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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) Nos. 6272/2007, 244/2008, 9612/2007, 9650/2007, 4798/2007, 4799/2007, 6003/2007, 6273/2007, 6274/2007, 7000/2007, 7015/2007, 7153/2007, 7303/2007, 8811/2007, 8814/2007, 9022/2007, 431/2008, 540/2008 and 578/2008.

DATE OF HEARING: 30.01.2008

DATE OF DECISION: 14.03.2008

IN THE MATTER OF :

Sgt. Sachin Kumar Pravin
Cpl. Arjun Kumar Maurya
Sgt. Sanjay Biswas
Cpl S.K. Srivastava
Ashish Srivastava
Cpl Pardeep Kumar
Sgt. N.S. Yadav
Cpl. Muluk Raj Singh
Cpl. Sanjay Kumar
Sgt. K.B. Singh
Cpl. Raj Kumar
Corporal Satveer Singh
Cpl. Sanjay Kumar
Corporal R.S. Yadav
Corporal A Mandal
Corporal UPV Pratheepan
Corporal Krishna KSR
Corporal Kamal Kumar
Sgt. Jai Singh

..... Petitioner in WP(C) No. 6272/2007
..... Petitioner in WP(C) No. 244/2008
..... Petitioner in WP(C) No. 9612/2007
..... Petitioner in WP(C) No. 9650/2007
..... Petitioner in WP(C) No. 4798/2007
..... Petitioner in WP(C) No. 4799/2007
..... Petitioner in WP(C) No. 6003/2007
..... Petitioner in WP(C) No. 6273/2007
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..... Petitioner in WP(C) No. 9022/2007
..... Petitioner in WP(C) No. 431/2008
..... Petitioner in WP(C) No. 540/2008
..... Petitioner in WP(C) No. 578/2008

Thru: Ms. Rekha Palli with Ms. Punam Singh for the petitioner
in WP(C) Nos. 244/2008, 6272-6274/2007.
Mr. Baljit Singh for the petitioner in WP(C) No. 9612/2007.
Mr. A.K. Trivedi for the petitioner in WP(C) No. 9650/2007,
7000/2007, 7015/2007 and 7303/2007.
Mr. Manzoor Ali Khan with Mr. D.K. Garg in WP(C) Nos.
4798-4799/2007.

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the digital data is as per the physical
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Mrs. Prasanthi Prasad for the petitioner in WP(C) Nos.
7153/2007, 8811/2007, 8814/2007, 9022/2007, 540/08 and
And WP(C) No. 431/2008.
Mr. Rajender Prasad for the petitioner in WP(C) No. 6003/2007.
Major K. Ramesh for the petitioner in WP(C) No. 578/08.

- Versus -

Union of India & Ors.
Chief of Air Staff & Ors

..... Respondents.
..... Respondents in WP(C) No. 8811/07,
WP(C) No. 8814/07, WP(C) No. 9022/07,
WP(C) No. 431/08, WP(C) No. 540/08
And WP(C) No. 7153/07

Thru: Ms. Sonia Mathur for the respondent in 244/2008,
9612/2007, 4799/2007, 6003/2007, 244/08, 431/08 and
6272-6274/2007.
Mr. Jitendra Kr. Singh for respondent No. 5 in WP(C) No.
7015/2007.

Mr. Sewa Ram with Mr. R. K. Bachchan for the
respondent in WP(C) Nos. 9022/2007, 540/08, 578/08.
Mr. Rajeeve Mehra with Ms. Rachitta Priyanka for the
respondent in WP(C) Nos. 7000/2007, 7015/2007,
7153/2007, 7303/2007, 8811/2007 and 8814/2007.
Mr. S. Bhowmick for counsel for respondent No. 6 in
WP(C) No. 4798/2007 and for respondent No. 4 in
WP(C) No. 4799/2007.
Ms. Saroj Bidawal for respondent in WP(C) No. 9650/07

CORAM :-

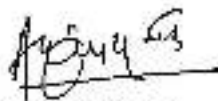
THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

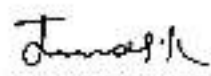
1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders see W.P.(C) No.6272 of 2007 entitled Sgt. Sachin Kumar Pravin Vs. Union of India & Others.


(A.K. SIKRI)
JUDGE

March 14, 2008.
skk


(J.M.MALIK)
JUDGE

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WP(C) Nos. 6272/2007, 244/2008, 9612/2007, 9650/2007, 4798/2007, 4799/2007, 6003/2007, 6273/2007, 6274/2007, 7000/2007, 7015/2007, 7153/2007, 7303/2007, 8811/2007, 8814/2007, 9022/2007, 431/2008, 540/2008 and 578/2008.

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DATE OF DECISION: 14.03.2008

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Sgt. Sachin Kumar Pravin
Cpl. Arjun Kumar Maurya
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Ashish Srivastava
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Corporal A Mandal
Corporal UPV Pratheepan
Corporal Krishna KSK
Corporal Kamal Kumar
Sgt. Jai Singh

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Thru: Ms. Rekha Palli with Ms. Punam Singh for the petitioner
in WP(C) Nos. 244/2008, 6272-6274/2007.
Mr. Baljit Singh for the petitioner in WP(C) No. 9612/2007.
Mr. A.K. Trivedi for the petitioner in WP(C) No. 9650/2007,
7000/2007, 7015/2007 and 7303/2007.
Mr. Manzoor Ali Khan with Mr. D.K. Garg in WP(C) Nos.
4798-4/99/2007.

Mrs. Prasanthi Prasad for the petitioner in WP(C) Nos.
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And WP(C) No. 431/2008.
Mr. Rajender Prasad for the petitioner in WP(C) No. 6003/2007.
Major K. Ramesh for the petitioner in WP(C) No. 578/08.

- Versus -

Union of India & Ors.
Chief of Air Staff & Ors

..... Respondents.
..... Respondents in WP(C) No. 8811/07,
WP(C) No. 8814/07, WP(C) No. 9022/07,
WP(C) No. 431/08, WP(C) No. 540/08
And WP(C) No. 7153/07

Thru: Ms. Sonia Mathur for the respondent in 244/2008,
9612/2007, 4799/2007, 6003/2007, 744/08, 431/08 and
6272-6274/2007.

Mr. Jitendra Kr. Singh for respondent No. 5 in WP(C) No.
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Mr. Sewa Ram with Mr. R.K. Bachchan for the
respondent in WP(C) Nos. 9022/2007, 540/08, 578/08.

