were to be provided on 12 and 24 years of service. The financial upgradations were to be in the next higher grade in the existing hierarchy. The Sixth Central Pay Commission recommended certain modifications in the Assured Career Progression Scheme implemented by the Government. One of the recommendations made by the Sixth Central Pay Commission was that save and except organized Group A services, the benefit of ACPS be available to all posts

belonging to Group A, whether isolated or not, which recommendation has been accepted by the Central Government. Grant of financial upgradation envisaged by Assured Career Progression Scheme is different from grant of higher scale of pay recommended by the Pay Commissions therefore the Assured Career Progression Scheme does provide a limited relief to the officers of the administrative officers cadre of BRO to a limited extent but is not a substitute for the benefits available to the said officers on encadrement of administrative officers cadre as an organized cadre.

46. The petitioners then reply upon Krishna Raja. P & Ors. v. UOI & Ors. WP(C) No. 17546-65/2006 , wherein this Court held as under:

“.....it is clear from the above that since there is a clear cut hierarchy of posts and the promotional avenues have been provided from one stage to the other, the accounts cadre in the Research and Analysis Wing of the Cabinet Secretariat can not be regarded as isolated posts but has to be considered to be an organized cadre.”

47.They further rely upon Harnanda & Ors. V. Union of India & Ors. (WP No. 6314/2012), a judgment of this Court whereby the RPF was directed to be given the benefits of an organized service.

48.Arguing for the other set of writ petitioners, Ms. Rekha Palli, the learned Senior Advocate would argue that with a view to remove the pay disparity faced by Group ‘A’ Organized Services and the advantage granted to IAS officers in the pay scale etc., the VI CPC granted NFFU to Officers of

Organized Group 'A' Services. The recommendation was accepted by the Government of India and an OM dated 24.04.2009 was issued, extending the NFU scheme w.e.f. 1.01.2006 but the benefit of the said scheme was not extended to BSF, CRPF and other CAPF's leading to the filing of present batch of Petitions. The said report of the CPC explained in Para 3.3.4 of its recommendations, what an Organized Group 'A' Central Service is and stated therein that 'An Organized Group 'A' Central Service represents a group of posts belonging to a distinct functional area arranged in a hierarchical order and in a pyramidal manner, representing different grades or levels of responsibility. These responsibilities increase with each senior level. The aforesaid description about Organized Group 'A' Service given by the CPC clearly shows that GD/ Executive cadre Group 'A' Officers of the BSF, CRPF and ITBP form an Organized Service, since they all represent a group of posts belonging to a distinct functional arranged in a order & pyramidal manner.

49. She submits that the term 'Organized' in conjunction with the word 'Service' has been used right from 1947 & has always been used to describe a service which is organized in a regular manner. The 1st CPC used the term 'Regularly Organized Superior Service' while the 2nd CPC while referring to Organized Service in Para 7 of Chapter III of its recommendations mentioned that before 1948, there were not many organized services but the trend during the last 10 years has been to constitute, wherever practicable, regular service by encadring similar posts in one or several posts in one or several Departments & its object was to facilitate planned recruitment, orderly management and mobility and to provide well defined career prospects.

50. It is submitted that the recommendations of the second CPC clearly shows that the term Organised Service is being used to describe regular services where similar posts are encadred in one or similar departments. It is submitted that since BSF, CRPF and ITBP are regularly constituted services and have a proper structure, they have always been treated as 'Organized Services' and that since all regularly constituted services were considered to be 'Organized services', the term 'organized services' had not been defined anywhere when OM dated 24.04.2009 introducing the NFU Scheme was issued and the term was only used as an antithesis to isolated posts. She argues that this is evident from the Monograph issued by DOPT in 1986 and 1993 wherein in Para VI (Pg 217/218 of Compilation) while dealing with 'Role of DP and AR' in the formulation of Cadre Review proposals, it has been specifically stated that while attention should be given to the Organized Group 'A' Central Services, isolated cadre/posts in Group 'A' in different Ministries should not be neglected and should also be reviewed.

