



2026:DHC:5168-DB



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

Reserved on: 13 March 2026
Pronounced on: 01 July 2026

+ W.P.(C) 13600/2019

SHRI KANT AND ORS.Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Ms. Muskan Dutta and Mr. Amrit Koul, Advs.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Amit Kumar Rana, Advs. Mr. Vinod Sawant, Law Officer CRPF and INSP Athurv and Mr. Ramniwas Yadav, CRPF Ms. Pratima N. Lakra, CGSC along with Mr. Vinod Sawant, law officer CRPF Mr. Atharv Midda, Law Officer

+ W.P.(C) 13607/2019

SYED MOHD ZAKI RIZVI AND ANR.Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Ms. Muskan Dutta and Mr. Amrit Koul, Advs.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Amit Kumar Rana, Advs.



2026:DHC:5168-DB



Mr. Vinod Sawant, Law Officer CRPF and
INSP Athurv and Mr. Ramniwas Yadav,
CRPF

+ W.P.(C) 1945/2020

GURDEEP SINGH MASTANA AND ANR.Petitioners

Through: Mr. Ankur Chhibber, Mr.
Anshuman Mehrotra, Mr. Nikunj Arora, Ms.
Muskan Dutta and Mr. Amrit Koul, Advts.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Amit Kumar Rana, Advts.
Mr. Vinod Sawant, Law Officer CRPF and
INSP Athurv and Mr. Ramniwas Yadav,
CRPF

+ W.P.(C) 2612/2020

RAJ KRISHAN GAUR & ORSPetitioners

Through: Mr. Ankur Chhibber, Mr.
Anshuman Mehrotra, Mr. Nikunj Arora, Ms.
Muskan Dutta and Mr. Amrit Koul, Advts.

versus

UNION OF INDIA & ORSRespondents

Through: Mr. Vivek Goyal, CGSPC, Mr.
Gokul Sharma, Advts.
Mr. Vinod Sawant, Law Officer CRPF and
INSP Athurv and Mr. Ramniwas Yadav,
CRPF

+ W.P.(C) 767/2020



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DEVENDRA KUMAR SHARMA

.....Petitioner

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Ms. Muskan Dutta and Mr. Amrit Koul, Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv.

+ W.P.(C) 912/2020

RAM KANWAR SAINI AND ORS.

.....Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Ms. Muskan Dutta and Mr. Amrit Koul, Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Avshreya Pratap Singh Rudy, CGSC with Mr. Ankit Khatri, Ms. Usha Jamnal and Ms. Nyasa Sharma, Adv. Mr. Nishant Gautam, CGSC with Ms. Kavya Shukla Adv. Mr. Vineet Negi, Mr. Naman Sharma, Ms. Theresa, Adv.

+ W.P.(C) 660/2022

RAZA HAIDER AND ANR.

.....Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Ms. Muskan Dutta and Mr. Amrit Koul, Adv.

versus



UNION OF INDIA AND ORS

.....Respondents

Through: Ms. Arti Bansal, CGSC with
Ms. Shruti Goel, Adv.
Mr. Vinod Sawant, Law Officer CRPF and
INSP Athurv and Mr. Ramniwas Yadav,
CRPF

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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JUDGMENT
01.07.2026

C. HARI SHANKAR, J.

1. These writ petitions involve a similar controversy. They are, therefore, being decided by this common judgment. For the sake of convenience, we would refer to the facts and render our decision treating WP (C) 13600/2019 as the lead case, and would thereafter apply the principles that we lay down to other writ petitions.

WP (C) 13600/2019 [Shri Kant & ors v. Union of India & Ors.]

A. The *lis* and the issues involved

2. The petitioners seek Non-Functional Financial Upgradation¹ in terms of Office Memorandum² dated 24 April 2009 issued by the Department of Personal and Training³. Petitioner 1 claims entitlement

¹ "NFFU" hereinafter

² "OM" hereinafter

³ "DOPT" hereinafter



to NFFU with effect from 10 July 2009; Petitioner 2 Dulal Chandra Dey with effect from 8 July 2007; Petitioner 3 Rizwan Rasul with effect from 21 June 2007 and Petitioner 4 B.D.S. Chauhan with effect from 1 January 2006. Petitioners 1 to 3 claim NFFU in the Higher Administrative Grade⁴ whereas Petitioner 4 claims NFFU in the Senior Administrative Grade⁵. The respondents, on the other hand, contend that Petitioner 1 was entitled to NFFU with effect from 1 April 2011 and Petitioner 2 with effect from 1 April 2009, and that they have been granted NFFU from the said dates. Petitioners 3 and 4, according to the respondents, are not entitled to NFFU.

3. Though arguments in these writ petitions were heard on multiple occasions, and we have been taken through a plenitude of OMs and other executive instructions, at the end of the day, the controversy has narrowed down to a very limited compass.

4. The respondents contend that grant of NFFU to any grade, under the DOPT OM dated 24 April 2009, is conditional on that grade forming part of the promotional hierarchy in the service of the petitioners. Petitioners 1 to 3 were already in the grade of Inspector General⁶ in the CRPF when they staked their claim for NFFU in terms of the OM dated 24 April 2009. The post of IG was in the SAG. NFFU was sought, by the said petitioners, in the HAG. The post of Additional Director General⁷ was introduced as a HAG-level post in the promotional hierarchy in the CRPF only on 7 October 2008, and

⁴ "HAG"

⁵ "SAG"

⁶ "IG" hereinafter

⁷ "ADG" hereinafter



the applicable Recruitment Rules⁸ were amended to that effect only in July 2009. The respondents' contention is therefore that, prior to 7 October 2008, none of the first three petitioners could seek NFFU under the OM dated 24 April 2009.

5. The RRs, as amended with effect from 7 October 2008, required 30 years' regular service in Group A with three years' regular service as IG for eligibility to promotion as ADG. One year's relaxation in the requisite residency period in the feeder grade was allowed by DOPT OM dated 30 September 2019. The requisite regular service as IG, which was ordinarily of three years as per the RRs was, therefore, reduced to two years by application of the OM dated 30 September 2019. Petitioners 1 to 3 were, therefore, according to the respondents, eligible for NFFU in the HAG, in terms of the OM dated 24 April 2009, only on completion of two years' regular service in the grade of IG (apart from 30 years' regular service in Group A, which, it is not disputed, all three petitioners possessed). In as much as two years' regular service as IG in the case of Petitioner 1 expired on 10 July 2010, he was given NFFU in the HAG with effect from 1 April 2011 and, as 2 years regular service as IG in the case of Petitioner 2 expired on 8 July 2008, he was given NFFU in the HAG with effect from 1 April 2009.

6. Petitioner 3 superannuated on 30 November 2007, before the post of ADG, in the HAG, was introduced as a promotional post in the

⁸ "the RRs" hereinafter



RRs. The respondents contend that, therefore, Petitioner 3 would not be entitled to NFFU in terms of the OM dated 24 April 2009.

7. Petitioner 4 has been denied NFFU in the SAG on the ground that he had not undergone the requisite promotional course for eligibility for promotion as IG till the date of his retirement from service, as was required by the OM dated 24 April 2009.

8. The petitioners contend, *per contra*, that the requirement of the post, to the scale of which the petitioners were seeking upgradation, being in the promotional hierarchy in the service, was not envisaged by the OM dated 24 April 2009, and had been artificially inserted in para 3(iii)(b) of a subsequent OM dated 30 September 2019 issued by the Ministry of Home Affairs⁹. The insertion of this condition, which was not envisaged in the OM dated 24 April 2009 has, therefore, been challenged, and quashing of the said para 3(iii)(b) of the MFA OM dated 30 September 2019 has been sought in the writ petition.

