



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

Judgment reserved on: 07.09.2022.

% **Judgment delivered on: 22.09.2022.**

+ **W.P.(C) 6459/2015**

V.K. TANDON & ORS Petitioners

Through: Mr. A. K. Aggarwal, Advocate

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Dev P. Bhardwaj, Advocate with
Ms. Anubha Bhardwaj, Ms. Ankita
Gautam, Mr. Sarthak Anand,
Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner before this Court have filed present Petition being aggrieved by the order dated 14.01.2015 passed in OA No. 3728/2013 passed by the Central Administrative Tribunal (“CAT”), by which the CAT has declined the prayer for grant of non-functional upgradation in Pay Band-4 (Senior Administrative Grade in the Pay Band of Rs. 37,400 – 67,000 + Rs. 10,000/- Grade Pay.



2. The facts of the case reveal that the Petitioners who are either serving employees or who have attained the age of superannuation became members of Central Power Engineering (Group A Service) through a process of selection conducted by Union Public Service Commission during the Years 1977 to 1984.

3. It is undisputed fact that all the Petitioners at the relevant point of time when the OA was preferred were placed in the Junior Administrative Grade (JAG) carrying Pay Band IV (Rs. 37,400 – 67,000) with Rs. 8,700/- as Grade Pay, and they were posted as Director/ Superintendent Engineering.

4. The facts further reveal that service conditions of the Petitioners are governed under the Rules known as Central Power Engineering (Group-A) Service Rules, 2005, and based upon the recommendations of the 6th Pay Commission, the Government of India vide Resolution dated 29.08.2008 has revised the pay structure and overall service conditions of all Central Government Employees including the Petitioners with effect from 01.01.2006. An Office Memorandum was issued on 29.08.2008. Relevant extract of the Office Memorandum is reproduced as under:

“(III) Pay scales of Central Services Group ‘A’

Sl. No.	Recommendations of the Sixth Pay Decision of the Government Commission
(i)	Central Services Group ‘A’ Grade Pay Rs. 5400 in PB-3 (Rs. Accepted 15600-39100) for the pre-revised pay



scale of Rs. 8000/-13500.

Grade Pay Rs.6100 in PB-3 for the pre-revised pay scale of Rs. 10000-15200/. Grade Pay modified at Rs. 6600.

Grade Pay Rs. 6600 in PB-3 for the pre-revised pay scale of Rs. 12000-16500. Grade Pay modified to Rs. 7600.

Grade Pay Rs. 7600 in PB-3 for the pre-revised pay scale of Rs. 14300-18300. Grade Pay modified to Rs. 8700 and placed in PB-4. PB-4 modified to Rs. 37400-67000.

Grade Pay Rs. 9000 in PB-4 for the pre-revised pay scale of Rs. 18400-22400. Grade Pay modified to Rs. 10000

Grade Pay Rs. 11000 in PB-4 for the pre-revised pay scale of Rs. 22400-24500. Grade Pay modified to Rs. 12000

Grade Pay of Rs. 13000 in PB-4 for the pre-revised pay scales of Rs. 22400-26000 and Rs. 24050-26000. A new pay scale of Rs. 75500- (annual increment @ 3%) – 80000 designated as HAG+ carved out of PB-4

Apex Scale of Rs. 80000(fixed) Accepted

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 to the officers belonging to batches of organized Group A services that are senior by Accepted. This will also be applicable to the Indian Police Service and the Indian Foreign Service in their respective State cadres for which the relevant cadre controlling authorities will issue the orders.



	two years or more should be given by the Government. Eligibility criteria prescribed for Accepted. promotion to Senior Administrative Grade in various organized group A services should be uniform.
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5. The Government of India notified Non-Functional Upgradation (NFU) for Group A Officers of timescale basis, and the non-functional upgradation was made applicable with a retrospective effect i.e. with effect from 01.01.2006.

6. All the Cadre Controlling Ministries and the Departments were required to amend Service Rules to incorporate the provisions for grant of NFU vide Office Memorandum dated 24.04.2009 providing for the eligibility criteria for Senior Administrative Grade promotion.

7. The Petitioners contention is that various Ministries and the Departments except, the Ministry of Power amended their Recruitment Rules, and the Petitioners were deprived of their legitimate right of financial upgradation.