51. It was also submitted that it is only after April 2009, that the Respondents had decided to lay down specific attributes of an Organized Service by way of OM dated 19.11.2009 and even this OM contained a 'Note' stating that 'the existing Organized Group 'A' Services has evolved over a period and may have minor deviations owing to their respective functional requirements. It is thus submitted that the CAPFs have been always been treated as 'Organised Services' and should continue to be treated as such despite having minor deviations vis-a-vis the attributes sought to be subsequently laid down in OM dated 19.11.2009.

52. She further contends that the term 'Organised Service' has been used interchangeably with Central Group 'A' Services and that both the monograph of 1986 and 1993 have no separate list of Organised Services and that the tenth Report of 2nd Administrative Reforms Commission held under DoPT explicitly includes the CAPF's as an 'Organized Service'.
53. Miss Palli submits that as late as 26.10.2012, the DoPT has in reply to an RTI query clearly stated that a list of 'Organized Group A' Services is not maintained and could therefore only provide to the Applicant data in respect of Central Group 'A' Services as on 1.07.2011.
54. It is submitted that since there was no definition or specific attributes of 'Organized Service' till as late as April 2009, the Hon'ble Supreme Court has explained what an Organized Service is. A perusal of Para 6 of the judgment of Hon'ble Supreme Court in the case of *State of Mizoram & Anr v. Mizoram Engineering Services Association* [(2004) 6 SCC 218] shows that the Hon'ble Supreme Court has held that in Government Service, there was hardly any difference between organized and unorganized service. Similarly perusal of Para 4 and 5 of *Krishna P. Reya v. Union of India*, passed by this Court vide judgment dated 25.05.2012 shows that when there is a clear cut hierarchy of posts and the promotional avenues are provided from one stage to the other, the cadre cannot be regarded as 'isolated posts' but has to be considered to be an Organized Cadre.
55. It is submitted that since the term Organized Group 'A' Service merely means a regularly constituted service, the Respondents have themselves while issuing OM dated 14.10.2010, (i.e. after OM dated 24.04.2009 and 19.11.2009) divided the services into technical, non-technical etc but yet not included real definition of Organized Service and it is evident that all

regularly constituted services with a proper structure and promotional avenues were to be considered as Organized Services and the presence of minor deviations from attributes laid down in OM dated 19.11.2009 should be allowed as mentioned in the OM itself. It is submitted that even otherwise the main attribute which the BSF, CRPF and ITBP are alleged to not fulfil is the attribute that “*all vacancies above JTS and upto SAG level in which services are filled by promotion from the next lower grade*”. It is submitted that non-fulfilment of the aforesaid attribute by BSF, CRPF and ITBP can at best be treated as a minor deviation as only 162 posts are reserved for IPS Officers comprising of around 10,000 Group ‘A’ Officers, meaning that less than 1.5% posts are earmarked for deputations and the rest 98.5% posts from JTS level to SAG level are filled by promotion only and thus all the CAPFs fulfil even attribute No. IV laid down in OM dated 19.11.2009.

56. It is submitted that this Court had vide its order dated 3.09.2014 directed the Respondents to explain the genesis of the term ‘Organized Service’ and though the Respondents filed an Additional Affidavit dated 9.10.2014, they had still failed to show any statute, rule or even circular laying down the procedure prescribed for declaring a service as an Organized Service and she argues that in fact the Respondents have attempted to mislead this Court by filing a truncated document and deliberately removed, Para 2, despite knowing very well that paragraph clearly states that CRPF and BSF are Organized Services.

57. It is submitted that the plea of the Respondents that an ‘Organized Service’ has to be a closed service where outsiders cannot join and since in the CAPFs, lateral entry of IPS Officers by way of deputation it cannot be

treated as an Organized Service, overlooks the fact that there is a provision for only 1.5% deputationists from IPS to join the CAPFs and therefore it is only a minor deviation which is permissible according to the OM dated 19.11.2009 itself. It is submitted that the plea that grant of NFU would lead to chaos in the command structure is based on a wholly baseless misconception as in all financial upgradation Schemes, including the ACP Scheme, persons not able to earn promotions due to lack of vacancies are placed in the pay scale of the promotional post and this has never led to any operational or command problem in any of the CAPFs.

