



2024:DHC:6788-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 03.09.2024***

+ W.P.(C) 16543/2022
ANIL KUMAR YADAVPetitioner
Through: Mr.Manish Sangwan, Adv.

versus

UNION OF INDIA & ANR.Respondents
Through: Mr. Subhash Tanwar, CGSC.

+ W.P.(C) 3931/2023
MUKESH TATERWAYPetitioner
Through: Mr.Manish Sangwan, Adv.

versus

UNION OF INDIA & ANR.Respondents
Through: Ms. Anju Gupta with Mr.Akshat Meena, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T**SHALINDER KAUR, J (ORAL)**

1. The two petitions before us lay a similar challenge and thus, are being taken up together. The petitioners, Anil Kumar Yadav and Mukesh Taterway, presently attached with the Police-II Division, Ministry of Home Affairs (MHA), being Second-in-Command (2-I/C) in the Central Reserve Police Force (CRPF) have approached this Court under Article 226 of the



Constitution of India read with Section 151 of the Code of Civil Procedure (CPC), 1908, seeking quashing of common order dated 05.04.2021 passed by respondent no. 2. For the sake of brevity, Anil Kumar Yadav, the petitioner in the writ petition bearing no. W.P(C) 16543/2022 before us, will be referred to as “petitioner no.1”. Mukesh Taterway, the petitioner in the other writ petition bearing no. W.P(C) 3931/2023, will be referred to as “petitioner no.2”.

2. Vide the impugned order, the petitioners’ representations seeking relaxation in Mandatory Field Service (MFS) was rejected and they were both required to be de-attached from the MHA, so they could complete the required MFS for grant of Non-Functional Financial Upgradation (NFFU). Aggrieved by such action of the respondents, the petitioners have approached this Court with a prayer that the impugned order be set aside and their request for grant for NFFU w.e.f. 01.01.2022, by waiving the requirement of MFS in the rank of 2-I/C, be accepted.

3. Before dwelling into the controversy at hand, it may be necessary to note that both the petitioners are 2-I/Cs, while the petitioner no.1 is working with the Legal Cell of the Police-II Division of the MHA, the petitioner no.2 is working in the Legal Monitoring Unit of the Police-II Division of the MHA. The factual matrix of both the petitions, which is similar, is as follows.

4. The petitioners were appointed to the post of Assistant Commandant in the year 2003 and were subsequently promoted to the post of Deputy Commandant on 17.04.2010. On 21.10.2016, the petitioners were promoted to the rank of 2-I/C and have been serving as 2-I/Cs for over 7 years. The petitioner no.1, since joining the CRPF, has served in various parts of the



country including Srinagar, Tripura, Barmula, Neemuch, Rangareddy, some of which stations were duty battalions. Similarly, the petitioner no.2 has also served in different parts of the country including Neemuch, Srinagar, Mokokchung, Kishtwar, Gadchiroli and New Delhi with some of the stations being duty battalions.

5. It is also apposite to mention that the petitioner no.1 is a law graduate who claims to have helped create the 'Legal Cell' of the Police-II Division along with his colleagues and has been working with such division of the MHA since 10.09.2013. On the other hand, the petitioner no.2 was entrusted with establishing the 'Legal Monitoring Unit' in the Police-II Division and has been working with this division of the MHA since 23.11.2015. This Legal Cell deals with the litigation work of various Central Armed Polices Forces (CAPF) in the MHA. Similarly, the Legal Monitoring Unit deals with court cases involving CAPF as well as of Assam Rifles and National Security Guard, through its Court Case Monitoring System.

6. On account of their continued service with the MHA, where the petitioners were serving with the Police-II Division, they were unable to complete the two years MFS in the rank of 2-I/C, consequently, they were declined the benefits of NFFU vide Office Memorandum (OM) No. J-ii-07/2018-SLP/Pers.ii dated 04.07.2019, on the ground that though they met all other eligibility criteria of promotion, they had not completed the requisite two years of MFS which is the criterion for grant of NFFU, as prescribed under the said OM, being the same as that for promotion.

