

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

% **Date of decision: 27th July, 2020.**

+ **W.P.(C) 12052/2019, CM No.49365/2019 (for stay), CM No.593/2020 (of Indian Police Service Central Association (IPSCA) for vacation of stay dated 18th November, 2019), CM No.600/2020 (of Ram Gopal & Ors. for impleadment) & CM No.601/2020 (of Ram Gopal & Ors. for vacation of stay dated 18th November, 2019)**

TARUN KUMAR BANJAREE AND ORS. Petitioners

Through: Mr. P.S. Patwalia, Sr. Advocate with
Mr. Ankur Chhibber, Mr. Anshuman
Mehrotra and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun
Bhardwaj, CGSC, Mr. Abhishek
Sharma, Ms. Aakanksha Kaul, Mr.
Manek Singh, Mr. Padmesh Mishra
and Mr. Arkaj Kumar, Advs. for UOI.
Mr. Darpan Wadhwa, Sr. Adv. with
Mr. Arun Khatri & Ms. Rajdeepa
Behura, Advs.
Mr. Gaurav Sarin, Mr. Aditya Singla,
Ms. Supriya Juneja & Ms. Cheshta
Jetly, Advs. for the applicant IPS
Association.

AND

+ **W.P.(C) 12751/2019, CM No.52106/2019 (for interim direction), CM No.604/2020 (of IPSCA for impleadment), CM No.605/2020 (of IPSCA for vacation of stay dated 18th November, 2019), CM No.3264/2020 (of Sachin Badshah & Ors. for impleadment) & CM No.3265/2020 (of Sachin Badshah & Ors. for vacation of stay**

dated 18th November, 2019)

SANJAY PRAKASH AND ORS.

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman
Mehrotra and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun
Bhardwaj, CGSC, Mr. Abhishek
Sharma, Ms. Aakanksha Kaul, Mr.
Manek Singh, Mr. Padmesh Mishra
and Mr. Arkaj Kumar, Advs. for UOI.
Mr. Gaurav Sarin, Mr. Aditya Singla,
Ms. Supriya Juneja & Ms. Cheshta
Jetly, Advs. for the applicant IPS
Association in CM 3264/2020 and
3265/2020

AND

+ **W.P.(C) 12875/2019, CM No.52617/2019 (for stay), CM
No.595/2020 (of IPSCA for impleadment), CM No.596/2020 (of
IPSCA for vacation of stay dated 6th December, 2019), CM
No.599/2020 (of Kiran S. & Ors. for impleadment), CM
No.1387/2020 (of respondents for vacation of stay dated 6th
December, 2019) & CM No.3607/2020 (of respondents for interim
directions)**

MAHENDRA SINGH DEO

..... Petitioner

Through: Mr. Ankur Chhibber, Mr. Anshuman
Mehrotra and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun

Bhardwaj, CGSC, Mr. Abhishek Sharma, Ms. Aakanksha Kaul, Mr. Manek Singh, Mr. Padmesh Mishra and Mr. Arkaj Kumar, Advs. for UOI. Mr. Gaurav Sarin, Mr. Aditya Singla, Ms. Supriya Juneja & Ms. Cheshta Jetly, Advs. for the applicant IPS Association.

AND

+ W.P.(C) 13014/2019, CM No.53052/2019 (for stay), CM No.607/2020 (of respondents for vacation of stay dated 10th December, 2019), CM No.608/2020 (of IPSCA for impleadment), CM No.609/2020 (of IPSCA for vacation of stay), CM No.611/2020 (of Ashwani Kumar Chand & Ors. for impleadment), CM No.612/2020 (of Ashwani Kumar Chand & Ors. for vacation of stay), CMs No.3612/2020 & 4412/2020 (both of respondents for interim directions) & CM No.12706/2020 (of respondents for clarification of interim order dated 10th December, 2019) & CM No.13025/2020 (of respondents Union of India for direction)

RADHA MOHAN MEENA AND ORS. Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun Bhardwaj, CGSC, Mr. Abhishek Sharma, Ms. Aakanksha Kaul, Mr. Manek Singh, Mr. Padmesh Mishra and Mr. Arkaj Kumar, Advs. for UOI. Mr. Gaurav Sarin, Mr. Aditya Singla, Ms. Supriya Juneja & Ms. Cheshta Jetly, Advs. for the applicant IPS Association.

Mr. Amit Anand Tiwari & Ms. Mary Mitzy, Advs. for applicants in CM No. 611/2020.

Mr. Vivek Kumar Singh, Law Officer, CRPF

AND

+ **W.P.(C) 13588/2019, CM No.54944/2019 (for interim directions), CM No.587/2020 (of IPSCA for impleadment), CM No.588/2020 (of IPSCA for vacation of stay dated 23rd December, 2019) & CM No.591/2020 (of Jitender Rana & Ors. for impleadment)**

SUDHIR KUMAR SINGH AND ORS.

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arun Bhardwaj, CGSC, Mr. Abhishek Sharma, Ms. Aakanksha Kaul, Mr. Manek Singh, Mr. Padmesh Mishra and Mr. Arkaj Kumar, Advs. for UOI. Mr. Shanker Raju with Mr. Nilansh Gaur, Mr. Sanjiv Saxena & Mr. Ramneek Mishra, Advocates for impleaded respondent. Mr. Gaurav Sarin, Mr. Aditya Singla, Ms. Supriya Juneja & Ms. Cheshta Jetly, Advs. for the applicant IPS Association. Mr. Anupam S. Sharma & Mr. Prakarsh Airan, Advs. for applicants in CM No.591/2020.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. These five petitions, by personnel of different services viz. Central Reserve Police Force (CRPF), Border Security Force (BSF), Sashastra Seema Bal (SSB), Indo Tibetan Border Police (ITBP), and Central Industrial Security Force (CISF), collectively known as Central Armed Police Forces (CAPFs), (i) impugn the direction of each of the said services, for filling up of the additional posts created pursuant to the Cadre Review (CR) of the year 2016, as per existing Recruitment Rules (RRs), which provide for certain percentage of posts at each level upto Senior Administrative Grade (SAG) being filled up by deputation; and, (ii) seek mandamus directing the respondents to amend the RRs of each service, by including various attributes, as required by Department of Personnel and Training (DoPT) Office Memorandums (OMs) dated 20th November, 2009, 15th December, 2009, 24th March, 2009, 24th April, 2009 and 8th May, 2018, particularly to the extent provide for all posts upto SAG level being filled up by promotion only and not by deputation, and to thereafter conduct CR of Group 'A' Officers of each cadre, by treating each service as Organised Group 'A' Service (OGAS), as held by this Court in *G.J. Singh Vs. Union of India* 2015 SCC OnLine Del 11803 and affirmed by the Supreme Court in *Union of India Vs. Harananda* (2019) 14 SCC 126.

2. The petitions, on the statement of the counsels that the question

involved in each of the petitions was the same, were listed together for hearing and arguments have been heard together, with reference to W.P.(C) No.13014/2019 (by personnel of CRPF) only and the counsels, at the close of the hearing also stated that besides pleadings in W.P.(C) No.13014/2019, the pleadings only in W.P.(C) No.12052/2019 may be referred to and there is no need for referring to pleadings in the other petitions, which are the same.

3. W.P.(C) No.13014/2019 has been filed by 83 personnel of CRPF, of the rank of Deputy Inspector General (DIG)/Commandant, pleading that (i) the petitioners are Group 'A' Officers of CRPF Executive Cadre; (ii) CRPF, though has origin in 1929 as the Crown Representative Police, but in the year 1949, by an Act of Parliament, was constituted as an Armed Force of the Union, known as CRPF, after amalgamating the Armed Police of the States; (iii) though originally there was only one Battalion, but with the passage of time strength of CRPF has increased almost four times i.e. from 60 battalions to 231 battalions, from four sector headquarters to 20 sector headquarters and from one Training Institution to 20 Training Institutions; (iv) though the respondent No.1 Ministry of Home Affairs (MHA), Government of India (GOI) is the Cadre Controlling Authority of CRPF but the DoPT under the Ministry of Personnel and Administrative Reforms is the Nodal Agency for cadre management related issues of all Group 'A' Central Civil Services, as per provisions of Allocation of Business Rules 1962 of GOI; (v) the DoPT has issued list of all Group 'A' Central Civil Services, in the years 1986, 2008 and 2010 and CRPF Group 'A' (Executive Cadre) is included in all the lists issued by DoPT; (vi) as per para 2.4 of

DoPT OM dated 18th March 1988, RRs are meant for those posts which are not covered by any of the organised services; for the organised services, comprehensive Service Rules should be framed; (vii) DoPT, in 1993 issued a Monograph on cadre management of Group 'A' Central Civil Services and this Monograph incorporates the decision that cadre management reviews in respect of each of the Group 'A' services should be undertaken once in three years; subsequently the period of three years was increased to five years vide OM dated 14th December 2010 issued by DoPT; (viii) a typical Group 'A' service has a cadre structure which is constituted in the form of pyramid, with the various layers of the pyramid corresponding to different levels of responsibilities, with functional distinction; (ix) the pyramid starts with Junior Time Scale which is generally probation-cum-training grade for direct recruits and passes through Senior Time Scale, Junior Administrative Grade and SAG; (x) if the cadre pyramid is steep, the promotional opportunities for individual members of the service would be limited, else one can expect reasonable promotional opportunities for members of the service, which is the legitimate expectation of every officer joining Group 'A' service of the government; (xi) the objective of the CR is to strike a healthy balance between the functional requirements and career progression of officers as well as to fulfil aspirations of cadre officers and therefore periodical review of cadre strength is an important cadre management function, playing vital role in keeping up the morale of the members of the service; however since inception of Group 'A' cadre of CRPF, only 3 CR Exercises have taken place i.e. in the years 1980, 1991 and 2016; however, between 1991 and 2016, two augmentation-cum-cadre restructuring were held in 2004 and 2009 and the strength of Group 'A' posts in CRPF has

increased by 201%, from 1396 in 1991, to 4210 at present; (xii) while the CR of CRPF Group 'A' Executive Cadre was pending, **G.J. Singh** supra and connected petitions were filed by personnel of various CAPFs, to be declared as OGAS, to be granted Non-Functional Financial Upgradation (NFFU), as recommended by the 6th Central Pay Commission (CPC), for OGAS; (xiii) the said writ petitions were allowed by this Court, holding that officers of Pay Band (PB)-3 and (PB)-4 in CAPFs have been categorised as Organised 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 OGAS, ought to be granted to them and the respondents were directed to issue requisite notification granting benefit of NFFU as recommended by the 6th CPC, to the members of CAPFs also; (xiv) the effect of the said judgment was, that all the CAPFs were declared OGAS; (xv) though the respondents, in pursuance to the said judgment, were duty bound to conduct CR of Group 'A' Executive Cadre as an OGAS, after incorporating basic attributes of OGAS as provided in OM's dated 20th November 2009, 15th December 2009, 24th March 2009, 24th April 2009 and 8th May 2018, but the respondents issued the CR vide order dated 11th July 2016, without treating the CAPFs Group 'A' Executive Cadre as an OGAS and without incorporating in the RRs of CAPFs the attributes as provided in the said OM's, of OGAS; (xvi) Para 14 of the petition reads as under:-