58. She would argue that even though the Respondents have sought to rely on list of 'Organized Services' of the 4th CPC, many of these services including "Indian Salt Services" have, in response to RTI Applications, denied that they are Organized Services and thus, it is evident that the term Organized Service has always been treated interchangeably with Regularly Constituted Group 'A' Services and the only attempt to deviate from the said concept is by way of OM dated 19.11.2009 which has been done away with an attempt to deprive many services including CAPFs of the benefits of NFU.

59. It is submitted that the Respondents have in Para 3 (vii) to (xii) of their Additional Affidavit contended that the lists issued on 31.07.1982 & 11.04.1986 do not mention CAPFs and therefore, they are not Organized Services. However, the subsequent list issued on 16.07.1990 clearly mentions CAPFs and hence, it is argued that it is apparent that the CAPFs are a part of Organized Services as per the list of 16.07.1990. It is submitted that the plea of the Respondents that CAPFs are not Organized Services because the NFSG was granted to them on completion of 16 years

as compared to grant of NFSG to other services after 14 years, overlooks the fact the since the post of Commandant (Selection Grade) was a functional post in the CAPFs for which an Officer had to complete 16 years Group 'A' Service; NFSG could be granted to CAPFs only after 16 years so as to maintain a parity between those who are getting promotion and those getting NFSG and therefore, merely because NFSG was granted after 16 years to Group 'A' officers of CAPFs cannot be a reason to contend that the CAPFs are not Organized Services.

60. It is submitted that the reliance on an internal office noting by the Respondents to contend that CAPFs are not an Organized Service, is wholly misplaced since it is only an internal office noting at an intermediate stage whereas the Brief Note prepared by DOPT on the proposal for cadre review of ITBP placed before the Cadre Review Committee shows that as and when the strength of a service increases, it is organized into a proper service.

61. It is submitted that once Group 'A' GD/Executive Cadre of the CAPFs were 'Organized Services' at least from 1986 itself and also satisfy the criteria given by the 6th CPC in Para 3.3.4 of its Report; there was neither any requirement nor justification to get them declared as 'Organized Services' as has been sought to be done and it is therefore, submitted that Para 7.19.31 of the 6th CPC cannot be relied upon to take away the status of Organized Service which the Group 'A' GD/Executive Cadre of the CAPFs already had for the last almost 30 years.

Contentions of Respondents

62. Refuting the aforesaid arguments, Mr. Sanjay Jain, the learned Additional Solicitor General (ASG) for the Union of India submits that Organized Group 'A' Services was first referred to in 1973. His submissions are premised on the OM dated 28.10.2013. He also refers to the six attributes to be fulfilled before it is considered as Organized Group 'A' Services. He referred to the affidavit filed in WP(C) 153 of 2013. He fairly admits that the first three attributes are met by the CAPFs. He, however, submits that the 4th and the 6th attributes are not met. He further submits that even if the six attributes are met, it has to meet certain other criteria. In this regard, he refers to the letter dated 31.01.1995 of DoPT which is reproduced as under:

"To

Dated: 31.1.95

*The Deputy Inspector General (Pay Commission Cell)
Border Security Force,
CGO Complex,
New Delhi- 110 003*

ORGANISED CADRE

With reference to a letter no.38/1/1/94/V-PCC/BSF/117 dt. 25.1.94, regarding whether B.S.F. Group 'A' Cadre has been recognised as a organised Group 'A' service. In this connection it is stated that Border Security Force (General Duty) Group 'A' Service is an organised Group 'A' Central Services. However, the expression "organised Group 'A' Civil Cadre" means a cadre which has all the following attributes, namely (i) the highest cadre post is not below the level of Rs.5900-6700 (ii) it has all the standard grades, namely Rs.2200-4000, Rs.3000-45000, Rs.3700-5000/Rs.4500-5700 and Rs.5900-6700 (iii) at least 50% of the vacancies in the Junior Time Scale (Rs.2200-4000) are required to be filled by direct recruitment and (iv) all vacancies above the

Junior Time Scale and upto the Senior Administrative Grade (Rs.5900-6700) are filled by promotion from next lower grade.

