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

+ **W.P.(C) 4142/2017**

R.P. SAXENA

.....Petitioner

Through: Mr. Shanker Raju and Mr
Nilansh Gaur, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms. Sangita Rai, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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15.05.2026

C. HARI SHANKAR, J.

1. The issue before us is the entitlement, or otherwise, of the petitioner to non-functional upgradation¹ in terms of Office Memorandum dated 24 April 2009 issued by the Department of Personnel and Training². The claim of the petitioner to NFU stands rejected by the Central Administrative Tribunal³ *vide* judgment dated 29 November 2016 rendered in OA 371/2016⁴. The petitioner has challenged the said decision before us in the present proceedings.

¹ "NFU", hereinafter

² "DOPT", hereinafter

³ "the Tribunal", hereinafter

⁴ **R P Saxena v. UIO & Ors.**



2. We have heard Mr. Shanker Raju, learned counsel for the petitioner and Ms. Sangita Rai, learned counsel for the respondents, at length.
3. The issue is short and purely legal.
4. The relevant Clauses of DOPT OM dated 24 April 2009 read as under:

“No. AB.14017/64/2008-Estt.(RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, the 24th April, 2009

Office Memorandum

Subject:- Non-Functional upgradation for Officers of Organised Group 'A' Services in PB-3 and PB-4

Consequent upon the acceptance of the recommendations of the Sixth Central Pay Commission, the following orders are issued:-

- (i) Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to batches of Organised Group A Services that are senior by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative. Service Officers in that particular grade at the Centre.
- (ii) Grant of higher scale would be governed by the terms and conditions given in Annex-I.”



2. Grant of higher scale (i.e. pay band and/or grade-pay) under these instructions would be w.e.f. 1.1.2006, wherever due and admissible.

Annexure I

TERMS AND CONDITIONS FOR GRANT OF HIGHER PAY SCALE ON NON-FUNCTIONAL BASIS TO OFFICERS OF ORGANISED GR.' A' SERVICES

1. The non functional up-gradation granted under these orders will be based on empanelment and posting of particular batch of IAS officer in the Centre. Such up-gradation would not be linked to the vacancies in the grade.

3. 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.

6. Orders will be issued with the approval of the competent authority. Grant of higher pay scale on the non-functional basis would be from the date of posting of the first officer belonging to the particular batch of IAS officer at the centre.

8. As and when the normal vacancies in the grade arise, the officer will be considered for regular promotions as per the normal DPC guidelines, based on the provisions of the recruitment rules. UPSC will be consulted wherever the rules provide for the same. However at the time of promotion, the pay in the grade will not be fixed again for officers who have been granted up-gradation under these orders.



11. ILLUSTRATION:- If officers of 1987 batch of IAS are empanelled as Joint Secretary in the grade pay of Rs. 10,000/in PB-4 and an officer of the batch gets posted in the Centre (under Central Staffing Scheme) on 15th January 2008, all the officers of the 1985 batch of organized Gr. A Central Services who have not been promoted to the Joint Secretary or equivalent grade and who are eligible for the same on 1/1/2007 for the panel year 2007-08, would be appointed to the same grade on non-functional basis under these instructions w.e.f. 15/1/2008. Same would be the case in the event of posting of an officer of particular batch as Deputy Secretary/ Director under Central Staffing scheme.”

5. The petitioner was promoted to the Senior Administrative Grade⁵ on 27 April 2006. He retired, on attaining the age of superannuation, on 31 October 2009, still drawing pay in the SAG. The petitioner belongs to the Central Water Engineering Class-I Service⁶, which he joined on 24 September 1975. He was, therefore, a 1975 batch officer of the CWES.