“That in the note that was put up to the Cabinet for approval, it was specifically approved by the M/o Personnel and Public Grievances and Department of Personnel and Training that the above cadre structure of CRPF is submitted to the following conditions:

- (i) *While finalizing the RRS and while giving promotions, the residency period as prescribed by O.M. No AB. 14017/61/2008- Estt(RR) dated 24th March 2009 must be adhered to. The Recruitment rules should be finalized at the earliest.*
- (ii) *MHA should seek concurrence of DoPT wherever any relaxation in the existing RRS is required to fill up the additional new posts.*
- (iii) *In future cadre review may be undertaken in time and any creation of posts restructuring or review should be processed through cadre review procedure and even in case of urgent requirement the matter would be undertaken with the DoPT. No posts should be created without taking up the matter with the DoPT.*
- (iv) *MHA would take other cost cutting measures to bring down the expenditure and the benefit to be passed to the Jawans.*

*The above said approval specifically directed that while finalizing the Recruitment Rules and while giving promotions the residency period as prescribed by the OM dated 24.03.2009 as amended from time to time must be adhered to and the Recruitment Rules should be finalized at the earliest. It was also specifically stated that the M/o Home Affairs shall ensure that the proposed cadre structure should not violate any Court order. The said directions had been given specifically in light of the judgment of this Court in the case of **G.J. Singh** which had been affirmed by the Apex Court vide its judgment dated 05.02.2019.”;*

(xvii) the SLP of the Government, against grant of OGAS status and NFFU to CAPFs as well as Railway Protection Force (RPF) were dismissed by the Supreme Court vide **Harananda** supra;

(xviii) DoPT, in its capacity as Cadre Controlling Authority of CAPFs and RPF, issued an order dated 26th March 2019 for implementation of the judgments aforesaid of this Court and the Supreme Court; (xix) pursuant thereto, the Ministry of Railways (MoR) issued the OM dated 8th April 2019 informing DoPT that RPF had been notified as OGAS and restructuring of cadre of RPF was underway and RRs of RPF will be revised; (xx) in response to the aforesaid, DoPT stated that though procedure for granting OGAS involved initiation of proposal by the Cadre Controlling Authority but in view of the judgments having attained finality, it had been decided to implement the judgment and it was the Administrative Ministry/Department concerned which was mandated to issue necessary orders for grant of OGAS status and consequently, with the proposal of the MoR, RPF had already formulated the draft Service Rules, in supersession of the earlier RRs; (xxi) though the MoR has implemented the judgments aforesaid but the MHA had not done the needful and on the contrary, carried out the cadre review of CRPF Executive Cadre, without following the said procedure and has not even initiated the process for formulation of Service Rules in supersession of the existing RRs, as per OGAS norms, as mandated by the DoPT OM^s supra; (xxii) as an OGAS, (a) the highest cadre post in CRPF is to be not below the level of the Rs.37400-67000 plus Grade Pay of Rs.10,000 (SAG); (b) all the CAPFs have to have standard grades; (c) at least 50% of vacancies in Junior Time Scale are required to be filled by direct recruitment; all the vacancies above Junior Time Scale and up to SAG level, are to be filled up by promotion from the next lower cadre; and, (d) all the

cadres are to be governed by composite Service Rules, facilitating horizontal and vertical movement of all officers of a particular cadre, at least up to SAG level; (xxiii) though all the posts upto SAG level are to be filled up from the next lower grade but the respondents, by not amending Service Rules of CRPF to be in line with the OM dated 20th November 2009, are continuing to fill up the posts by deputation; (xxiv) DoPT issued OM dated 15th December 2009 for amending of Service Rules in respect of OGAS, to bring uniformity in eligibility criteria across various OGAS, for promotion; (xxv) the CR order dated 11th July 2016 *inter alia*, provides that newly created posts will come into existence from the dates these are filled up and these posts will be filled up in accordance with the Rules/Regulations governing such appointments, meaning thereby that the prevalent 20% deputation in the rank of DIG as well as 50% in the rank of IG, will continue and accordingly several orders appointing IPS officers on deputation to the rank of DIGs and IGs have been issued by MHA; (xxvi) the said orders are contrary to OM of DoPT as well as the judgment of this Court affirmed by the Supreme Court, declaring CRPF as an OGAS; (xxvii) prior to CR of 11th July 2016, the post of IG was equally held by Indian Police Service (IPS) and Cadre Officers; (xxviii) at the time of filing of petitions, several posts of IG to be filled up by IPS Officers as per existing Rules and which after the judgements aforesaid are to be filled up by promotion, were lying vacant but are not being filled up; and, (xxix) this being the position, the immediate juniors in the rank, are suffering, as their promotional

avenues, despite being vacant, cannot be given to them as the same are reserved for IPS cadre.

4. W.P.(C) No.13014/2019 came up first before this Court on 10th December 2019, when while issuing notice thereof it was directed that if there was any proposal to fill up the vacant posts of DIG and IG, the respondents will inform the Court in advance. The said order is continuing till date and it was pursuant to the applications of the respondents for early hearing, stating that large scale vacancies in the post of DIGs and IGs was affecting the functioning of CAPFs, that these writ petitions were ordered to be taken up for hearing via Video Conferencing.

5. All the respondents in W.P.(C) No.13014/2019 i.e. MHA, Ministry of Personnel, Public Grievance and Pensions, DoPT and Director General and Inspector General CRPF, have filed a common counter affidavit of Director General CRPF, pleading that (i) the exercise of CR of Group 'A' Officers was started in the year 2011; (ii) though the Group 'A' Executive Cadre Officers of CAPFs filed writ petitions in this Court (*G.J. Singh* and connected petitions supra) praying for declaration as OGAS, amongst other prayers but the judgment of this Court notices (a) the contention of the Group 'A' Executive Cadre Officers of CAPFs that the contention of the respondents, of CAPFs not meeting the attribute of all vacancies above JAG and up to SAG level being filled up by promotion from the next lower grade, was not a deterrent to the CAPFs being treated as OGAS, because CAPFs had always been treated as organised

service irrespective of the fact that they did not satisfy the said attribute and that minor deviations like not meeting the said attribute was owing to the functional requirement and did not come in the way of CAPFs being treated as OGAS, to be entitled to NFFU; (b) the contention of the Group 'A' Executive Cadre Officers of CAPFs, that the deputationists come against the ex-cadre post, by virtue of own cadre rules and therefore all the vacancies from JAG to SAG level in CAPFs, meant for cadre officers, were filled by promotion in CAPFs also; (c) the contention of Group 'A' Cadre Executive Officers of CAPFs that it was only after April, 2009 that the respondents had laid down the specific attributes of OGAS by way of OM dated 19th November 2009 and even this OM contained a note that the existing OGAS had evolved over a period of time and may have minor deviations owing to their respective functional requirements and thus the fact that in the CAPFs, there was deputation till SAG level, did not disentitle the Group 'A' Cadre Officers of CAPFs from NFFU and that less than 1.5% posts were earmarked for deputation and the rest of 98.5% posts from JAG to SAG level were filled up by promotion only and thus all CAPFs fulfilled even the attribute, of all posts till SAG level being filled by promotion and not by deputation; and, (d) the contention of Group 'A' Cadre Executive Officers of CAPFs that an organised service has to be a closed service, where outsiders cannot join and since in CAPFs, lateral entry of IPS officers by way of deputation was permitted to the extent of 1.5 % only, it was a minor deviation which was permitted vide OM dated 20th November 2009; (iii) this Court also, in the judgment held that (a) the non-

fulfilment by CAPFs of the stated attributes of all posts upto SAG level being filled up by promotion and not by deputation, did not disentitle CAPFs from OGAS status and the said non-fulfilment, as per the of Group 'A' Cadre Executive Officers of CAPFs also was a minor deviation; and, (b) since CAPFs in the past had been categorised as organised service, hence the benefit contemplated of NFFU, to remove disparity between All India Service and other Central Group 'A' Services, ought to be granted to CAPFs also; (iv) thus, it is clear that this Court in ***G.J. Singh*** supra declared CAPFs as OGAS with their present organisational structure intact, including deputation of IPS officers and issued direction only for grant of NFFU to the members of the CAPFs; (v) the Supreme Court also, in appeal observed that non-fulfilment by CAPFs of the prescribed attribute, of all posts up to SAG level being filled up by promotion and not by deputation was a minor deviation and expressly held that granting the status of OGAS to CAPFs would not affect the right if any of the IPS officers for their appointment on deputation on some of the posts in CAPFs; (vi) the CAPF cadre officers, in the earlier writ petitions having themselves pleaded for OGAS status admitting that they did not possess the attribute of all posts up to SAG level being filled up by promotion and not by deputation, cannot now be heard to ask that in pursuance to the judgment, deputation till SAG level should be removed; (vii) the petitioners are wrongly representing that in pursuance to the earlier judgments they are entitled to removal of deputation to posts up to the SAG level from CAPFs, under the respective RRs of CAPFs; (viii) the procedure for CR of Central

Group 'A' Services is laid down in OM dated 14th December 2010 of the DoPT and the same is applicable to all the Central Group 'A' Services, irrespective of whether the same is organised or not; (ix) the CR carried out in the year 2016 did not violate any of the directions issued by the Courts in the earlier judgments and the CR was carried out as per Rules and completed in 2016, with the approval of the Cabinet; (x) consequent upon finalisation of CR of Group 'A' Officers and creation of 203 posts of 2 IC, promotion of as many of 244 Deputy Commandants to the rank of 2 IC were released vide Signal dated 20th October 2016; subsequently promotion from all other ranks, from 2 IC upto IG, were also released and officers were promoted to the higher ranks; (xi) all the said follow up actions regarding calling of DPCs for promotions to various ranks and subsequent release of promotions of all eligible officers as a result of CR has already been undertaken on the specific approval of MHA, in the year 2016; subsequent promotions have also been effected accordingly since then and cannot be reversed and will lead to multiplicity of litigations, adversely affecting the operational effectiveness of CRPF; (xii) RRs in respect of course/grades in each of the CAPFs have been framed keeping in view the functional requirement of the organisation and as per the guidelines issued by the DoPT; it needs to be ensured that the personnel at different level require requisite experience before they can shoulder higher responsibilities; (xiii) thus keeping in view the operational efficiency and functional effectiveness requirement, the RRs provide a particular period of residency in a lower grade, mandatory field/command

services wherever same is felt necessary, pre-promotional courses and medical fitness; (xiv) the CAPFs are functionally different from civilian OGAS and hence the Service Rules cannot be on the pattern of civilian OGAS; accordingly action has not been initiated to amend the existing RRs of CAPFs; (xv) Monograph of 2010 issued by DoPT itself states that there cannot be an identical cadre structure for every service for obvious reasons and the DoPT has never intended to recommend any; the Monograph further states that functional requirement has to be the key criteria and need has to be assessed objectively; (xvi) in the CR of 2016, in CRPF, the organisational structural remains the same and only number of posts in various ranks changed and the RRs not amended; (xvii) the number of posts have been changed several times in the past also and the exercise of amending RRs is taken up only when there is a substantial change, more than a mere change in the number of posts; (xviii) neither this Court in ***G.J. Singh*** nor Supreme Court in ***Harananda*** supra directed fulfilment of all the six attributes of OGAS prescribed by DoPT or held it to be a pre-condition for grant of OGAS status; (xix) Article 312 of the Constitution of India provides for creation of All India Service common to the Union or States; under this provision, the All India Services Act was enacted by the Parliament in 1951, bringing into existence the IAS and IPS; (xx) in both, IAS and the IPS, authorised cadre strength of a State cadre is determined based on identification of senior duty post and 40% of such senior duty posts are earmarked as Central Duty Reserve so that those many officers may come to the Centre and work in various organisations of the