7. Being aggrieved by non-grant of NFFU, the petitioners made representations to the respondent no.2, seeking waiver of their MFS, as prescribed under the aforementioned OM. However, to the utter dismay of



the petitioners, their representations came to be rejected vide the common impugned order dated 05.04.2021, passed in respect of both the petitioners. Further, it was directed that the petitioners be detached from the MHA, in order to enable them to complete their MFS.

8. Aggrieved by the impugned order, the petitioners made several separate representations to the respondents, requesting that they be relived from attachment from MHA, so that they could move up the ranks in terms of promotion and their claim for grant of NFFU does not further get jeopardized. However, such requests were to no avail and the petitioners were merely given empty assurances that their case would be revaluated and that they would be accorded NFFU, which they deserved.

9. While no action was taken on the petitioners' representations, the respondent no.2 on 03.08.2022 published a list of Grade 'A' General Duty Officers who were to be granted NFFU w.e.f. 01.01.2022. The said list included not only batch mates of the petitioners but also a large number of their juniors. However, the name of the petitioners did not find mention in such list, leading to filing of the present petitions.

10. In support of the petitions, learned counsel for the petitioners submitted that the respondent no.2 has passed a vague, cryptic and non-speaking order, without communicating any reason for the rejection of the representations made by the petitioners.

11. He contended that the impugned order has caused grave injustice to the petitioners and even if the petitioners were to be detached now, it would not make up for the lost time and financial benefits, as they would only get their financial upgradations after two years of MFS, whereas their batch mates as well as juniors are already enjoying the same.



12. Learned counsel further urged that the petitioners were posted to the office of the MHA only in public interest and not at their request. He submitted that the transfer or posting of Force personnel is not in their hands, but is carried out by the competent authority in the interest of the Force, given the administrative requirements. Further, the NFFU being a necessary requirement for career progression, it was the responsibility of the respondents to appropriately transfer/attach personnel and officers in the Force, so that they get the opportunity to complete the MFS in time and are not deprived of their rightful promotions/NFFU.

13. In support of his submissions, learned counsel drew our attention to the following decisions and urged that the legal position is settled that once an individual, is in public interest, posted at static locations, he cannot be penalized for not being able to complete the required MFS before the cutoff date and ought to be in such a case, granted the requisite relaxation in MFS.

- ***Ashok Kumar & Ors. vs. Union of India & Anr., W.P. (C) No. 21900 of 2005 decided on 27.10.2009***
- ***Shri Virendra Singh Rajput v. Union of India & Ors. W.P.(C) No. 2427/2010,***
- ***S. Arul Raj v. Union of India and Ors W.P. (C) No.2266/2011 decided on 02.08.2011 (Upheld by Hon'ble Supreme Court of India),***
- ***Ram Naresh Pratap Singh v. Union of India & Ors. W.P. (C) No. 82/2012.***
- ***Ghamman Singh v. Union of India & Ors. in WP(C) 8046/2011 (decided on 27.09.2012).***
- ***Devender Singh Sandhu v. Union of India W.P. (C) No.2405/2013 decided on 29.05.2013***
- ***Commandant Rakesh Sethi vs. Union of India & Anr. W.P. (C) No. 3778/2014 and***
- ***Ashok Kumar Sharma vs. Union of India and Ors. [W.P.(C) 8468/2015]***



• *Pawan Kumar vs Union of India Through its Secretary & Anr.* [W.P.(C) 15759/2022]

14. Opposing the submissions made by the petitioners, learned counsel for the respondents urged that the completion of MFS is a mandatory condition for grant of NFFU and therefore, giving the petitioners any relaxation in their MFS for promotion/NFFU would defeat the purpose of MFS, which requires that all Force personnel/officers should have adequate experience of working in duty battalions in each rank.

