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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 06.09.2024**Date of decision: 11.09.2024*

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W.P.(C) 1216/2021 & CM APPL. 3401/2021 (stay)**DEEPAK CHATURVEDI****.....Petitioner**

Through: Mr.Ankur Chhibber, Mr.Pranjal Marwah, Mr.Nikunj Arora, Mr.Anshuman Mehrotra, Mr.Amrit Kaul, Mr.Arjun Pawar, Mr.Prahid Sharma & Ms.Muskan Dutta, Advs. along with the petitioner in person.

versus

UNION OF INDIA AND ORS**.....Respondents**

Through: Mr.Harish Vaidyanathan Shankar, CGSC with Mr.Srish Kumar Mishra, Mr.Alexander Mathai Paikaday & Mr.Sagar Mehlawat, Advs. with Mr.Hemendra Singh, Deputy Commandant, Border Security Force.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J****JUDGMENT**

1. By way of the present writ petition under Article 226 of the Constitution of India, the petitioner, who is presently serving as the Chief Law Officer(CLO) in the rank of Inspector General (IG) in the Border Security Force (BSF) has approached this Court seeking the following reliefs:



“(i) Issue a Writ of Certiorari for quashing the orders dated 02.12.2020 and 06.01.2021 to the extent where it withdraws NFFU benefits in SAG to the petitioner; and

(ii) Issue a Writ of Mandamus directing the Respondents to implement the order dated 01.11.2019 whereby the Petitioner had been granted the benefit of NFFU in the SAG w.e.f. 01.04.2015 by taking the draft recruitment rules into consideration which they had already done while passing the above order and to notify the draft Recruitment Rules of the BSF Chief Law Officer and Law Officers, in a time bound manner so as to avoid such misunderstanding in future;”

2. At the outset, the brief factual matrix as emerging from the record may be noted.

3. The petitioner joined the BSF as an Assistant Commandant (Direct Entry) on 01.10.1987 and was promoted as a Deputy Commandant (General Duty) on 13.02.1993. He was, thereafter, promoted as a Second In Command on 01.02.2003, which was followed by another promotion to the post of Commandant on 13.04.2006. While serving as a Commandant, the petitioner was selected for deputation as a Law Officer Grade I/Commandant in the BSF Law Cadre and, accordingly, joined duties at the Rajasthan Frontier Headquarters, BSF, Jodhpur as Law Officer Grade-I /Commandant, on 05.04.2006, whereafter he was, vide order dated 06.12.2007, permanently absorbed in the Law Cadre of BSF. From the date of his absorption in the Law Cadre, the petitioner is being governed by the ‘Border Security Force, Chief Law Officers and Law Officers Recruitment and Conditions of Service Rules, 1999’. After rendering service of 7 years in the BSF Law Cadre, the petitioner was, on 10.10.2013, promoted as an



Additional CLO/DIG, on which post he continued to serve till he was promoted as CLO/IG on 12.05.2023.

4. At this stage itself, it may be noted that initially the legal set up in the BSF was headed by a Chief Law Officer ('CLO') in the rank of Deputy Inspector General ('DIG'). With the passage of time, the requirement to have a more robust Law Cadre was felt and consequently, on 12.11.2012, the Director General ('DG'), BSF/respondent no. 2 forwarded a proposal to the Ministry of Home Affairs ('MHA')/respondent no. 1, the cadre controlling authority, for upgradation of two posts of Law Officer Grade I/ Commandant at Headquarters, Special DG (East) and (West) to that of Additional CLO/DIG. This proposal was followed by yet another proposal dated 14.02.2013 from the respondent no. 2 to respondent no. 1, this time for upgradation of one out of the two existing posts of CLO/DIG to the level of CLO/IG.

5. Vide its order dated 15.03.2013, the respondent no. 1 conveyed the sanction of the competent authority for upgradation of two posts of Law Officer Grade I/ Commandant at Headquarters Special DG (East) and (West) to that of Additional CLO/DIG. This was followed by an order dated 28.06.2013 passed by the respondent no. 1, accepting the respondent no. 2's proposal dated 14.02.2013, for upgradation of one out of the two existing posts of CLO/DIG to the level of CLO/IG.