Central Government; this way the officers also get experience to work in Centre and States and liaison between the Government of India and the States; (xxi) similarly, certain number of posts in different police and other organisations/departments of Central Government are filled up by the IPS officers allotted to various State cadres; the cardinal principle is that an IPS officer will be available to serve on central deputation for a stipulated tenure and thereafter return to his parent cadre; the movement of officers from State to the Centre and back is of mutual benefit to the States and Government of India on the one hand and, to the officers concerned on the other hand; (xxii) the IPS officers are appointed in Central Armed Paramilitary Forces/RPF, on deputation basis for a limited period as per percentage/quota fixed in the RRs/criteria of the posts; (xxiii) in exercise of the powers conferred by Section 3(1) of the All India Services Act, 1951, the Central Government implemented the IPS Cadre Rules 1954, which, (a) under Rule 3 provide for constitution of different State Cadres; (b) under Rule 4 prescribe the strength and composition of such cadre constituted under Rule 3, in consultation with the State Governments; and, (c) under Rule 6(1), IPS cadre officers can be deputed for services under the Central Government with the concurrence of the State Government concerned; (xxiv) the IPS (Pay) Rules list the posts which are to be manned by the IPS officers; therefore, utilisation of services of IPS officers under the Central Government is mandatory as per the constitutional scheme and the same is not amenable for overturning, through any subordinate Statute or differential judicial interpretation; (xxv) GOI has been very careful in structuring the

forces in such a manner so as to strengthen the federal structure; the services of the officers of an integrated service like IPS are a must for the smooth functioning of CAPFs, to enable them to work with the State Government and State Police Forces which are officered by the IPS and the State Police Services; (xxvi) any changes in the structure of CAPFs wherein IPS are required to be posted on deputation for better coordination and smooth functioning of the organisation, challenges the basic structure of the All India Service which is an essential feature of the federal structure under the Constitution of India; (xxvii) under Article 309 of the Constitution of India, the service conditions of persons serving the Union can be governed by the Statute passed by the Parliament subject to other provisions of the Constitution of India; (xxviii) creation of All India Service is part of the Constitution of India and basic feature of the All India Service cannot be changed without amending the Constitution; (xxix) closing the option of deputation of IPS officers to the CAPFs of the UOI will amount to changing the basic structure of IPS as an All India Service; (xxx) CRPF Rules, 1955, (a) in Rule 103 provide that there shall be separate cadre for superior posts in the force, manned by Army or IPS or State Police Officers, direct recruits and local promotees; (b) Rule 105(1) provides that the post of Commandant of a battalion other than a signal Battalion or Principal CTC shall be filled by transfer on deputation from the rank of Lt. Col. in Army or IPS officers or State Police Officers holding post of Superintendent of Police or equivalent posts; (c) similar provision exists for posting for the post of Commandant and for the post of Assistant Commandant (2 IC); and,

(d) thus it is clear that provision for posting of IPS officers on deputation exists from very beginning and initially it was there even for posts lower than Commandant; (xxxi) IP/IPS officers are being posted in CRPF from as far back as 1941; the CRPF officers were first recruited in 1961; the deputation of IPS Officers is continuing since then and at no point of time the government has taken a stand to stop deputation of IPS Officers in CRPF; (xxxii) CRPF as an organisation has evolved over a period and has increased manifold and functional requirements; (xxxiii) with changing functional requirements, the organisational structure has also continuously evolved over the time; (xxxiv) new posts were created and also number and strength of IPS officers and Army Officers and CRPF Group 'A' Officers manning the higher posts also changed; (xxxv) new Rules were framed for these posts and the number of posts to be manned by respective services, are presently as per RRs framed in 2010; (xxxvi) the decision regarding the number of posts at different levels including the number of posts of IPS and Army/Ex-Army officers, lies in the domain of the executive policy and no single cadre of officer can direct the government to design any organisation in any particular manner; (xxxvii) in view of the recommendations of the 6th CPC, the Ministry of Finance vide Resolution dated 29th August 2008, approved that administrative ministries concerned will take an administrative view on the recommendations of the 6th CPC relating to deputation quota for IPS in Central Paramilitary Forces at the level of DIG and above; MHA decided that DIGs in various CAPFs have a functional role and hence the level of DIG is an operational post

whose retention in various CAPFs was functionally necessary; accordingly the matter relating to deputation quota of IPS cadre and Army Officers at the level of DIG was considered and revised vide OM dated 10th August 2009; (xxxviii) the OM dated 15th December 2009, though may have been a tool for ensuring uniform career progression for members of different civilian, non-uniformed OGAS, it cannot be applied to uniformed cadres who have been declared OGAS recently, because (a) there are two functional ranks in the organisational structural of CAPFs which have no parallel in civil/non-uniformed services - these are commandant and DIG; (b) no equivalent of DIG in terms of pay is available in the ranks of non-uniformed civil services and therefore it is not provided for in the OM dated 15th December 2009; (c) in civilian OGAS, the post of Deputy Secretary (DS) and Director perform similar functions and are interchangeable; the Director level is merely a non-functional upgradation from DS post, without being entrusted with any higher responsibilities; and, (d) if this OM is applied, the CAPF Officers will be promoted directly from 2 IC to IG, without having gone through the intervening ranks of Commandant and DIG; (xxxix) when the 6th CPC made its recommendations and pursuant to which OM dated 15th December 2009 was issued, the template was prescribed for promotional eligibility in civilian non-uniformed OGAS; this is not suitable for uniformed forces like the CAPFs which have different organisational structure due to functional requirements; if this is made the promotional criteria, functional ranks of Commandant and DIG will not be there anymore and which will adversely impact the

organisational structure and functional efficacy of the CAPFs and adversely affect the security scenario; therefore OM dated 15th December 2009, cannot be applied to CAPFs since the structure of the CAPFs has been designed based on functional requirement of these forces; (xl) there are several examples of deviations amongst OGAS; various conditions are service specific and differ from each other and also deviate from certain provisions of DoPT OMs; (xli) it is the provision of RRs/Service Rules, which are the guiding factor for method of filling up the posts and this method has to be decided by Cadre Controlling Authority in consultation with the DoPT; illustrations of deviations from DoPT OMs are detailed; (xlii) it would not be proper to compare the issue of RPF with other CAPFs; (a) RPF being Railway Service is exempted from the purview of DoPT for conditions like recruitment, seniority and promotion, in terms of Allocation of Business Rules; (b) Service Rules/RRs of Railway services are directly referred to UPSC by MoR; but in other Central Services, there is a requirement of consultation of DoPT; (c) even prior to grant of OGAS status to RPF, the provisions of RRs of various posts of RPF up to SAG level were formulated in such a manner they should be filled by promotion, failing which by deputation; however in other CAPFs, there was always a provision of earmarking of percentage of post for IPS/Ex-Servicemen; (d) on structural aspects also, RPF differs from other CAPFs as in the MoR there is a Railway Board, as apex body for decision making and which has provision for members from various Railway Services; RPF and IRMS do not have any post at member level and they are

reporting through other members of Railway Board, either through CRB or Member (Staff), both in the apex scale; hence in railway service, there are apex level officers reporting to apex level, based on functional requirement, due to concept of Railway Board; (e) in RPF, the SAG level posts are mainly in zones, where they are reporting to GMs which are exclusively for other railway services; (f) in CAPFs, there is requirement of SAG level officer even in Headquarter and even they are heading certain Units at field formations, unlike Railways where Zones are headed by GMs and divisions by DRMs and the GM and DRM posts are held by other Railway services than RPF; and, (g) in RPF, there are no posts on the level of 2 IC; (xliii) the 6th CPC did not recommend the grant of OGAS status to the CAPFs and the demand of IPS officers to do away with the rank of DIG, was also rejected by 6th CPC; rather the 6th CPC recommended merger of the post of Additional DIG in CAPFs with the post of DIG; (xliv) there are two functional ranks in the organisational structure of CAPFs, which have no parallel with civilian non-uniformed service, viz. the posts of Commandant and DIG; (xlv) there cannot be identical cadre structure for each service and DoPT also has not recommended so ever; as per the Monograph also, functional requirement has to be the key criteria and needs to be assessed objectively; there should be thus a serious attempt to anticipate organisations role five years down the line and to correlate with the changing needs of the service/cadre; (xlvi) in CAPFs, there are officers recruited to various cadres like General Duty, Engineering, Medical, Ministerial, etc. and there is no uniform/common cadre; alongwith officers there are other cadres

including Group 'C'; every cadre plays an important functional role in the organization; (xlvii) decision regarding number of posts at different levels including number of posts of IPS and Army/Ex-Army Officers, lies in the domain of Executive Policy making and it is the prerogative of the Executive to decide the organizational structure as per functional necessity, need for lateral introduction of talent, constitutional provisions, etc.; (xlviii) RRs of Group 'A' General Duty Officers were finalized during the year 2010 and the CR of Group 'A' General Duty Officers was finalized during the year 2016, wherein no additional rank was introduced except creation/abolition of certain number of posts; since in the CR of 2016, the organisational structure remained the same and only number of posts changed, the RRs were not amended; (xlix) IPS officers are inducted into CAPFs, after an intensive process of empanelment; (l) IPS Officers who otherwise get promoted to higher ranks and hold higher posts in their respective cadres may not get empanelled to hold post of equivalent rank in CAPFs; (li) Para 4 of MHA Rules for deputation of IAS officers mentions the process of empanelment; (lii) the present vacancy situation in the posts reserved for IPS Officers is a dynamic situation, which keeps changing over a period of time and the organisational design need not be reviewed just because some posts are vacant at a particular point of time; and, (liii) present system of percentage of IPS officers is required from functional point of view and needs to be continued.