Mr. Rajeev Mehra with Ms. Rachita Priyanka for the
respondent in WP(C) Nos. 7000/2007, 7015/2007,
7153/2007, 7303/2007, 8811/2007 and 8814/2007.

Mr. S. Bhowmick for counsel for respondent No. 6 in
WP(C) No. 4798/2007 and for respondent No. 4 in
WP(C) No. 4799/2007.

Ms. Saroj Bidawal for respondent in WP(C) No. 9650/07

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SEKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

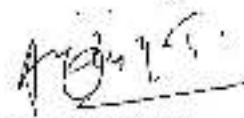
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A.K. SEKRI, J.

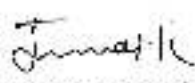
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Pravin Vs. Union of India & Others.


(A.K. SEKRI)
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DATE OF HEARING: 30.01.2008

DATE OF DECISION: 03.03.2008

IN THE MATTER OF :

Sgt. Sachin Kumar Pravin	 Petitioner in WP(C) No. 6272/2007.
Cpl. Arjun Kumar Maurya	 Petitioner in WP(C) No. 244/2008
Sgt. Sanjay Biswas	 Petitioner in WP(C) No. 9612/2007
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Cpl. Pardeep Kumar	 Petitioner in WP(C) No. 4799/2007
Sgt. N.S. Yadav	 Petitioner in WP(C) No. 6003/2007
Cpl. Mukul Raj Singh	 Petitioner in WP(C) No. 6273/2007
Cpl. Sanjay Kumar	 Petitioner in WP(C) No. 6274/2007
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Corporal R.S. Yadav	 Petitioner in WP(C) No. 8811/2007
Corporal A Mandal	 Petitioner in WP(C) No. 8814/2007
Corporal UPV Pratheepan	 Petitioner in WP(C) No. 9022/2007
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Corporal Kamal Kumar	 Petitioner in WP(C) No. 540/2008
Sgt. Jai Singh	 Petitioner in WP(C) No. 578/2008

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 Mr. Manzoor Ali Khan with Mr. D.K. Garg in WP(C) Nos. 4798-4799/2007.
 Mrs. Prasanthi Prasad for the petitioner in WP(C) Nos. 7153/2007, 8811/2007, 8814/2007, 9022/2007, 540/08 and

8 16

And WP(C) No. 431/2008.
Mr. Rajender Prasad for the petitioner in WP(C) No. 6003/2007.
Major K. Ramesh for the petitioner in WP(C) No. 578/08.

- Versus -

Union of India & Ors.
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Respondents.
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Ms. Saroj Bidawal for respondent in WP(C) No. 9650/07

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

The petitioners in all these writ petitions are Airmen with the Indian Air Force – either working in the capacity of Sergeant or Corporal. They have filed these petitions seeking identical relief. After some years of service in the Air Force they want to be relieved from Air Force service on the ground that they have been appointed for civil post in different organizations which are Central Government/State Government or Public Sector Undertakings (PSUs). Their plea is that on their appointment to civil post in the Central Government/State Government/ PSUs they are entitled to 'No Objection Certificate' (NOC) to enable them to join the said civil post for which they are selected. They had made requests for issuance of NOC, but the respondents have turned down all such. In these circumstances, the relief prayed for is to quash the rejection orders and direct the respondents to issue NOC for civil post for which they have been selected.

In view of the commonality of the factual position operating in all these cases which are governed by identical Rules and Regulations, we had heard these petitions together. Writ Petition (Civil) No.6272 of 2007 was treated as lead case. Therefore, for the sake of convenience, we may start our discussion while taking note of the facts of this writ petition.

The petitioner in this case is serving as airman in the Indian Air Force.

He was enrolled as a Radio Fitter on 26.10.1993 and was subsequently promoted to the rank of Corporal and thereafter Sergeant. On 22.9.2006, the petitioner applied for the post of Section Officer (Audit) which is a civil post under the Government of India. Selection for this post is conducted through Staff Selection Commission (SSC). The petitioner submitted his application to the SSC through the present employer, namely, Indian Air Force. His application was duly forwarded by his Unit to the SSC on 22.9.2006. The petitioner appeared in the written examination and successfully cleared the same. Thereafter, he was to appear in the interview which was scheduled for 14.6.2007. He applied for NOC to appear in the said interview on 8.6.2007. His superior authorities forwarded his application to the Competent Authority in the Air Force for giving NOC. On 14.6.2007 the petitioner appeared in the interview by which time NOC had not been issued. Later, vide order dated 28.6.2007 the Competent Authority rejected his request and did not issue the NOC. Since the petitioner had appeared in the interview held on 14.6.2007, he was considered by the SSC and has been selected for the post of Section Officer (Audit). However, he is not able to join the post for want of NOC.

In these circumstances, he has approached this Court with the following prayers:

- A. "Issue a writ of mandamus or other appropriate order/direction directing Respondents to issue a 'No Objection Certificate (NOC)' for Civil post i.e. Section Officer (Audit) in

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Staff Selection Commission and for quashing the decision of Respondent No.3 declining to grant NOC to the Petitioner for the Civil Post of Section Officer (Audit).

- B. Issue a writ of certiorari quashing the decision of the Respondent No.3 declining to grant NOC to the Petitioner for the post of Section Officer (audit).
- C. Pass any other appropriate order/direction which this Hon'ble Court deems fit and proper".

Under what circumstances such an NOC can be granted or rejected would be appreciated better when we glance through the relevant provisions on the subject. Thus we proceed to take note of the extant Rules:

At the time of entry into Indian Air Force service, such persons like the petitioner herein, had given service bond as per which they had agreed to serve the Air Force for a period of 20 years. Normally, therefore, these petitioners are required to complete their tenure of 20 years with the Indian Air Force. However, the respondent Indian Air Force has framed a Policy as per which NOC can be given after rendering 7 years of service by an airman in case he gets selected in a civil post under Central Government/State Government/PSUs subject to fulfillment of certain conditions mentioned in the Policy. The Policy in question is dated 9.5.2003 which has been amended from time to time.

POLICY DATED 9.5.2003.