6. In accordance with the aforesaid upgradation of the two posts of Law Officer Grade I, Commandant to the level of Additional Chief CLO/DIG, a proposal was mooted by the BSF Headquarters on 21.03.2013 for holding a Departmental Promotion Committee (DPC) for promotion of the senior most Law Officer Grade I/Commandant to be promoted as Additional CLO/DIG.



This proposal was accepted and consequently, Sh.Vijay Yadav as also the petitioner, who were the senior most Law Officers in Grade 1, were, with the approval of respondent no. 1, promoted as Additional CLO/DIGs w.e.f 10.10.2013.

7. Based on the upgradation of one post of CLO/DIG to the level of CLO/IG, a similar proposal for holding a DPC for filling up the upgraded post of CLO/IG was moved by respondent no. 2 on 08.07.2013. This proposal was, however, returned by the respondent no. 1 on 21.08.2013, with the remarks that as per the instructions issued by the Department of Personnel and Training ('DoPT') on 31.12.2010, a DPC could not be convened till the Recruitment Rules for the said post were notified. The respondent no. 2 was, therefore, directed to get the Recruitment Rules notified for the post of CLO/IG within two months. It is the petitioner's case that the draft Recruitment Rules for the upgraded post of CLO/IG were immediately prepared at the BSF Headquarters and after approval of the respondent no. 2, forwarded to the respondent no. 1 on 01.10.2013 itself.

8. These draft Recruitment Rules, however, remained pending with the respondent no. 1 for more than 5 years and it was only on 04.05.2018, that the respondent no. 1 approved the proposal for forwarding the draft Recruitment Rules to the DoPT. In terms of these directions issued by the respondent no. 1, the draft Recruitment Rules were uploaded on the website of DoPT for their concurrence, whereafter the file was again submitted to respondent no. 1 on 24.05.2018 but remained pending consideration for yet another 5 years, with the Recruitment Rules for CLO/IG finally being notified on 09.01.2023. During this period between 01.10.2013 to 09.01.2023, when the draft Recruitment Rules were pending finalization,



various proposals for holding DPC for the post of CLO/IG on the basis of the draft Recruitment Rules were mooted.

9. The said proposals were, however, not accepted and consequently, two CLO/DIGs, namely Sh KJS Bains and Sh Vijay Singh Yadav, and one Additional CLO/DIG Sh. Vijay Yadav, who were all eligible for promotion as IG as per the draft Recruitment Rules, superannuated without being considered for promotion. As per the notified Recruitment Rules, appointment to the post of CLO/IG can be made by promotion from serving Additional CLO/DIG with two years of regular service in the level 13A with total 19 years of Group 'A' service, failing which the post was to be filled by deputation, as had been proposed under the draft Recruitment Rules itself.

10. At this stage, it may be noted that even before the proposal of respondent no. 2 for upgradation of the post of Additional CLO/DIG to that of CLO/IG was forwarded to respondent no. 1, the DoPT, based on the recommendations of the 6th pay commission, issued an O.M dated 24.04.2009, providing for grant of Non-functional financial upgradation (NFFU) for officers of Organised Group 'A' Services (OGAS) who were meeting the eligibility criteria for the promotional post. This O.M. was initially not applied to the Group 'A' officers of the Central Armed Police Forces (CAPFs), leading to filing of various writ petitions, including W.P. (C) no. 153/2013, before this Court, which petitions were allowed on 03.09.2015. The decision of this Court was challenged before the Apex Court by way of *Civil Appeal No. 1474 of 2019* and upon dismissal of the same on 04.07.2019, the respondent no. 1 issued an order dated 30.09.2019,



extending the benefits of NFFU to Group A Executive Officers in the CAPF, in accordance with the DoPT's O.M. dated 24.04.2009.