9. Alternatively, the petitioners contend that the prescribed eligibility for promotion to the post of ADG in the CRPF was not 30 years' regular service in Group A with at least three years' regular service as IG, as the respondents would contend, but 25 years' regular service in Group A with at least one year's regular service as IG, for which purpose the petitioners rely on DOPT OMs dated 15 December 2009 and 18 January 2011. There is no dispute that all four petitioners fulfil the requirement of 25 years' regular service in Group A. One

⁹ "MHA" hereinafter



year's regular service as IG was completed by Petitioner 1 on 10 July 2009, by Petitioner 2 on 8 July 2007 and by Petitioner 3 on 21 June 2007 with effect from which dates, according to the petitioners, Petitioners 1 to 3 would therefore be entitled to grant of NFFU in the HAG.

10. In so far as Petitioner 4 is concerned, the petitioners contend that the DOPT OMs dated 15 December 2009 and 18 January 2011 required the RRs to be amended to provide for Junior Administrative Grade¹⁰ officers with 17 years' regular service in Group A, of which at least four years' regular service had to be in the JAG, as the eligibility criterion for promotion to the SAG. It is contended that Petitioner 4 had, by 31 March 2006, completed 17 years in Group A, out of which four years' regular service was in the JAG and that, therefore, Petitioner 4 was entitled to NFFU, in terms of the OM dated 24 April 2009, with effect from 31 March 2006.

11. Thus, only two issues primarily arise for consideration in the present petitions, viz.,

- (i) whether it was a prerequisite, for being entitled to NFFU in a particular grade in terms of the DOPT OM dated 24 April 2009, that the said grade had to form part of the promotional hierarchy in the service; in other words, whether para 3(iii)(b) of the MHA OM dated 30 September 2019 was legal and valid, and

¹⁰ "JAG" hereinafter



(ii) whether the petitioners are entitled to NFFU, as claimed by them, in terms of the DOPT OM dated 24 April 2009.

B. Rival Pleadings

I. Case of the petitioners in the writ petition

12. Of the four petitioners in this writ petition,

(i) Petitioner 1 enrolled on 1 December 1971, was promoted to the rank of IG on 10 July 2008 and to the rank of ADG on 1 April 2011, and superannuated on 30 September 2011,

(ii) Petitioner 2 enrolled on 15 December 1971, was promoted as IG on 8 July 2006, as ADG on 7 September 2009 and superannuated on 30 June 2010,

(iii) Petitioner 3 enrolled on 1 December 1971, was promoted as IG on 21 June 2006 and superannuated on 30 November 2007 and

(iv) Petitioner 4 was enrolled on 6 December 1971, was promoted as DIG on 17 May 2005 and superannuated on 31 December 2007.

13. Pursuant to the recommendations of the 6th Central Pay Commission¹¹, the DOPT issued OM dated 24 April 2009, the entitlement of the petitioners to the benefit of which constitutes the controversy in this writ petition. The following clauses of the OM are relevant:

¹¹ "CPC" hereinafter



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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 on the acceptance of the recommendations of the 6th 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 belonging to backlogs of Organised Group A Services that are senior by 2 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.
- (iii) Appropriate amendments in the Service Rules may also be carried out.

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

ANNEX I

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



3. All the prescribed eligibility criteria and promotional norms including 'benchmark' for upgradation 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 1st officer belonging to the particular batch of IAS officer at the Centre.

In case of any delay in the issue of order, financial benefits under these orders will be given from the due date.

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 conducted 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 upgradation under these orders.”

14. Certain officers of the CRPF approached the respondents for being granted NFFU with effect from the dates when Joint Cadre IAS officers two batches junior to them were posted at the Centre. The DIG (Personnel) in the CRPF, *vide* communication dated 27 September 2012, addressed to one such officer, rejected the request on the ground that the DOPT OM dated 24 April 2009 applied only to officers of Organized Group A services, appointed under the Central Staffing Scheme¹², and CRPF cadre officers neither belong to an Organized Group A service, nor were they appointed under the CSS. Nonetheless, the matter was referred to the MHA for comments.

¹² "CSS" hereinafter



15. This led to some of the officers approaching this Court in a batch of writ petitions, headed by WP (C) 153/2013¹³. These writ petitions were disposed of, by a Division Bench of this Court, on 3 September 2015, from which we deem it appropriate to reproduce the following paragraphs:

“2. During the pendency of these proceedings, vide an order dated 26.09.2013, the Court directed the respondents to re-examine the issue regarding grant of NFFU to Group ‘A’ officers of the Central Reserve Police Force, Border Security Force and Indo-Tibetan Border Police. However, vide an Office Memorandum (for short OM) No. F. No. P.I.1/21022-Pers.DA-Pay dated 28.10.2013 issued by the Ministry of Home Affairs, the issue was decided against the petitioners. Accordingly, the petitioners were given leave to file amended writ petitions to incorporate these subsequent events.

3. Hence, the petitioners seek a writ of mandamus to grant them, i.e., Executive Group-A officers of CAPFs, the benefit of NFFU with effect from 01.06.2006, as given to other Officers of Group-A Service under PB-3 & PB-4, as issued vide Office Memorandum (OM) dated 24th April, 2009.

4. The petitioners further pray that they be formally declared as an Organized Group ‘A’ Service with effect from 01.01.2006 with all consequential benefits. Finally, some of the petitioners also seek directions for amendment of the Recruitment Rules, i.e., CRPF Group-A (General Cadre Officers) Recruitment Rules, 2008 as notified on 10.08.2010 vide Notification No. GSR 679(E) issued by the Ministry of Home Affairs, Government of India.

72. In this case, the Court has been called upon to decide if the impugned letter dated 31st May 2012 rejecting the grant of NFFU is arbitrary. Consequently, it has to be decided if the petitioners would be entitled to NFFU w.e.f 1.1.2006 as has been granted to Group A Officers in PB-3 and PB-4 vide OM dated 24.04.2009.

¹³ **G.J. Singh v. Union of India**



84. The issue of acknowledging the petitioners as OGAS has been pending for some time like a festering wound. From the preceding discussion, the Court would note although from the government records it can clearly be seen that the Petitioners have over and over again been recognised as OGAS, an element of obfuscation has been kept alive. It cannot be overemphasised that in matters relating to the armed forces and the paramilitary/CAPFs there ought to be clarity and certainty apropos the service benefits which the forces would be entitled to. An element of greater dispatch in taking decisions governing their service conditions would always be requisite. Therefore, to the extent that the OM dated 19/20.11.2009 and OM dated 28.10.2010 themselves leave scope for interpretation, it could well be said that there is a level of arbitrariness in them. The government having repeatedly acknowledged the Petitioners in their various communications as belonging to OGAS cannot be allowed to reprobate there from.

85. In view of the above, the Court is of the view that the petitioners, i.e., officers in PB-3 and PB-4 in the CAPFs (CRPF in the present instance) have been categorised under Organised Group 'A' Service ever since the year 1986. Hence, the benefits contemplated by the 6th CPC by way of NFFU to remove disparity between All India Services and other Organised Central Group 'A' Services, ought to be granted to them. Accordingly, the impugned OM dated 28.10.2010 and all other letters whereby the petitioners' request for the grant of NFFU was rejected, cannot be sustained and are hereby quashed."