15. Learned counsel contended that upon both the petitioners being promoted to 2-ICs on 21.10.2016, their services continued in MHA, where they were attached since 2013. Consequently, they without praying for being repatriated to the CRPF, submitted a duly signed Charge Assumption Report to the MHA, to assume charge of the promoted post. This in itself indicates the intention of both the petitioners to continue with the MHA. Since the petitioners chose to remain in these static postings on their own volition, they cannot be considered for the grant of NFFU, without completion of MFS.

16. Further, the competent authority in the CRPF had vide their letter dated 05.04.2021, conveyed its decision of not acceding to the request of the petitioners to grant them relaxation in their required MFS. The petitioners, however, chose not to make any further communication in response to the aforesaid letter of the Director General (DG), CRPF, to report back to the CRPF in order to complete MFS. This further goes to show the interest of the petitioners to continue to remain attached with the MHA and therefore, their case squarely falls within the ambit of paragraph 5(iii) of the OM dated 02.06.2012, where no relaxation of MFS can be granted. He has therefore,



urged that the decision in *Pawan Kumar (supra)* relied upon by the petitioners would not be applicable to the facts of the present case as no recommendation for relaxation/ waiver of MFS was ever made in their favor by the DG, CRPF.

17. It is urged that the petitioners are due for promotion to the rank of Commandant in the year 2028, and will therefore have sufficient time to complete their MFS, after they are detached from the MHA. The learned counsel, while concluding, seeks dismissal of the writ petition and urges that there is no provision for relaxation in the eligibility criteria relating to the guidelines dated 24.09.2009, for which the grant of NFFU only was subject to fulfillment of promotional criteria, which in the present case includes 2 years of MFS.

Analysis and conclusion

18. Having heard the learned counsel appearing on behalf of the parties and perused the record, the short question which emerges for consideration of this Court is, as to whether, in the facts of the present case, the petitioners were entitled to the relaxation in the required MFS for grant of NFFU.

19. At the outset, it may be noted that in order to overcome the problem of stagnation, where regular promotions cannot be granted due to lack of vacancies or other similar reasons, the 6th Central Pay Commission recommended the grant of NFFU to all Group 'A' officers in various organizations' Group 'A' services. While such a grant of NFFU is only by way of advance grant of financial benefit, which would otherwise accrue later to the concerned individual when they are considered for regular promotion as per DPC guidelines based on the provisions of Recruitment



Rules. Thus, NFFU was envisaged as a financial up-gradation without changing the seniority, post or duties of the employees.

20. In pursuance of the directions of the Apex Court in *Union of India vs Haranada* [2019 SCC OnLine SC 126], the Union of India (UOI) vide its OM dated 04.07.2019 has directed the grant of the benefit of NFFU to group 'A' Executive Cadre officers of the CAPF. We, thus, find that NFFU has been made applicable to all the grade 'A' services without linking them to vacancies in their respective grades. As per the DoPT's OM dated 24.04.2009, the MHA has, therefore, clarified that to be eligible for grant of NFFU, the officer has to fulfill all the terms and conditions as laid down in the said OM.

21. A symbiotic reading of MHA's OM dated 30.09.2019 and the DOPT's OM dated 24.04.2009, encompasses all eligibility criteria, as are applicable for promotion and also required for the grant of NFFU.

22. Alluding to the mandatory requirements set out in these OMs, the counsel for the respondents vehemently submitted that as per the aforesaid OMs, an officer, to be eligible for grant of NFFU has to fulfill all the six prescribed conditions in the Recruitment Rules for promotion. One of those being, 'two years mandatory field service in the rank of 2-I/C'. He submitted that respondents being the employer are fully within their rights to prescribe eligibility criteria and consider other conditions before grant of such upgradations. As the petitioners failed to meet the MFS criteria, they were found to be not eligible for grant of NFFU.

23. He submitted that the petitioners' plea that the said eligibility condition of 2 years of MFS could not be met by them, not due to their own inaction or default, but on account of their not being relieved by the



respondents from their present deputation/ attachment posting with the MHA, is factually incorrect. Further, drawing the attention of this Court to the decision in ***Ghaman Singh vs. UOI (supra)***, they submitted that pursuant to numerous judicial pronouncements regarding grant of relaxation in MFS, the MHA came up with a policy decision on 02.06.2012, providing for grant of relaxation in MFS by the DG in appropriate cases.