6. The petitioners, in the rejoinder have pleaded that, (i) **G.J. Singh** and **Harananda** supra lay down that CAPFs are an OGAS and accordingly the officers of CAPFs are entitled to grant of NFFU – the consequence of the said judgment is that the respondents ought to have conducted the CR of CAPFs as OGAS; (ii) however the respondents, in a deliberate and intentional manner did the CR of CAPFs as non-organised service; (iii) had the respondents undertaken the CR of CAPFs as OGAS, the respondents were duty bound to follow the various OMs issued by the DoPT and would have automatically fulfilled all the six attributes as mentioned by the respondents; (iv) the claim of the respondents that **G.J. Singh** and **Harananda** supra only directed the respondents to grant NFFU and not to amend the RRs is contrary to the record because once CAPF has been declared as an OGAS and the respondents had issued an order dated 12th July 2019 reiterating that CAPFs has been treated as an OGAS for CR the respondents were duty bound to conduct the CR of CAPFs treating them as an OGAS and any attribute which was not fulfilled, the respondents were duty bound to create the same while conducting the CR; (v) the claim of the respondents that in **G.J. Singh** and **Harananda** supra the petitioners had only pleaded for grant of OGAS status and not for injecting all attributes of OGAS, is not correct because the petitioners had specifically pleaded for grant of declaration of CAPFs as OGAS with all consequential benefits and once the Courts declared CAPFs as OGAS, as a consequence thereof all the attributes prescribed for OGAS were required to be fulfilled; (vi) pursuant to **G.J. Singh** and **Harananda** supra, the respondents

were under bounden duty to frame Service Rules for CAPFs in line with other OGAS as well as DoPT OM's dated 15th December 2009, 24th April 2009, 24th March 2009 and 8th May 2018; (vii) however the respondents have not substituted the RRs of CAPFs with the Service Rules; (viii) DoPT in its communication to MHA in 1996 had categorically stated that the CR is only undertaken in respect of OGAS; since the CR of CRPF had taken place in 1983 and 1991, MHA was asked to confirm if formal notification for OGAS had been issued or otherwise; (ix) MHA in its counter affidavit has wrongly pleaded that CR takes place alike for both OGAS as well as other services; MHA in the past had stated that cadre review of ITBP could not be undertaken since it was not considered OGAS like BSF and CISF; (x) cadre denotes the officers belonging to an organised service and the manner in which the cadre in an organisation needs to be harmonised for the functional needs with legitimate career expectation of its members; CR of an OGAS like CRPF cannot include the IPS officers as IPS has a different cadre and are governed by the Indian Police Service Cadre Rules, 1954; (xi) under the CRPF Act and the RRs of CRPF, the respondents have not identified any post as ex-cadre post except for 3 posts which are AIG (Legal), AD (Accounts) and Financial Advisor; thus all the posts in CRPF belong to the CRPF and do not belong to IPS; had the IPS officers been part of CRPF cadre, their service conditions would have been governed by CRPF Recruitment Rules for that particular post as there cannot be two sets of rules for the post within the same cadre; (xii) had the IPS officers been part of CRPF cadre, they too would have required 24 years of

service with 2 years in the rank of DIG with SHAPE 1 in annual medical examination, after clearing the pre-promotion course, to join CRPF in the rank of IG— however, this is not the case; (xiii) as per the principles of deputation, deputationist can join on deputation only when eligible officers are not available within the cadre; (xiv) as per DoPT instructions, whenever deputationist joins against cadre post, the Cadre Controlling Authority has to review said deputation and make efforts to encadre this post; however no such effort has been made by the respondents and on the contrary, six new posts for the IPS have been created despite the fact that CRPF has been declared as OGAS by the Courts; (xv) IPS officers are allotted specific State/UT cadre and do not belong to CRPF cadre; their CR is done by respective State cadre; (xvi) having created percentage quota of deputation in CAPFs, IPS officers are having multiple cadre and multiple cadre reviews – one in their own State cadre and other in CAPF, effectively resulting in creation of excess vacancies for IPS officers for promotion and which is the main reason for the posts lying vacant, both in States as well as in Centre, as admitted by the respondents in letter dated 26th November 2019, stating that large number of central deputation posts remain unutilised; it is for this reason only that the Central Government is undertaking an exercise to reduce the existing central deputation post from 1075 to 500 only; (xvii) DoPT, vide OM dated 24th March 2009 directed MHA and CAPFs to amend the RRs; (xviii) had the DoPT as well as Cadre Review Committee been informed that CAPF has been declared as OGAS, DoPT would have directed the MHA to amend the Rules of

CAPFs as per OM dated 15th December 2009; (xix) while the OM dated 15th December 2009, deals with OGAS, the OM dated 24th March 2009 relates to Central Group 'A' Services; (xx) thus, the entire CR done of CAPFs is contrary to the judgment of this Court; (xxi) MHA filed SLP against the decision of this Court pertaining to RPF, even though MoR is the Cadre Controlling Authority of RPF and MHA has no *locus standi* whatsoever; (xxii) in the case of RPF, the respondents have implemented the judgments in ***G.J. Singh*** and ***Harananda*** supra in the right manner, by amending the RRs in line with the DoPT OM as applicable to other OGAS; however, the respondents are denying to do the same in respect of CAPFs; (xxiii) CAPFs are not functionally different from civilian OGAS; (xxiv) the GOI has only declared OGAS status and has not divided the same into civilian OGAS and CAPFs OGAS and thus the respondents are not entitled to make a distinction; (xxv) Article 14 of the Constitution of India requires uniform criteria to be maintained; (xxvi) once the Courts in the earlier round of judgments have granted OGAS status to the CAPFs, all consequential benefits follow and consequential steps of changing the Recruitment Rules of CAPFs, to bring them in conformity with the attributes detailed in OM dated 15th December 2009 of OGAS, were required to be taken; (xxvii) the respondents have themselves understood the judgment so for RPF but not for CAPFs; (xxviii) OM dated 15th December 2009 was issued in pursuance to the directions given by 6th CPC for bringing uniformity amongst all OGAS; the respondents cannot add something to the OMs, which has not been provided; (xxix) the 6th CPC as well as

DoPT were aware that the various organised services have different functions with different structure; despite the same, OM dated 15th December 2009 was issued and the respondents cannot now take the stand that the said OM will not be applicable to CAPFs, despite the fact they have been declared as OGAS; (xxx) the respondents, in affidavit filed in W.P.(C) No.947/2019 titled ***Jaspreet Singh Kohli Vs. Union of India*** informed the Court that they had initially amended the RRs for the post of Additional Director General in CRPF vide Notification dated 28th December 2011, and in terms of OM dated 15th December 2009; however subsequently it was opined that the RRs based on DoPT OM dated 15th December 2009 could not be applied in the case of CRPF as it was not an OGAS and accordingly the Recruitment Rules were amended vide Notification dated 9th March 2012; however now that CRPF has been declared as OGAS, the respondents cannot take a stand that OM dated 15th December 2009 can still not be applied; (xxxi) the conduct of the respondents of maintaining status quo amounts to contempt of the orders of this Court and the Supreme Court and is in disobedience of the decision of the Union Cabinet; (xxxii) the issue pertaining to federal structure was raised by the respondents before the Supreme Court also and was disposed of on merits; (xxxiii) right to central deputation does not essentially mean a right to deputation to CAPFs; in several other organised services such as IRS, IC and CES, Customs etc., IAS officers were coming on deputation at higher rank posts; however, over a period of time, all such posts were encadred and the same has not resulted in any dilution of the federal structure; in fact the federal

structure will get more strengthened if IPS officers with a Central Ministry as their Cadre Controlling Authority work in the States i.e. in their parent cadre; in fact majority of work of Central Government is discharged by the central services; (xxxiv) it has not been stated how stopping the IPS deputation in CAPFs will affect the federal structure; (xxxv) there is no distinction, as pleaded in the counter affidavit, between uniformed OGAS and civilian OGAS; and, (xxxvi) earlier the stand of the respondents was that RPF cannot be treated any differently from CRPF; however, now the respondents are arguing to the contrary.

7. That completes the narration of pleadings in W.P.(C) No.13014/2019, with reference to which all the counsels argued.

8. As far as W.P.(C) No.12052/2019, pleadings of which also were requested to be seen, the same is filed by 72 Group 'A' Officers of ITBP Executive Cadre. We have gone through the contents of the said writ petition and the counter affidavit thereto and to none of the paragraphs of which any specific attention was drawn during the hearing and we find the contents thereof to be identical to that of the pleadings in W.P.(C) No.13014/2019 and do not feel the need to repeat.

9. With reference to the other writ petitions, suffice it to state (i) W.P.(C) No.12751/2019 has been filed by 332 Group 'A' Officers of CISF Executive Cadre; (ii) W.P.(C) No.12875/2019 has been filed by the 80 Group 'A' Officers of BSF Executive Cadre; and (iii) W.P.(C)

No.13588/2019 has been filed by four Group 'A' Officers of SSB, General Duty Cadre.

10. Counsel for the petitioners in all the petitions, in his opening arguments contended that, (i) the representations of the petitioners for grant of NFFU to the members of CAPFs, treating CAPFs as OGAS, were rejected, resulting in refusal of NFFU to CAPFs; (ii) **G.J. Singh** supra and other connected petitions were filed challenging the said rejection and seeking declaration of CAPFs as OGAS and consequential grant of NFFU to CAPFs; (iii) during the pendency of these petitions an attempt was made to change the structure of CAPFs so that CAPFs do not qualify as OGAS, but on application of the petitioners therein, the said attempt was stayed and the writ petitions were amended; (iv) ultimately, this Court declared CAPFs as OGAS and entitled to NFFU; (v) the respondents preferred an SLP but there was no stay of the judgment of the High Court during the pendency of the matter before the Supreme Court; (vi) during the pendency of the matter before the Supreme Court, CR of CAPFs was undertaken but the Cadre Officers of CAPFs were denied participation in cadre review, though as per the procedure for Cadre Review, were required to be heard; on the contrary it was represented to the Cadre Review Committee that CAPFs were not OGAS; (vii) the Cabinet directed MHA to amend the RRs of CAPFs after CR, in line with the OM dated 24th March 2009; (viii) the CR carried out is bad, because no opportunity of being heard was granted to the petitioners and because of having been carried out without treating CAPFs as OGAS; (ix) as

an OGAS, all posts in CAPFs up to rank of IG are to be filled up from Cadre Officers only and there has to be no deputation till the post of IG; (x) Supreme Court dismissed the SLP/appeal preferred by the petitioners on 5th February 2019; (xi) the Cadre Review carried out without taking into account the judgment in **G.J. Singh** supra, for the reason of the appeal thereagainst then pending in the Supreme Court, in view of the judgment in **Harananda** supra dismissing the appeal, is liable to be set aside; (xii) though IPS Officers were not a party to **G.J. Singh** and connected petitions earlier filed, but filed SLP claiming that their rights were affected by the judgments declaring CAPFs as OGAS – the said SLP was also dismissed; however on application by GOI, clarification was issued; (xiii) after **Harananda** supra also, no steps have been taken for declaring CAPFs as OGAS or to amend the RRs and Service Rules of CAPFs; (xiv) DoPT, vide orders dated 4th July 2009 and 20th November 2009 declared RPF and CAPFs as OGAS; and, (xv) DoPT again, vide order dated 12th July 2019 declared CAPFs as OGAS in respect of CR also.

