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

Date of decision: 18th August, 2020

+ **W.P. (C) 5381/2020**

NEERAJ KUMAR AND ORS.Petitioners

Through: Mr. A.K. Bhardwaj and Mr.
Shivanshu Bhardwaj, Advocates

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. D.S. Mahendru and Mr.
Kavindra Gill, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER
18.08.2020

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. Appln.19388/2020 (Exemption from filing typed copies of the Annexures) and C.M. Appln.19389/2020 (Exemption from attestation of the accompanying affidavits)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The applications are disposed of.

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3. The 46 personnel of the respondent No. 3 Border Security Force (BSF) have filed this petition seeking the following reliefs:-

A. *Issue an appropriate writ/direction to respondents to read down the DoP&T OM dated 6th June, 2000, to the effect that the benefits of NFSG is extended to OGAS officers of BSF General Duty Cadre w.e.f. 06.06.2000, but on 1st January of the 14th year following the year of examination on the basis of which the members of the service were recruited in the entry grade i.e. Assistant Commandant, disregarding, inter alia, the following: -*

- i. *Restriction of holding the JAG post;*
- ii. *Limitation of extending the NFSG only to the number of officer's equivalent to the posts authorized in JAG;*

and

- iii. *Ceiling of 30% of SDPs be removed.*

B. *Pass an order granting the Petitioners (OGAS Officers of BSF General Duty Cadre) NFSG from the 1st of January of the 14th year from the year following the year of examination on the basis of which they were recruited in the entry grade;*

4. It is the contention of the petitioners, (i) that the 4th Central Pay Commission (CPC) extended the benefit of Non-Functional Selection Grade (NFSG) to Group 'A' Services; (ii) that pursuant to the judgment of this Court in ***G.J. Singh Vs. Union of India***

2015 SCC OnLine Del 11803, upheld in *Union of India Vs. Harananda* (2019) 14 SCC 126, the BSF was also treated as Organised Group 'A' Services (OGASs) and the personnel of BSF became entitled to NFSG; (iii) that though the impugned Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) dated 6th June, 2000 relating to grant of NFSG provides for the grant of the said benefit after 14 years of service and on compliance of certain other conditions and such benefit vis-à-vis other Group 'A' Services, of which examples have been pleaded in the petition, is being granted immediately after the said 14 years, but in BSF, the personnel are not becoming entitled to the benefit, in spite of 19-20 years of service, owing to acute stagnation in BSF; (iv) that thus the objective of the recommendation of the CPC and the OM of DoP&T for grant of NFSG is being defeated by the condition therein of holding a Junior Administrative Grade (JAG) post and owing to the ceiling placed, of 30% of the Senior Duty posts, on the personnel entitled to NFSG; (v) though the eligibility prescribed for JAG is of 10 years, but the personnel of the BSF are getting JAG only after 19-20 years; (vi) thus, the purpose of NFSG, of addressing stagnation, is being defeated; (vii) thus, the OM dated 6th June, 2000 has to be read down, to exclude the said condition and with the exclusion whereof, the purpose of grant of NFSG *qua* BSF shall be served; (viii) though the Government has relaxed certain conditions of the said OM vis-à-vis other Services, but not for BSF; and, (ix) that similar issue raised by personnel of CRPF by way of W.P.(C) 3445

of 2020 came up before this Court on 10th June, 2020, when notice thereof has been issued for 14th September 2020.

5. We have informed the counsel for the petitioners that though from a reading of the petition, our sympathies are with the petitioners, but enquired, how, within the legal framework, we can grant the relief as claimed.

6. The petitioners, while on the one hand seek the benefit of DoP&T O.M. dated 6th June, 2000, on the other hand are seeking to split up the said O.M. and wanting to accept some part of it and reject some part of it. To us, it *prima facie* appears that the reliefs sought, of deletion of certain conditions for grant of NFSG, do not fall within the ambit of the concept of “reading down”.

7. We have enquired from the counsel for the petitioners, whether not the same is a matter of policy and since according to the petitioners, the conditions have already been relaxed for some other Services, as per exigency thereof, whether not the remedy of the petitioners is before the governmental authorities only.

8. Attention of the counsel for the petitioners has been drawn to our judgment in ***Tarun Kumar Banjaree Vs. Union of India*** 2020 SCC OnLine Del 859 where, while declining the reliefs claimed by members of Central Armed Police Forces (CAPFs) as a consequence of being declared OGAS, we have directed the Central Government to consider the representations preferred by them.

9. The counsel for the respondents appearing on advance notice states that the remedy of the petitioners is by way of making a representation to the Central Government. It is contended that no representation whatsoever has been made claiming the reliefs as are claimed in this petition or highlighting the grievances, as are urged in this petition. With respect to W.P.(C) 3445/2020, it is contended that the controversy therein is different from as raised in the present petition.

10. The counsel for the petitioners, without prejudice to the rights and contentions of the petitioners, states that in view of what has been observed by the Court, the petitioners would be satisfied if the direction is issued to the respondents to treat this writ petition as a representation of the petitioners and to, after hearing the representatives of the petitioners, either grant the reliefs as are claimed or if not inclined to grant the relief, give reasons in writing therefor.

11. Considering the nature of the grievances, which have *prima facie* merit therein, we are of the view that the request of the counsel for the petitioners is reasonable.

12. We therefore direct the respondents to consider the writ petition as a representation of the petitioners and to, on or before 30th November, 2020, after giving an opportunity of hearing/s to the representatives of the petitioners, limited to not more than three of the petitioners, take a decision thereon, in writing, and if the

reliefs as sought by the petitioners, or any of the reliefs are not granted, to give reasons therefor in writing to the petitioners, within the said time.

13. The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

AUGUST 18, 2020
pkb/s