8. The Petitioners, in those circumstances, prayed for the following reliefs before the CAT:

“a) Direct the Respondent no.1 Ministry of Power to discharge its statutory function to put in place the Service (Amendment) Rules from 1.1.2006 to 3.7.2012 to inter alia incorporate the NFU Mandate, and to lay down procedure for



granting NFU consistent with NFU Mandate ie. Government of India Resolution dated 29.8.2008.

b) Direct the Respondent No.1 Ministry of Power to retrospectively grant NFU to the Applicants based on their batch seniority and with effect from the commensurate dates specified in OM dated 1.7.2010.

c) Direct the Respondent No.1, Ministry of Power, to make payment to the Applicants, of all the consequential financial benefits so accruing to them, including those related to the pension and other terminal benefits, as and where applicable.”

9. The CAT has dismissed the Original Application and Paragraph 12 to Paragraph 20 of the order passed by the CAT reads as under:

“12. We have carefully examined the contents of the pleadings and such documents that have been adduced by the parties. We have also patiently listened to the arguments advanced by their respective counsel and on the basis thereof, we find that the following issues need to be resolved in order to arrive at a satisfactory conclusion in this OA:

- (i) Whether fulfillment of promotion criteria is prerequisite eligibility under the NFU Scheme?*
- (ii) Whether the qualification of field experience has been introduced only to deny the grant of NFU to the applicants and is against Rules?*
- (iii) Whether the action of the respondents has been discriminatory to the applicants in any manner whatsoever?*

13. In so far as the first issue is concerned, we have to look to the body of the Scheme itself. The OM of respondent no.3 dated 24.4.2009 contains the Scheme and has also appended as Annexure-A the terms and conditions for grant of higher scale



on non functional basis to officers of Organized Group 'A' Services. Clause 2 of the OM states that the grant of higher scale would be governed by the terms and conditions given in Annexure-I, which provides that the financial upgradation will be a purely non- functional upgradation, personal to the officer and it would not bestow any right to the officer to claim promotion or deputation benefits based on non-functional upgradation in such a manner. The next Clause states 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.

14. Clause 8 states that as and when the normal vacancies arise in the grade, the officer will be considered for regular promotions as per normal DPC guidelines based on the provisions of the recruitment rules. UPSC will be consulted whenever the rules provide for the same. However, at the time of promotion, pay in the grade will not be fixed again for officers, who have been granted upgradation under these orders. It is further provided that non functional up-gradation is a fall back option only to be exercised in such cases where officers of a particular Service have not been granted promotion to a particular grade in normal course according to the due procedures.

15. In view of such clear enunciation in the guidelines and circulars issued by the respondent no.3, the issue is not in doubt that the promotion norms have to be applied in non functional upgradation. Even if the grant of benefit of financial upgradation has been made purely personal to the officers, it remains a fact that upgradation is being given to the higher grade. Provisions for Screening Committee have also been made. This implies that all promotional norms are applicable



and such officers, who do not fulfill the norms, are to be screened out. This does not leave the issue in any form of doubt, which is accordingly decided against the applicants.

*16. Insofar as the second issue is concerned, we take note of the fact that provisions of NFU were made applicable only vide the order dated 24.4.2009. Prior to that, it was not applicable. The Central Power Engineering (Group 'A') Services Rules, 2005 were notified on 21.04.2005 when the NFU Scheme was not in existence. Therefore, the applicants cannot turn around and say that the Clause of field experience has been introduced to deny NFU to them. It is a regular part of the promotion process. Moreover, we also take note of the fact that the services exist for delivery of certain deliverables and not otherwise. The Government has full right to take policy measures and bring about such structural changes as deemed fit in the Services. This stands supported by decisions of the Hon'ble Apex Court in **Maharashtra State Board of Secondary and Higher Secondary Education & Anrs. Vs. Paritosh Bhupesh Kurmarsheth, etc.**, (1984)4 SCC 27, **Bhushan Uttam Khare Vs. The DEAN, BJ Medical College and Ors.** (1992)2 SCC 220, **State of Rajasthan & Ors. Vs. Lata Raun** 2002)6 SCC 252, **Union of India & Anr. Vs. S.K. Goel** (2007) 14 SC 641, **Dr. Kamal Chauhan Vs. Union of India** (OA No. 1918/2012) and **H.R. Bangia Vs. Union of India** (OA No. 1653/2012), to mention a few.*