11. Per contra, the Additional Solicitor General appearing for the respondents contended that, (i) no mandamus for amendment of the RRs, having the effect of directing the Legislature to legislate, can be issued; (ii) the defence of the respondents in the petitions earlier filed by the petitioners seeking NFFU was, that CAPFs did not fulfil the six attributes of OGAS; (iii) however this Court in **G.J. Singh** supra held that to be entitled to NFFU it was not necessary that all the six attributes were met/satisfied; (iv) in other OGAS, filling up of all the

posts till SAG level by promotion is not by virtue of OM dated 20th November 2019 but by virtue of their respective RRs or Service Rules, meaning that the exclusion of deputationist therein till SAG level was/is not by OM dated 20th November 2019; no new rights are created by the said OM; (v) per contra in the case of CAPFs, as per the RRs some posts up to the SAG level are to be filled up by deputation and the OM dated 20th November 2019 cannot change the same; (vi) the petitioners, after in the earlier petitions stating, that for declaration of CAPFs as OGAS it was not necessary that there has to be exclusion of deputationists till SAG level, cannot now turn around and contend so; (vii) 6th CPC was not interfering with the structure or the constitution of any service; (viii) no parity can be drawn with RPF, for the reasons set out in the counter affidavit; (ix) CR has nothing to do with whether the posts are to be filled up by promotion or deputation; the same is subject matter of the RRs; (x) the petitioners, by these petitions are seeking restructuring of CAPFs, thereby interfering with Legislative function; (xi) no mandamus to Legislature or body authorised to undertake legislative function can be issued, to legislate in a particular manner; (xii) the decision to amend the Rules does not obliterate the Rules, till they are amended; (xiii) the OM of DoPT only directed the CAPFs to revisit the RRs and Union of India has filed a status report on 29th June 2020 stating that after revisiting the RRs, no need to amend the same was felt; (xiv) OMs are executive orders and are not mandatory; (xv) that the respondents have already complied with the judgments in the earlier petitions granting NFFU benefit to members of the CAPFs; (xvi) the

RRs can be amended without CR also; (xvii) each of the CAPFs has its own legislation; and, (xviii) reliance was placed on *Ajaya Kumar Das Vs. State of Orissa* (2011) 11 SCC 136 (Para 14); *Suresh Chand Gautam Vs. State of Uttar Pradesh* (2016) 11 SCC 113 (Para 48); and *Census Commissioner Vs. R. Krishnamurthy* (2015) 2 SCC 796 (Para 25).

12. Finding the counter affidavits filed to be on behalf of MHA only and further finding from the tenor of the arguments of the petitioners, of the petitioners seeking implementation of OM's of DoPT, it was enquired from the learned ASG, whether he had instructions from the DoPT as well. The ASG, on the next date stated that DoPT also stands by the arguments made by him and the stand of MHA in the counter affidavit and further stated that an email to the said effect alongwith DoPT Note dated 14th January 2020, had been received by him in this regard. On enquiry, it was also stated that though during CR, the Cadre Review Committee can also suggest the need for amendment of RRs/Service Rules but the said recommendation is to be considered; it was also informed that the next Cadre Review due will be after 5 years from the earlier Cadre Review in the year 2016.

13. The senior counsel/counsel for IPS Officers who have filed applications for impleadment/intervention in these petitions and whose applications, though had not been allowed but were assured of hearing, contended that, (a) neither *G.J. Singh* nor *Harananda* supra interfere with the right of offices of the IPS to deputation at various

posts in CAPFs; (b) these petitions are designed only to stop deputation of IPS Officers to various posts in CAPFs, though the said relief is couched in the prayers made in the petitions; (c) the petitioners in fact are challenging the RRs to each of the CAPFs but have not made it obvious; (d) deputation to various posts in CAPFs has been in vogue since beginning; (e) the petitioners have couched the prayers in these petitions, for seeking CR, after amending the RRs and by claiming the same to be required to be done in accordance with ***G.J. Singh*** and ***Harananda*** supra; however neither ***G.J. Singh*** nor ***Harananda*** supra direct so; (f) no writ of mandamus can be issued, without there being a corresponding duty (though judgments were referred to in this regard but the need to burden this judgment therewith is not felt); however no duty in the respondents to do what is sought in the petitions i.e. amend the RRs, has been disclosed; (g) the provision for deputation in CAPFs has been made considering the operational and functional requirements of CAPFs; the petitioners, for their own benefit, want to overwrite that; (h) the petitioners first pursued ***G.J. Singh*** and ***Harananda*** supra by contending that CAPFs were not required to fulfil all the six attributes of OGAS as prescribed in the DoPT OM dated 20th November, 2009; however after obtaining the relief on the said basis, the petitioners are now seeking implementation of the attributes in DoPT OM dated 20th November, 2009; (i) the petitioners have obtained stay in these petitions against filling up of the posts of DIGs/IGs in CAPFs, without placing before this Court the order dated 18th October, 2019 of the Supreme Court in M.A. No.774/2019 (filed by the IPS Officers for clarification of the

judgment in ***Harananda*** supra to the extent that the right of the IPS Officers for deputation, in terms of RRs in various CAPFs were not impacted merely by grant of OGAS status to CAPFs), clarifying that the controversy before the Court in the appeal was with respect to grant of OGAS status to CAPFs; there was no issue before the Court with respect to any of the rights of the IPS Officers for deputation in CAPFs; no observations were made by the Supreme Court in judgment in ***Harananda*** supra with respect to right of IPS Officers for deputation in terms of the RRs if any in various CAPFs; therefore when the said controversy was not there, there is no question of any clarification, as was sought in the application; even otherwise, in paragraph 26 of the judgment of which clarification was sought, it was specifically mentioned that by granting OGAS status to CAPFs, the right of IPS Officers, if any for their appointment on deputation on some of the posts, cannot be said to be affected; nevertheless, it was observed that while deciding the appeals, the Supreme Court had made no observation with respect to the right of the IPS Officers for deputation, in terms of the RRs if any, as the same was not the controversy and/or issue before the Court and the judgment in ***Harananda*** supra should be construed with respect to grant of OGAS status only; (j) Supreme Court in ***Harananda*** supra has expressly held that fulfilment of all attributes listed in DoPT OM dated 20th November, 2009 was not necessary, for members of CAPFs to be entitled to NFFU; (k) though from paragraph 4 of the judgment of this Court in ***G.J. Singh*** supra, it is evident that the petitioners also sought amendment of RRs of CAPFs but this Court did not grant the said

relief—the said relief having not been granted earlier, this second round of petitions claiming the same relief are not maintainable and the issue of RRs is *res judicata*; (l) even otherwise, this Court in **G.J. Singh** supra, without hearing the IPS Officers and who were not before this Court then could not have passed any order / judgment effecting the rights of IPS Officers; (m) the recruitment and posting of IPS Officers are as per Central and State Governments regime; (n) in these sets of petitions also reliefs of CR pursuant to amendment of RRs are claimed only on the premise of **G.J. Singh** and **Harananda** supra and independently of that the only ground urged is by seeking parity with RPF; however RPF, in the judgment in **Harananda** supra, was separately dealt, having already been recognised as OGAS; (o) in **G.J. Singh** and **Harananda** supra, only the claim of members of CAPFs qua NFFU was in consideration; (p) Supreme Court also in **Harananda** supra has noted the difference between RPF and CAPFs; (q) the RRs in CAPFs are different from RRs in RPF; in RPF, there is no provision for deputation to Group ‘A’ posts; and, (r) per contra, the Rules applicable to IPS Officers provide for 40% deputation quota; if it was to be held that the deputation posts are not available, the same will be contrary to the Rules pertaining to IPS Officers.

14. The senior counsel/counsel for the petitioners, in rejoinder contended that, (i) the IPS lobby does not want to let go of deputation posts in CAPFs; (ii) however most of the deputation posts in field areas, to which IPS Officers claim entitlement, remain unoccupied; (iii) though RPF is not under MHA but under MoR but SLP against

the judgment of this Court in ***G.J. Singh*** and connected petitions including by officers of RPF was filed by MHA and not by MoR; (iv) that it is the MHA controlled by IAS and IPS Officers who is opposing these petitions; inspite of the query of this Court during the hearing, no affidavit on behalf of DoPT has been filed; (v) the grievance of members of CAPFs in the earlier round was, non-declaration of CAPFs as OGAS and consequent denial of NFFU—both these reliefs were granted in ***G.J. Singh*** and ***Harananda*** supra; (vi) for implementation of ***G.J. Singh*** and ***Harananda*** supra, RRs/Rules pertaining to CAPFs have to be amended but which is not being done; (vii) once OGAS status has been conferred to CAPFs, all the recommendations of the 6th CPC qua OGAS have to be complied with and non-compliance thereof is resulting in the members of CAPFs being denied application thereof; (viii) once the recommendations of the 6th CPC were accepted and DoPT OM dated 20th November, 2009 was issued, Service Rules/RRs giving other benefits were required to be amended (ix) DoPT OM dated 24th November, 2009 and 15th December, 2009 are also to the said effect; (x) the RRs of CRPF provide for SAG after 24 years instead of after 17 years as should be for OGAS; (xi) the normal CR was in progress at the time of pronouncement of ***G.J. Singh*** supra; however the Cadre Review Committee was not informed of the said judgment and therefore the Cadre Review Committee was misled into forming an opinion that there was no need for amendment of RRs of CAPFs; (xii) vide DoPT OM dated 24th March, 2009 also, Service Rules/RRs were required to be amended pursuant to the recommendations of the 6th

