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

% **Date of decision: 14th December, 2020**

+ **W.P. (C) 13599/2019**

ARUN CHHIBBER AND ANR.Petitioners

Through: Mr. Ankur Chhibber, Mr.
Anshuman Mehrotra, Mr. Harsh
Dhankar and Mr. Nikunj Arora,
Advocates

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Arun Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The two petitioners, having retired from the rank of Inspector General in the respondents No. 2 and 3 Central Reserve Police Force (CRPF) on 30th June, 2007 and 30th August, 2008 respectively, have filed this petition, (i) impugning the order dated 1st November, 2019 of the respondents CRPF, to the extent excluding the names of the petitioners from the list of those granted the benefit of the Non-functional Financial Upgradation (NFFU) for the Higher Administrative Grade (HAG) level; (ii) impugning the order/Office Memorandum (OM) dated 30th September, 2019, to the extent it states that NFFU is to be allowed in

HAG, provided it is a level in the promotional hierarchy of the Central Armed Police Force (CAPF) concerned; (iii) seeking mandamus, directing the respondents to amend the Recruitment Rules/Service Rules for Group 'A' officers of CRPF and to make it in line with the Department of Personnel and Training (DoPT) OMs dated 24th April, 2009, 15th December, 2009, 18th January, 2011 and 8th July, 2011; (iv) in the alternative, pending the amendment of the Recruitment Rules, consider the petitioners for grant of benefit of NFFU w.e.f. 31st March, 2006 in HAG, by following the eligibility criteria provided in OM dated 15th December, 2009 and as has been done with respect to personnel in the Ministry of Mines, vide letter dated 2nd December, 2010; and, (v) seeking mandamus, directing the respondents to grant the benefit of NFFU to the petitioners w.e.f. 31st March, 2006, along with arrears, interest and all consequential benefits.

2. The petition was entertained and notice thereof issued. Counter affidavits and rejoinders have been filed.

3. In view of the manner in which the counsels have argued, need is not felt, to detail herein the pleadings of the parties.

4. The counsel for the petitioners has argued, that (i) both the petitioners joined the respondents CRPF, in the month of December of the year 1971, as directly recruited Assistant Commandants and were promoted to the rank of Inspector General, in the year 2004; (ii) the petitioner No.1 Arun Chhibber superannuated on 30th June, 2007 and the petitioner No.2 Suresh Chander Sharma superannuated on 30th August, 2008; (iii) with effect from the publication of the report of the 6th Central Pay Commission, the benefit of NFFU was made available to all the

organized group 'A' services (OGAS); (iv) however, the respondents did not treat the CAPFs, including CRPF, as OGAS; (v) vide **G.J.Singh Vs. Union of India** 2015 SCC OnLine Del 11803 (DB), it was held that the CAPFs are also OGAS; (vi) vide judgment in **Union of India Vs. Harananda** (2019) 14 SCC 126, the appeals preferred to the Supreme Court against the judgment in **G.J.Singh** supra, were dismissed; (vii) that the Government of India, Ministry of Personnel, vide OM dated 12th July, 2019, implemented the judgments aforesaid, by grant of NFFU to the CAPFs, with effect from 1st January, 2006; (viii) in pursuance thereto, the respondents CRPF, vide impugned order dated 1st November, 2019 granted the benefit of NFFU in HAG pay scale to the officers mentioned therein but in which, the names of the petitioners were not included; (ix) the names of the petitioners were excluded from order dated 1st November 2019 on the basis of impugned OM dated 30th September, 2019 of Ministry of Home Affairs (MHA), which, while granting the benefit of NFFU to group 'A' executive cadre officers of CAPFs in pursuance to the OM dated 4th July, 2019 (the counsel for the petitioners states that the OM dated 30th September 2019 was also in pursuance to the OM dated 12th July, 2019), granted the benefit to the officers who satisfied the criteria mentioned therein; (x) in the criteria so laid down in impugned OM dated 30th September, 2019, it was inter-alia stated that "one year relaxation in the residency period prescribed under the Recruitment Rules, to the group 'A' executive cadre is agreed to, subject to the following conditions:-" and one of the conditions mentioned therein was "as per guidelines, NFFU is to be allowed in HAG level, provided it is a level in the promotional hierarchy of the CAPF