17. Insofar as the third issue is concerne, the respondents have provided a case by case analysis of all the applicants as to how they would not fulfill the eligibility, as under:-



Sl No	Name	DoB	Jan at Year	JTS	STS	JAG	Field Experience			Date of Retirement	NFU to SAG	Date of NFU granted (vide CBA's O/o No.5/4/2012-Adm.J dated 12.08.2013)
							Date of completion of field experience	Whether completed field experience	Field			
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	V.K. Tandon	21.11.1946	1978	24.8.1978	24.2.1983	24.9.1998	-	NO	-	30.11.2006	NO	-
2.	K.B. Bhatnagar	01.03.1946	1977	16.07.1977	10.02.1983	25.09.1998	-	NO	-	28.02.2006	NO	-
3.	P.S. Matharu	26.06.1947	1978	30.12.1978	22.12.1984	11.11.2006	-	NO	-	30.06.2007	NO	-
4.	Brajraj Poddar	02.06.1949	1978	21.02.1979	22.12.1984	13.11.2001	-	NO	-	30.06.2009	NO	-
5.	Aditya Kumar	22.06.1947	1978	01.01.1979	01.06.1985	15.11.2001	-	NO	-	30.06.2007	NO	-
6.	S.K. Thakur	27.19.53	1978	3.11.1978	1.5.1984	7.8.2001	6.4.2010	Yes	Geo Thermal	31.07.2013	Yes	1.4.2011
7.	Mangal Singh	4.7.1953	1980	24.11.1983	27.07.1988	16.06.2003	May, 2009	Yes	NTPC	31.07.2013	Yes	1.4.2010
8.	Rajinder Prasad	23.2.1950	1977	25.7.1977	10.2.1983	24.9.1998	31.5.2007	Yes	NRP C	28.2.2010	Yes	1.4.2008
9.	Jagdish K. Khatri	8.6.1951	1978	16.9.1978	27.1.1984	8.9.1999	7.6.2008	Yes	ERP C and Thapana	30.6.2011	Yes	1.4.2009
10.	S.K. Kaul	15.1.1952	1978	10.1.1979	16.3.1984	24.9.1998	26.6.2007	Yes	WAP COS	31.1.2012	Yes	1.4.2008
11.	R.K. Rastogi	6.4.1991	1977	29.10.1977	17.2.1983	24.9.1998	25.3.2008	Yes	Chukla and Geo Thermal	30.4.2011	Yes	1.4.2009
12.	B.K. Jain	28.06.1952	1978	12.10.1978	24.4.1983	24.9.1998	30.9.2005	Yes	NRP C	30.06.2012	Yes	1.4.2006
13.	Ajay Kumar Jain	26.6.1955	1980	31.12.1980	14.3.1990	28.12.2004	13.07.2010	Yes	NER PC	-	Yes	1.4.2911
14.	K.K. Arora	28.4.1958	1980	2.12.1980	14.3.1990	28.12.2004	20.07.2010	Yes	NRP C	-	Yes	1.4.2011
15.	P.D. Shrivastava	15.2.1960	1984	1.5.1985	14.3.1990	28.12.2004	3.11.2011	Yes	NER PC	-	Yes	1.4.2012
16.	P.S. Mhaske	02.04.1961	1983	10.05.1984	18.11.1988	9.12.2003	22.06.2008	Yes	WRP C & NRP C	-	Yes	1.4.2009
17.	S.K. Sharma	1.5.1961	1983	11.06.1983	28.6.1991	8.12.2005	10.1.2007	Yes	NER EB	-	Yes	1.4.2009
18.	Sharma Shweta Thakur	28.12.1956	1982	27.10.1984	22.06.1990	2.12.2005	21.2.2013	Yes by 21.02.2013	HET D	-	No	-

The officers from Sl. No. 1 to 5 could not be granted NFU to SAG as they did not possess the required mandatory field experience as per the RRS.

The officers from Sl. No. 6 to 17 were found eligible for grant of NFU to SAG and were granted accordingly.