As per Policy dated 9.5.2003, Airmen/NCs (E) who have completed 07 years of their engagement including training period are permitted to apply for civil posts under Central Government/State Government/PSUs. Procedure under which such applications are to be processed is also stated in the said Policy to which we shall advert to soon after taking note of certain other factors contained in the Policy. Para-6 of this Policy states that NOC has to be issued by the Air Headquarters (Directorate of Personnel and Administration) in the prescribed format "on case to case basis, subject to service exigencies and after the approval by ACAS (PA & C)". Thus, each case is to be considered on its own merit in order to see whether NOC is to be issued in a particular case or not. While bestowing its consideration, the guiding principle before the Competent Authority would be "the service exigencies". Para-6 further mentions that issuance of NOC is a privilege and cannot be claimed as a matter of right within the engagement period of 20 years, as is clear from its reading:

"6. NOC will be issued by Air Headquarters (Directorate of Personnel & Administration) as per format given at Appendix to this AFO on case by case basis, subject to service exigencies and after approval by ACAS (PA & C). Issuance of NOC is a privilege and cannot be claimed as a matter of right within the engagement period of 20 years. Request for issue of

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NOC is to be made when an Airman/NC (E) fulfills all eligibility conditions and his application is forwarded to the employer through respective Command Headquarters. Once the NOC is issued, it is to be attached either as a part of the application for the post or presented at the time of interview, as per the requirement of the employer. No provisional or conditional NOC will be issued by the Station/Unit."

The procedure, to which we now advert to, is specified in the said Policy as under:

The applications of those eligible airmen etc (i.e. who have completed 07 years of their engagement) desirous of applying civil post is to be forwarded to their respective Command Headquarters through Station/Unit Commanders. The Command Headquarter has to vet these applications and on satisfying that the concerned candidate fulfils the eligibility conditions, the Command Headquarter is to forward the application to the concerned Department/employer.

As mentioned above, these applications have to be for those civil posts which are under Central Government/State Government/PSUs. Certain categories of Airmen/NCs are not entitled to apply, as mentioned in para-4 of the Policy. However, we can avoid details of these persons as admittedly none of the petitioners are covered by such cases, as mentioned in para-4. Once this

application is forwarded to the Command Headquarter, the concerned Airman is allowed to appear in the written test for the post for which he has applied. The Policy further states that as and when he qualifies for the interview, the Air Headquarter has to approach directly by the Station for issue of NOC which is to be obtained from Air Headquarter (Directorate of Personnel and Administration) before attending the interview, irrespective of the fact whether NOC has been asked for by the prospective Department or not. It is further mentioned that NOC will not be issued once the interview is over or the offer letter has been received. The Policy also stipulates that those Airmen etc. who are selected for civil posts after completion of 07 years of service should apply for discharge and accept the appointment only after discharge is approved by the Competent Authority at Air Headquarters.

POLICY DATED 21.3.2007.

There was an amendment in the Policy and revised Policy was introduced vide Circular dated 21.3.2007. In this Policy, it is, inter alia, noted that there was 'bulge' at the Sergeant level which was affecting the airmen cadre and its detrimental effect on the cadre on the whole was a well known fact. It further notes that even with the recent increase in the establishment sanctioned strength by the Government which is to be actually added in phases the strength of Sergeant

would still remain considerably above the establishment. This bulge has come about due to two main factors noted in this policy:

- (a) "A liberal, welfare-oriented policy regarding extensions beyond the term of Regular Engagement (RE) of 20 years, which awards extensions based on the employment needs of the individual with scant emphasis on cadre requirements beyond ensuring that the individual has the basic attributes regarding medical category and disciplinary benchmarks.
- (b) Promotion to the rank of Sgt at 13.5 years of service, regardless of ext vacancies".

The Policy thereafter, in para-3, takes note of measures which are being taken to reduce this surplus which had assumed significant proportions. Apart from taking proactive measures so as to achieve noticeable result with meaningful time frame as mentioned in para-3, paras 4 and 5 of the said policy deal with "No Objection Certificates for Civil Employment and Discharge". We reproduce these paras in entirety:

3. The present Sgt-level bulge is of significant proportions, and would need firm, proactive measures so as to achieve noticeable results within meaningful time frames. The following measures are being taken for implementation:-

- (a) Trade and rank wise, (above Sgt level) cadre requirements would be drawn and continuously updated. This would form the basic benchmark for the ideal cadre for the AF, on which cadre management strategy would be based.
- (b) The airmen would indicate their willingness or otherwise for extension beyond RE two year prior to RE expiry i.e. on completion of 18th year of service starting from PBOR who are completing

18 years in Sep 07 and whose RE expiry is Sep 2009. To help the PBOR to decide on willingness or otherwise for extension of term of engagement, a rough estimate of vacancies (rank wise and trade wise) likely to arise in the next three years would also be published every year.

(c) A BOO would be convened at AFRO twice a year to identify shortfalls in each rank trade wise. Vacancies to be filled by extensions would then be worked out on actual requirements, taking into consideration any recently approved additional vacancies and also the manpower allotted to newly formed units from within the existing strength. The BOO would consider airmen who have completed 18 years of service and are willing for extension. The extension panel would be published indicating the list of airmen considered by the BOO. The bi-annual BOO would have a member each from the Adm Branch, D Trg and DMP. The critical requirements to hold IIR in a particular trade; in a fleet or for any specialized training imparted would be provided by Dte of MP/Specialist Dte for consideration of the Board of Officers. The applications for extension would be arranged into a trade-wise and rank-wise merit list, and the available vacancies allotted as per merit.

(d) Extensions would be awarded in a controlled and selective manner, where merit would be the key factor (compassionate cases would continue to be dealt with by this HQ). A trade-wise list of airmen who would be granted extension subject to their medical fitness would be published. The cases of airmen recommended for extension by BOO but not meeting the medical standards would be considered by a condonation board.

4. "Presently, airmen are granted 'No Objection Certificate' for applying for Civil Posts and subsequently permitted to seek discharge after seven years of service in case they get employment in Central Govt/State Govt/PSUs. The job could be for any Gp A, B, C and even a Gp D post. This results in some PBOR

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considering the Air Force as only a stepping stone for another career. Even though the number of such individuals may not be alarming, the image of the IAF should also be considered. While an individual could be permitted to seek release in case he was offered a job which ensured better prospects/career enhancement, allowing him to leave for low paid jobs like LDC/Primary school teacher etc. would be retrograde step, especially after spending a considerable amount of money on his training; thus this does not seem advisable, though this is the present situation.