6. The CWES, admittedly, is an organised Group A service.

7. The petitioner contended that, an IAS officer of the 1977 batch and, therefore, two batches junior to the petitioner, was appointed as Additional Secretary in the Government of India in the pay scale of ₹ 67000-₹ 79000 on 26 December 2007. This, according to the petitioner, entitled him to grant of NFU in the same scale of ₹ 67000-₹ 79000 with effect from 26 December 2007 i.e., the date when he was posted to the Centre.

⁵ “SAG” hereinafter

⁶ “CWES”, hereinafter



8. Attempts at securing the said scale at the departmental level having failed, the petitioner approached the Tribunal by way of OA 371/2016. The prayer clauses in the said OA read thus:

“8. RELIEF SOUGHT:

In view of the facts and submissions as made herein above, it is most respectfully prayed that this Hon'ble Tribunal graciously be pleased to:-

- (i) call for the relevant records of the respondents dealing with issues raised in the instant OA;
- (ii) declare the order/letter No.15/02/2013-Estt.1/495-96 dated 10th March, 2015 (Annexure-A Impugned) and Office Memorandum No.AB.14017/64/2008-Estt.(RR) dated 24.04.2009 (Annexure-A-1 impugned) to the extent the same requires fulfillment of the eligibility criteria for regular promotion applicable for the benefit of non-functional upgradation in terms of Resolution dated 29.8.2008 as illegal, arbitrary and discriminatory;
- (iii) declare that the applicant is entitled for upgradation in HAG pay scale of Rs.22,400-525-24,500 (Pre-revised) (revised to Rs.67,000-79,000) w.e.f. 26.12.2007 in view of the conscious policy decision of the Government through Ministry of Finance and respondent No.2 vide Resolution dated 29.8.2008 (Annexure-A-2);
- (iv) direct the respondents to re-fix the pay of the applicant in HAG pay scale of Rs.22,400-525-24,500 (Pre-revised) (revised to Rs.67,000-79,000) w.e.f. 26.12.2007, consequently re-fix his pension, etc. and pay the arrears of pay, pension and retiral benefits thereof with interest @ 12% p.a.;
- (v) order exemplary cost against the respondents and in favour of the Applicant.
- (vi) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

9. By judgment dated 29 November 2016, the Tribunal has



rejected the petitioner's OA thereby causing the petitioner to approach this Court by means of the present writ petition.

10. The stand of the respondent, which has been echoed before us by Ms. Rai and was accepted by the Tribunal, was that, by operation of Clause 3 of the Terms and Conditions enlisted in Annexure I to the DOPT OM dated 24 April 2009, a candidate was required to satisfy the promotional norms for promotion to the grade in which she or he sought NFU, in order to be entitled to the benefit thereof. Three years in the SAG were required for promotion to the HAG. Inasmuch as the petitioner had been promoted to the SAG with effect from 27 April 2006, he satisfied the requirement of three years in the SAG only on 26 April 2009. His eligibility for grant of NFU, therefore, was considered on 1 January 2010. However, by that time, he had superannuated and could not, therefore, be granted NFU.

11. Defending the impugned order of the Tribunal, Ms. Rai presses into service Clause (ii) of the DOPT OM dated 24 April 2009 read with Clause 3 of the Terms and Conditions enlisted in Annexure I to the OM.

12. She submits that, the petitioner having satisfied the requirement of three years service in the HAG only on 26 April 2009, his eligibility for grant of NFU did not arise prior to that date. His case, was, therefore, required to be considered as on 1 January 2010. Prior thereto, however, as the petitioner had retired from service, he could not be granted NFU.



13. Mr. Shankar Raju, arguing for the petitioner, submits, on the other hand, that the petitioner's entitlement to grant of NFU in fact crystallized on 26 December 2007 when, an IAS officer two batches junior to the petitioner was posted to the Centre. The requirement of satisfying the promotional norms for promotion to the HAG as envisaged in Clause 3 of the Terms and Conditions enlisted in Annexure I to the OM, could at best defer the date of his entitlement to 26 April 2009. At least as and from that date, the petitioner was entitled to grant of NFU. Mr. Raju submits that, therefore, the decision to deny NFU to the petitioner could not sustain in law or on facts.