The officers at Sl. No. 18 is deemed to have completed the required experience on 21.02.2013 as per MoP's Letter No. A-32013/2/2011-Adm.I dated 21.02.2013. He will be considered for grant of NFU to SAG against the penal year 2014-15.

18. It clearly emerges from perusal of the above Chart that cases of the applicants have been dealt strictly on the basis of their individual merit. We do not find here any departure from the criteria laid down and, hence, there is no discrimination or inaccurate application of mind.

19. In view of the afore considerations, we conclude that grant of NFU is contingent to employees fulfilling all the conditions prescribed for promotion and Screening Committee has been provided to prevent ineligible persons from getting the Grade. It is part promotion in the sense that the next higher grade is being given. The Government circular dated 24.04.2009 is self-contained in this regard. We have also taken note of the fact that the provisions for field experience has been introduced in the year 2005, much prior to the promulgation of the Scheme of NFU vide the OM of respondent no.3 dated 24.04.2009. We are also satisfied that there has been in-depth examination of claim of each of the applicant on issues.

20. In conclusion, we find that meeting the criteria for promotion prescribed is an essential pre-requisite for grant of NFU. The respondents have not exhibited even a hint of mala fides in providing for field experience; and the cases of the applicants have been dealt with individually by the respondents whereby they have been granted NFU as per their eligibility. Therefore, we find the OA devoid of merit and the same is accordingly dismissed. There shall be no order as to costs. ”



10. The aforesaid order passed by the CAT reveals that the CAT has taken into account that a large number of Officers were granted NFU for the period with effect from 01.01.2006 to 02.06.2012 as the Office Memorandum dated 24.04.2009 provided for grant of upgradation to an Officer who is stagnating on a post, and who could not be promoted to the next higher post. The CAT has also taken into account the Central Power Engineering (Group-A) Service Rules, 2005 and Schedule II, Part A of the said Service Rules reads as under:

*“SCHEDULE II
(See Rule 7(2) and 8)
PART-A*

Method of Recruitment, field of promotion and the field of selection for deputation (including short term contract) for appointment to the duty posts included in the Central Power Engineering (Group A) Service.

<i>SL. No.</i>	<i>Grade</i>	<i>Method of recruitment</i>	<i>Field of promotion</i>	<i>Field of selection for deputation (including short term contract)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>1.</i>	<i>Senior Administrative Grade</i>	<i>By Promotion failing which by deputation (including short-term contract)</i>	<i>Director (Engineering)/ Superintending Engineer with three years regular service in the Grade possessing three years' field experience of investigation in</i>	<i>Officers under the Central Government/ State Government/ Union territories/ Public Sector Undertakings/ Semi-Government/</i>



			any grade of the Service. Provided that for the members of the Service appointed to the Service prior to 21st August, 1990 (i.e. the date of notification of the now superseded Central Power Engineering (Group-A) Service Rules, 1990), the requirement of field experience or experience of investigation shall be two years in any grade of the Service.	Statutory/ Autonomous organizations; (a)(i) holding analogous posts on regular basis in the parent cadre/ department; or (ii) with two years' service in the grade rendered after appointment thereto on regular basis in posts in scale of pay of Rs. 16400-20000 or equivalent in the parent cadre/ department; or (iii) with three years' service in the grade rendered after appointment thereto on regular basis in posts in the scale of pay of Rs. 14300-18300 or equivalent in the parent cadre/
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				department; and (b) possessing educational qualifications and experience as specified in Part-B of Schedule II.
2.	Junior Administrative Grade	By promotion failing which by deputation (including short term contract)	Deputy Director (Engineering)/ Executive Engineer/ Assistant Secretary, Regional Electricity Board/ Secretary, North Eastern Regional Electricity Board/ Pert Analyst/ Senior Data Analyst/ Deputy Director (Editor)/ Deputy System Engineer (Rs. 10000-15200) with nine years' regular service in the grade including regular service, if any rendered in the Non-Functional grade of Senior Time Scale in the pay scale of Rs. 12000-16500 of	Officers under the Central Government/ State Government/ Union territories/ Public Sector Undertakings/ Semi-Government/ Statutory/ Autonomous organizations (a)(i) holding analogous posts on regular basis in the parent cadre/ department; or (ii) with five years' service in the grade rendered after appointment thereto on regular basis in