5. In view of the above, it has now been decided that airmen shall be allowed to apply for appointment to Civil Central Govt/State Govt/PSU posts carrying higher pay scales only. However, such a restriction will not be applicable to those PBOR who have completed 15 years of service, subject to cadre requirements at that time. NOC for applying for civil posts falling in the above categories would continue to be issued by Air HQ with the overriding condition being the overall cadre requirement in a particular rank/trade. Station/Unit administration would issue NOC to PHOR who have completed 18 years of service and have submitted unwillingness to extend their service or have not been cleared for grant of extension. NOC to PHOR unwilling or not cleared for extension may be granted by the Station/Unit administration for employment by any agency, including the private sector. Airmen granted such NOCs will be allowed to seek discharge in case they are selected for employment in Govt enterprises/PSUs/Private Sector as the case may be. PBOR having undergone specialist training/course/deputation abroad would be allowed discharge after completion of their obligatory period, if any".

Para-6 of the Policy deals with "Pre Release Courses".

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Paras 7 and 8 under the caption 'Conclusion' are also relevant for our purposes and, therefore, it would be in the fitness of things to extract these paras as well:

7. "A holistic view of cadre management has been taken by granting controlled and selective extension of service to airmen based on the overall cadre requirement as well as a more relaxed policy regarding the welfare aspect relating to allowing discharges on compassionate grounds and those seeking alternate careers in civil life. All airmen who are denied extension would be given preference for PRC courses so as to better prepare them for civil life, as well as permitting the issues of NOCs for any job including the Private Sector.
8. This policy on extension and discharge of airmen based on cadre requirement will come into effect from Sep 09 and necessary amendments would be incorporated in the relevant HRPs in due course. Your HQs are requested to disseminate the same to all Stations/Units under your Command".

The petitioners emphasized that there is an acceptance of the fact that there is a 'bulge' at Sergeant level. It is even affecting the Airmen Cadre and is detrimental to the cadre. In such circumstances the respondents have to be liberal in granting discharge to those airmen who applied for the same and fulfill the conditions laid down in the Policy. It is also sought to argue that many other officers similarly situated are issued similar NOC whose names are given in the petitions.

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AIR FORCE ORDER DATED 1.6.2007

This was followed by Air Force Order No.4 of 2007 issued by Air Chief Marshal on 1.6.2007 giving in detail the guidelines which are to be followed while considering applications for discharge. Para-1 thereof stipulates that the concerned applicant would be permitted to apply "for civil post under Central/State Governments in Group A and B (Gazetted) and equivalent posts in "PSUs" including Para-Military Forces. Thus as per this the civil post to which such airmen apply should be in Group-A or Group-B (Gazetted) or equivalent post in PSUs. This restriction is not, however, applicable to those airmen who have completed 15 years of service. Thus it applies to those officers who have rendered more than 7 years of service but less than 15 years of service. All these officers are in this category who have not completed 15 years of service.

Para-8 of the Circular dated 1.6.2007 further mentions that NOC is to be obtained from Air Headquarters (Directorate of Personnel and Administration) in respect of airmen and respective Command Headquarter in respect of NCS(E). It also stipulates that NOC shall not be issued if the application for the post has not

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contained in Policy dated 9.5.2003 which would be applicable. More so, when new Policy dated 1.6.2007 is not made retrospective.

2. Once permission is given to apply for the post, NOC should not normally be refused. It was argued that such permission is given after satisfying that a particular applicant fulfilled all the conditions and also was entitled to apply for the job and exigencies of service demanded giving him discharge on being selected. On the strength of such permission to apply for the post, when the applicant appears in the written test, qualify the same and thereafter qualify the interview as well and get selected, at that stage he cannot be told that NOC would not be issued.
3. The purpose of the policy was to reduce the 'bulge' at sergeant level. It was for this reason that permission was given to seek discharge only when the candidate gets selected in civil post under the Government so that his services are utilized by another agency of the Government or under the control of the Government i.e. PSUs. Therefore, such a Policy should be liberally construed.
4. The main reason for giving discharge after 07 years of service was that at this period of time the concerned airmen would be eligible to apply for civil

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post which opportunity may not be available for 20 years of service as such airmen would face age bar.

5. The action of the respondents amounted hostile discrimination and thus violative of Article 14 and 16 of the Constitution of India inasmuch as other similarly situated persons were granted NOCs and were allowed to be discharged, whereas in the case of the petitioners NOCs were denied.
6. The decision of the respondents in rejecting the request of the petitioners was irrational as there was no such exigencies which compelled the respondents to retain the petitioners for service more so when they were surplus in their strength.

The petitioners referred to the judgment in the case of State of Mysore and Anr. Vs. R.K.Kasi (1985) 2 SCC 110.

Whereas all other counsel adopted the aforesaid submissions, counsel appearing in WP(C)No.9612/2007 made additional submission to the effect that order of rejection in the case of his petitioner was non-speaking. Likewise counsel for the petitioner appearing in WP(C)Nos.6273 and 6274 of 2007 submitted that in these cases request was rejected on the ground that the post to which those petitioners applied was not Group-B post which was factually incorrect. It was

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submitted that Group-B post (Gazetted) was in the pay scale of Rs.6500-200-10500. However, the petitioners in these cases had applied for the post of Section Officer (Audit) which is a Group 'B' post in the pay scale of Rs.6500-200-10500 in the PSU where they are selected. Though the pay scale at the relevant time was lesser but there was revision in the pay scale w.e.f. 7.8.2007 and revised scale was more than the scale applicable to Group-B post (Gazetted).

The respondents have refuted the aforesaid submissions of the petitioners by filing separate counter-affidavits in these writ petitions. Since we had taken note of the facts appearing in WP(C)No.6272/2007, the legal submissions which are made by the respondents in the counter-affidavit filed to this writ petition can safely be reproduced as generally i.e. the defence of the respondents in all these cases.

It is stated by the respondents that at the time of enrolment at Indian Air Force, these petitioners had voluntarily signed Enrolment Form to serve the Indian Air Force for a period of 20 years. Therefore, normally such officers are bound to serve Indian Air Force for regular engagement period. Likewise when applying for the civil post these petitioners had signed the undertaking of the following nature:

"read and understood the contents of AFO 5/2003 and Air HQ letter No.Air HQ/10726/26/PA (RC) dated 15 Mar 05. Para 6 of the said AFO 05/2003 clearly states that

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issuance of NOC is subject to service exigencies and is a privilege and can not be claimed as matter of right within the engagement period of 20 years."