CPC; (xiii) though the DoPT OM dated 24th March, 2009 in annexure thereto prescribes the minimum qualifying service for promotion but the RRs of CAPFs are not in consonance therewith; (xiv) CR is also concerned with RRs; (xv) DoPT OM dated 12th July, 2019 also conveys the approval for grant of OGAS status to CAPFs and consequential benefit of NFFU and NFSG; (xvi) the DoPT OM dated 26th March, 2019 also, on the subject of implementation of judgment in *Harananda* supra requested the MHA to send detailed modalities on all issues/directions covered in the judgment, enabling implementation thereof; (xvii) the confidential document at page 723 of the paper book, being a “Note dated 16th August, 2019 for Cabinet” on the subject of “Cadre Review in respect of Group ‘A’ General Duty (Executive) Cadre and Non-GD Cadre Officers of Indo Tibetan Border Police (ITBP)” shows that the Cadre Review Committee was misled that ITBP was not an OGAS; (xviii) as per the understanding of DoPT, RRs of CAPFs have to be amended; (xix) the officers of IPS do not want to go to districts, where the CAPFs function but only want to occupy the positions of Inspector General, Additional Director General and Director General; (xx) the Monograph on CR of Group ‘A’ Central Services also provides CR to be concerned with Cadre Structure and the minimum time at each cadre level; the cadre restructuring can be done only by amending the RRs and not otherwise; (xxi) though during the CR, the members of the CAPFs ought to have been granted an opportunity of hearing but were not called upon and were represented only by IPS Officers manning the higher posts in CAPFs; (xxii) even for grant of NFFU benefit fully to

the members of CAPFs, amendment of RRs is required; (xxiii) even vide DoPT OM dated 8th May, 2018 on the subject of “Review of Recruitment Rules / Service Rules”, it was prescribed that RRs should be reviewed once in five years with a view to effecting such changes as are necessary, to bring them in conformity with the changed position and that since RRs are statutory in nature, it is imperative that RRs/Service Rules are updated in accordance with DoPT instructions from time to time; (xxiv) DoPT, vide OM dated 15th December, 2019 directed amendment of RRs/Service Rules for bringing uniformity in eligibility criteria across OGAS, for promotions and the same has also not been complied with; as per the said OM, the eligibility requirement for promotion to SAG level is eight years regular service in JAG level or 17 years regular service in Group ‘A’ posts and out of which at least four years regular service should be in the JAG level post; however if deputation to the extent of 50% at SAG level, as existing continues, there are very few posts at SAG level, resulting in the promotion to SAG level being much beyond the prescribed 17 years regular service in Group ‘A’ posts; (xxv) that the documents pertaining to ITBP circulated during the course of hearing, themselves, while setting out the growth history of ITBP record that in all the CAPFs, CR had got delayed and that there was a need for amendment of RRs; (xxvi) as per the Transaction of Business Rules of GOI, the proposal for amendment of the RRs has to be mooted by the concerned department and which in this case is MHA; (xxvii) the OMs and directions of DoPT are to be complied by MHA; (xxviii) originally, all the Group ‘A’ posts in CAPFs were filled up by IPS

Officers; however once the cadre in each of the CAPFs matured, the deputation of IPS Officers to the cadre posts in CAPFs has to go; (xxix) MHA, vide its communication dated 26th November, 2019 annexed to the rejoinder filed by the petitioners, has itself noted that most of the State Governments were not sparing their IPS Officers to serve in Central deputation and on going through the data of officers on Central deputation throughout the country, it was observed that then 428 IPS officers were working on Central deputation against the authorised strength of 1075 officers and resultantly a large number of Central Deputation Reserve Posts remain unutilised and that the Central Government was undertaking an exercise to reduce the existing Central Deputation Reserve Quota, by 40% of the Senior Duty Posts i.e. from 1075 posts to about 500 posts; (xxx) **G.J. Singh** supra not only granted NFFU but granted all consequential reliefs and for this reason only the UOI had preferred SLP to the Supreme Court and the judgment of the Supreme Court notices arguments of the Additional Solicitor General that NFFU could not be granted to CAPFs because in CAPFs all posts upto SAG level were not filled up by promotion, meaning that grant of NFFU would require change therein; (xxxi) therefore once CAPFs were declared as OGAS, all consequences have to be followed; (xxxii) IPS Officers do not have any right to deputation in CAPFs; and, (xxxiii) mandamus is not being claimed to amend the RRs but seeking implementation of the DoPT OM's which are binding on MHA and in the context of challenging the CR-2016.

15. The ASG further submitted that, (a) ***G.J. Singh and Harananda*** supra having declared CAPFs as OGAS qua NFFU only, there is no need to amend the RRs for other things besides for ensuring benefit of NFFU; (b) that CAPFs are not All India Service but creatures of the Parliament; (c) just like Police is a State Service, CAPFs are functional oriented service; (d) neither in ***G.J. Singh*** nor in ***Harananda*** supra is there any declaration of CAPFs as OGAS for anything except NFFU; (e) DoPT has instructed him to state that counter affidavit filed by MHA may also be treated as on behalf of DoPT; (f) it is for the Cadre Controlling Authority to assess/review the amendment of RRs and no mandamus to do anything in a particular way can be issued; (g) the whole purpose of these petitions is to stop deputation in CAPFs; (h) ***G.J. Singh and Harananda*** supra have been fully complied with by grant of NFFU benefit and qua which no grievance has been urged; (i) no error with respect to the CR exercise has been pointed out—the same were carried out as per the DoPT OM dated 14th December, 2010 which does not recognise any difference between OGAS or Non-OGAS; (j) the objective of CR is to amend the structure based on functional requirements; (k) the Cadre Reviewing Authority has to work within the four corners of RRs and if feels any changes required are not possible without amendment of RRs, has to only suggest amendment of RRs; and, (l) MHA is best aware of the functional requirements and has decided that the existing cadre structure of CAPFs should continue.

16. We have considered the controversy. Though the narration of

pleadings and contentions is lengthy but the controversy, according to us, is very narrow, not deserving the length which the narrative of pleadings and contentions has taken.

17. The controversy has its birth in the Report of the 6th CPC, of March, 2008. During the hearing we wondered, whether the Pay Commission could be concerned with the RRs or Cadre Structures of any service of the Central Government and whether as a consequence of acceptance of any recommendation of the Pay Commission with respect to pays/emoluments, amendment of RRs and Cadre Structure has to necessarily follow. The nomenclature “Pay Commission” does not suggest that the same would be concerned with the structure of any service or organisation. In response to our said query, the learned ASG circulated the Resolution dated 5th October, 2006 of the GOI to appoint the 6th CPC. We have also perused the Report of the 6th CPC available on the internet. A reading of the terms of reference of the 6th CPC shows the same to be fairly wide, encompassing recommendations for structural changes in organisations as CAPFs. The 6th CPC under the Chairmanship of Justice B.N. Srikrishna also in its Report records that unlike the terms of reference of earlier Pay Commissions, the reference of the 6th CPC envisaged transforming the Central Government Organisations into modern entities dedicated to the service of the people and that it was for the first time that a Central Pay Commission had been asked to look into the measures that would improve the delivery mechanism and to harmonise the functioning of the Central Government Organisations with the

demands of the emerging global economic scenario. The Report of the 6th CPC further records that the mandate of the 6th CPC was not only to evolve a proper pay package for the government employees but also to make recommendations rationalising the governmental structure, with emphasis on accountability, responsibility and assimilation of technology etc. However, the 6th CPC in its Report pursuant to reference aforesaid, in the Preface records that though it had received many memorandums from various associations, organisations and individuals, seeking review of specific cadres, but was refraining from entertaining specific CR and which in any case was required to be carried within an institutional framework and for conducting which an established procedure existed in the Government—while following the said procedure, the Cadre Structures may be reviewed in the light of recommendations made in the Report of the 6th CPC. It is thus clear that the 6th CPC, inspite of its wide mandate, did not carry out any CR and only recommended the next CR exercise to take into consideration its recommendations. It thus cannot be said that from the judgments in ***G.J. Singh*** and ***Harananda*** supra holding CAPFs to be OGAS to whom the benefit of NFFU was granted by the 6th CPC, it follows that any CR of CAPFs also has to follow.

18. A perusal of the Report of the 6th CPC in the context of NFFU shows, that in Chapter 3.3 titled “Central Services Group ‘A’” of the said Report, (a) in para 3.3.1, it was mentioned that Group ‘A’ Civil posts in the Central Government can be broadly categorised into two,

viz., those encadred in the Organised Group 'A' Central Services and posts in Group 'A' that are not part of any Organised Group 'A' Service, which are classified as General Civil Services (GCS) Group 'A'; while the Organised Civil Services are governed by their respective Service Rules, each GCS Group 'A' post has its own individual RRs which *inter alia* stipulate mode and method of recruitment; apart from the Organised Services and GCS Group 'A' posts, posts of the level of Deputy Secretary and above in the Central Secretariat are filled up through the Central Staffing Scheme managed by DoPT; (b) in para 3.3.2, it was noted that while the three All India Services namely IAS, IPS and Indian Forest Service (IFS) are common to the Centre and the States, the manpower for performing the functions of the Central Government at Group 'A' level is mainly provided by Organised Central Services and these services account for the bulk of the Group 'A' posts under the Central Government; (c) in para 3.3.3, it was noted that in Chapter 3.3, Organised Group 'A' Central Services were being taken up; (d) in para 3.3.4, it was noted that an Organised Group 'A' Central Service represents a group of posts belonging to a distinct functional area arranged in a hierarchical order and pyramidal manner representing different grades or levels of responsibility; these responsibilities increase with each senior level; (e) in para 3.3.6, it was noted that in the year 2000, the Government implemented the 5th CPC's Recommendation and increased the percentage of Non-Functional Selection Group (NFSG) posts from 15% to 30% of Senior Duty Posts; this has considerably reduced the time taken by officers of Organised Services in getting the NFSG; (f)

in para 3.3.7, it was noted that through the mechanism of CR, most Organised Group 'A' Services had also got more posts created at SAG and Higher Administrative Grade (HAG) levels; (g) in para 3.3.8, it was noted that inspite of implementation of the recommendations of the 5th CPC and the Cadre Reviews and restructurings undertaken in the previous ten years, most of the services still had a great degree of stagnation at SAG and HAG levels because of being organized in a pyramidal manner; promotions are based strictly on the availability of vacancies; therefore, career progression of Officers in a particular cadre greatly depends on the manner in which it is managed on a long-term basis; (h) in para 3.3.9, it was noted that in order to increase the number of such posts at the SAG and above level, the 6th CPC recommends that all the OGAS should consider decadring 20% posts in SAG and above, so that the Government has the option to select the most suitable personnel for some posts from any source; (i) in paras 3.3.10 and 3.3.11, the demands made by OGAS in the consultations held by 6th CPC were recorded and one of which demand was full parity with the IAS in terms of pay-scale and career progression; and, (j) in para 3.3.12, it was recorded that there was a conventional edge of two years between IAS and other All India Services /Central Group 'A' Services; though the 5th CPC had considered this issue and taken the view that the edge need not be disturbed; in practice, however, the gap of two years for posting to various grades in the Centre in form of empanelment of IAS officers and promotion for other Group 'A' Officers, had increased in respect of many OGAS and which was not justified;

OGAS had to be given their due, which means that the disparity, as far as appointment to various grades in Centre are concerned, should not exceed two years between IAS and Organised Central Group 'A' Services; the Government should accordingly consider batch-wise parity while empanelling and/or posting at Centre between respective batches of IAS and other OGAS with the gap being restricted to two years; whenever any IAS Officer of a particular batch is posted in the Centre to a particular grade carrying a specific grade pay in pay bands PB-3 or PB-4, grant of higher pay scale on non-functional basis for the officers belonging to batches of OGAS that are senior by two years or more should be given by the Government.