			<i>the Service.</i>	<i>posts in the scale of pay of Rs. 12000-16500 or equivalent in the parent cadre/ department and</i> <i>(b) possessing educational qualifications and experience as specified in Part – B of Schedule II.</i>
3.	<i>Senior Time Scale (Non-Functional)</i>	<i>By placement on the basis of seniority based on suitability</i>	<i>Deputy Director (Engineering)/ Executive Engineer/ Assistant Secretary, Regional Electricity Board/ Secretary, North Eastern Regional Electricity Board/ Pert Analyst/ Senior Data Analyst/ Deputy Director (Editor)/ Deputy System Engineer (Rs. 10000-15200) with five years' regular service in the grade of the Service.</i>	-----
4.	<i>Senior Time</i>	<i>By Promotion</i>	<i>Assistant Director</i>	<i>Officers under</i>



	<i>Scale</i>	<i>failing which by deputation (including short-term contract)</i>	<i>(Engineering) (Grade-I)/ Assistant Executive Engineer/ Junior Data Analyst/ Assistant System Engineer with four years' regular service in the grade in the Service</i>	<i>the Central Government/ State Government/ Public Sector Undertakings/ Semi-Government/ Statutory/ Autonomous organizations;</i> <i>(a)(i) holding analogous posts on regular basis in the parent cadre/ department; or</i> <i>(ii) with five years' service in the grade rendered after appointment thereto on regular basis in posts in the scale of pay of Rs. 8000-13500 or equivalent in the parent cadre/ department; and</i> <i>(b) possessing educational qualifications and experience</i>
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				<i>as specified in Part-B of Schedule II.</i>
5.	<i>Junior Time Scale</i>	(i) 50% of posts by promotion failing which by deputation (including short-term contract). (ii) 50% of the posts by Direct Recruitment through Combined Engineering Services Examination conducted by Union Public Service Commission. The age limit, educational qualifications and plan examination shall be such as may be provided by the Government from time to time in the rules of	Assistant Director (Engineering) (Grade-II)/ Assistant Engineer in the Central Power Engineering (Group B) Service with two years' regular service in the grade and possessing a Diploma in Engineering from a recognized institute or equivalent	Officers under the Central Government/ State Government/ Union territories/ Public Sector Undertakings/ Semi – Government/ Statutory/ Autonomous organizations (a) (i) holding analogous posts on regular basis in the parent cadre/ department; or (ii) with two years' service in the grade rendered after appointment thereto on regular basis in posts in the scale of pay of Rs. 7500- 12000 or equivalent in the parent cadre/



		<i>Combined Engineering Services Examination</i>		<i>department, and (b) Possessing educational qualifications and experience as specified in Part-B of Schedule II.</i>
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Note 1: In the event of suitable officer being not available for appointment to the Grades of Senior Administrative Grade, Junior Administrative Grade, Senior Time Scale, in accordance with the method of recruitment, prescribed under Column 3 above, the posts may be filled by recruitment by advertisement and selection through the Commission under rule 8 of these rules.

Note 2: No officer shall have claim for promotions as of right.

Note 3: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service.

Note 4: The period of deputation to the duty posts mentioned at serial numbers 1 and 2 shall not be more than five years and to the duty posts mentioned at serial numbers 4 and 5 shall not ordinarily exceed three years.”

11. The aforesaid statutory provision of law provides for promotion on the post of Director Engineering/ Superintendent Engineer to the post of Chief Engineer/ SAG and makes it very clear that three years of regular service in the grade is mandatory, meaning thereby, even for financial



upgradation under the NFU Scheme, an employee is required to fulfill the criteria of promotion which is provided under the Recruitment Rules for next higher post.

12. The executive instructions (Office Memorandum dated 24.04.2009) issued by the Government Of India makes it very clear that an employee shall be entitled for financial upgradation subject to fulfillment of all prescribed eligibility criteria and promotional norms including bench-mark upgradation to a particular Grade Pay, and it also provides for screening.

13. The Chart which has been reproduced by the CAT makes it very clear that all those employees who were fulfilling the eligibility were granted upgradation under the NFU Scheme.