Thus, the Division Bench of this Court held the CRPF to be an Organised Group A service and also held the petitioners before it to be entitled to NFFU in terms of the DOPT OM dated 24 April 2009.

16. The Union of India challenged the aforesaid judgment dated 3 September 2015 of this Court before the Supreme Court. The Supreme Court consolidated several writ petitions involving the issues of entitlement of various services to be treated as Organised Group A Services and the consequent entitlement of officers in the said services to the benefit of NFFU in terms of the DOPT OM dated



24 April 2009, which came to be decided in *Union of India v. Sri Harananda*¹⁴. The judgment independently deals with the batches of Civil Appeals dealing with various services.

17. The first Civil Appeal decided by the said judgment arose out of SLP (C) 12393/2013, and dealt with the Railway Protection Force¹⁵. The second batch of appeals decided in the said judgment included the Civil Appeal arising out of the judgment of the Division Bench of this Court in *G.J. Singh*. The following passages from the judgment of the Supreme Court merit reproduction:

“23.1. At the outset, it is required to be noted that the issue in the present appeals is non-grant of NFFU to the officers/employees like the original writ petitioners serving in CRPF. CRPF in the present case is denied NFFU solely on the ground that CRPF is not an Organised Group A Service and, therefore, they are denied the benefits of NFFU as recommended by the 6th Pay Commission as granted to other services.

23.3. As observed hereinabove, CMPFs are not granted the benefit of NFFU on the ground that they are not categorised as Organised Group A Services. As noted hereinabove, it is the case on behalf of the appellants that, out of six attributes which are required to be considered for treating and/or considering an organisation as an Organised Group A Services, CRPF does not satisfy Attributes (iv) and (vi) and also on the ground that the 6th Pay Commission did not recommend grant of NFFU to CAPFs.

23.4. Considering the material on record, more particularly, the Monographs published by the DoPT right from 1986 till date, CAPFs have been shown to be a part of the Central Group A Services. CAPFs have been shown as a part of the Central Group A Services after conducting the exercise of cadre review, etc. by the DoPT. Therefore, all throughout from 1986 till date, in the Monographs published by the DoPT, CAPFs have been shown to

¹⁴ (2019) 14 SCC 126

¹⁵ "RPF" hereinafter



be a part of Central Group A Services. Therefore, thereafter it would not be open for the DoPT not to consider and/or treat the CAPFs as an Organised Group A Services.

24. Now, so far as another ground on which CRPF are denied NFFU that the 6th Central Pay Commission did not grant NFFU to CAPFs is concerned, it is required to be borne in mind that the Central Pay Commission, as such, is not authorised to define “Organised Services” or to grant such status to any service. The recommendations would be made by the Central Pay Commission on the basis of the information submitted to it by the various Departments. It appears from the material on record that right from 1986 onwards, in various Monographs CAPFs were included in the list of Group A Central Civil Services. The Government took “U” turn and a stand was taken that CAPFs are not Organised Group A Central Services and, therefore, on the basis of such a stand, the Department must have given the information to the Central Pay Commission and, therefore, the 6th Pay Commission did not recommend NFFU to CAPFs. Therefore, merely because the 6th Pay Commission did not recommend to grant NFFU to CAPFs — Group A Officers in PB-III and PB-IV, the Group A Officers in PB-III and PB-IV cannot be denied NFFU, which otherwise is granted to all the Officers of Group A Central Civil Services.

24.2. Considering the aforesaid facts and circumstances and the objects and reasons of the grant of NFFU as recommended by the 6th Pay Commission, *when the High Court has observed and consequently directed that the officers in PB-III and PB-IV in the CAPFs are Organised Group A Service and, therefore, entitled to the benefits recommended by the 6th Pay Commission by way of NFFU and thereby has directed the appellants to issue a requisite notification granting the benefits of NFFU as recommended by the 6th Central Pay Commission, it cannot be said that the High Court has committed any error which calls for the interference by this Court.* We are in complete agreement with the view taken by the High Court.

25. In view of the facts and circumstances, the present appeals arising out of SLPs (Civil) Nos. 35548-554 of 2015 and 13937 of 2016 deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.”

(Emphasis supplied)



The Supreme Court, therefore, upheld the entitlement of the CRPF officers who had initially petitioned this Court and, thereafter, were respondents before the Supreme Court, both to be entitled to be regarded as members of an Organised Group A Service as well as to the benefit of NFFU in terms of the DOPT OM dated 24 April 2009.

18. In compliance with the judgment of the Supreme Court, in so far as it dealt with members of the RPF, the Ministry of Railways, *vide* OM dated 8 April 2019, notified the RPF as an Organised Group A Service. The Notification also received the concurrence of the DOPT on 12 April 2019. Following this, the draft RRs of the RPF were also circulated amongst stakeholders, inviting comments.

19. On 12 July 2019, the DOPT issued the following OM, also a consequence of the judgment of the Supreme Court in *Harananda*:

“Dated 12 July 2019

OFFICE MEMORANDUM

Subject: Grant of Organised Status of Railway Protection Force (RPF) and Group ‘A’ Executive Cadres of Central Armed Police Force (CAPFs)¹⁶

The undersigned is directed to refer to the Hon’ble Supreme Court’s judgement dated 05.02.2019 given in SLP (C) 35545-35554/2015 and SLP (C) No. 12393 of 2013 Re: Organised Group ‘A’ status to CAPF’s hand RPF.

2. In compliance of the above mentioned judgement dated 05.02.2019 of the Hon’ble Supreme Court, the Ministry of Home Affairs and Ministry of Railways *vide* the references cited above,

¹⁶ It is not in dispute that the CRPF is also a CAPF.



have conveyed the approval of the competent authority to grant of OGAS status to RPF and 2 Group 'A' Executive Cadre Officers of CAPFs and consequential benefits of NFFU with effect from 01.01.2006 and NFS the at 30% of Senior Duty Post (SDP) with effect from 06.06.2000 respectively.

3. The RPF and Group 'A' Executive Cadres of the following CAPFs having been treated as Organised Group 'A' Service (OGAS) by this Department for Cadre review and other related matters accordingly.

(i) Central Reserve Police Force (CRPF)

20. Despite this, the MHA proceeded to issue, on 30 September 2019, an OM, which contains, *inter alia*, para 3(iii)(b), with which the petitioners are aggrieved. The relevant paragraphs of the said OM may be reproduced as under:

North Block, New Delhi
Dated, the 30th September, 2019

OFFICE MEMORANDUM

Subject: Grant of Benefits of Non-Functional Financial Upgradation (NFFU) and Non-Functional Selection Grade (NFSG) to Group 'A' Executive Cadre Officers of CAPFs considered by the Hon'ble Quotes as belonging to Organised Group 'A' Services (OGAS) – Reg.

2. The matter has been further examined on the advice of DOPT was talked seeking relaxation in the residency requirement by one year, so as to benefit more officers.

3. DOPT has conveyed as under:-

(ii) CAPFs may release payment on grant of NFFU to all those officers who meet the eligibility norms prescribed in the RRs in compliance of court orders, except in respect



of NFFU to Level-13A, for the reason explained in (i) above.