24. In order to appreciate the above submissions of the parties which flow from the MHA's OM dated 02.06.2012, it would be apposite to note the OM in its entirety hereinbelow :-

“F.No.1-45020/7/2012-Pers-11
Government of India
Ministry of Home Affairs
Police-11 Division (Pers.II)

Subject: Grant of relaxation in condition of 2/3 years Mandatory Field Service (MFS) in a duty Bn. to become eligible for next rank promotion in respect of Executive personnel of Central Armed Police Forces (CAPFs) & Assam Rifles (ARS) - Guidelines regarding.

The existing Recruitment Rules of various CAPFS & ARS provide for 2 to 3 years of Mandatory Field Service (MFS) i.e. service to be rendered in a duty Battalion, to be completed by the Executive (General Duty) personnel of various ranks to become eligible for promotion to the next higher rank.

2. Some Force personnel, who did not complete the said eligibility conditions, as provided under the Recruitment Rules (RRs) and resultantly could not be promoted to next rank, have approached the various Courts of Law for relief in relaxation to the conditions prescribed in the RR. In some of the judgments passed in such cases, the Hon'ble Court(s) have directed the respondents (MHA/CAPF concerned), to give promotion to the petitioners along with all consequential benefits, except the back wages, without insisting for completion of MFS. In this regard, the orders of the Hon'ble High Court of Delhi in WP(C) No.2266/2011 (S. Arul Raj Vs UOI) dated 2.08.2011 on this issue were challenged by MHA before Hon'ble Supreme Court of India by filing SLP No..../2012 CC No.2919/2012. However, the Hon'ble Apex Court was pleased to dismiss the SLP.



3. Recently in another such case (WP (C) No.8046/2011 SI/GD Ghaman Singh Vs UOI) the Hon'ble High Court of Delhi has observed and directed as under :-

"Once a matter has been decided by the Apex Court, all the similarly placed persons should be granted the relief in a uniform manner without compelling the members of the Force to go before the Court further directing that in case such frivolous matters are brought before the Court, they will be disposed of with very heavy cost which may have to be recovered from the senior officers responsible for not curbing the litigation. The Court has given 4 weeks time from 28.03.2012 to take a decision on the issue to allow promotion without insisting on 2 years mandatory field service."

4 The matter has been examined and it has been found that such problem of not completing the MFS which is an operational requirement of the Force and also provided under the RRs to become eligible for next promotions pertains to less than 2% of the total Force personnel which means about 98% personnel are being promoted in conformity of the RRS after completion of the MFS. Even these 2% personnel are not able to complete the required MFS:

- (i) Either due to exigency of their services for the Force concerned in the interest of the Force; or
- (ii) Due to their own personal reasons such as health, family problems, social commitments, education/marriage of children etc.

While some Force personnel are posted/attached to static offices due to the administrative requirements of the Force concerned/MHA, there is another category of personnel who express their unwillingness for being posted to a field unit or in the Ops areas citing different personal reasons as mentioned above and as a result get posted/attached to static offices/offices knowing fully well that the service rendered by them does not counted towards MFS as provided under RRs. Besides this, certain Force personnel are not able to complete the MFS owing to their Medical Shape category.

5. It has been decided that since MFS is the operational requirement for the Force to hold higher responsibilities, doing away with the requirement of MFS from the Recruitment Rules itself will adversely affect the operational efficiency and functional effectiveness of these CAPFS & ARs. Therefore, all such cases wherein the CAPFS & ARs personnel concerned, has not completed the MFS, while his name is being considered for promotion to the next rank, **the waiver/relaxation of such eligibility condition should be considered by the CAPFs/MHA objectively and sympathetically. CAPFs & ARS may follow the following guidelines while considering such waiver/relaxation of the MFS condition prescribed in the RRs:-**

- (i) **Those CAPFs & ARs personnel who could not be posted to Duty Battalion due to exigency/requirements of CAPFs in the interest of the work of the Force or due to other technical reasons/grounds,** cases of such CAPFS & ARs personnel will be duly considered by the DG of the



CAPF concerned, for granting waiver/relaxation in the Mandatory Field Service.