It is further contended that there is a shortage of manpower based on the existing strength as compared to the authorized strength in the trade of the petitioners (Radio Fitter). Further it is also denied that there is a stagnation in the Air Force as all Air Warriors are considered for promotion to the rank of Sergeant on clearing promotion examination, medical fitness etc. irrespective of merit after completion of 13 years 6 months of service and to the rank of JWO after 17 years of service, on the basis of merit. Therefore, the question of 'bulge' at Sergeant level was not material insofar as petitioners were concerned. These were the considerations which prevailed with the respondents in examining each case for issuance of NOC and it was decided to reject the request in the cases of the petitioners.

It was also submitted that reliance on Policy dated 1.6.2007 was of no consequence as it would come into effect in September, 2009. Counsel for the respondent also explained that most of these petitioners had applied for those civil posts which were not Grade A or B (Gazetted) post in the Central/State Governments or equivalent in PSUs. It was submitted that though initially such applications for issuance of NOC were dealt with liberally, over a period of time it

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was found that there was surge in such applications and if all these applications are allowed, it is going to create deficiency in the strength. The trade of Radio Fitter was critical trade and even as per the Policy, the request was to be allowed keeping in view the 'exigencies of service'. The learned counsel appearing for the respondent submitted that instructions were applied uniformly and there was no discrimination. Cases cited by the petitioners where the NOC was issued were sought away by giving justification because of which such NOCs were issued. At the time of hearing records in these cases were produced for perusal of the Court to show the reasons because of which such requests were rejected.

We have considered the respective submissions and have also perused the records. For sake of convenience, we may give details of each case stating the grounds for rejecting the requests of the petitioners:

Sl.No.	CWP No.	Particulars of Airmen	Details of the Case
1.	4798	776836 Cpl A. Srivastava AF Fit	Post-Aircraft Technician Employer- Indian Airlines Date Considered-13 Jun 07 Intimation to Unit-14 Jun 07 Grounds of rejection- Manpower deficiency/criticality in his trade, Service less than 15 years and Post also not Gazetted or its equivalent
2.	4799	776372 Cpl Pradeep Kumar	Post-Aircraft Technician Employer- Indian Airlines Date of Consideration-13 Jun 07

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		AF Fit	Intimation to Unit-14 Jun 07 Grounds of rejection- Manpower deficiency/criticality in his trade, Service less than 15 years and Post also not Gazetted or its equivalent
3	6003	740331 Sgt NS Yadav ADSO	Post- Primary School Teacher Employer- Rajasthan Public Service Commission Date of Consideration- 07 May 07 Intimation to Unit- 08 May 07 Grounds of rejection- Manpower deficiency/criticality in his trade, Class 'C' Post
4	6272	748058 Sgt SK Praveen Rdo Fit	Post- Section Officer (Audit) Employer- Staff Selection Commission Date of Consideration- 26 Jun 07 Intimation to Unit- 28 Jun 07 Grounds of rejection- Manpower deficiency/criticality in his trade, Service less than 15 years and Non-Gazetted post
5	6273	780770 Cpl Sanjay Kumar MTD	Post- Section Officer (Audit) Employer- Staff Selection Commission Date considered- 08 May 07 Intimation to Unit- 11 May 07 Grounds of rejection- Manpower deficiency/criticality in his trade, Service less than 15 years and Non-Gazetted post
6	6273	769497 Cpl MR Singh Eng Fit	Post- Assistant Employer- Staff Selection Commission Date considered- 04 May 07 Intimation to Unit- 10 May 07 Grounds of rejection- Manpower deficiency/criticality in his trade, Service less than 15 years and Non-Gazetted post
7		743268-B Cpl Amritakar Mandal Rad Fit	Post- Section Engineer Employer- Indian Railway Date considered- 16 Oct 07 Intimation to Unit- 18 Oct 07 Grounds of rejection- Facing manpower shortage in Rad Fit Trades, Service rendered by him is less than

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			15 years and Post applied for is not Group 'A' post.
8	6274	785964 Cp. Raj Kumar PMF(M)	Post -Junior Engineer II (C&W) (Rs.5000-8000) Employer -Indian Railways Date considered -01 Aug 07 Intimation to Unit -02 Aug 07 Grounds of rejection -Manpower deficiency/criticality in his trade, Service less than 15 years and Non-Gazetted post
9	7000	751051 Sgt KB Singh MF(L)	Post -Section Engineer (Rs.6500-10500) Employer -Indian Railways Date of Consideration 23 Aug 07 Letter of Intimation to Unit -27 Aug 07 Grounds of rejection -Manpower deficiency/criticality in his trade, Service less than 15 years and not equivalent of Group 'A' post.
10	7153	770668 Cpl Satveer Singh Clk GD	Post -Assistant Employer -Staff Selection Commission Date of Consideration -30 Apr 07 Letter of Intimation to Unit -04 May 07 Grounds of rejection -Manpower deficiency/criticality in his trade, Service less than 15 years and Non-Gazetted Post
11	7303	763486 Cpl Sanjay Kumar Inst Fit	Post -Section Engineer Employer -Indian Railways Date of Consideration -13 Set 07 Letter of Intimation to Unit -17 Sep 07 Grounds of rejection -Manpower deficiency/criticality in his trade, Service less than 15 years and not equivalent of Group 'A' post.
12		749140 A Cpl RS Yadav Rdo Fit	Post -Section Engineer Employer -Indian Railways Date of Consideration -18 Set 07 Letter of Intimation to Unit -19 Sep 07

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			Grounds of rejection -Facing manpower shortage in Rad Fit Trades. Service rendered by him is less than 15 years and Post applied for is not Group 'A' post.
13		790223 Cpl UPV Pratheopan Rdo Fit of 1 Wing	Post -Section Engineer Employer -Indian Railways Date of Consideration -17 Jul 07 Letter of Intimation to Unit -26 Jul 07 Grounds of rejection -Facing manpower shortage in Rad Fit Trades, Service rendered by him is less than 15 years and Post applied for is not Group 'A' post.
14		755369 Sgt Sanjay Biswas MF(M)	Post -Assistant Teacher Employer WB School Selection Commission Date of Consideration -25 May 07 Letter of Intimation to Unit -28 May 07 Grounds of rejection -Shortage of manpower in MF(M) trade, Service rendered is more than 15 years but post applied for is not a Group 'B' (Gazetted) or equivalent post.
15		764699 Cpl SK Srivastava PMF(E)	Post -Section Engineer Employer -UP Electricity Board Date of Consideration -23 Aug 07 Letter of Intimation to Unit -27 Aug 07 Grounds of rejection -Shortage of manpower in PMF(E) trade, Service rendered is less than 15 years and post applied for is not a Group 'A' or equivalent post.
16		791348 Cpl A.K. Maurya Rdo Fit	Post - sub Inspector in CBI Employer - SSC (NR) Date of Consideration - 13 Sep 07 Intimation to unit - 17 Sep 07 Ground of rejection - Shortage of manpower in Radio Filter trade, Service rendered is less than 15 years and post applied is not a Group 'A' or