Sd/-

(B.R. Arya)

Senior Research Officer (CC)”

Referring the OM dated 24.04.2009, he submits that CRPF does not fulfil criteria No. (iv) & (vi) and that apropos point no. (iv), CRPF has training reserves and deputation reserves. He further refers to the OM dated 19.11.2009 which provides that “*merely having all the attributes does not qualify a service to be an Organised Group – A Service and that such a service is constituted consciously and there are established procedures for this*”. Accordingly, he contends that such a status to CRPF is not functionally warranted. Hence, NFFU cannot be extended to Group ‘A’ Officers of the said force. Furthermore, he states that the 6th CPC itself was not in favour of creation of new organised services which become a closed cadre where outsiders cannot join even they are more qualified. He contends that although the CRPF has been shown in the category of other services in Central Group ‘A’ Services in terms of the Memorandum dated 24.04.2009, it has not been categorised as Organized Group ‘A’ Services by the cadre controlling authority; that such recognition comes about only by conscious decision of the latter through established procedure. The procedure for grant of organized service status is the same as cadre review procedure. He would rely on the dicta of the Supreme Court in ***Hukam Chand Gupta vs. Director General Indian Council of Agricultural Research and Ors.*** reported in (2012) 12 SCC 666 to show that prescription of pay scales on a particular post is a very complex exercise and these are matters to be assessed by expert bodies like the employer or

the Pay Commission. Neither the Central Administrative Tribunal nor a writ court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise to undertake the complex exercise of equation of posts or the pay scales. He also relies upon the decision in *S.C. Chandra Vs. State of Jharkhand* reported in AIR 2007 SC 3021 which while referring to the judgement in the *State of Haryana & Ors. vs. Haryana Civil Secretariat Personal Staff Association* (2009) 6 SCC (sic), Appeal (civil) 3518 of 1997 which observed that fixation of pay and determination of parity is a complex matter which is for the executive to discharge; that equation of posts and salary is a complex matter which should be left to an expert body.

63.To these arguments, Ms. Palli would submit that isolated cadre/posts in Group 'A' are those which are the opposite of organised services and lack a pyramidal structure of promotion such as the Indian Salt Service which is not an organised cadre.

64.Referring to the additional affidavit of 09.10.2014 of the Director, CRD, DoPT, the learned ASG would submit that the term 'Organized Group-A Services' is mentioned in the Monograph issued by the DoPT in 1986 which was revised in 1993 and this revised Monograph contains definition of the word 'organised' as mentioned therein. The Monograph of 2010 dated 19.11.2009 also mentioned attributes of Organized Group – A Service. Both the Monographs of 1986 and 1993 referred to Cadre Review Division which processes the proposal for constitution of a new Organised Group-A service.

65. In reply to the petitioners' contention that 10th report of Second Administrative Reforms Commission shows the Central Paramilitary forces in the list of Group – A Services and refers to them as members of the Organised Group – A Services of the Central Government, the learned ASG would contend that this is a mistake and a letter dated 15.09.2014 was addressed by the DoPT to the Department of Administrative Reforms and Personnel Grievances (DARPG) pointing out the mistake and for bringing a corrigendum.
66. The learned ASG would further refute the petitioners' arguments that it is only after the recommendation of the 6th Central Pay Commission that the DoPT for the first time has laid down the attributes of the 'Organised Group – A Central Services. In this regard, he would submit that since the attributes of Organised Group – A Central Services has already been mentioned in the Monograph of 1993, the aforesaid argument is untenable.
67. Similarly, he also refutes the petitioners' argument that noting in file No. I-11011/12/2008-CRD prepared by a Section Officer indicating that till 2009 the Central Government was feeling the need to formalize the definition and attributes of 'Organised Group – A Services so as to put to rest any doubt. He submits that the said noting contains only certain observations of the Section Officer on the subject matter. These were duly countered by the Department of Expenditure on 24.06.2009 in the same file wherein it was mentioned that "*Attributes of Organised Group – A Services are well defined; not only through the authoritative DoPT 'Monogram', but also by the successive Pay Commissions.*" To the petitioner's contention that assuming that the expression 'Organised' has indeed been used by DoPT

with a valid explanation, no legal sanctity can be attached to it for the reason that it cannot substitute or override Recruitment Rules, the learned ASG would contend that in terms of allocation of Business Rules, the administration of Service Rules including FRs, SRs and CSRs, conditions of service of Central Government Employees, issued for formal orders of the Govt. of India in matters relating to amendments to service rules is the subject matter of DoPT. Therefore, any changes in the service has to be suitably incorporated in the RRs. He refers to para 3.13 of the Monograph of 1993 which reads as under:

“Recruitment rules are a sine-qua-non for creation and continuation of any posts, for an organised service. There have been instances where Service cadres have been constituted even before framing proper recruitment rules. In some cases such situation (existence of Service without proper recruitment rules) continues for quite some time giving rise to distortion in cadre management. The department of Personnel and Training have been issuing guidelines and instructions from time to time in regard to framing of recruitment rules. The Department of Personnel and Training (Establishment Division) have issued a Hand Book in 1984 wherein the various guidelines together with the model recruitment rules have been published for the use of Min/Deptt. of the Govt. of India. The Hand Book enables the cadre authorities to frame recruitment rules in respect of posts included in the cadre under their control in a rationale manner. It

should also be checked and ensured that the recruitment rules already framed are in line with the guidelines.”

68.As to the procedure for declaration of a service as an ‘Organised Service’ the Respondent’s affidavit states as under:

“An ‘Organised’ service is constituted consciously and through established procedures. The procedure for grant of Organised Service status is same as the Cadre Review procedure. As per the procedure, the administrative Ministry prepares a proposal and refer the same in form of a CoS (Committee of Secretaries) Note to DoPT with approval of Minister in Charge and Integrated Finance Division. The proposal is examined in DoPT and with the approval of Secretary (P), the same is sent for approval of Secretary (Expenditure). After approval of Deptt. Of Expenditure, the proposal is placed for approval of The Cadre Review Committee (CRC) headed by Cabinet Secretary. The Recommendation of CRC is approved by Minister of State (PP) and Finance Minister. Thereafter, approval of Cabinet has to be obtained by the Administrative Ministry. Latest guidelines on cadre review has been issued vide OM No. I-11011/1/2009-CRD dated December 14, 2010”

69.Regarding whether DoPT has the lists of Organised Group – A Central Services, it is stated that the first list of Organised Group – A Service is

in the OM dated 31.07.1982 issued by the DoPT. Another list was issued on 11th April, 1986. The third list was issued on 16th July, 1990 which mentions Central Armed Police Forces (CAPFs) separately. Further, vide this OM, NFSG was made applicable for CAPFs on completion of 16 years whereas in the Organised Services the same is available in 14th year. As per the respondent's affidavit, this fact clearly establishes that the CAPFs were not being treated at par with the Organised Services. The 4th CPC in its report, mentions and lists these facts. To the queries (i) does the fact that cadre review of a service is carried out means that it is an organised service; (ii) How does one ascertain whether a service is an 'organised' service or not; (iii) Are there any files/documents examining the fact whether the para military forces are 'organised' or not; and (iv) What is the status of the proposal of cadre review and granting of organised Group 'A' status to Railway Protection Force, the affidavit states that (i) DoPT undertakes cadre review of the Central Group A services, irrespective of the same is an Organised Group – A Service or not. It maintains a common list of all Central Group – A Services classified in technical, non-technical, health and other services; (ii) While examining the proposals of Cadre Reviews and any specific queries, based on the records available, DoPT clarifies whether the particular service has been listed as Organised Service or not; (iii) There are various files/documents available wherein it has clearly mentioned that the CAPFs are not organised service i.e. (a) F. No. 5/19/86-PPII – while examining the cadre review proposal of ITBP, Department of Expenditure mentioned that ITBP is not an Organised Service; (b) F.No. 5/19/86-PPII – While examining the cadre review proposal of ITBP, on