11. Based on the aforesaid order, cases of BSF Law Cadre Officers, including the petitioner, were submitted to MHA for consideration for grant of NFFU in SAG level. Based on the recommendations of the Internal Screening Committee held at MHA/respondent no. 1 on 17.10.2019, financial upgradation in SAG (in pre revised grade pay Rs. 10,000) now pay matrix level 14, was recommended to be granted to four officers of the BSF Law Cadre, namely Sh KJS Bains, CLO/DIG, Sh. Vijay Singh Yadav, CLO/DIG, Sh Vijay Yadav, Additional CLO/DIG and the petitioner. These recommendations, which were based on the draft Recruitment Rules were approved by the respondent no. 1 on 25/28.10.2019 and consequently, vide order dated 01.11.2019, while Sh KJS Bains and Sh Vijay Singh Yadav were granted NFFU in SAG w.e.f 01.04.2014, the petitioner, along with Sh Vijay Yadav, was granted NFFU in SAG w.e.f 01.04.2015.

12. However, after about one year, i.e. on 02.12.2020, the respondent no. 1, based on the advice of the DoPT took a decision to withdraw the benefit of NFFU granted to all the four officers of the BSF Law Cadre, including the petitioner. Consequently, vide the impugned order dated 06.01.2021, the aforesaid three officers, along with the petitioner, were informed that the benefit of NFFU extended to them vide order dated 01.11.2019 was being withdrawn. As a result of this withdrawal order which was issued without any show cause notice to the petitioner, his salary was considerably reduced and recoveries were sought to be made for the amount paid to him towards NFFU w.e.f 01.04.2015.



13. Being aggrieved, the petitioner has approached this Court by way of the present petition. On 22.02.2021, this Court, while issuing notice in the petition, stayed the recovery of the allegedly excess amount paid to the petitioner, which interim stay has continued till date. It is the common case of the parties that during the pendency of the present petition, after the Recruitment Rules were notified on 09.01.2023, the petitioner was promoted as CLO/IG on 12.05.2023.

14. In support of the petition, learned counsel for the petitioner submits that the impugned orders are liable to be set aside as the petitioner was granted NFFU only after he was found to be meeting all the eligibility criteria by the respondent's own Internal Screening Committee, the recommendations of which were also approved by the MHA/respondent no. 1. He submits that the respondents' act of unilaterally withdrawing benefits of NFFU from the petitioner, without even giving him any opportunity to show cause, is violative of principles of natural justice and, therefore, liable to be set aside on this ground alone. Further, the impugned decision for withdrawal of NFFU is also contrary to the various decisions of the Apex Court as also the DoPT's O.M.s dated 30.03.1988 and 06.07.2007, which categorically allow promotions even on draft Recruitment Rules. His plea being that once even promotions are permissible on the basis of draft Recruitment Rules, there is no reason as to why the benefit of NFFU, which is only in the nature of a financial upgradation, could not have been granted on the basis of these draft Rules framed on 01.10.2013.

15. He submits that when there is delay on the part of the respondents themselves in notifying the draft Recruitment Rules, they could not deprive the petitioner of the benefits of the promotional post, which admittedly stood



created on 08.07.2013 itself. It is the own case of the respondents', he contends, that the draft Recruitment Rules remained pending with the respondent no. 1 for over 09 years before being notified on 09.01.2023 and that too without any changes being made in the clause based on which the petitioner was granted NFFU. He submits that as per the DoPT's O.M.s dated 24.03.2009, 15.12.2009 and 25.03.2014, a periodic review of the Recruitment Rules is required to be done after every 5 years. In the present case, the draft Recruitment Rules for the post of CLO/IG in the BSF, which were forwarded to respondent no. 1 on 01.10.2013 came to be notified after more than 9 years, for which delay the petitioner cannot be penalized. Further, not only has the petitioner been already extended the benefit of NFFU w.e.f 01.04.2015 with approval of respondent no.1 but also stands promoted to the post of IG on 12.05.2023.

16. By placing reliance, on the decision of the Apex Court in *State of Mizoram Vs Mizo Engineers Service [(2004) 6 SCC 218]*, he submits that once the respondents adopted the recommendations of the 6th pay commission, they were bound to immediately notify the Recruitment Rules for Law Cadre in the BSF; having failed to do so, they cannot now be permitted to take benefit of their own lapse. Further, he places reliance on the decision dated 02.12.2019 of a Coordinate Bench in **W.P.(C) no. 3945/2017** titled '*Shailendra Singh & Ors. V. Union of India*', to contend that when the delay in notifying the Recruitment Rules was entirely due to administrative exigencies, the same cannot be a ground to deny the petitioner benefits of upgradation from the due date. Once the benefit of NFFU has been extended to all other OGAS, it was incumbent upon the respondents to ensure that the Recruitment Rules are finalized from the date



the upgraded post of CLO/IG was created. He further contends that in similar circumstances the benefit of NFFU was, on 02.12.2010, extended to the Group 'A' officers of the Geological Survey of India w.e.f 01.01.2006 itself on the basis of the draft Recruitment Rules only. He, therefore, prays that the impugned order be set aside.