(iii) One year relaxation in the residency period, prescribed under the Recruitment Rules, to the Group A Executive Cadre is agreed to, subject to the following conditions:-

- a) This is a one-time relaxation in respect of CAPF officers who are otherwise due for NFFU during the period 01.01.2006 to 31.12.2019.
- b) As per guidelines, NFFU is to be allowed in HAG level, *provided it is a level in the promotion hierarchy of the CAPF concerned.*
- c) The officers fulfil all other terms and conditions laid down in DOPT OM dated 24.04.2009 for grant of NFU and other instructions issued from time to time.”

21. Even while objecting to the introduction, in para 3(iii)(b) of the MHA OM dated 30 September 2019, of the additional requirement of the post, the grade of which was being sought on NFFU basis under DOPT OM dated 24 April 2009, being part of the promotional hierarchy in the service, the petitioners contend that, in fact, in the CRPF, the post of ADG was already in existence since 1987, for which purpose they rely on the following order dated 25 May 1987:

No. II. 27012/32/86/FP.II
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

....

New Delhi, Dated: 25.5.1987

To

1. The Director General,
Border Security Force,
New Delhi



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2. The Director General,
Central Reserve Police Force,
New Delhi.

Subject: Creation of a post each of Additional DG in BSF
and CRPF

Sir,

I am directed to convey herewith the sanction of the Pres to the creation of one post each of Additional Dir General in the scale of the of ₹ 7300-100-7600 in the BSF and CRPF with effect from the date these posts are filled in and up to 29.2.1988 for the present.

2. The above sanction is subject to the condition that you posts of Assistant Commandant in BSF and 2 posts of Dy. SPs in CRPF will be kept in abeyance till the posts of Additional DG continue and the supporting staff for the post of Additional DG in BSF and CRPF should be made available by the Organisation concerned by internal adjustment.

3. The expenditure involved in the creation of the posts will be debitable to the budget head of BSF and CRPF respectively under Demand No. 41 of the Ministry of Home Affairs for 1987-88.

4. This issues with the concurrence of Integrated Finance Division vide their Dy. No. 1811/87-Fin. III (D.I) dated 20 May 1987.

Yours faithfully,

(P. Vijayaraghavan)

Under Sec to the Government of India

Dated: 21.5.1987.”

22. The DG, CRPF issued, on 1 November 2019, an Order granting NFFU in the HAG, in terms of DOPT OM dated 24 April 2009, to various officers in the CRPF. Petitioner 1 was granted NFFU with effect from 1 April 2011 and Petitioner 2 was granted NFFU with effect from 1 April 2009. The name of Petitioner 3 was absent.



23. This was followed by Order dated 13 December 2019, also issued by the DG, CRPF, granting NFFU in the SAG, in terms of DOPT OM dated 24 April 2009, to officers of the CRPF. The list did not include Petitioner 4.

24. According to the petitioners, Petitioners 1 and 2 were entitled to NFFU with effect from 10 July 2009 and 8 July 2007 respectively, Petitioner 3 was entitled to NFFU with effect from 21 June 2007 in the HAG and Petitioner 4 was entitled to NFFU in the SAG with effect from 31 March 2006.

25. It is in the above circumstances that the petitioners approached this Court by means of the present writ petition, praying that

(i) DOPT OM dated 30 September 2019 be quashed and set aside to the extent it requires, in para 3(iii)(b) thereof, inclusion of the post, the scale of which was being sought on NFFU basis under DOPT OM dated 24 April 2009, in the promotional hierarchy of the service,

(ii) Orders dated 1 November 2019 and 13 December 2019, issued by the DG, CRPF be quashed and set aside to the extent they do not grant NFFU to the petitioners with effect from the dates from which they were entitled thereto, in terms of DOPT OM dated 24 April 2009, and

(iii) a writ of mandamus be issued to the respondents to grant NFFU to the petitioners with effect from the dates indicated in para 24 *supra*.



26. The petitioners have, in the writ petition, submitted that the MHA could not, in the OM dated 30 September 2019, include, in para 3(iii)(b) thereof, an additional requirement of the post, for which NFFU was being sought, having to be in the promotional hierarchy of the concerned CAPF.

27. That apart, the writ petition relies on the following OMs issued by the DOPT, which repeatedly called upon the respondents to amend the Service Rules/RRs of the CAPFs to bring the promotional avenues, and eligibility thereto, in line with the recommendations of the 6th CPC:

DOPT OM dated 15 December 2009

Dated 15th December, 2009

OFFICE MEMORANDUM

Subject:- 6th Central Pay Commission's recommendations – amendment of Service Rules – regarding

This Department in OM No. AB 14017/61/2008-Estt ® 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 organised 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 ‘A’ posts in the service out of which at least 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 at least 1 year’s regular service should be in the SAG.”

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

DOPT OM dated 18 January 2011

Dated 18th January, 2011

OFFICE MEMORANDUM

Subject:- Qualifying service for promotion to SAG/HAG Grades in Organised Group ‘A’ Engineering Services – regarding

This Department vide OM of even No. dated 15.12.2009 had issued guidelines for amendment of Service Rules for incorporating the eligibility requirements for promotion to SAG and HAG level in Organised Group A Services.

2. The matter has been examined in respect of the Organised Engineering Services where the functional JAG is at Grade Pay of ₹ 8700/- and the eligibility requirement for SAG level is 3 years in the JAG grade. Accordingly for promotion to SAG (PB 4 Grade Pay ₹ 10,000/-) level in Organised Engineering Services, the eligibility requirement shall be



“Officers in the grade of Superintending Engineer and equivalent (PB 4 Grade Pay of ₹ 8700/-) with 3 years regular service in the grade or officers in the grade of Superintending Engineer/equivalent with 17 years regular service in Group A posts in the service out of which at least one year of regular service should be in the PB-4 Grade Pay of ₹ 8700.”

For promotion to HAG (₹ 67,000-79,000/-) level, the eligibility requirement shall be

“Officers in the SAG (PB-4 Grade Pay ₹ 10,000/-) with 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 at least 1 year’s regular service should be in the SAG.”

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

DOPT OM dated 8 July 2011

Dated 8th July, 2011

OFFICE MEMORANDUM

Subject:- 6th Central Pay Commission’s recommendations – amendment of Service Rules – regarding

This Department in OM No. AB 14017/61/2008-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. Separately the revised eligibility conditions for SAG & HAG level for members of Organised Group A Services have been issued in this Department OMs dated 15.12.09 (Non-Technical) and 18.01.2011 (Engineering Services). The provisions with regard to grant of functional scale of ₹ 14,300-18,300 (pre-revised) to the SEs and equivalent in respect of Engineering Services prescribed in OM dated 29.12.2010 also



refers. Instructions for grant of NFU as per 6th CPC recommendations have been issued in OM dated 24.4.09.

2. As the Recruitment Rules/Service Rules are required to be amended after incorporating the above instructions, all the Ministry/Departments/Cadre Controlling Authorities of Organised Group 'A' Services may take immediate necessary action for notification of Service Rules positively by 31.3.2012 in consultation with DOPT/UPSC & Ministry of Law.”

28. The petitioners contend, in the writ petition, that the applicable eligibility qualifications for promotion to the HAG in the CRPF had to abide by the stipulations contained in DOPT OM dated 15 December 2009. Reckoned thus, it was submitted that all petitioners qualified for grant of NFFU in terms of the DOPT OM dated 24 April 2009 with effect from the date mentioned in the prayer clause in the writ petition.