19. The aforesaid recommendations of the 6th CPC, accepted by the GOI, led to, DoPT receiving a number of clarifications about the attributes and definition of 'Organised Group 'A' Central Services' on whom the benefit of NFFU had been conferred; and, to many Service Associations filing proceedings in various Courts claiming the status of OGAS and the benefit of NFFU. DoPT, vide its OM dated 20th November, 2009, observing that the difference between an OGAS and other services / cadres had not been appreciated in true sense; and that the attributes of an OGAS were clearly laid down in the existing Monograph of cadre management, to remove any doubt, reiterated the attributes of OGAS as under:

“(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.15600-39100 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 Reserves, (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.

2. *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 one which is constituted consciously as such by the Cadre Controlling Authorities and such a service can be constituted only through the established procedures."*

20. The members of the CAPFs also represented that each of the CAPFs was also an OGAS and thus the members of CAPFs were entitled to the benefit of NFFU introduced pursuant to the Report of the 6th CPC. The said representations were rejected. This led to the filing of **G.J. Singh** supra and connected petitions and in the judgment whereof, forming the fulcrum of the arguments in opening of the counsel for the petitioners, it is recorded that, (a) though the reliefs claimed in the petitions were for grant of benefit of NFFU to the members of CAPFs but in some of the petitions other reliefs, of declaration of CAPFs as OGAS and of amendment of RRs were also claimed; (b) in the representations made by the petitioners, they had claimed a status corresponding to OGAS; (c) that the questions to be answered in the petitions were, "(i) what is NFFU?; (ii) what is 'Organised Group 'A' Services vis.-a-vis. 'Group 'A' Services'; (iii) whether the Government has recorded the petitioners as officers of 'Organised Group 'A' Services'; and, (iv) if yes, whether they would be entitled to NFFU?" (d) according to the petitioners, there is only Group 'A' Services and introduction of the word "Organised" was merely an innovation and that the expression "Organised

Group 'A' Services" had no sanction of law because the law only recognised the term 'Group 'A' Services' and that CAPFs were also Group 'A' Service; (e) it was further the argument of the petitioners that the requirement of "all the vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade" as laid down in DoPT OM dated 20th November, 2009, was merely an attribute or a characteristic and could not take away the recognition otherwise conferred on CAPFs as Group 'A' Service, since long and that the absence in CAPFs of "all the vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade" was merely a deviation within the meaning of para 2 of the OM dated 20th November, 2009; (f) it was the argument of the petitioners that deputationists come in certain posts in CAPFs against ex-cadre posts, as per own Cadre Rules and thus it could not be said that in CAPFs, all posts of the cadre of relevant CAPFs, upto SAG level were not filled up by promotion and that deputation was temporary and for mutual benefit of CAPFs and IPS and could not operate to disadvantage of CAPFs; (g) the Court, in the said petitions was concerned only with the entitlement of members of CAPFs to NFFU; (h) it was held that since CAPFs had always been treated as Group 'A' Service and the provision for deputation upto posts in SAG level, was only a deviation within the meaning of para 2 of OM dated 20th November, 2009 and did not disentitle CAPFs from NFFU; and, (i) it was ordered that benefit of NFFU granted under the 6th CPC was to be granted to members of CAPFs because CAPFs had always been treated as a Group 'A' Service. Accordingly, the writ petitions were allowed and the respondents were directed to "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 of this order”.

21. The ASG is thus right in his contentions as noted above with respect to **G.J. Singh** supra. This Court in **G.J. Singh** supra clearly did not go into the question of RRs of CAPFs or into the question of doing away with the deputation including upto SAG level in CAPFs or into the question of residency period at each post/rank of CAPFs. We may mention that the grievance of the petitioners in these petitions, in a nutshell is, with respect to, (i) filling up of vacancies upto SAG level in the CAPFs, besides by promotion, also by deputation; and, (ii) the residency period at each post in CAPFs i.e. the period before which eligibility for the next higher post does not mature, in CAPFs being more than the residency period in other Group ‘A’ Services. A reading of the judgment indeed does not show the parties to have raised any pleading or contentions also in this regard. Restructuring of the CAPFs as is argued now, to be the need of the hour, was not the subject matter of **G.J. Singh** supra. The judgment also does not declare CAPFs as OGAS but only declares that CAPFs in the past had been treated as a Group ‘A’ Service and the members of the CAPFs were thus entitled to NFFU. The judgment, even while allowing the petitions, only directs the respondents to issue requisite Notification granting benefit of NFFU as recommended by the 6th CPC, to the members of the CAPFs and does not direct any consequential steps to be taken for making the CAPFs compliant with all the attributes of OGAS listed in the DoPT OM dated 20th November, 2009.

22. The senior counsel / counsel for the petitioners are not right in

contending that once benefit of NFFU has been ordered to be granted to the members of CAPFs, treating them as OGAS, as a consequence thereof, MHA is required to or CAPFs are entitled to eliminate from the existing Rules and provisions governing CAPFs, the provisions for deputation in CAPFs till SAG level and to other changes in RRs. This is also so because the CAPFs, while claiming the relief of grant of NFFU, expressly contended that the differences as existed in CAPFs from the attributes listed in the OM dated 20th November, 2009 did not disentitle CAPFs from the benefit of NFFU. Having succeeded in the said argument, they cannot now as a consequence of the judgments supra, seek elimination of the differences. Members of the CAPFs, to the said extent, are found to be approbating and reprobating. However, if the members of the CAPFs are entitled to elimination of deputation and to changes in residency otherwise, they will be entitled to urge so as herein below provided.

23. The Supreme Court, in appeals against the judgment of this Court, in *Harananda* supra held that, (i) the issue in the appeals was non-grant of NFFU to members of CAPFs which the members of CAPFs were denied solely on the ground that CAPFs were not OGAS and were therefore not entitled to NFFU, as recommended by the 6th CPC; (ii) for considering the said issue, the objective of grant of NFFU, was required to be considered; (iii) the 6th CPC recommended NFFU to all Group 'A' Officers in various OGAS, to overcome the stagnation problem; the purpose of granting NFFU was to give relief to Group 'A' Officers facing the problem of stagnation, as fall back option, when regular promotions do not come owing to various factors; (iv) it was not in dispute that CAPFs were facing huge problems of

stagnation as promotions were not being granted as most of the promotional posts were filled in by deputation; on the other hand they were also being denied NFFU; (v) it was the case of the respondents that out of six attributes which as per DoPT OM dated 20th November, 2009 were required to be considered for treating and/or considering an organisation as OGAS, CAPFs did not satisfy attribute Nos.(iv) & (vi) of the DoPT OM dated 20th November, 2009 and also because the 6th CPC did not recommend grant of NFFU to CAPFs; (vi) however CAPFs, in various documents, were shown to be part of Central Group 'A' Services and once CAPFs had throughout, from 1986 onwards in the Monograph published by DoPT been part of Central Group 'A' Services, it was not open to the DoPT to not consider CAPFs as OGAS; (vii) the DoPT OM dated 20th November, 2019 specifically noted that there may be certain "minor deviations" from the attributes listed therein and that even when the listed criteria were fulfilled, the same will not automatically confer the status of an OGAS; thus, the High Court had rightly held that fulfilling/compliance of all the attributes should not be given too much weightage while deciding the status of CAPFs; (viii) it could not be said that CAPFs were not OGAS or not Group 'A' Central Services; (ix) the 6th CPC was not authorised to define "Organised Services" or to grant such status to any service; (x) the 6th CPC did not recommend NFFU to CAPFs because the Government, inspite of showing CAPFs as Group 'A' Central Services in all Monographs, must have represented to the 6th CPC that CAPFs are not Organised Group 'A' Central Services; (xi) CAPFs had also been granted the benefit of recommendations of the 4th CPC qua Central Group 'A' Services; (xii) thus, the High Court had rightly directed issuance of requisite Notification granting the benefits of NFFU as

recommended by the 6th CPC, to members of CAPFs also; and, (xiii) the rights, if any of IPS Officers for appointment on deputation to some of the posts in CAPFs could not be said to have been affected by the judgment of the High Court and merely because some of the posts in CAPFs are required to be filled in by deputation also, grant of OGAS status would not affect the IPS Officers.

24. From the judgment of the Supreme Court in *Harananda* supra also, we are unable to find any discussion or consideration on the aspect of the need for deputation at some posts in CAPFs or the qualifying term at each level of the cadre (called “residency” by the senior counsel/counsel for the petitioners).

25. We thus conclude that the judgments in *G.J. Singh* and *Harananda* supra are not concerned with elimination of deputation existing in CAPFs or with the term of residency at each post in the CAPFs.

26. It is also not as if *G.J. Singh* or *Harananda* supra direct any consequential steps also to be taken. *G.J. Singh* supra merely directed issuance of requisite Notification granting benefit of NFFU as recommended by the 6th CPC to the members of the CAPFs and Supreme Court merely dismissed the appeals preferred thereagainst. We are thus unable to agree, that as a consequence of or in compliance with the said judgments, anything else besides grant of NFFU, was required to be done.

27. Be that as it may, even if any consequential steps are required to be taken, the said consequential steps cannot include making the RRs of CAPFs compliant with the attributes (iv) & (vi) of the DoPT OM dated 20th November, 2009. We reiterate that this is so because of the members of

CAPFs themselves in the earlier round of writ petitions having argued that notwithstanding CAPFs not fulfilling the said attributes, they were entitled to the benefit of NFFU. Rather, it was then the contention of the members of CAPFs that the Rules for filling up of certain posts in CAPFs by deputation, were necessary considering the functional requirements of CAPFs. It was not the case of the members of the CAPFs then that the provisions existing in the RRs of CAPFs, qua deputation and residency, were bad or required to be eliminated. The matter is also placed beyond any pale of doubt, by the judgment of the Supreme Court expressly clarifying that right of IPS Officers to deputation in CAPFs were not under consideration as well as by the clarificatory order dated 18th October, 2019 of the Supreme Court. In the light thereof, it is today not open to the members of CAPFs to contend that they are claiming reliefs in these petitions consequential to the judgments in ***G.J. Singh*** and ***Harananda*** supra.

28. In fact at one stage of hearing, we had enquired from the senior counsel/counsel for the petitioners that if according to the petitioners what they were seeking in these petitions had already been granted to them vide the judgments in ***G.J. Singh*** and ***Harananda*** supra, how were these petitions maintainable and the remedy, if any of the petitioners was to seek enforcement of the said judgments. In response thereto, it was answered that though the reliefs claimed of elimination of deputation and reduction of residency follow as a consequence of the earlier judgments but since a CR had taken place and the DoPT had issued various OMs, enforcement whereof is claimed, a substantive petition challenging the CR and

compliance of the OM's was necessary.