17. *Per contra*, learned counsel for the respondents opposes the writ petition and submits that as the DoPT has now clarified that NFFU in the pay scale of CLO/IG could not have been granted till the Recruitment Rules for the said post were notified, the respondents had no other option but to withdraw the benefits granted to the petitioner only on the basis of the draft Recruitment Rules. Merely because there was a delay in finalization of the Recruitment Rules, the same did not entitle the petitioner to claim that he must be granted the benefit of NFFU on the basis of the draft Recruitment Rules itself. His plea being that till the Recruitment Rules for the post of CLO/IG were finalized, it could not be ascertained whether the petitioner was fulfilling the eligibility criteria for promotion to the said post, which criteria, as per the DoPT's O.M.s dated 24.04.2009 and 30.09.2019, is a mandatory condition for grant of NFFU also.

18. The provisions of the O.M dated 24.04.2009 having not been assailed by him, the petitioner cannot be permitted to urge that even though the eligibility criteria for the promotional post had not been finalized, he ought to have been granted the benefits of NFFU on the basis of the draft Recruitment Rules itself. The mere fact that while notifying the Recruitment Rules on 09.01.2013, the eligibility criteria for the post of CLO/IG, as prescribed in the draft Recruitment Rules was maintained, cannot be a ground to uphold the respondent no. 1's earlier decision to grant NFFU w.e.f



01.04.2015, when the Recruitment Rules for the promotional post of CLO/IG had, admittedly, not been notified.

19. He further submits that the petitioner's plea that there was a deliberate delay on the part of respondent no. 1 in notifying the Recruitment Rules is also contrary to the record. By placing reliance on the decision of this Court dated 16.04.2024 in **W.P. (C) no. 11013/2021** titled '*Vijay Yadav & Ors. v Union of India & Ors.*', he submits that the delay, if any, was only on account of the continuous deliberations between respondent no.s 1 and 2 and could not be said to be attributable to either of them. He, therefore, contends that once this Court has categorically held that the delay in notification of the Recruitment Rules was not attributable to the respondents, the decisions in *State of Mizoram (supra)* and *Shailendra Singh (supra)* would not be applicable to the facts of the present case.

20. He contends that the petitioner's plea that in the absence of the notified Recruitment Rules, he was rightly considered for grant of NFFU on the basis of the criteria notified by the DoPT vide its O.M. dated 15.12.2009 is also misplaced. It is his plea that this O.M. dated 15.12.2009 was applicable only to civilian OGAS and not to Group 'A' officers of the CAPFs, who were extended the benefit of NFFU only under the directions of this Court and the Apex Court. The CAPFs, being functionally different from civilian OGAS, the officers of CAPFs cannot claim parity with non-uniformed, civilian OGAS. Taking into account the organizational structure and functional requirements of the CAPF, the eligibility of officers for promotion or grant of NFFU can be determined only on the basis of the notified Recruitment Rules. He, therefore, prays that the writ petition be dismissed.



21. Having considered the submissions of learned counsel for the parties and perused the record, the foremost fact which needs to be noted is that the parties are *ad idem* that the upgraded post of CLO/IG, in the pay scale of which the petitioner has been granted NFFU w.e.f 01.04.2015, already stood created on 08.07.2013. Both sides are also in agreement that the draft of the Recruitment Rules for this upgraded post was immediately prepared by the respondent no. 2 and forwarded to the respondent no. 1 on 01.10.2013. The said rules, however, came to be notified only on 09.01.2023, which is after more than 9 years from the date on which the draft Rules were submitted to respondent no. 1. The respondents also do not dispute that the eligibility criteria for this post, as per the Recruitment Rules notified on 09.01.2023, are exactly the same as proposed in the draft Recruitment Rules forwarded to the respondent no. 1 on 01.10.2013.