II. Counter-affidavit

29. The CRPF has filed a counter-affidavit by way of response to the writ petition. In the counter-affidavit, the CRPF has placed reliance on Clause 3 of the Annexure to the DOPT OM dated 24 April 2009, which required fulfilment, by the officer seeking NFFU in terms of the OM, of the prescribed eligibility criteria and promotional norms, including benchmark, for upgradation to the post carrying the grade pay of which NFFU was being sought, to be met at the time of screening while considering the case for grant of NFFU.

30. The counter-affidavit points out that, following the OM dated 24 April 2009, the DOPT issued a further OM dated 25 September



2009, providing clarifications to the earlier OM dated 24 April 2009, para 2 of which read as under:

“2. The new HAG scale of ₹ 67,000-79,000 has been introduced in replacement of the pre-revised S-30 scale. It is clarified that consequent upon the carving out of the new HAG scale, non-functional upgradation under the scheme will be available to particular Grade Pays in PB-3 and PB-4 and also to the HAG scale. *SAG officers can be allowed Non-functional upgradation to the HAG Grade only where there is such a Grade in the service.*”

31. Promotional avenues, and eligibility thereto, it is pointed out, are specified in the RRs. The post of ADG, in the HAG, was created in the CAPF for the first time on 7 October 2008, following which, in July 2009, provision was made in the RRs for promotion of cadre officers in the CAPFs to the post of ADG. The first promotions to the post of ADG in the CRPF followed, in September 2009. As such, prior to 7 October 2008, there was no HAG post in the promotional hierarchy in the CAPFs. There could be no question, therefore, of the benefit of NFFU in the HAG scale, in terms of the DOPT OM dated 24 April 2009, being extended prior to 7 October 2008.

32. The MHA OM dated 30 September 2019 provided a one-time one year relaxation in the residency period for grant of NFFU under the OM dated 24 April 2009.

33. On this basis, the CRPF has sought to justify the grant of NFFU in the HAG to Petitioners 1 and 2 in the Order dated 1 November 2019 issued by the DG, CRPF, and the refusal of NFFU to Petitioners 3 and 4 on the following basis:



(i) Petitioner 1 was promoted to the SAG, as IG, on 10 July 2008. The RRs stipulated 30 years' regular service in Group A with at least three years' service in the SAG, as the eligibility for promotion to the HAG. The requirement of three years in the SAG stood reduced to two years' by virtue of the one year relaxation extended by MHA OM dated 30 September 2019. Thus, Petitioner 1 became eligible for grant of NFFU under the DOPT OM dated 24 April 2009 on the expiry of two years from 10 July 2008, i.e. on 10 July 2010. He was, therefore, granted NFFU with effect from the beginning of the next financial year, i.e. with effect from 1 April 2011.

(ii) By the same token, Petitioner 2 having been promoted to the SAG on 8 July 2006, became eligible for NFFU in the HAG scale on expiry of two years therefrom, i.e. on 8 July 2008. He was, therefore, granted NFFU with effect from 1 April 2009.

(iii) Petitioner 3 had not completed the requisite two years' residency period in the SAG, after promotion as IG on 1 June 2006, before he superannuated on 30 November 2007. He could not, therefore, be granted NFFU in terms of the DOPT OM dated 24 April 2009.

(iv) Petitioner 4 had not undergone the requisite promotional course as stipulated in the RRs till his superannuation, after



2026:DHC:5168-DB



promotion as DIG, in the JAG scale on 17 May 2005. He was, therefore, not eligible for grant of NFFU.

34. The CRPF has, therefore, prayed that the writ petition be dismissed.

C. Rival Contentions

35. We have heard Mr. Ankur Chhibber, learned Counsel for the petitioners and Mr. Ripudaman Bharadwaj, learned CGSC for the respondents, at length.

36. Mr. Chhibber reiterates the contentions advanced by the petitioners in the writ petition. Additionally, Mr. Chhibber places reliance on the following OM issued by the DOPT on 26 March 2019, mandating expeditious implementation of the judgment of the Supreme Court in *Harananda*:

“No.I-11011/2/2013-CDR (Vol.II)
Government of India
Department of Personnel & Training
(Cadre Review Division)

Lok Nayak Bhawan, New Delhi

Dated, the 26th March, 2019

OFFICE MEMORANDUM

Sub: Implementation of Hon'ble Supreme Court's judgment dated 05.02.2019 in SLP No. 12393 of 2013 and SLP No.35548-35554 of 2015 in the matter of Organised Status and consequential benefit of NFU to RPF and CAPFs.



2026:DHC:5168-DB



The undersigned is directed to refer to MHA's OM No.I-21023/08/2013-IPS.III dated 22.03.2019 on the subject mentioned above.

2. Being Cadre Controlling Authority for the RPF and CAPFs, M/o Railways and Ministry of Home Affairs (respectively) are requested to send detailed modalities-on all issues/directions covered in the Orders of the Hon'ble Court for enabling implementation at the earliest.

3. This may be accorded TOP PRIORITY.

Sd/-
(M S Subramanya Rao)
Director (CRD)

Shri Amitabh Kharkwal
Joint Secretary (Police)
Ministry of Home Affairs
North Block, New Delhi.”

37. Mr Chhibber submits that, while the RPF had, in due earnest, taken steps to comply with the judgment of the Supreme Court and had also framed draft amended RRs, the CRPF, despite repeated missives from the DOPT, had still not amended its RRs in tune with DOPT OM dated 15 December 2009. The petitioners, it is submitted, could not be prejudiced as a reason of the inaction on the part of the respondents.

38. Mr. Chhibber further placed reliance on the judgment of a Division Bench of this Court in *Arun Chhibber v. Union of India*¹⁷. He has drawn our attention to paras, 1, 6 and 7 of the said decision which read thus thus:

¹⁷ 2022 SCC OnLine Del 2697



“1. The two petitioners, having retired from the rank of Inspector General in the respondents No. 2 and 3 Central Reserve Police Force (CRPF) on 30th June, 2007 and 30th August, 2008 respectively, have filed this petition, (i) impugning the order dated 1st November, 2019 of the respondents CRPF, to the extent excluding the names of the petitioners from the list of those granted the benefit of the Non-functional Financial Upgradation (NFFU) for the Higher Administrative Grade (HAG) level; (ii) impugning the order/Office Memorandum (OM) dated 30th September, 2019, to the extent it states that NFFU is to be allowed in HAG, provided it is a level in the promotional hierarchy of the Central Armed Police Force (CAPF) concerned; (iii) seeking mandamus, directing the respondents to amend the Recruitment Rules/Service Rules for Group ‘A’ officers of CRPF and to make it in line with the Department of Personnel and Training (DoPT) OMs dated 24th April, 2009, 15th December, 2009, 18th January, 2011 and 8th July, 2011; (iv) in the alternative, pending the amendment of the Recruitment Rules, consider the petitioners for grant of benefit of NFFU with effect from 31st March, 2006 in HAG, by following the eligibility criteria provided in OM dated 15th December, 2009 and as has been done with respect to personnel in the Ministry of Mines, vide letter dated 2nd December, 2010; and, (v) seeking mandamus, directing the respondents to grant the benefit of NFFU to the petitioners with effect from 31st March, 2006, along with arrears, interest and all consequential benefits.

6. The counsel for the respondents has however also drawn attention to the OM dated 24th April, 2009 issued consequent upon the acceptance of the recommendations of the 6th Pay Commission qua grant of NFFU, inter-alia providing that the grant of higher scale would be governed by the terms and conditions given in annexure thereto and to the clause in the annexure thereto, inter-alia providing 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.” It is contended that since till October, 2008, there was no eligibility criteria for promotion of the cadre officers to the rank of Additional Director General, the petitioners cannot be said to have met the eligibility criteria and norms for promotion to the HAG level of Additional Director General.