(ii) As regards the CAPFS & ARs personnel who have not completed the MFS owing to their own request for being posted in static postings/offices where service rendered by them is not counted towards MFS or wherever such personnel have expressed their unwillingness for posting to field units/ops areas and get posted/attached, on their own volition, to static offices, their cases will not be considered for granting relaxation in MFS.

(iii) While posting such CAPFs & ARs personnel to the static postings, the CAPF concerned may inform the Force personnel concerned regarding the consequences of such postings with regard to their not meeting the eligibility criteria for next promotion as per RRs. While posting personnel to any of such static postings, it may be categorically intimated to the personnel that his tenure will not be counted toward's Mandatory Field Service and no representation will be entertained for claiming promotion to next rank in relaxation to the prescribed MFS Therefore, such personnel shall not be considered for promotion by the DPCs till they complete the requisite Mandatory Field Service as laid down in the Recruitment Rules. In case of such personnel, who have been left out by DPC, due to his being declared UNFIT by the DPC for not completing MFS, his seniority will depreciate and he would be considered by the subsequent DPCs for next vacancy year.

(iv) The Force personnel who are not able to complete the MFS owing to their poor Medical shape category shall also not be considered for waiver of MFS criteria. However, in respect of personnel in poor Medical Shape Category due to injury sustained by him attributable to active Govt. duty, the requirement of Mandatory Field Service will be relaxed by DG of CAPF concerned to treat certain low medical category at par with Shape-I medical category for the purpose of promotion.

(v) A certificate with reasons recorded in writing for the waiver/relaxation in requirement of Mandatory Field Service, wherever given, will be placed the ACR dossier of the personnel concerned."

(Emphasis supplied)

25. What emerges from the aforesaid OM issued by the MHA is that detailed guidelines have been laid out for considering cases for grant of waiver / relaxation in the 2 years of MFS required for grant of promotion / NFFU. While clause (i) of paragraph 5 of the OM provides the



circumstances under which waiver/ relaxation will be granted, clause (ii) to (iv) lay down cases where no relaxation in the MFS will be granted. The OM also provides that cases for waiver/ relaxation must be considered objectively and sympathetically.

26. Now turning to the facts of the case, it is the plea of the petitioners that they had made requests to the respondent no. 2 / DG, CRPF seeking exemption / waiver in MFS condition, as per Recruitment Rules, for grant of NFFU since the petitioners vide orders dated 05.09.2013 and 20.11.2015, were directed to report to MHA on attachment, without seeking their willingness and were instructed to create a Legal Cell and a Legal Monitoring Unit in the division to facilitate the legal work of the Central Forces. They were assured that they would be relieved from their present postings in six months after satisfactory functioning of the Legal Cell as well as the Legal Monitoring Unit, however, despite their requests for being relieved, they remained posted and continued to serve at the Police-II Division of the MHA. The petitioners had, therefore, requested for the exemption clause prescribed in MHA No. 1/45020/7/2012-Pers.-ii dated 02.06.2012, to be applicable to them.

27. It is not disputed that the petitioners are on attachment with MHA w.e.f. 10.09.2013 and 23.11.2015 respectively and while on said attachment itself, they were promoted to the rank of 2-I/C on 21.10.2016. It is further admitted by the respondents that the petitioners were never posted to any duty Battalion after their promotion as 2-I/C, and have for the past 10 years, been posted in MHA due to service exigencies. In these circumstances, when the petitioners are in no way responsible for their continued retention in their static posting in the MHA, the decision of the respondents to reject



the request of the petitioners, for grant of relaxation/ waiver of MFS by them, is wholly arbitrary. Essentially, the posting and transfer policy is not within the control of an employee as he/she cannot be permitted to have any influence or give input with regard to his transfer and posting to a particular station / department. The employee is required to obey the lawful orders issued by his employer, else it would amount to misconduct. The respondents have failed to show that the petitioners had ever requested for an exemption from being posted at a particular place, or that they had ever made any request for seeking posting to a static location.