concerned”; (xi) the aforesaid criteria was/is contrary to the criteria as contained in the OM dated 25th September, 2009 which provided that “the new HAG scheme of Rs. 67,000-79000/- has been introduced in replacement of the pre-revised S-30 scheme. It is clarified that consequent upon the carving out of the new HAG scale, non-functional upgradation under the scheme will be available to particular grade pays in PB-3 and PB-4 and also to the HAG scale. The SAG officers can be allowed non-functional upgradation to the HAG grade only where there is such a grade in the service”; (xii) that though the OM dated 25th September, 2009 permitted grant of NFFU to the Senior Administrative Grade (SAG) officers, of the HAG grade, only where HAG grade was available in the service but in the OM dated 30th September, 2019, the condition of availability of HAG grade in the service was changed to the promotional hierarchy to the HAG level being available in the service; (xiii) that the criteria laid down in OM dated 25th September, 2009 could not have been so changed in the OM dated 30th September, 2019 and the said change is illegal; (xiv) that the petitioners have been denied the NFFU to HAG scale, reasoning that there was no HAG level in the promotional hierarchy of CRPF; (xv) however, the said promotional level of HAG i.e. of Additional Director General (ADG), was available since 25th May, 1987, when the MHA conveyed the sanction to Director General of CRPF, of creation of one post of ADG in the scale of pay of Rs.7300-100-7600/- with effect from the dates the said posts were filled up and on the condition that two posts of Deputy Superintendent of Police in CRPF would be kept in abeyance till the post of ADG continues; (xvi) that the scale of pay of Rs. 7300-100-7600/- corresponds to the S-30 pay

scale and thus there was a level of promotion to the S-30 grade pay available in CRPF, since 1987; (xvii) that though the said post of ADG created in 1987, till the framing of the Recruitment Rules in October, 2008, was meant to be filled by deputation only and was not available to the cadre officers, but since the word used in the OM dated 25th September, 2009 is 'service', the same would include from whichever source i.e. from the cadre or by deputation; and, (xviii) reference in this regard is made to Section 3 clause 2 of the DoPT Monograph of 9th December, 2010 on Cadre Review of Group 'A' Central Services. It is argued, that the petitioners fulfilled the criteria of residency period and total length of service, for being entitled to the benefit of NFFU.

5. The counsel for the respondents has contended that since the Recruitment Rules of the CRPF were amended in October, 2008 only i.e. after both the petitioners had superannuated and it is only w.e.f. October, 2008 that one post of Additional Director General in CRPF has become available to cadre officers, the respondents CRPF has been giving the benefit to all those fulfilling the criteria of residency period and total length of service thereafter, but since before October, 2008, there was no post of ADG for those from the cadre and it was only to be filled on deputation, the petitioners have not been granted the said benefit. The counsel for the respondents has however been unable to controvert that the use of the word 'service' in OM dated 25th September, 2009 would include the cadre officers as the petitioners also, irrespective of the post being available before 2008 only to deputationists. On enquiry, the counsel for the respondents also affirms that even though under the Recruitment Rules w.e.f. October, 2008, only one post of ADG is

available for cadre officers but all those fulfilling the criteria of residency period and total length of service have been given the benefit.

6. The counsel for the respondents has however also drawn attention to the OM dated 24th April, 2009 issued consequent upon the acceptance of the recommendations of the 6th Pay Commission qua grant of NFFU, inter-alia providing that the grant of higher scale would be governed by the terms and conditions given in annexure thereto and to the clause in the annexure thereto, inter-alia providing that “all the prescribed eligibility criteria and promotional norms including “benchmark” for up-gradation to a particular grade pay would have to be met at the time of screening for grant of higher pay scale under these orders.”. It is contended that since till October, 2008, there was no eligibility criteria for promotion of the cadre officers to the rank of Additional Director General, the petitioners cannot be said to have met the eligibility criteria and norms for promotion to the HAG level of Additional Director General.

7. However, it is not the argument of the respondents that the petitioners did not meet any of the eligibility criteria laid down in the Recruitment Rules amended in October, 2008 or that the eligibility criteria for deputationists to be appointed as Additional Director General in CRPF were not met by the petitioners. Once it is so and the petitioners are found to meet the eligibility criteria of three years regular service in the SAG or 25 years regular service in group ‘A’ post and of which at least one year regular service should be in SAG, as found in OM dated 15th December, 2009 for promotion to HAG level, and both of which criteria, it is not the case of the respondents that the petitioners did not

satisfy, we are of the view that the petitioners are entitled to the benefit of NFFU w.e.f. 31st March, 2006 in accordance with OM dated 21st May, 2009 *inter-alia* providing that since the 1975 batch of IAS officers had been posted/empaneled as Additional Secretary w.e.f. 31st March, 2006 and thus batch of 1973 and earlier of organized Group 'A' service are to be considered for NFFU; it is contended that thus the petitioners who are of 1971 batch, would be entitled to the NFFU benefit from 31st March, 2006 in the HAG grade.

8. The petition is thus allowed to the aforesaid extent. The respondents are directed to, within twelve weeks, grant NFFU to the petitioners in the HAG scale, with effect from 31st March, 2006 and to also re-compute the pension and other benefits payable to the petitioners as a consequence thereof and to, within the said time, also pay the arrears of salary, pension and other benefits, so found due on recomputation.

9. If the arrears are not paid within 12 weeks as aforesaid, the same shall also incur interest @ 8% p.a.

10. The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

**DECEMBER 14, 2020
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