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17	777129 Cpl Karnal Kumar AF Fit	equivalent post Post - Tax Assistant Employer - SSC Date of Consideration - 30 Apr 07 Intimation to unit - 04 May 07 Ground of rejection - Shortage of manpower in AF Fit trade, Service rendered is less than 15 years and post applied is not a Group 'A' or equivalent post
18	775076 Cpl KSR Krishna AF Fit	Post - Junior Engineer Employer - Indian Railways Date of Consideration - 14 Sep 07 Intimation to unit - 17 Sep 07 Ground of rejection - Shortage of manpower in AF Fit trade, Service rendered is less than 15 years and post applied is not a Group 'A' or equivalent post

It is clear from the above that in most of the cases the grounds for rejection are:

- A. Manpower deficiency/criticality in the trade to which the petitioner belongs.
- B. Service less than 15 years.
- C. Civil post for which the petitioner applied is also not gazetted or its equivalent.

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We may point out that as per record produced though as on 13.4.2007 there was a surplus of manpower of this particular trade by 175 persons inasmuch as, against the sanctioned strength of 1723 there was 1907 officials in place. However, in August, 2007 when the applications for NOC of the petitioners were considered and rejected, there was a deficiency of 117 officers.

The first question that falls for determination is as to which date would be material for considering the request for issuance of NOC. Would it be the date when the concerned officer applied for civil post and his application was forwarded through proper channel or would be a date when the NOC is to be issued. It is not in dispute that if latter date is to be considered as material date, at the time of issuance of NOC there was deficiency of officers.

In order to determine the relevancy of date, we refer to certain provisions in the Policy dated 9.5.2003. The relevant aspects of this Policy have already been highlighted above. As noticed above, those Airmen who have completed 07 years of their engagement including training period are "permitted" to apply for civil post under Central/State Governments and PSUs. However, merely because they are permitted to apply does not mean that they automatically get the NOC as well. When they apply for such a post, the Adjutant has to recommend and forward the same to the respective Command Headquarter. Once

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the application is recommended by him and forwarded to the Command Headquarter, such an applicant is allowed to appear in the written test and/or interview for the post. Whether he is to be given NOC or not is not considered at that time. Such a consideration is to be made by Air Headquarter at a time when the applicant qualifies for interview. It is clear from Para-5 of the Policy, relevant portion whereof reads as under:

5. "As and when Airmen/NCs (F) qualify for the interview, Air HQ is to be approached directly by the Station/Unit for issues of 'No Objection Certificate'. NOC is to be obtained from Air Headquarters (Dte of PA) before attending the interview, irrespective of the fact whether the NOC has been asked for by the prospective department/employer or not. NOC will not be issued once the interview is over or offer letter has been received. While approaching Air Headquarters for issue of NOC, Station/Unit will invariably forward the following documents :

- (a) Written request from the Airman/NC(E) asking for issue of NOC.
- (b) A copy of interview call letter with specific date and venue of interview, duly attested by a commissioned officer.
- (c) Advertisement in original or Xerox copy duly attested by a commissioned officer vide which the employer had sought submission of applications.
- (d) A certificate to the effect that there is no disciplinary case in progress/contemplated against concerned Airman/NC(E).
- (e) A certificate from Station/UNIT Commander/Adjutant to the effect that the concerned Airman/NC(E) is not under obligation to serve beyond RE due to an undertaking given by him.
- (f) A Xerox copy of the covering letter received from Command Headquarters vide which the application of

the Airman/NC(E) was forwarded to the concerned employer/department".

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Along with the application for issuance of NOC requisite documents as mentioned therein are also to be given. It is at that stage that the Air Headquarters would consider whether NOC would be granted or not, which is manifest from para-6 of the Policy as well:

"6. NOC will be issued by Air Headquarters (Directorate of Personnel & Administration) as per format given at Appendix to this AFO on case by case basis, subject to service exigencies and after approval by ACAS (PA & C). Issuance of NOC is a privilege and cannot be claimed as a matter of right within the engagement period of 20 years. Request for issue of NOC is to be made when an Airman/NC (E) fulfills all eligibility conditions and his application is forwarded to the employer through respective Command Headquarters. Once the NOC is issued, it is to be attached either as a part of the application for the post or presented at the time of interview, as per the requirement of the employer. No provisional or conditional NOC will be issued by the Station/Unit."

The respondents have explained the rationale in considering such NOC at a later stage. It is explained that unless the applicant qualifies for interview, it is not even necessary to consider as to whether he would be needing NOC or not as

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no NOC would be required by a candidate who has failed to qualify for civil post. Moreover the question of discharge would come at a stage and at point of time such an applicant gets selected for civil post. It is clear from the above, that the relevant date of issuance of NOC is when such NOC is applied after selection. The material date would be August, 2007, and not April, 2006, by which date the respondents were facing deficiency in this critical trade. With such a reason for rejection, which is relevant consideration, we cannot act as an Appellate Authority and decide as to whether the decision of the respondents is correct or not. In exercise of our judicial review, we are concerned with the decision making process and not the merit of the decision unless it is shown that the decision of the respondents is irrational or there is procedural impropriety or it is perverse or contrary to some law, the Court cannot interfere with such a decision.

We have already noted in para-6 of the Policy reproduced above that issuance of such an NOC is a privilege and not a right conferred upon these Airmen within engagement period of 20 years. The respondents are within their right to examine each request on case to case basis keeping in view the service exigencies.

We may mention that during the course of arguments in respect of petitioners in WP(C) Nos. 8811/2007, 8814/2007, 9022/2007, 431/2008, WP(C) No. 6272 of 2007

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540/2008 and 578/2008 it was conceded by the respondents that the post to which they applied were equivalent to Group-B post. However, in their cases request is rejected on the ground that service rendered by them was less than 15 years. In such cases arguments revolved on the issue as to which Policy out of the two-Policy dated 9.5.2003 or 1.6.2007 would be applicable.