22. Learned counsel for the petitioner has, by placing reliance on the DoPT's OMs dated 24.03.2009, 15.12.2009 and 25.03.2014, urged that when the DoPT itself mandates that the Recruitment Rules must be revised every 5 years, the delay on the part of the respondents in not approving the draft Recruitment Rules for more than 9 years was unjustified. He has, therefore, contended that once there was an inordinate delay on the part of the respondents in finalizing the Recruitment Rules and that too knowing well that the scheme for NFFU had already been introduced, the petitioner could not be penalized and was, therefore, along with the other three BSF Law Cadre officers, rightly granted the benefit of NFFU by respondent no. 1 itself. In support of his plea that the employees cannot be made to suffer on account of the delay in framing of the Recruitment Rules, he has relied on the decisions in *State of Mizoram (supra)* and *Shailendra Singh (supra)*.



23. Learned counsel for the respondents has, on the other hand urged, that this Court itself in *Vijay Yadav (supra)*, while dealing with the claim of an officer belonging to the same BSF cadre, has categorically held that the delay in notification of the Recruitment Rules for the post of CLO/IG in the BSF were not attributable to the respondents. He has, therefore, contended that the decisions in *State of Mizoram (supra)* and *Shailendra Singh (supra)* would not be applicable to the facts of the present case where there was no delay found on the part of the respondents. In order to appreciate this plea of the respondents, it would be apposite to refer to para no. 21 of this Court's decision in *Vijay Yadav (supra)* on which heavy reliance has been placed by the respondents. The same reads as under:

“21. In fact, even though there has been a delay in framing the RRs to the post(s) of CLO/ Addl. CLO in the BSF, however, when they were finally approved by the MHA in May, 2018, the BSF redrafted the same and again sent them from its end for approval at the earliest to the MHA and even otherwise the draft RRs went back and forth multiple times between the BSF and the MHA between the said period. Hence, it cannot be said that the BSF and/ or the MHA were, in any way lackadaisical in their approach towards finalizing the RRs or that there was some mala fide or bias towards any of the petitioners as both the BSF and the MHA were acting promptly but it was due to the suggestions and amendments made thereunder, that the RRs were notified only in 2023. Thus, the BSF and MHA, independently and jointly, were in fact thoroughly deliberating the RRs, expending sufficient time and effort in coming up with the final RRs. It cannot be thus said that the said delay was unexplained or unjustified. As such, the delay cannot be attributable to either of them.”



24. In the light of the aforesaid observations made by the Coordinate Bench in *Vijay Yadav (supra)*, what emerges is that this Court while dealing with the claim of another BSF Law Cadre officer, who had already superannuated on 30.09.2021, opined that though there was delay in framing of the Recruitment Rules to the post of CLO in the BSF, the said delay was on account of the continuous deliberations between respondent no.1 and respondent no. 2. The Court, therefore, observed that it could not be said that the delay was unjustified or attributable to any of these respondents, and therefore, concluded that till the Recruitment Rules were notified, no DPC could have been held to consider the petitioner therein to the post of CLO. From these observations of the Court in *Vijay Yadav (supra)*, it has to be taken that there was no deliberate delay on part of the respondents in notifying the Rules. This finding, however, in our view, cannot in itself be a ground to reject the petitioner's claim. It needs to be remembered that the petitioner is not seeking regular promotion w.e.f 01.04.2015, but is seeking the benefits of only a financial upgradation. Even though, the respondents are correct in urging that as per the DoPT's O.M. dated 24.04.2009, the parameters for grant of NFFU are identical to that of promotion, they do not deny that the eligibility criteria for CLO/IG, as notified on 09.01.2023, is the same as had been formalized by way of the draft Recruitment Rules on 01.10.2013.