14. The other important aspect of the case is that the Central Power Engineering (Group-A) Service Rules, 2005 came in existence on 24.01.2005, and at the relevant point of time NFU Scheme was not in existence, and the Government took a policy decision for grant of NFU Scheme to the members of Central Power Engineering (Group-A) Service Rules, 2005, and the Clause relating to overall experience was also introduced vide Notification dated 29.08.2008.

15. It is an undisputed fact that the Petitioners were not fulfilling the prescribed criteria for promotion, and their cases were subject to screening, and as the Petitioners were not fulfilling the eligibility criteria for promotion to the next higher Grade Pay, they were rightly denied the financial upgradation under the Scheme of NFU which was introduced vide Office Memorandum dated 24.04.2009 issued by the Respondent No.3.



16. At this juncture, we deem it appropriate to advert to the findings of the Hon'ble Supreme Court in the judgment of ***Bhakra Beas Management Board vs. Krishan Kumar Vij & Anr.***, (2010) 8 SCC 701 wherein the Hon'ble Supreme Court considered the following issue: -

“2. Precisely, we are required to consider whether in light of the order/circular issued by the Appellant Bhakra Beas Management Board (hereinafter shall be called as “Board”), Respondent 1 employee would be entitled to benefit of higher scale of pay/upgradation/stepping up of salary sans prerequisite qualification for the grant of the same.”

In the facts and circumstances of the said case, the Hon'ble Supreme Court proceeded to hold the following: -

22. We have already mentioned hereinabove with regard to Clause 2 of the 1990 Order read with Regulation 9 which restricts the benefit only to directly recruited Assistant Engineers/Assistant Executive Engineers, meaning thereby that one must possess the requisite qualification as prescribed under the Regulations, then only the benefit would accrue to the employee, not otherwise. The Note appended thereto clearly stipulates that even those employees who were promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be deemed to have been appointed by direct recruitment. This legal fiction is limited. It is applicable only to those employees who have been promoted in conformity with the provisions contained in Clause 4. Thus, the employees who had passed both Parts (A) and (B) of the AMIE examination and were promoted against 9% posts reserved for that class were fictionally treated as direct recruits. Thus, it clearly stipulates that only those Assistant Engineers who were either directly recruited or had acquired the requisite qualifications prescribed for direct recruitment were chosen to be granted higher scale if they had been promoted against the post falling within the quota of 9% of the cadre strength of the said post.



23. The 1990 Order contemplates that it is to be followed as per regulation which provides that only such persons as have been promoted under Regulation 7(a)(ii) read with Regulation 10(4) shall be treated as direct recruits. In other words, it does not apply to the promotees irrespective of their academic qualifications nor can they be treated on a par with the direct recruits. There was a purpose for treating them so, otherwise, it would have the effect of violating the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, on the premise that unequals have been treated as equals. It is with that intention, to avoid criticism and future litigation that such persons who possessed qualifications for direct recruitment and could be promoted against the posts falling vacant, would become entitled to claim the benefit. Since Respondent 1 did not fall in this category, obviously, he was not entitled to the higher scale.

24. Thus, there appears to be no illegality committed by the Board in rejecting Respondent 1's representation. So, in our considered opinion, the High Court has clearly erred in setting aside and quashing the same.

25. The critical examination of the impugned judgment passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil prerequisite qualifications for holding the higher post. In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorised as suffering from stagnation as per Order of 23-4-1990.

26. Obviously, an employee who does not fulfil the qualification as per Regulation 10(4) for the higher post would be ineligible for promotion and/or higher pay scale. In that eventuality, such an employee cannot complain of stagnation. Moreover, even



while adopting the 1990 Order, it was made clear by the Board vide its Order dated 26-6-1992 that the time-bound promotional/devised promotional scales after 9/16 years' service are admissible only in respect of the posts in which the initial induction is through direct recruitment.

x x x x x x x x

31. If the interpretation of the High Court to the 1990 Order is to be implemented, then it would lead to unsustainable consequences. It would then mean that every Assistant Engineer irrespective of his conduct, qualifications, performance or behaviour would become entitled to the higher scale on completion of particular length of service. If that be so, then even those employees with poor service record and doubtful integrity would also become entitled to claim higher scale merely because they had completed a particular length of service. If such an interpretation is to be given to the 1990 Order, then it would not only be improper but would also be against public policy and interest of the Board. It is too well settled that a statute or any enacting provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to a futility has to be avoided.

x x x x x x x x

39. At the cost of repetition, we may reiterate that the effect of the 1990 Order read with the Regulations would be that only those employees who fulfilled the prerequisite qualification for further promotion along with certain length of service as required would only be entitled to the benefit as per the 1990 Order. The other Assistant Engineers, even though they had completed the requisite length of service would not be entitled to claim the benefit, unless they had fulfilled the basic qualifications and minimum experience as required.”