7. However, it is not the argument of the respondents that the petitioners did not meet any of the eligibility criteria laid down in the Recruitment Rules amended in October, 2008 or that the



eligibility criteria for deputationists to be appointed as Additional Director General in CRPF were not met by the petitioners. Once it is so and the petitioners are found to meet the eligibility criteria of three years regular service in the SAG or 25 years regular service in group 'A' post and of which at least one year regular service should be in SAG, as found in OM dated 15th December, 2009 for promotion to HAG level, and both of which criteria, it is not the case of the respondents that the petitioners did not satisfy, we are of the view that the petitioners are entitled to the benefit of NFFU with effect from 31st March, 2006 in accordance with OM dated 21st May, 2009 *inter-alia* providing that since the 1975 batch of IAS officers had been posted/empaneled as Additional Secretary with effect from 31st March, 2006 and thus batch of 1973 and earlier of organized Group 'A' service are to be considered for NFFU; it is contended that thus the petitioners who are of 1971 batch, would be entitled to the NFFU benefit from 31st March, 2006 in the HAG grade.”

39. During the course of arguments, Mr. Chhibber sought to contend that the petitioners were seeking the benefit of NFFU, as per the DOPT OM dated 24 April 2009, with effect from 31 March 2006. He sought to place reliance, for this purpose, on OM dated 21 May 2009 issued by the DOPT, which reads thus:

“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 21st May, 2009

Office Memorandum

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

A reference is invited to this Department OM of even No. dated 24.04.09 on the above subject. As indicated at point (v) of para 1, the details of batch of the officers belonging to the Indian



Administrative Service who have been posted at the Centre in the various grades of PB-3 and PB-4 with effect from 01.01.2006 as well as the date of posting of the first officer belonging to the batch is annexed. Necessary action may be taken for grant of higher scale for the Officers belonging to batches of Organized Group A Services that are senior by two year or more and have not so far been promoted to that particular grade.

2. Hindi version will follow.

Sd/-

(S. J. Kumar)

Deputy secretary to the Government of India
Tel. 2309 2112”

40. Mr. Chhibber submits that the Annexure to the aforesaid OM specifies the dates with effect from which various batches of officers of Organised Group A services were to be considered for NFFU, on batches of officers in the IAS, two years’ junior, being posted as Additional Secretary, Joint Secretary etc. Mr. Chhibber’s contention is that, as per the said OM, Organised Group A service officers of batches of 1973 or earlier were required to be considered for grant of NFFU in terms of DOPT OM dated 24 April 2009, with effect from 31 March 2006.

41. Inasmuch as the petitioners are officers of the 1971 batch, he submits that they would be entitled to NFFU with effect from 31 March 2006.

42. We may note, here itself, that the above submission of Mr. Chhibber cannot be permitted to be countenanced, as it is contrary to the prayers in the writ petition, which specify the dates with effect



from which the petitioners are seeking grant of NFFU. These prayers were never amended. We cannot, therefore, permit the petitioners, at the stage of arguments, to change the case set out in the writ petition and seek NFFU with effect from 31 March 2006.

43. Mr. Chhibber also places reliance on the judgment of the Supreme Court in *State of Mizoram v. Mizoram Enigeering Service Association*¹⁸. However, as this decision deals only with the issue of whether the Mizoram Engineering Service could be treated as an Organised Group-A service, and as this issue, so far as the CRPF is concerned, stands concluded by the judgment of the Supreme Court in *Harananda*, we do not intend to advert further to this judgment.

44. Responding to Mr. Chhibber's submission, Mr. Bhardwaj, learned CGSC, submits that the decision in *Arun Chhibber* was rendered in the peculiar facts of that case, in which there was no dispute that the officers concerned satisfied the residency period requirement for promotion to the grade in which they were seeking NFFU. He submits that, on the date of superannuation of Petitioners 1 and 2, 3 years in the SAG was the essential requirement to entitle an officer to promotion in the HAG. One year's relaxation to this requiement of three years' service in the SAG was available in view of MHA OM dated 30 September 2019. The RRs for the post of ADG came to be amended later on 10 August 2010, after the Petitioner 2 had superannuated. In any event, as the RRs were amended on 10

¹⁸ (2004) 6 SCC 218



August 2010, Petitioner 2 could not seek grant of NFFU from 8 July 2007.

D. Analysis

45. Having heard learned Counsel for the parties and perused the material on record, the only relief which, to our mind, can be granted in the present case is advancing the date with effect from which Petitioners 1 and 2 would be entitled to NFFU to 10 July 2010 and 8 July 2008 respectively. No further relief can be granted to the petitioners in this petition.

46. The challenge, in the writ petition, to para 3(iii)(b) of MHA OM dated 30 September 2019 is, to our mind, without substance. As has been pointed out by the respondents in the counter affidavit, this requirement was contained in OM dated 25 September 2009 issued by the DOPT. It is not, therefore, as though the MHA introduced this requirement for the first time in the impugned OM dated 30 September 2019.

47. The requirement, to our mind, does not travel beyond the limits of DOPT OM dated 24 April 2009. Clause 3 in Annexure I to the OM clearly required satisfaction of the prescribed eligibility criteria and promotional norms for upgradation to a particular grade pay to be met by an officer seeking NFFU in that grade pay under the OM. It is but obvious that, if NFFU was sought, under the OM, to a post which was not in the promotional hierarchy of the service concerned, there could



be no question of satisfaction, by the officer, of the prescribed eligibility criteria and promotional norms applicable for promotion to that post. There was, therefore, nothing illegal or irregular in the DOPT and, later, the MHA, clarifying that NFFU in the HAG would be available only if a post in the HAG was part of the promotional hierarchy in the service. Else, compliance with Clause 3 of Annexure I to the DOPT OM dated 24 April 2009 could not be ensured.

48. We, therefore, reject the challenge to para 3(iii)(b) of MHA OM dated 30 September 2019.

49. Once we have upheld the requirement of the grade, to which NFFU was sought, being one which was in the promotional hierarchy of the service concerned, all that remains is to decide whether, applying the concerned RRs, the decision of the respondents, in so far as the petitioners' entitlement to NFFU was concerned, is correct, or whether the petitioners are entitled to NFFU from the dates claimed in the writ petition.

50. We have already noted, earlier in this judgment, the contention, advanced by Mr. Chhibber, to the effect that the post of ADG, in the HAG, was part of the CRPF since 1987.

51. This submission was sought to be justified on the basis of order dated 25 May 1987 issued by the MHA, reproduced in para 21 *supra*.



52. We have seen the said order. The order conveys the sanction of the President to the creation of two posts of ADG for a limited period, till 29 February 1988. In the interregnum, two posts of Deputy SP were to be kept in abeyance.

53. No order or other document, extending this arrangement beyond 29 February 1988, has been placed on record. In the absence thereof, it appears, from a reading of the order dated 25 May 1987, that the arrangement envisaged therein was a mere *ad hoc* arrangement for a limited period of time.

54. In any event, what is required is that the grade to which NFFU is sought under the DOPT OM dated 24 April 2009, is part of the promotional hierarchy in the service. The respondents are correct in their contention that a post becomes part of the promotional hierarchy in an organised service only when it is so specified in the applicable RRs. The submission of the respondents that the post of ADG, in the HAG, was made part of promotional hierarchy in the CRPF only with effect from 7 October 2008 and that the applicable RRs were accordingly amended only in July 2009, has not been disputed by the petitioners.