25. We find that the respondents also do not deny that the benefit of NFFU, pursuant to the DoPT's O.M. dated 24.04.2009, was extended to all civilian OGAS w.e.f 01.01.2006 on the basis of the eligibility criteria prescribed in the DoPT's O.M. dated 15.12.2009 itself. They have, however,



urged that the criteria prescribed in this O.M. was applicable to civilian OGAS and therefore, could not be applied to the CAPFs who could be granted the benefit of NFFU only on the basis of the notified Recruitment Rules. In order to appreciate this plea, it would be apposite to note the relevant extract of this O.M. dated 15.12.2009, which reads as under:

***“No. AB.14017/61/2008-Estt. (RR)/Pt.
Government of India
Ministry of Personnel, Public Grievances and
Pensions
Department of Personnel and Training
New Delhi***

Dated 15th December, 2009

OFFICE MEMORANDUM

*Subject:- Sixth Central Pay Commission's
recommendations -
amendment of Service Rules - regarding*

This Department in OM No.AB14017/61/2008-Estt(RR) dated 24.3.2009 issued the guidelines for amendment of Service Rules/Recruitment Rules for incorporating the changes arising out of 6th CPC recommendations.

2. The 6th CPC have also recommended for bringing uniformity in eligibility criteria across various organized Group A Services for promotions. The issue has been examined and in the light of these, it has been decided that the following steps to amend the existing Service Rules shall be undertaken on priority basis:

(i) For promotion to SAG level, the eligibility requirement shall be



“Officers in the JAG with 8 years' regular service in the grade including NFSG OR Officers with 17 years' regular service in Group ~' posts in the service out of which atleast 4 years' regular service should be in the JAG (including service rendered in the NFSG of the JAG.”

(ii) For promotion to HAG level, the eligibility requirement shall be

“Officers in the SAG with 3 years' regular service in the grade OR Officers with 25 years' regular service in Group 'A' posts in the service out of which atleast 1 year' regular service should be in the SAG.

3. The cadre controlling authorities of the various Organized Group A Services may initiate action for appropriate amendments in the Service Rules.

4. Hindi version will follow.

*Sd/-
Director (E I)”*

26. From a bare perusal of the aforesaid O.M., we find that there is no such restriction in the O.M. that the same would not be applicable to the CAPFs. The O.M. categorically states that it will be applicable to all the OGAS and specifically directs, on 15.12.2009, all cadre controlling authorities of the OGAS for carrying out appropriate amendments in the Service Rules. Thus, there was a clear direction from the DoPT to all the cadre controlling authorities to ensure timely amendment of the Service Rules so that all the eligible officers could receive the benefits of NFFU on time. In the present case, once the post in question, i.e, CLO/IG, was created, the respondents were under an obligation to ensure that the Rules for the said post are expeditiously finalized so that the candidates eligible for NFFU in the pay scale of CLO/IG are able to receive the benefits of NFFU



on time. In our considered view, even if, as held by this Court in *Vijay Yadav (supra)*, the delay on the part of the respondents in notifying the Recruitment Rules for the post of CLO/IG could not be said to be deliberate or willful, the fact that there was indeed an inordinate delay of more than 9 years in the notification of the Recruitment Rules cannot be brushed aside as is sought to be urged by the respondents.

27. It is evident that the respondents being aware of this inordinate delay, had themselves, therefore, by applying the criteria prescribed in the draft Recruitment Rules read with the DoPT's O.M. dated 15.12.2009, taken a conscious decision on 01.11.2019 to grant the benefit of NFFU in the pay scale of CLO/IG to the petitioner and the other three eligible Law Cadre officers w.e.f from the dates on which they completed the prescribed service as DIG. This decision was thereafter, without any show cause notice, sought to be withdrawn by the impugned order dated 02.12.2020, which order, the petitioner urges, is illegal. The question before this Court, therefore, would be whether the respondents ought to be permitted to withdraw this benefit of NFFU which was granted to all other OGAS officers w.e.f 01.01.2006 or later, depending upon the date they completed the eligibility service as per the DoPT's O.M. dated 15.12.2009, only because the Recruitment Rules, though formulated on 01.10.2013, could not be finalized for over 9 years till they were finally notified on 09.01.2023.