the query of Department of Expenditure on applicability of cadre review on the services which are not organised, the reply of DoPT dated 5.11.1986 clearly shows that even services which are not organised have cadre reviews and that the para military forces do not have the status of organised Group – A Service. Border Security Force, Central Labour Service, Indian Reserve Police Force, Medical Officers Cadre of BSF, Medical Officers Cadre of ITBP and Medical Officers Cadre of CRPF are not organised service, have been reviewed by the CRC; (c) F. NO. 9/1/96-CRD – in reply to Rajya Sabha Unstarred Question No.1933 dated 1.8.1996, it was clearly held that the CRPF Group A is not an ‘Organised Service’; and in reply to aforementioned query no. (iv) it was stated that some officers of the Railway Protection Force had filed a Writ Petition (no. 6314/2012) in the High Court of Delhi claiming the status of an Organised Group – A Service. The petitioners had claimed that DoPT had vide its letter no. I-11011/4/2001-CRD dated November 20, 2003 conveyed its in-principle agreement to the constitution of RPF as an Organised Group –A service. The High Court had directed to finalize the cadre and service rules of RPF to grant it Organised Group ‘A’ status within six months. The case was examined in consultation with the Ministry of Law and it was decided an SLP would be filed. The SLP (No. 12393 of 2013) was accordingly filed with the MHA and DoPT as first and second petitioners respectively. The main ground raised in the SLP was that the approval of DoPT in 2003 on which reliance has been placed by the petitioners is not final and after the approval of DoPT, approval of Department of Expenditure, Cadre Review Committee, Minister of State (PP) and Finance Minister was required and thereafter, approval of the

final authority i.e. Cabinet is taken. Meanwhile, the Cadre Review proposal of the Railway Protection Force was examined and 'Organised' Group A status was not given by the Cadre Review Committee on 29th July, 2013. After taking the approval of the MoS (PP) and Finance Minister, this decision has been communicated to the Ministry of Railways for taking approval of the Cabinet.

70. However the learned Senior Advocates for the petitioners would submit that the respondent's answer to query no. (vii) as mentioned in the additional affidavit, as to whether the DoPT has the lists of Organised Group – A Central Service, is illusive and evasive. It is not an answer to the query. Besides, the lists of 1986 and 1990 are with respect to NFSG and not with respect to whether the CAPFs were Organised Group – 'A' Services. Furthermore, in reply to points/queries no. (vi) and (viii) in the affidavits, the learned counsel for the petitioners would submit that the same are contrary to each other because the answer to query no. (viii) clearly reflects that the DoPT can undertake cadre review of the Central Group – A Services irrespective of there being Organised Group – A Services or not then the reference to procedure for declaration of a service as organised service is irrelevant. They submit that the request of the DoPT regarding Cadre Review Division of 15th September, 2013 even while the bunch of petitions were being heard, a corrigendum was issued apropos inclusion of BSF, CISF, CRPF and ITBP in the list of Organised Group – A Services in the Government of India was rightly turned down by the DARPG vide its letter dated 23.09.2014 because the Administrative Reforms Commission had completed its turn in the year 2009. Miss Jyothi Singh would submit that the ARC set up under the Commission of Enquiry

Act, 1952. Its report has statutory sanctity under Rule 5(3) which reads as under:

“(3)The Commission or any officer, not below the rank of a gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, 1898, (5 of 1898)in so far as they may be applicable.”

71. Furthermore, there is no list of Government of India showing ‘Un-Organised’ as opposed to ‘Organised’ Group – A Central Services. The 1986, 1992 and 2010 ARCs of Classified CAPFS has organised Group – A Services and it has been so specifically stated in the reply to the RTI dated 06.02.2015 from the DoPT which says that no separate list of Organised and Un-organised Services are maintained.

Analysis

72. In this case, the Court has been called upon to decide if the impugned letter dated 31st May 2012 rejecting the grant of NFFU is arbitrary. Consequently, it has to be decided if the petitioners would be entitled to NFFU w.e.f

1.1.2006 as has been granted to Group A Officers in PB-3 and PB-4 vide OM dated 24.04.2009.