55. Petitioner 3, having superannuated prior to 7 October 2008, could not be entitled to NFFU in the HAG, as the HAG was not part of the promotional hierarchy in the CRPF till the date of superannuation of Petitioner 3. There is, therefore, no illegality in the



respondents' decision to deny NFFU to Petitioner 3 in terms of DOPT OM dated 24 April 2009.

56. Insofar as Petitioners 1 and 2 are concerned, we cannot agree with Mr. Chhibber that the eligibility criteria for promotion to the HAG (i.e. the post of ADG) was to be adopted from the DOPT OM dated 15 December 2009. That OM merely calls upon the various organized Group A Services to amend their RRs to incorporate the eligibility qualifications contained in the said OM, both for promotion to the SAG as well as for promotion to the HAG. Till the date of superannuation of Petitioners 1 and 2, it is not in dispute that the applicable RRs for the post of ADG in the CRPF were not amended in line with DOPT OM dated 24 April 2009.

57. In the absence of any such amendment, the entitlement of Petitioners 1 and 2 to NFFU in terms of the DOPT OM dated 24 April 2009 has to be decided on the basis of the RRs as they existed on the date when the said petitioners superannuated. On that date, the RRs for the post of ADG (in the HAG) required 30 years' service in Group A with at least three years' regular service in the SAG. This requirement of three years stands reduced to two years in view of the one year relaxation granted by MHA OM dated 30 September 2019. Even so, the officer was required to have 30 years' service in Group A with at least two years' regular service in the SAG.

58. While there is no dispute about the fact that Petitioners 1 and 2 possessed 30 years' service in Group A, the requirement of two years'



regular service in the SAG was completed by Petitioner 1 only on 10 July 2010 and by Petitioner 2 only on 8 July 2008. They could not, therefore, be entitled to NFFU in terms of the DOPT OM dated 24 April 2009 prior to the said dates.

59. Accordingly, the prayer of Petitioner 1 for grant of NFFU with effect from 10 July 2009 and of Petitioner 2 for grant of NFFU with effect from 8 July 2007 is without merit and has to be rejected.

60. That said, however, we see no justification for the respondents granting NFFU to Petitioner 1 and Petitioner 2 only from the first day of April of the year following the year in which they satisfied the requirement of two years' residency in the SAG. There is nothing in the DOPT OM dated 24 April 2009 which justifies postponement of the date from which NFFU would be granted to the first day of April of the year following the year in which the officer was entitled thereto. In fact, Clause (i) of the OM specifically states that the grade would be granted "on non-functional basis *from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre*". The entitlement would be, therefore, from the date when the Joint Cadre IAS officers, two batches junior, were posted at the centre, subject, of course, to satisfaction of the terms and conditions enumerated in Annexure-I to the OM.

61. Clause 3 of Annexure-I of the OM required the officers to fulfill the prescribed eligibility criteria and promotional norms for promotion to the grade in which NFFU was sought. That requirement



was satisfied in the case of Petitioner 1 on 10 July 2010 and in the case of Petitioner 2 on 8 July 2008. The said petitioners, therefore, became *ipso facto* entitled to NFFU in the HAG scale from those dates.

62. We cannot, therefore, sustain the decision of the respondents to grant NFFU to Petitioner 1 only with effect from 1 April 2011 and to Petitioner 2 with effect from 1 April 2009. We hold that Petitioners 1 and 2 would be entitled to NFFU under the DOPT OM dated 24 April 2009 with effect from 10 July 2010 and 8 July 2008, respectively.

63. In so far as Petitioner 4 is concerned, there is no dispute that he had not undergone the requisite ISSMC for promotion to the SAG. Respondents are correct in their submission that Clause 3 of Annexure-I to the DOPT OM dated 24 April 2009 would require the officer to satisfy all promotional norms stipulated for promotion to the grade in which NFFU is sought. *Inter alia*, in the case of post of IG, this would have required Petitioner 4 to undergo the ISSMC, which he had not undergone till the date of his superannuation.

64. We, therefore, do not find any error or infirmity in the respondents' decision to deny, to Petitioner 4, the benefit of NFFU in terms of the DOPT OM dated 24 April 2009.

65. Insofar as the case of *Arun Chhibber* is concerned, a bare reading of para 7 thereof reveals that the court ruled as it did because there was no dispute that the petitioners before it satisfied the



residency period requirement for the purpose of promotion to the grade in which NFFU was sought. In the case of the petitioners, this requirement, as we have noted, was not satisfied in the case of Petitioner 3 and, in the case of Petitioners 1 and 2, they have been granted NFFU with effect from the date on which they satisfied the said requirements.

66. The decision in *Arun Chhibber*, therefore, would in fact validate the act of the respondents, rather than otherwise.

67. The petitioners have also prayed for a direction to the respondents to amend the RRs in terms of the DOPT OM dated 15 December 2009. It is trite that a writ court cannot direct the executive to frame, or amend, Rules¹⁹. Even were such a direction to be issued, it would be of no avail to the petitioners, as any amendment could not have retrospective effect.

Conclusion

68. For the aforesaid reasons, we are of the opinion that, except for advancing the date of grant of NFFU of Petitioner 1 to 10 July 2010 and of Petitioner 2 to 8 July 2008, no other relief can be granted to the petitioners in this writ petition.

69. The petition is accordingly disposed of.

¹⁹ Refer *Union of India v. K. Pushpavanam* (2023) 20 SCC 736, *State of J & K v. A R Zakki* 1992 Supp (1) SCC 548 and *Supreme Court Employees' Welfare Association v. Union of India* (1989) 4 SCC 187.



WP (C) 13607/2019 [Syed Mohd Zaki Rizvi and Anr v. Union of India and Ors]

70. There are two petitioners in this writ petition. Both the petitioners seek grant of NFFU in the SAG.

71. Petitioner 1 was promoted to the JAG in the rank of DIG with effect from 30 May 2005 and Petitioner 2 was promoted as DIG with effect from 24 May 2005. However, both the petitioners underwent the ISSMC between 10 and 15 November 2008. They were granted SAG with effect from 1 April 2009.

72. As in the case of Petitioners 1 and 2 in WP (C) 13600/2019, this writ petition would liable to be allowed to the limited extent of advancing the date of grant of NFFU to the petitioners with effect from the dates when they underwent the ISSMC.

73. As the exact dates are not forthcoming, the writ petition is disposed of in these terms.

WP (C) 1945/2020 [Gurdeep Singh Mastana and Anr v. Union of India and Ors]

74. There are two petitioners in this writ petition. Both claim NFFU to the SAG grade.

75. Petitioner 1 G.S. Mastana was promoted as DIG, in the JAG grade, on 30 September 2005. His case is, however, similar to



Petitioner 4 in WP (C) 13600/2019, as he had not undergone the requisite ISSMC for promotion as IG till the date of his superannuation on 31 January 2008. He was not, therefore, entitled to NFFU in terms of the DOPT OM dated 24 April 2009.

76. Petitioner 2 retired from service in the rank of ADIG. It was only thereafter that his post of ADIG was upgraded as DIG, in the JAG grade, *in situ*, with effect from 23 October 2008. Petitioner 2, therefore, was promoted to the JAG scale only after he had superannuated, he was also not entitled to the benefit of NFFU in terms of the DOPT OM dated 24 April 2009.