17. The position of law on this issue is now well-settled. In the judgment of ***Punjab State Power Corporation Limited and Anr. vs. Bal Krishan***



Sharma & Ors., (2022) 1 SCC 322, the Hon'ble Supreme Court reiterated its stance in **Bhakra Beas** (Supra). The operative Paragraphs of the Judgment read as under:

“19. This Court in Bhakra Beas Management Board case [Bhakra Beas Management Board v. Krishan Kumar Vij, (2010) 8 SCC 701 : (2010) 2 SCC (L&S) 694] , after considering the aims and objects of the office order dated 23-4-1990 issued by the PSEB, and also the entire scheme of time bound benefit of promotional/devised promotional scale as envisaged in the said office order, observed as under : (Bhakra Beas Management Board case [Bhakra Beas Management Board v. Krishan Kumar Vij, (2010) 8 SCC 701 : (2010) 2 SCC (L&S) 694] , SCC pp. 710-12, paras 25 & 31)

“25. The critical examination of the impugned judgment [Krishan Kumar Vij v. State of Punjab, CWP No. 19306 of 2003, order dated 6-12-2004 (P&H)] passed by the Division Bench of the High Court completely defeats primary purpose of the 1990 Order and provisions applicable to the employees of the Board. No doubt, it is true that the 1990 Order was issued only with an intention to remove the stagnation but this would not give blanket or absolute right to any employee to be entitled to higher pay scale even if he does not fulfil prerequisite qualifications for holding the higher post. In other words, if he possesses the required qualifications but is unable to get the higher post on account of non-availability of such post, then only he can be categorised as suffering from stagnation as per Order of 23-4-1990.

31. If the interpretation of the High Court to the 1990 Order is to be implemented, then it would lead to unsustainable consequences. It would then mean that every Assistant Engineer irrespective of his conduct, qualifications, performance or behaviour would become entitled to the higher scale on completion of particular



length of service. If that be so, then even those employees with poor service record and doubtful integrity would also become entitled to claim higher scale merely because they had completed a particular length of service. If such an interpretation is to be given to the 1990 Order, then it would not only be improper but would also be against public policy and interest of the Board. It is too well settled that a statute or any enacting provision must be so construed as to make it effective and operative. Any such construction which reduces the statute to a futility has to be avoided.”

20. In view of the above, it was made clear by this Court in Bhakra Beas Management Board case [Bhakra Beas Management Board v. Krishan Kumar Vij, (2010) 8 SCC 701 : (2010) 2 SCC (L&S) 694] that an employee could be said to be suffering from stagnation as per the office order dated 23-4-1990 only if he possessed the requisite qualification for the next higher post and was unable to get the higher post on account of non-availability of such post.”

18. In the considered opinion of this Court, the financial upgradation Scheme as evident from the Office Memorandum issued by the Government of India provides for upgradation subject to fulfillment of eligibility criteria for the next promotional post and the undisputed facts on record makes it very clear that none of the Petitioners was fulfilling the eligibility criteria prescribed for promotion to the to the post of Chief Engineer, and, therefore, the question of interference in the peculiar facts and circumstances of the case does not arise.

19. Learned Counsel for the Petitioners has placed reliance upon a judgment delivered in the case of **Union of India & Anr. Vs. Central Govt. SAG & Ors.**, 200 (2013) DELHI LAW TIMES 165 (DB).



20. This Court has carefully gone through the aforesaid judgment, and the aforesaid case was a case relating to fixation of pay of retirees, keeping in view the recommendation of 6th Pay Commission. The aforesaid case is certainly not a case dealing with financial upgradation under the NFU Scheme, and, therefore, the judgment relied upon is distinguishable in facts.

21. This Court does not find reason to interfere with the order passed by the CAT, the Writ Petition is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 22, 2022
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