73. The crux of this matter is the Government's classification of Group A services as organized or otherwise and whether the officers of the CAPFs (previously known as CMPFs) are a part of Organized Central Group – A Services. The Court would note that the issue in these cases is not fixation of pay scale as argued by the learned ASG but is in fact, whether the Government itself has at anytime acknowledged or stated that such officers of the CAPFs form a part of organised Group-A Services. Therefore, the reference to and reliance on various judgments referred to above in Para 63 in his contentions above are misplaced because those precedents deal with fixation of pay and not with classification of services in 'organised' and unorganised cadres which is the issue in this batch of writ petitions.
74. It is a settled canon of constitutional jurisprudence that the doctrine of classification is a subsidiary rule evolved by courts to give practical content to the doctrine of equality. Over-emphasis of the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptively erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. (**LIC of India v. Consumer Education & Research Centre [(1995) 5 SCC 482]**).
75. What is therefore necessary is a firm stance by the Government with a proper classification in place leaving as little room for ambiguity as possible. This is not seen in the OM dated November 19, 2009 to the extent that it notes that there may be certain "minor deviations" from the attributes listed therein and also to the extent wherein it states that even if the listed

criteria are fulfilled, the same would not automatically confer the status of an organised Group A Service. The Court is therefore, reluctant to read too deeply into these attributes when deciding on the status of the petitioners as belonging to Organised Group A Service.

76. In each of the Monographs published by the DoPT till date, the CAPFs have been shown to be a part of the Central Group 'A' Services. This is not under contention. What we have to decide is whether the CAPFs meet the condition of being 'Organised.' It is to be borne in mind that the Central Pay Commission is not authorised to define 'Organised Services' or to grant such status to any service; it has no independent source of information and whatever information is submitted to it by the various departments sent through various Memorandums form the basis of its report. In any case, their recommendations are subject to the final decision and approval of the Government of India. Should the information not be exhaustive, the reference to and reliance upon by the Central Pay Commission on such data/information would be incomplete.

77. It has been noted by the Department of Expenditure, Ministry of Finance, Government of India in the context of ITBP which has been referred to in the additional affidavit of the Director, CRD, DoPT. A truncated version of the aforesaid, for reasons best known to the UoI, was filed in the affidavit. The entire note reads as under:

*“Ministry of Finance
(Department of Expenditure)
EIII Branch*

Reference note on prepage.

1 Department of Personnel & Training (PP Division) have sought our comments on the 'brief' prepared by them on the Cadre Review in respect

of General Duty Executive Officers of Indo-Tibetan Border Police. The brief has been gone through. Ministry of Home Affairs is the cadre controlling authority of General Duty (Executive) Officers of ITBP. This Service has not yet been organised into a proper Service. Its structure is quite different from other proper organised services. The Head of the service is appointed on deputation of IPS officers. All other posts are filled by deputation of service officers/IPS/State Police Officers, re-employment of ex army officers or by promotion in terms of Rule 105 of the CRPF Rules, 1965. No quota or percentage is fixed for any method. No direct recruitment at the junior time scale of Rs. 700-1300. Thus this service has no similarity with other proper organised services.

2. *Normally, such services are not re-structured by Cadre Review. It is not clear as to how many officers in the service have been appointed on deputation and how many have cadre posts. In its broad sense, a cadre review encompasses such operational tasks as actual recruitment, training, placement, etc. and attempts to bring about congruence between functional needs and legitimate aspirations of the members of a service. This service has no proper recruitment plan and hence it is difficult to judge the legitimate aspirations of the members of the service. The upgradation/downgradation of posts of increasing/decreasing the number of posts at various levels is not the only/main aspect of cadre review. The internal structure of a Service depends on initial structure and the pattern of subsequent recruitment. Since this Service has no proper structure, it is not possible to compare it with other organised services like BSF, CRPF. (emphasis added)*

3. *In view of the position stated above, we may suggest DP&T (PP Division) to first examine the possibility of organising this Service into a proper Service with proper recruitment plan and only thereafter, the aspect of cadre review should be examined.*

Sd/”

78. From the above, it is clear that the Government itself has admitted way back on 21.10.1986 that BSF and CRPF are organised services and have in fact used them as examples of organised services. Thereafter, the Government has through its own process classified the BSF, CRPF, ITBP and CISF as being at par with each other in the 1986, 1993 and 2010 Monographs wherein the aforesaid CAPFs have been shown as part of the same Group ‘A’ Central Civil Services.

79. The report of the Second Administrative Reforms Committee includes in Table 4.1 a list of all Organised Group ‘A’ Central Civil Services in the Government of India in which paramilitary forces such as BSF, CISF, CRPF and ITBP are shown at Serial nos. 22 to 25 respectively and the source at the bottom of the table is stated to be the DoPT itself.