28. In this regard, we may refer to a recent decision of this Court in the case of **Pawan Kumar vs Union of India Through its Secretary & Anr.** [W.P.(C) 15759/2022], the relevant extracts read as under:-

“17. Even otherwise, in our view, it is for the respondents to ensure while managing the posting profile of the members of the Force to ensure that they are allocated postings in such a manner that none of them are rendered ineligible for promotion unless they choose to specifically request for static posting in which case they must be informed that they may be rendered ineligible for promotion on account of MFS. Further we find that the fact that his service at the Law Branch in Delhi where he was being posted at his request from May, 2017 would not be counted as MFS, was communicated to the petitioner only on 18.04.2017. Admittedly, no such communication was given to the petitioner till 01.04.2017 when he otherwise became eligible for grant of NFFU. The respondents therefore cannot be permitted to urge that the petitioner was himself responsible for not being able to complete MFS before 01.04.2017 when he was otherwise eligible for NFFU.

18. We also find merit in the petitioner’s plea that the relaxation granted by respondent no. 2 could not have been ignored by respondent no. 1. From the counter affidavit, we are unable to discern any justifiable reason as to why the respondent no.1 has rejected the specific recommendations for relaxation made by the respondent no.2. In our considered opinion once the respondent no.1 has delegated the power of relaxation to the respondent no.2, it



is expected to follow the advice given by the said respondent. It is respondent no. 2 who is conversant with the requirements of the Force and is required to take a decision as to which Officer is to be posted at which location. In the present case, taking into account the qualifications of the petitioner, he was, in public interest, under directions of respondent no. 2, posted to static locations for which he cannot be blamed.

19. In fact, the rejection by the respondent no.1 of the relaxation in MFS granted to the petitioner by respondent no. 2 would not only be contrary to own guidelines dated 12.07.2019, but would also amount to penalizing the petitioner for obeying the lawful orders issued by the respondent no.2. We may note that it is not even the respondents' case that any time before 01.04.2017, the petitioner was ever posted to any Duty Battalion or that he had made any request for seeking posting to static location.

20. In the light of the aforesaid, we have no hesitation in holding that the decision of respondent no. 1 to hold the petitioner as being ineligible for grant of NFFU in JAG level w.e.f. 01.04.2017 was arbitrary and is unsustainable. The decision of respondent no. 1 to ignore the order for grant of relaxation passed by respondent no. 2 is accordingly set aside."

29. The respondents have vehemently urged that the decision in **Pawan Kumar (supra)** is distinguishable on facts, as in the said case, the petitioner was granted relaxation by the DG. However, no such relaxation has been granted by the DG in favour of any of the petitioners. Having perused the said decision, though learned counsel for the respondents is correct in urging that no relaxation was granted to the petitioners by the DG, nothing turns on this. We say so since once the respondents admit that both the petitioners were retained with the MHA only due to the exigencies of service and therefore, the said posting would certainly qualify as being in public interest. When this is the admitted position, the respondents cannot penalize the petitioners by denying them relaxation in MFS. The decision of the respondents in rejecting the petitioners request for grant of relaxation/



waiver of MFS and consequential rejections of their claim of NFFU are unsustainable and liable to be set aside.

30. For the aforesaid reasons, we allow the writ petitions by setting aside the impugned order dated 05.04.2021 and direct the respondent no. 1 to reconsider the petitioners' case for granting of relaxation in MFS in the light of our observations made hereinabove, and consider them for grant of NFFU at the Commandant level w.e.f. 01.01.2022. Needless to state, in case the petitioners are found to be meeting all other eligibility criteria for grant of NFFU, they will be paid all consequential arrears from the due date. The exercise in terms of this order will be carried out within 12 weeks.

31. The writ petitions, are disposed of, in the aforesaid terms.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 03, 2024
FK/SU