The comparison of the two Policies would show the following differences between them:

AFO 05/03	AFO 04/07
- Date of issue of AFO is 09-05-03 - Minimum service required to apply for the civil post is 07 years - Permitted to apply for civil posts under Central/State Govt. and public undertaking. - Airmen/NC(E) - Those who have given undertaking to serve for a specific period beyond regular engagement owing to courses, deputation/posting within India/abroad are not permitted to apply.	- Date of issue of AFO is 01-06-07 - Minimum service required to apply for the civil post is 07 years - Permitted to apply for civil posts before 15 years under Central/State Govt. in Group A and B Gazetted post only. - Above restriction of Group A and B Gazetted post will not be applicable to Airmen/NC(E) who have completed 15 yrs. Of service. - Airmen who have completed 18 yrs of service and are unwilling to serve further or not cleared for extension of engagement are permitted to apply for employment in private sector also and there will be no restriction of any kind.
<u>Procedure</u> - Application to be forwarded to the Command HQ. Thereafter Command HQ will forward the application to the concerned Department/Employer.	<u>Procedure</u> - Application to be forwarded to the respective department/employer by the AOC/Sin Cdr/CO unit duly vetted.

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- As Airmen/NC(E) qualify for interview, Air HQ is to be approached directly by the Stn/Unit for issue of NOC. - NOC to be obtained from Air HQ (DPA) for attending the interview. <u>Para-6 of AFO</u> - NOC will be issued by Air HQ (DPA) as per Appendix to AFO on case by case basis, <u>subject to service exigencies</u> and after approval by ACAS(P&C). Issuance of NOC cannot be claimed as a matter of right within engagement period of 20 years. Request for issue of NOC is to be submitted only when an Airman/NC(E) fulfills all the eligibility conditions and application was <u>forwarded to the employer/department through Command HQ</u>. Once NOC is issued, it is to be attached either as part of the application for the post or presented at the time of interview, as per the requirement of the employer. No provisional or conditional NOC is being issued by the Unit/Stn.	- Application for NOC is to be submitted by the individuals after receiving call letter for the interview. - Stn Cdr/CO will forward the application to the Air HQ for issue of NOC. <u>Para-9 of AFO</u> -NOC will be issued by the Air HQ (DPA) in respect of airmen as per format given at <u>Appendix C</u> and in respect of NC(E) as per <u>Appendix D</u> to this AFO case by case basis, subject to the exigencies of service and with the overriding condition being the <u>overall cadre requirement in a particular rank/trade</u>. Issuance of NOC cannot be claimed as a matter of right within engagement period of 20 years. Request for issue of NOC is to be submitted only when an Airman/NC(E) fulfills all the eligibility conditions and application was forwarded to the employer/department through proper channel. No provisional or conditional NOC is to be issued by the Stn/Units.
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It is because of the reason that as per Policy dated 9.5.2003 Airmen with 07 years were allowed to be permitted to apply for civil post whereas in Policy dated 1.6.2007 the slight amendment was made insofar as this period is concerned. In the amended Policy, a Clause is added that civil post under Central/State Governments should be in Group A and B (Gazetted) and equivalent post in PSUs including Para-Military forces. In the

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earlier Policy there was no such condition. However, if an Airman has completed 15 years of service then it is not necessary that the civil post to which he applies should be in Group-A and B (Gazetted) or equivalent in PSUs. In these cases certain officials applied for civil post which is not Group-B or equivalent. Others who have applied for a post which is Group-B (Gazetted) post or equivalent do not have 15 years of service. It is in these circumstances question of applicability of a particular Policy has arisen. In case Policy dated 9.5.2003 is applicable, it is not necessary for them to show that the civil post to which they apply is Group B (Gazetted) or equivalent as no such nomenclature was mentioned in that Policy and after 07 years of service an airman was entitled to apply for the civil post without any specification about the category of the post. These petitioners would, therefore, be eligible under Policy dated 9.5.2003 but are rendered ineligible as per Policy dated 1.6.2007.

As we have taken the view that material date for consideration of request for NOC is the date when an applicant qualifies for interview, the Policy which is applicable on that date would govern the field. The date on which the applications are considered for NOC submitted and considered is after March, 2007 when Policy dated 21.3.2007 had come into force. Therefore, the consideration will have to be in accordance with the Policy on which date requirement of 15 years had come into place. Since all these petitioners had either not applied for Group A and B (Gazetted) post or had

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not completed 15 years of service, this reason given for rejection of their requests would be valid.

We may note here that the Policy was amended and aforesaid provision introduced with specific purpose. The respondents had produced the noting in the file justifying of inclusion of the said clause. It was found that with liberal grant of NOCs under the earlier Policy as per which stipulation of 07 years of regular engagement was provided for such Airmen to apply for civil post, attrition rate was high and in the process the erstwhile 'bulge' led into deficiency in some trades. The rationale behind laying down condition of 15 years was criticality in some trades and even ranks (particularly supervisory ranks). Keeping in view the purpose with which the Policy was amended, the respondents have also decided that while considering issue of NOCs in future, the following two categories of applicants for NOCs may not be subjected to the aforesaid condition relating to overall cadre requirement or criticality of trade:

- (a) Applicants for NOCs, whose length of service in IAF (including training period) is more than 7 years but less than 15 years but the civil post in question is a 'Group A' post in Central/State Govt or its equivalent in pay scale in PSUs.

Justification :- Even from the point of view of criticality of trade, this is not likely to be prejudicial to the interest of service, because, going by the past experience, the number of airmen selected for Group

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'A' posts are very rare, while stakes from the point of view of welfare of airmen are very high.

- (ii) Applicants for NOCs, who have rendered more than 15 years of service and the civil post in question is Group 'B' (Gazetted) post in Central/State Govt. or its equivalent in pay scale (Rs.6500 to 10500) in PSUs.

Justification : PBOR in the Army and Navy are availing of such concession after only 14 years' length of service and even in the IAF pensionable age for airmen is 15 years only. Moreover a decision was also taken to issue NOCs in few cases on similar grounds.

The respondents have thus laid down the objective criteria for considering all these applications and are now issuing NOCs, only after applying these criteria, in cases where this criteria is fulfilled.