28. Having given our thoughtful consideration to this issue, we are of the view, that it would be highly unfair to the petitioner to permit the respondents to withdraw this benefit which has already been granted to him after due deliberations by respondent no.1, the cadre controlling authority. It is not as if the petitioner, on 01.04.2015, when he was granted the benefit of



NFFU, in accordance with DoPT's OM dated 24.04.2009 read with the O.M.s dated 15.12.2009 and 30.09.2019, did not meet the eligibility criteria prescribed in the notified Recruitment Rules, which as noted hereinabove were identical to the draft Recruitment Rules formulated on 01.10.2013. In fact, as noted hereinabove, during the pendency of the present petition, the petitioner has already been granted regular promotion as a CLO/IG on 12.05.2023. In these circumstances, we are of the view, that when the criteria for grant of upgradation under the NFFU was already clear, the petitioner could not have been penalized for the delay in notification of the Rules, which instead of being notified within a reasonable time were notified after more than 9 years from the date of formulation of the draft Rules and therefore, there is no justification for withdrawal of the NFFU granted to him as per law with reference to the pay scale of the post which stood created much prior to the date of grant of NFFU to him. In this regard, reference may be made to the following observations in **Shailendra Singh (supra)** as contained in para nos. 14 to 18:

"14. From the stand taken by the Respondent, it appears that the denial of benefit of upgradation to the Petitioners is only on account of the time taken by the Respondents to notify the amended RRs to actually give effect to the restructuring proposal. It may be recalled that the MHA had issued clear instructions to the BSF conveying the decision of the Central Government to implement the restructuring orders with effect from 1st April, 2004.

15. The delay in notifying the changed RRs, including the eligibility criteria for upgradation on different dates for different cadres of the BSF is entirely due to the internal administrative exigencies of the Respondents.



That cannot result in delaying the date from which the benefit ought to be given. In other words, notwithstanding that the RRs had been notified on a later date, or the assessment of the suitability of the incumbent for grant of upgradation may have been completed at an even later date, the actual benefit of the upgradation ought to be given from the date when it was meant to be given i.e. 1 st April, 2004.

16. This is somewhat similar to recommendations of a CPC. Periodically, restructuring is undertaken; pay-scales are introduced and revised as a result of the recommendations of the CPC. However, the actual implementation of these recommendations gets postponed because in the individual Departments and Ministries, the necessary changes to the RRs have to be made and notifications have to be issued. All of this postpones the actual grant of the benefit in that particular Ministry or Department. However, when it is finally given, the benefit is usually given from the uniform date when such revised pay-scales were made available, as a result of the recommendations of the CPC.

17. That same principle should apply in the present cases as well. In other words, notwithstanding that for the EC, the amended RRs may have been notified only with effect from 31st October, 2007, it would not postpone the actual date from which the benefits ought to be given i.e. 1 st April, 2004.

18. For the aforementioned reasons, a direction is issued to the Respondents to issue necessary orders granting the benefit of the upgraded pay-scale to each of the Petitioners, and others similarly situated, with effect from 1st April, 2004, and on that basis, grant them all the consequential benefits, including re-fixing the notional date of their respective promotions.”



29. In the light of the aforesaid, we are of the view that it is a fit case where we must follow the same course of action as adopted in *Shailendra Singh (supra)* and hold that the grant of NFFU to the petitioner in the pay scale of CLO/IG w.e.f 01.04.2015 was absolutely justified and could not have been withdrawn. While doing so, we are also taking into account the fact that despite directions issued by the DoPT vide O.M.s dated 24.03.2009 15.12.2009 and 25.03.2014 for timely finalization of Recruitment Rules, the respondents took more than 9 years to finalize the draft Recruitment Rules and that too without any change in the eligibility criteria for the post of CLO/IG. Further, it is also an undisputed position before us that the Ministry of Mines, on account of the delay in finalization of Recruitment Rules, had proceeded to grant the benefit of NFFU on the basis of draft Recruitment Rules itself.

30. For the aforesaid reasons, we are of the view that the impugned orders are wholly unsustainable and are accordingly set aside. The writ petition is allowed by directing the respondents to release arrears of benefits of NFFU in SAG scale as payable to the petitioner, in terms of their order dated 01.11.2019 and consequently they will also stand restrained from seeking recovery of the benefits already granted to him.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 11, 2024/kk/SU