29. Having not found the petitioners entitled to the reliefs claimed on the basis of the judgments in the earlier round of litigation, we had during the hearing enquired from the senior counsel/counsel for the petitioners, whether any case for elimination of deputation upto SAG level and reduction of residency period in CAPFs independently of the judgments was made out. Though the senior counsel/counsel for the petitioners answered in the affirmative but could not show that any challenge in the petitions is made to the RRs or any other provision providing for deputation upto SAG level in CAPFs or providing for the existing residency period at each rank to have been made. Similarly, though during the hearing it was contended that with the passage of time and increasing strength of CAPFs, the provisions for deputation are required to be changed but no foundation even therefor is found to have been laid in the pleadings. No case of discrimination vis.-a-vis. other Group 'A' Services also is made out in the pleadings save for vis.-a-vis. RPF. We may however clarify that in the rejoinder to the counter affidavit, in para 6(xiv) in response to the plethora of reasons stated in the counter affidavit in favour of deputation, some pleas have been taken by the petitioners but the same cannot take the place of pleading in the petition to claim the relief thereon. We thus clarify that though the respondents in their counter affidavit have set out numerous reasons justifying deputation in CAPFs but the petitioners having not claimed the relief in these petitions besides on the basis of judgments in *G.J. Singh* and *Harananda* supra and on the basis of DoPT OM's, we are not adjudicating the same.

30. We find no merit however in the contentions of the respondents that

since in some of the petitions in the earlier round of writ petitions the reliefs of amendment of the RRs was claimed and the same having not been granted, these petitions *inter alia* seeking amendment of RRs are barred by *res judicata*. As aforesaid, the consideration by the Courts in **G.J. Singh** and **Harananda** supra was confined to NFFU only and the Courts having not considered the need if any for amendment of RRs pertaining to CAPFs, it cannot be said that the said relief if now were to be claimed, is barred by *res judicata*. The said relief, had it been claimed in these petitions, would not have been barred by *res judicata*. However the petitioners in these petitions have claimed the said relief only on the basis of judgments in **G.J. Singh** and **Harananda** supra and on which aspect we do not find in favour of the petitioners.

31. That brings us to the ground urged, of discrimination of CRPF with RPF. The case in this regard is that though officers of RPF also had claimed similar relief as officers of CAPFs in the earlier round of writ petitions and the officers of RPF were granted the same relief as the officers of the CAPFs by this Court, while RRs of RPF have been amended, those of CAPFs have not been amended. We have already noticed above the response of the respondents thereto.

32. We find Supreme Court in **Harananda** supra, while dealing with the appeals against the judgment of this Court insofar as in favour of RPF officers to have noted/held (i) that DoPT vide its OM dated 20th November, 2003 had already granted *in principle* approval for constituting RPF as OGAS; (ii) that the judgment of this Court insofar as in favour of IPS Officers was a consent order, after counsel for the parties had agreed that

this Court could dispose of the matter by passing necessary directions; (iii) that it was never disputed by any of that respondents that the OM dated 20th November, 2003 was *in principle* decision of DoPT for constitution of RPF as OGAS and the High Court had only issued directions for implementation thereof; and, (iv) the appeal against the consent order was thus not maintainable. It thus emerges that as far as RPF was concerned, as distinct from CAPFs, there was already an *in principle* approval for declaring RPF as OGAS, much prior to the pronouncement of judgment in G.J. Singh and connected petitions. It is borne out from the pleas of the respondents in their counter affidavit that though officers of RPF also had filed petitions claiming NFFU but it cannot be said that RPF is at par with CAPFs, for CAPFs to be entitled to equality before law with RPF. The said differences have not been controverted. The two are under different Ministries, governed by different Rules and have different structure. No case of discrimination or of CAPF being meted out in equal treatment also is thus made out.

33. We now proceed to examine, whether the DoPT OM's dated 20th November, 2009, 15th December, 2009, 24th March, 2009, 24th April, 2009 or 8th May, 2018 mandate amendment of RRs of CAPFs, to bring them in compliance with the six attributes, particularly attributes (iv) & (vi) of the OM dated 20th November, 2009.

34. We have already noted above the context in which the OM dated 20th November, 2009 was issued i.e. in response to the claims of many Service Associations, of OGAS status, to be entitled to NFFU benefit granted by the 6th CPC. The said OM was not for amendment of the RRs of any service, as

indeed could not in law have been. Moreover, as per the said OM read literally, CAPFs did not qualify as OGAS, as admitted by members of the CAPFs also in the earlier round of writ petitions. However in ***G.J. Singh*** and ***Harananda*** supra, members of the CAPFs have been held entitled to the benefit of NFFU. We have already held above that the RRs of the CAPFs are not required to be amended as a consequence of the said judgments.

35. The DoPT OM dated 15th December, 2009 was in reference to the earlier DoPT OM dated 24th March, 2009, issuing the guidelines for amendment of Service Rules/RRs for incorporating the changes arising out of the 6th CPC recommendations and notices that the 6th CPC had also recommended bringing uniformity in eligibility criteria across all OGAS for promotions and the OM directs initiation of action for amendment of Service Rules qua eligibility criteria for promotion to SAG level and HAG level. However Supreme Court in its judgment in ***Harananda*** supra has noticed that the 6th CPC did not recommend NFFU for CAPFs because GOI represented to the 6th CPC that CAPFs were not OGAS. It follows that the recommendations of the 6th CPC, for compliance of which the DoPT OMs dated 24th March, 2009 and 15th December, 2009 were issued, did not cover CAPFs, though CAPFs have now by judgments in ***G.J. Singh*** and ***Harananda*** supra been treated as OGAS, but expressly qua NFFU only and from neither of the said judgments, we are able to decipher any directive of declaring CAPFs as OGAS for all purposes whatsoever. Moreover till the date of the OM dated 24th March, 2009 and 15th December, 2009, ***G.J. Singh*** supra had not been pronounced and in ***G.J. Singh*** supra no relief with respect to OM dated 15th December, 2009 was granted.

36. The DoPT OM dated 24th April, 2009 was also on the subject of NFFU to OGAS and in furtherance of the 6th CPC recommendations for maintenance of not more than two years difference between IAS and other Group 'A' services.

37. That leaves the DoPT OM dated 8th May, 2018. The same was in reference to the earlier OM dated 31st December, 2010 *inter alia* requiring that the RRs be reviewed once in five years, with a view to effecting such changes as have become necessary to bring the RRs in conformity with the changed position and laments that many Ministries/Departments were not undertaking the said exercise and directs the Ministries/Departments to immediately undertake the exercise for review of existing RRs/Service Rules which had not been amended in the preceding five years. The respondents have not pleaded that in the preceding five years any such exercise has been carried out with respect to the RRs of CAPFs. However further on this aspect, herein below.

38. As far as the challenge to the CR is concerned, we do not feel the need to delve into the said question because (I) CR, as aforesaid, is required to be carried out every five years; and, (II) the last CR was in the year 2016 and the next CR is due in the year 2021 i.e. after six months from now. We are of the view that by adjudicating the challenge to the CR on merits and even if finding any merit therein, no effective purpose will be served in issuing any consequential directions when the next CR is due, as aforesaid, barely after few months. Adjudicating the challenge on merits to CR would only keep the parties embroiled in litigation, without any benefit. We are thus of the view that all that needs to be done is to issue directions ensuring

that the next CR due in the year 2021 is conducted. Even if the last CR of any of the CAPFs was done post 2016 and five years have not elapsed since the last CR, the CR of the said CAPFs be also done in the year 2021, as the issues urged in these petitions are common to all the CAPFs and it is expedient that CR of all the CAPFs is done at the same time. Once, the petitioners are not found entitled to the reliefs claimed on the basis of judgments in *G.J. Singh* and *Harananda* supra, according to the petitioners also, it is the exercise of CR only which can go into the questions as arising from the counter affidavit of the respondents qua the demand of petitioners for elimination of deputation till SAG level from the CAPFs and for reducing the residency period at each rank in the CAPFs, to enable the members of the CAPFs to reap timely benefit of the recommendations of the 6th CPC qua NFFU.

39. Not only so, as aforesaid, as per the DoPT OM's dated 31st December, 2010 and 8th May, 2018, the RRs are required to be reviewed every five years. Nothing has been placed before us to show that there was any review of the RRs of CAPFs by the MHA in the preceding five years. A direction therefor thus also needs to be issued.

40. We find merit in the contention of the senior counsel/counsel for the petitioners, that during the CR, the Cadre Officers of CAPFs are also required to be compulsorily given an opportunity of hearing and be heard. Even if IPS Officers are occupying any posts in CAPFs, grant of opportunity of hearing to them is not the same as grant of opportunity to the Cadre Officers of CAPFs. It is only the Cadre Officers of CAPFs who have grievances qua stagnation, residency etc. and the IPS Officers, even if

manning some posts in CAPFs, are not aggrieved therefrom.

41. We thus dispose of these petitions:

- (I) By permitting the members of each Central Armed Police Force to, if so desire, make comprehensive representation(s) to the Ministry of Home Affairs, for amendment of the respective Recruitment Rules of each Central Armed Police Force including qua Cadre Structure, Residency, Deputation etc.
- (II) By directing the Ministry of Home Affairs to, in compliance of the DoPT OM's dated 31st December, 2010 and 8th May, 2018, immediately undertake the exercise for review of existing Recruitment Rules of each Central Armed Police Force, also taking into consideration the representation(s), if any, received from the members of the Central Armed Police Forces and after giving them an opportunity of being heard and to place its decision in this regard before the Department of Personnel and Training.
- (III) By directing the Department of Personnel and Training to, immediately on receipt of decision from the Ministry of Home Affairs qua review of Recruitment Rules of respective Central Armed Police Forces, take necessary action thereon;
- (IV) By permitting the petitioners to make comprehensive representation(s) qua each Central Armed Police Force to the Department of Personnel and Training, qua the Cadre Review due in the year 2021 including as to the terms of reference if any thereof.

(V) By directing the Department of Personnel and Training to ensure timely commencement of Cadre Review exercise due in the year 2021 and to, in the terms of reference qua Cadre Review for Central Armed Police Forces, consider incorporating the representation(s), if any, made by the members of each Central Armed Police Force and the decision of the Ministry of Home Affairs qua the review of Recruitment Rules of each Central Armed Police Force.

(VI) By directing that the entire exercise aforesaid be concluded on or before 30th June, 2021.

42. Needless to state, the interim orders directing the respondents to inform this Court before making any promotions to the post of DIG/IG in CAPFs, stands vacated.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 27, 2020
‘pkb/bs’