14. Having heard learned Counsel for the parties, we are inclined, for the following reasons, to hold that the petitioner was entitled to the benefit of NFU.

15. Para (i) of the DOPT OM dated 24 April 2009 specifically states that the officer would be entitled to the NFU "from the date of posting of the Indian Administrative Service Officers in that particular grade at the centre". The entitlement of the petitioner to grant of NFU, therefore, enured on 26 December 2007.

16. However, as Ms. Rai correctly points out, para (ii) of the first para in the DOPT OM dated 24 April 2009 makes the entitlement to higher scale subject to the terms and conditions in Annexure I to the OM. Clause 3 of Annexure I to the OM states that all prescribed



eligibility criteria and promotional norms for upgradation to a particular pay scale would have to be met at the time of screening for grant of NFU. This made the requirement of three years in the SAG a mandatory pre-condition for the petitioner to be entitled to NFU under the OM dated 24 April 2009.

17. Admittedly, the petitioner satisfied this requirement on 26 April 2009 when he completed three years in the SAG. Even if one were to defer the entitlement of the petitioner to grant of NFU, which was otherwise available under clause (i) of the DOPT OM dated 24 April 2009 on 26 December 2007, the entitlement would nonetheless fructify on 26 April 2009.

18. Admittedly, on 26 April 2009, the petitioner was very much in service.

19. We are unable, therefore, to justify the respondent's decision not to extend him NFU on the ground that, on 1 January 2010, the petitioner had superannuated.

20. It is true that the Illustration following the OM does refer to consideration from the 1st of January of the next year following the date of entitlement. However, in the absence of any such condition being present either in the OM or in the Terms and Conditions annexed to the OM, we cannot treat the petitioner ineligible for NFU because he had retired by 1 January 2010.



21. Our conclusion is fortified by the DOPT OM dated 25 September 2009 with respect to point number 5 in para 1 of the OM, clearly states that even retired officers would be eligible for grant of NFU as per the DOPT OM dated 24 April 2009 provided they were otherwise eligible *as on due date*. The relevant part of DOPT OM dated 25 September 2009 reads as under:

“No. AB. 14017/64/2008-Estt. (RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

New Delhi, the 25th September, 2009

Office Memorandum

Subject:- Non-Functional upgradation for Officers of Organised Group 'A' Services in PB-3 and PB-4- Clarifications

This Department vide OM dated 24.4.09 issued instructions regarding non-functional upgradation for officers of Organised Group 'A' Services in PB-3 and PB-4. Subsequently vide OM dated 21.5.09, details regarding the batch of officers belonging to the IAS and who have been posted at the Centre in various grades of PB-3 and PB-4 w.e.f. 1.1.2006 as well as the date of posting of the first officer belonging to the batch were indicated. In this connection, clarifications have been sought from this Department by some Ministries/Departments and by individual representations. The same have been considered by this Department in consultation with Department of Expenditure and following clarifications are issued.

	Point of doubt	Clarification



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5.	Whether retired employees are to be granted the benefit of non-functional upgradation	Para 6 of our instructions provide that benefits would be from due date. Therefore, even retired officers who are otherwise eligible as on due date would need to be considered.
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(J.A. Vaidyanathan)
Deputy Secretary to the Government of India
Tel. 23092112”

At the highest, therefore, we can treat 26 April 2009 as the due date when the petitioner was eligible for being granted the benefit of NFU. Clause 5 of para 1 of the DOPT OM dated 25 September 2009 would also, therefore, support our conclusion.

22. For the aforesaid reasons, therefore, we cannot sustain the decision of the Tribunal to reject the petitioner’s OA.

23. OA 371/2016 stands allowed in terms of the prayers contained therein.

24. The writ petition also stands allowed accordingly with no order as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MAY 15, 2026

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