77. The respondents, therefore, correctly denied NFFU to the petitioners as sought in this writ petition.

78. The writ petition is, therefore, dismissed.

WP (C) 2612/2020 [Raj Krishna Gaur & Ors v. Union of India & Ors.]

79. There are nine petitioners in this writ petition. All the petitioners seek grant of NFFU in the HAG grade.

80. Petitioners 1, 2 and 3 were promoted to the rank of IG, in the SAG, with effect from 24 July 2009. Thus, for grant of NFFU in the HAG, they were required to have two years in the SAG. However, they superannuated on 31 July 2009, 31 August 2009 and 31 October 2009 and could not, therefore, be granted NFFU in the HAG.



81. Petitioner 9 was promoted to the rank of IG with effect from 9 January 2012. He, too, superannuated on 31 January 2012, before completing two years in the SAG and was not, therefore, eligible for NFFU in the HAG.

82. Petitioners 4, 5, 6, 7 and 8 were promoted to the rank of DIG with effect from 29 November 2005, 7 February 2007, 9 February 2005, 5 April 2005 and 22 September 2008 respectively. Their case is, however, similar to Petitioner 4 in WP (C) 13600/2019, as they had not undergone the requisite ISSMC for promotion as IG till the date of superannuation of Petitioners 4, 5, 6, 7 and 8 on 31 January 2007, 31 July 2007, 31 August 2008, 30 September 2006 and 31 January 2009 respectively. They were not, therefore, entitled to NFFU in terms of the DOPT OM dated 24 April 2009.

83. The respondents, therefore, correctly denied NFFU to the petitioners as sought in this writ petition.

84. The writ petition is, therefore, dismissed.

WP (C) 767/2020 [Devendra Kumar Sharma v. Union of India & Ors.]

85. The petitioner, Devendra Kumar Sharma, in this writ petition seeks grant of NFFU in the HAG grade. He is a Group A General Duty Cadre retired officer of the ITBPF²⁰.

²⁰ Indo Tibetan Border Police Force



86. The petitioner was not considered for grant of NFFU to the grade of HAG as neither was the HAG level post available in the promotion hierarchy before 14 November 2019, nor were any service Rules available in ITBPF till date. The MHA vide OM dated 30 September 2019 granted a one-time relaxation of one year in the residency period prescribed under Recruitment Rules to Group A Executive Cadre Officers as a special dispensation.

87. Since there were no service Rules available in ITBPF and, therefore, no HAG post available in the promotional hierarchy of the ITBPF, in view of the MHA OMs dated 24 April 2009 and 30 September 2019, the respondents denied NFFU to petitioner as sought in this writ petition.

88. We find no infirmity with the decision.

89. The writ petition is, therefore, dismissed.

WP (C) 912/2020 [Ram Kanwar Saini & Ors v. Union of India & Ors.]

90. There are 11 petitioners in this writ petition. All the petitioners have claimed NFFU to the SAG and HAG grade.

91. Petitioners 1, 10 and 11 were promoted to the rank of DIG on 21 April 2008, 18 May 2007 and 12 August 2008 respectively and to the rank of IG, in the SAG grade, on 1 January 2012, 24 August 2011



and 1 March 2014 respectively. Subsequently they superannuated on 31 July 2015, 31 August 2013 and 29 February 2016 respectively. They were granted NFFU in the SAG grade with effect from 1 April 2011. They would be entitled to NFFU in the SAG with effect from the actual date of completion of one year service as DIG (as the prescribed residency period in the RRs for the post of IG was two years as DIG, with one year relaxation), which would advance their entitlement to NFFU in the SAG to 21 April 2010, 18 May 2009 and 12 August 2010 respectively.

92. Petitioners 2, 6 and 7 were promoted to the rank of DIG on 1 January 2006. Petitioners 2 and 6 were promoted to the rank of IG on 31 December 2015 and Petitioner 7 on 15 September 2013. Petitioners 2 and 6 superannuated on 28 February 2017 and 31 March 2019 respectively and Petitioner 7 superannuated on 31 August 2015. Petitioners 2 and 6 were granted NFFU in SAG grade with effect from 1 April 2013 and Petitioner 7 was granted NFFU in SAG grade with effect from 1 April 2011.

93. Petitioners 3, 4 and 8 were promoted to the rank of DIG in the year 2003, 1 March 2004 and 1 February 2002 respectively and to the rank of IG on 25 March 2010, 5 August 2010 and 26 September 2008 respectively. Petitioner 3 superannuated on 31 December 2011, Petitioner 4 superannuated on 28 February 2014 and Petitioner 8 superannuated on 31 July 2010. They were granted NFFU in SAG grade with effect from 3 January 2006. Their claim for SAG NFFU from 1 January 2006 is therefore effectively met. As regards NFFU in



HAG grade, Petitioner 3 was promoted to the rank of IG only on 25 March 2010 and superannuated on 31 December 2011 and Petitioner 8 superannuated on 31 July 2010 before completing two years' residency period as IG. They were not, therefore, entitled to NFFU in the HAG.

94. No NFFU to the HAG could, however, be granted as the post of ADG, in the HAG, was created in the ITBPF only on 14 November 2019.

95. Petitioners 5 and 9 were promoted to the rank of DIG on 21 April 1998 and 27 February 2003 respectively and to the rank of IG on 1 August 2012 and 24 June 2009 respectively. They superannuated on 30 September 2015 and 31 July 2012 and Petitioner 5 and 9 were granted NFFU in SAG grade with effect from 1 April 2011 and 3 January 2006 respectively being the date on which they met the eligibility norms under the existing RRs. Their claim that NFFU in SAG grade ought to have been granted from 1 January 2006 is not sustainable, as the eligibility norms prescribed under the existing RRs were not met by them as of that date.

96. We, therefore, find no infirmity in the decision of the respondents.

97. The writ petition is, therefore, dismissed.



WP (C) 660/2022 [Raza Haider & Anr v. Union of India & Ors.]

98. There are two petitioners in this writ petition. Both claimed NFFU to the JAG grade.

99. Petitioner 1, Shri Raza Haider was promoted to the rank of Dy. Commandant on 31 July 2006. On completion of the ISSMC and he was granted NFFU in the JAG grade with effect from 1 April 2012. He was subsequently promoted to the rank of Commandant on 1 January 2014.

100. Petitioner 1 has claimed NFFU in the JAG grade with effect from 28 September 2010 on the basis of his batch entitlement under DOPT OM dated 4 January 2011.

101. As the ISSMC and other eligibility conditions had not been fulfilled as on 28 September 2010, therefore he was not entitled to NFFU in terms of the DOPT OM dated 24 April 2009.

102. Petitioner 2 was promoted to the rank of Deputy Commandant on 16 July 2003. He remained posted at Central Police Canteen till 14 May 2008 and had not completed two years' mandatory Duty Battalion field service as prescribed under the statutory RRs, which was one of the essential eligibility conditions for grant of NFFU in the JAG grade.

103. Petitioner 2 was promoted to the rank of 2-IC with effect from 18 April 2008, i.e., prior to fulfilling the eligibility criteria for grant of



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NFFU in the JAG grade. Therefore, the respondents denied grant of NFFU to the JAG grade to Petitioner 2.

104. The respondents, therefore, correctly denied NFFU to petitioners, as sought in this writ petition.

105. The writ petition is, therefore, dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 01, 2026

dsn/AR