Insofar as argument of discrimination is concerned, we find from the counter-affidavit that the cases in which NOCs are given are duly explained in the counter-affidavits. In the first instance it may be pointed out that most of those cases relate to the period prior to March, 2007 which were considered in the light of Policy dated 9.5.2003. It is also mentioned that in some cases where the NOC is issued after March, 2007, length of service rendered by the applicant in those cases was more than 15 years or they had applied to the post equivalent to Group-A post. We are, therefore, satisfied that no case of discrimination is made out. Therefore, the Supreme Court judgment in R.K. Kasi case (supra) cited by the petitioner will have no

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application insofar as these cases are concerned. In that matter two officers similarly circumstanced were treated unequally in the matter of repatriation and this was treated as violative of Article 14.

Such cases of refusal of NOC have come up for judicial scrutiny on earlier occasion before the Supreme Court, this Court as well as other High Courts. We may now refer to some of these cases.

In Union of India and others Vs. R.P.Yadav (2000) 5 SCC 325, the Apex Court was concerned with those Naval Officers who after completing their usual period of commission had given consent for re-engagement in Navy and wanted to withdraw the said consent before the expiry of re-engagement period. The Supreme Court, per majority held that they had no right to withdraw the consent and demand their release as of right. It was also observed that such a claim of release was even inconsistent with the requirement of strict discipline for Naval service. The following observation of the Supreme Court in the context are worth a quote:

24. "An incidental question that arises is whether the claim made by the respondents to be release from the force as of right is in keeping with the requirements of strict discipline of the naval service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon the security of the nation. It has to be borne in mind

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that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in the Regulations like Regulations 217 and 218 that persons who in the opinion of the prescribed authority, are not found permanently fit for any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high degree of expertise and skill for which substantial amounts are spent from the exchequer.

25. Therefore, it is in the fitness of things that the strength of the Naval Force to be maintained is to be determined after careful planning and study. In a situation of emergency the country may ill-afford losing trained sailors from the force. In such a situation if the sailors who have completed the period of initial engagement and have been granted re-engagement demand release from the force and the authorities have no discretion in the matter, then the efficiency and combat preparedness of the Naval Force may be adversely affected. Such a situation has to be avoided. The approach of the High Court that a sailor who has completed 15 years of service and thereby earned the right of pension can claim release as a matter of right and the authority concerned is bound to accept his request, does not commend itself to us. In our considered view, the High Court has erred in its approach to the case and the error has vitiated the judgment".

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The twin propositions which can be culled from the reading of the aforesaid paras are:

- A. The officer is expected to serve for the period of engagement or re-engagement as the case may be and such a measure is required in the general interest of the country.
- B. It is necessary to maintain the strength of the force which is determined after careful planning and studying and in such cases the officer has no discretion in the matter of release from the force.

Both these aspects apply in equal force as far as these cases are concerned. Rather, the Policies specifically stipulate that issuance of NOC is not a right of the applicants but only a privilege and give discretion to the respondents to consider each case on its own merit having regard to the exigencies of service. If at the time of consideration of the petitioners' applications it was found that the trade to which petitioners belong is critical and their strength is dwindling, the respondents had a right to reject these applications.

This Court in the CWP.No.1370 of 2002 entitled **Sgt. Sarkar J.C. Vs. Union of India and Ors.** Decided on 18.5.2002 dealt with the cases of Air Force Officers. The Court was dealing with Air Force Order bearing

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No.AFO'18 dated 7.9.2001 as per which those who have completed 15 years of engagement were permitted to apply for civil posts under Central/State Governments and equivalent jobs in PSUs. The writ was filed questioning said provision of the order which banned applications to civil posts for initial period of 15 years of service. Repelling the challenge and upholding the said AFO, it was held that there was no right of persons to leave service after some time for better job, inasmuch as the petitioners had entered into requisite contracts agreeing to serve respondents for a period of 20 years. We need to reproduce the following observations made by this Court while dismissing the writ petition:

16. "The respondent in its counter affidavit has contended that a decision was taken at the highest level at Air Headquarters in consultation with the Judge Advocate General (Air) that all Airmen who were given initial permission to apply for civil post by the Air Force Units prior to 06-09-01 were all issued with NOCs to join the civil posts as and when they applied, but from 07-09-01, grant of NOC would be governed by AFO 18 of 2001 inasmuch as thereby the eligibility condition is stated to be 15 year's of service. In that view of the matter, evidently the petitioner had not been discriminated against.

17. It has been contended that such a decision had been taken having regard to the fact that costly training is imparted to the Airmen and thus the upward trend of mis-utilization should be curtailed. It has been pointed out that the petitioner also applied for permanent commissioning and branch commissioning in Indian Defence Forces within the engagement period.

In the instant case, the petitioner had not been able to show that the said AFO No.18 of 2001 is unconstitutional.

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18. The terms and conditions of service, particularly with regard to the right of a person to leave services after some time for a better job cannot be claimed as a matter of right keeping in view the fact that the petitioner agreed to serve the respondent for a period of 20 years wherefor he entered into a requisite contract.

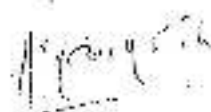
19. From the petitioner's letter dated 03-04-01, it appears that he had only applied for permission to appear in the Civil Examination for Class I post conducted by the Board. Only the said application was forwarded. There is nothing on record to show that the petitioner had in fact applied for grant of NOC from the Competent Authority".

This leaves us to consider additional submissions which were made by learned counsel for the petitioners appearing in WP(C)Nos.4798/2007 and 4799/2007. It was stated that the pay scales of Rs.3620-5850 to which petitioners applied for the post of Aircraft Technicians in Indian Air Lines Ltd. of the civil post were revised wef 7.8.2007 and as per the revised pay they were equivalent to Group-B post in the pay scales of Rs.6555-10375. However, we cannot take into consideration this revision. It has been rightly pointed out by the learned counsel for the respondents, the pay scales of Group-B post in the Government came into force w.e.f. 1.1.96 on the implementation of the 5th Central Pay Commission. Therefore, comparison has to be of the pay scale prevailing as on that date. In a particular PSU if the pay scale are revised to 1.8.2007, similar revision has become due in respect of Government pay scales as well. Once they are

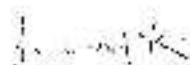
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revised, most likely that come into force w.e.f. 1.1.2006. Therefore, we hold that the petitioners in these two cases had not applied for a post which is equivalent to Grade B post.

For all these reasons, we do not find any merit in these petitions, which are, accordingly dismissed.

No costs.


(A.K. SIKRI)
JUDGE

March 14, 2008.
skk


(J.M. MALIK)
JUDGE