

The Supreme Court judgement on the NFU case, in support of the CAPFs has been explained in most lucid and understandable terms by Maj Navdeep Singh

NON-FUNCTIONAL FINANCIAL UPGRADATION - AN EXPLAINER IN LAYPERSON TERMS - SUPREME COURT JUDGEMENT ON IT

***Major Navdeep Singh**

By now, many would be aware of the decision of the Supreme Court pronounced today (04 Feb,2019) wherein the much detailed and well reasoned decision of the Delhi High Court granting Non Functional Up gradation (Known as “NFFU”, or more popularly as “NFU”) to the Central Armed Police Forces (CAPFs) has been upheld.

So what is the NFU?

NFU was introduced on the recommendation of the 6th Central Pay Commission with effect from 01-01-2006 to offset the financial loss for lack of promotional avenues in various Government services. NFU implies that whenever an IAS officer gets empanelled at a particular appointment at the Centre, all other Group-A service officers are also upgraded to the same level after a period of two years from the date of empanelment, on a non-functional basis, irrespective of whether they are actually promoted or not. For example, if an officer of the IAS of 1989 batch is empanelled as an Additional Secretary to Govt of India, then all other Organised Group-A officers of the 1987 batch shall also be placed in the ‘Additional Secretary to Government of India’ pay grade (Higher Administrative Grade/HAG). As a result, almost all organised Group-A civil officers are retiring with the pay and pension of much higher grades than the functional grades actually held by them.

The controversy over non-grant of NFU to certain services

While NFU was initially only meant for ‘Organised Group A Services’, it was later extended to the All India Services (other than the IAS) also, that is, the Indian Police Service and the Indian Forest Service. However, certain cadres of officers which ironically faced the maximum stagnation, were left out- this included the commissioned ranks of defence services and the Group-A officers of the Central Armed Police Forces (CAPFs) such as the CRPF, BSF, ITBP etc. The stand of the Government was that these services were not exactly termed as ‘Organised Group A Services’ as per various Office Memoranda and they lacked the attributes of being ‘organised’ as per policies of the Department of Personnel & Training.

Decision of the Delhi High Court

Many officers of the CAPFs challenged the non-grant of NFU to them in the Delhi High Court. The Government opposed the relief again on the ground that though CAPFs were Group-A officers, they were not members of an ‘Organised Group -A Service’. A strange stand was also taken that grant of NFU would adversely affect the operations and functioning of CAPFs. This was incongruous to say the least, since NFU, on the contrary, would have contributed in increasing the motivation level of the women and men in uniform operating in difficult and trying circumstances. The reality was in fact the other way round since the functioning was rather affected because of non-grant of NFU since at various places, senior uniformed officers were getting a lower pay and lower grade of facilities than civilian officers of other Group-A services directly serving them as their juniors. NFU was also not bound to affect functioning in

the manner projected by the establishment since by its very definition it was 'Non-Functional'. This aspect was anyway commented upon by the High Court in the following terms:

"The Government's contention that NFFU cannot be granted since the CAPFs comprise a strict hierarchy with a well defined Command and Control structure; that any interference with this structure would be detrimental to the interest of the forces and would adversely affect its operation and functioning; It was thus, claimed that all posts in the CAPFs are functional and there is no room for Non Functional posts, is untenable because by very definition there is no interference with functions, duties or the posts but only an increase in the financial prospects"

In a well reasoned and detailed decision, the High Court granted the relief to affected officers and directed the Government to grant NFU to them. In a very valid parting shot, the High Court also observed the under:

"It cannot be overemphasized 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."

Challenge by the Union of India in the Supreme Court

Availing essentially the same grounds taken earlier, the Union of India challenged the verdict of the High Court before the Supreme Court. In between, in the year 2017, the Supreme Court by way of a detailed order had even asked the Central Government to attempt to resolve the issue but the contentions of the affected officers were not agreed upon by the establishment. A separate matter concerning the Railway Protection Force (RPF) was also tagged with the SLPs of other CAPFs. The Apex Court has pronounced its decision today and has upheld the decision of the High Court and has observed its 'complete agreement' with the High Court. The Supreme Court has also made an observation on stagnation in the CAPFs by observing thus:

"In order to overcome the stagnation problems, the 6th Pay Commission recommended NFFU to all Group A Officers in various Organised Group A Services. The purpose of granting NFFU was to give relief to Group A Officers facing the problem of stagnation as fallback option when regular promotions do not come into various factors. It has come on record that CPMFs are facing huge problems of stagnation, more particularly, on one hand they are not being granted the promotions as most promotional posts are filled by deputation, and, on the other hand, they are denied NFFU."

The Supreme Court has also dismissed a plea by the Indian Police Service Association filed against the High Court decision which was submitted on the pretext that the vacancies of the IPS officers on deputation with the CAPFs would be curtailed if the said forces are treated as organised services. Declining the applications filed by the IPS Association, the Court has observed that there is no effect of the High Court decision on the posts of the IPS (on deputation).

Who is affected?

Group-A officers of the Central Armed Police Forces (CAPFs) falling within the criterion for grant of NFU stand to gain from the decision, including those who were in service as on 01-01-2006 and retired thereafter. It shall also affect the pensionary benefits of those who have retired after the said date.

Closure of a long pending controversy

The decision closes the chapter of the controversy on a positive note and it is hoped that the Government now rises to the occasion and also resolves this anomaly for other cadres which are pending before it or before various Courts and Tribunals. In fact, this exercise should have been initiated with full grace and humility after the High Court decision, rather than taking the matter into appeal.

*(*Major Navdeep Singh is a practicing lawyer at the Punjab & Haryana High Court, the founding President of the Armed Forces Tribunal Bar Association at Chandigarh, and Member of the International Society for Military Law and the Law of War at Brussels.)*