80. The Court would note that after about six years of the publication of this report, the matter is being argued and the Government’s own documents are being relied upon by the petitioners to contend that they belong to Organised Group ‘A’ Central Civil Services of the Government. Meanwhile, the Government has sought to correct the said list to exclude the petitioners (CAPFs) from the ambit of Organised Group ‘A’ Central Civil Services. This, however, is impermissible in law since the release of the list was a result of a statutory exercise. The information supplied to the Administrative Reforms Committee would have been accompanied by

affidavits of and/or communication from responsible officers and the Government would be bound by it. Therefore, the Court is of the view that for the Government to state that this was a mistake to withdraw it, at this stage, is neither convincing nor tenable.

81. The Court would note that the DoPT's OM dated 19/20.11.2009 which lays down six attributes which a Central Groups 'A' Service needs to possess to be considered as Organised cannot be relied upon too heavily since it is the respondents' own admission in the impugned OM dated 28.10.2013 that "these attributes are merely traits /characteristics and are not sacrosanct." The Note at the bottom of the 2009 OM provides for minor deviations from these attributes. It also states that even if a Group 'A' service possesses all six attributes, it might not be automatically conferred the status of an Organised Group 'A' Service as these have to be "*constituted consciously*" and "*can be constituted only through the established procedures*". The Court is of the view that the presence of reports and other documents explicitly stating the CAPFs are an Organised Group 'A' Service evidences that they have been constituted consciously and through established procedures.

82. The Government's contention that NFFUs cannot be granted since the CAPFs comprise a strict hierarchy with a well defined Command and Control structure; that any interference with this structure would be detrimental to the interest of the forces and would adversely affect its operation and functioning; It was thus, claimed that all posts in the CAPFs are functional and there is no room for Non Functional posts, is untenable because by very definition there is no interference with functions, duties or the posts but only an increase in the financial prospects.

83. The Court would also take cognizance of the reply dated 11.02.2015 to an RTI application whereby certain queries bearing relevance to the present case were sought and through which it was revealed that the Indian Defence Accounts Service (IDAS) is an Organised Group 'A' Central Civil Service. This RTI reply was accompanied by a list of all Organized Group 'A' Central Civil Services. This is the same list discussed above and seen in the report of the Second Administrative Reforms Committee in Table 4.1 and includes the CRPF. Therefore, it can be seen that as recent as 11.2.2015, this list has been endorsed and relied upon by the Government of India and the Court sees no reason to doubt its applicability.
84. The issue of acknowledging the petitioners as OGAS has been pending for some time like a festering wound. From the preceding discussion, the Court would note although from the government records it can clearly be seen that the Petitioners have over and over again been recognised as OGAS, an element of obfuscation has been kept alive. It cannot be overemphasised that in matters relating to the armed forces and the paramilitary/CAPFs there ought to be clarity and certainty apropos the service benefits which the forces would be entitled to. An element of greater dispatch in taking decisions governing their service conditions would always be requisite. Therefore, to the extent that the OM dated 19/20.11.2009 and OM dated 28.10.2010 themselves leave scope for interpretation, it could well be said that there is a level of arbitrariness in them. The government having repeatedly acknowledged the Petitioners in their various communications as belonging to OGAS cannot be allowed to reprobate there from.

85. In view of the above, the Court is of the view that the petitioners, i.e., officers in PB-3 and PB-4 in the CAPFs (CRPF in the present instance) have been categorised under Organised Group 'A' Service ever since the year 1986. Hence, the benefits contemplated by the 6th CPC by way of NFFU to remove disparity between All India Services and other Organised Central Group 'A' Services, ought to be granted to them. Accordingly, the impugned OM dated 28.10.2010 and all other letters whereby the petitioners' request for the grant of NFFU was rejected, cannot be sustained and are hereby quashed.

86. In view of the above, the Writ Petitions are allowed. The respondents shall issue requisite notification granting the benefits of Non Functional Financial Upgradation as recommended by the 6th Central Pay Commission to the Petitioners within eight weeks from this order.

NAJMI WAZIRI, J.

SEPTEMBER 03, 2015

KAILASH GAMBHIR, J.