

HIGH COURT OF DELHI AT NEW DELHI

W.P(C) 9035 of 2008

Judgment reserved on: 04.03.09

Judgment delivered on: 17.07.09

Sgt. Deepak Kumar

.....Petitioner

Through: Mr. Narender Kaushik, Adv. and
Mr. Pankaj Kaushik, Adv.

Versus

Union of India & others

..... Respondents

Through: Mr. Vikas Chopra with Wg. Cdr
Ajit Kakkar and Sgt. P.K. Sattapathy.

CORAM:

HON'BLE MR. JUSTICE B.N. CHATURVEDI

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S. L. BHAYANA, J.

The present petition has been filed by the petitioner under Article 226 of the Constitution of India. The petitioner has approached this court for the following reliefs:-

1. Issue a writ in the nature of certiorari quashing the order of the Respondents declining grant of NOC to the Petitioner for

the post of driver in the DTC dated 27th Aug 2008, and against the rejection order dated 10th Nov 2008.

2. Issue a writ in the nature of mandamus directing the respondents to discharge the petitioner from service with immediate effect with due terminal benefits as per law;
3. Pass any other appropriate writ, order or direction as deem just and proper in the circumstances of the case.

2. The prefatory facts building up the factual edifice would be essential. The petitioner is serving as an Airman in the Air Force. He was enrolled as an Airman in the trade of MTD (Driver) on 13th October 1992 and was subsequently promoted to the rank of Corporal in 1997 and thereafter Sergeant in May 2006. The petitioner has been an outstanding sportsman throughout and has won several medals and appreciations during his employment.

3. The respondent on 1st June 2007 issued AFO 4 of 2007 which granted the permission to airman who had rendered seven years of service to appear and join civil services of all categories. In January 2008, the petitioner applied for the post of Driver in the DTC. The petitioner cleared the required written test and skill test conducted by the Delhi Subordinate Services Selection Board (hereinafter to be referred as DSSSB). Thereafter, in view of the positive result, the

petitioner applied for NOC which was forwarded by his superior authorities to the Competent Authority in the Air Force for giving NOC. However, vide order dated 27th August 2008 the Competent Authority rejected his application for the NOC. Again the petitioner applied for reconsideration of NOC to the competent authorities by letter dated 6th October 2008, which was again rejected vide letter dated 10th November 2008. The petitioner also requested the appropriate authority for screening of posting till March 2010 on extreme compassionate grounds. The petitioner was offered appointment as driver by DTC and had been directed by the DTC to appear for medical test on 26th December 2008. By interim order dated 19th Dec 2008 this court directed the respondents to permit the petitioner to undergo medical test. In the meantime, the petitioner has been transferred and Respondent No. 3 issued posting order RDD/191 dated 9/01/2009 directing the petitioner to report the Air Force station at Tanjapur on 16th March 2009.

4. Under what circumstances NOC can be granted or rejected can be appreciated better by going through the relevant Rules on the issue. Thus we proceed to take note of the extant Rules:

(A) On 1st June 2007, Indian Air force came up with an order AFO 04/2007(AnnexureP-1), As per aforementioned order

Airmen who have completed seven years of their engagement including training period, are permitted to apply for civil posts under Central Govt. / State Govt. in Group A or B (gazette) and equivalent posts in the PSUs including the paramilitary forces. However such a restriction is not applicable to those airmen and NCs (E) who have completed fifteen years of services. They are permitted to apply for civil posts under Central Govt. / State Govt. / PSUs including paramilitary forces, irrespective of groups and pay scales of civil posts.

(B) As per Section 9 of the AFO 4/2007 NOC will be issued by the Air Headquarters (DTE of PA) in respect of Airmen on “case to case” basis, subject to exigencies of service and with the overriding condition being the overall cadre requirements in a particular rank/trade. Further, it says that issuance of NOC cannot be claimed as a matter of right within the engagement period of 20 years.

(C) Para 11 of the AFP 4/2007 makes it clear that an airman selected for the civil post and whose application for NOC has been processed through proper channel are to accept the appointment only after discharge is approved by the

competent authority at Air headquarters/ Command Headquarters as applicable.

5. The submissions made by the learned counsel for the petitioner can be summarized as following:

(i). The denial of discharge is illegal and unconstitutional when the petitioner has applied for the Driver post through proper channel as per AFO 04/2007 dated 1st June 2007.

(ii). Denial to petitioner amounts to discrimination and is hit by Article 16 of the constitution of India in as much as other similarly placed and identically situated Airmen were given NOC or discharge, hence rejection order should be quashed.

iii. The petitioner's application was forwarded as per AFO 4/2007 issued by the Chief of Air Staff after he applied for the same for joining as driver in DTC. The denial of discharge amounts to promissory estoppel against the respondents

iv. Denial without speaking order or reason in vague manner after first clearance is violation of Article 14 of the Constitution of India.

v. The AFO was made with a view to provide rehabilitation and resettlement for the airmen to meet their hardships. The

family of petitioner along with old parents needs services of petitioner at home as there is no one to look after them.

vi. The petitioner has completed 16 ½ years of service meaning thereby left with only 3 ½ years of service inclusive of 4 months of leave encashment in addition to pre release training if allowed to the petitioner. In all, the petitioner is hardly left with 2 ½ years of actual service which also includes two months of annual leave each year.

vii. The petitioner i.e. the airmen are always permitted to apply and get discharged on compassionate grounds of looking after old ailing parents who are dependent on them or to meet the matrimonial disputes if any or to manage the high value property or to change the service for prosperity in the inter-se services.

6. The respondents have refuted all the aforesaid submissions of the petitioner. It is submitted by the respondents that the petitioner was enrolled in the Air Force for a period of 20 years. The petitioner had applied for the civil post in January 2008 which was forwarded to the secretary DSSSB, Delhi by his unit vide letter No.54 ASP/1321/P3. The application was considered at appropriate level at the Air Force headquarter and was not approved on the

ground of service exigency as per para 9 of the AFO 4/2007. It is clearly stipulated in para 9 of the said AFO that NOC is to be issued on case to case basis with the overriding condition being the overall cadre requirement in a particular rank/trade. The rationale behind laying down such condition was criticality in some trades and ranks. Thus, it was decided in July 2007 that NOC were only to be issued to overcome the criticality in the services/ rank and shortage of manpower in air Force. In the said view of criticality, a new AFO 14/2008 was issued on 19th September 2008. As per para 2 of the said AFO all the applications for civil post are to be forwarded to the prospective employer by the unit after verifying the eligibility including criticality of manpower application of Airman belonging to critical trade ought to be rejected at the unit level only. The Air HQ updates the criticality of trade twice a year, in June and December and is intimated to the units through command HQs. The petitioner's application for reconsideration for issue of NOC was rejected on the ground of service exigency. The respondents have also maintained that with the promulgation of AFO 14/2008, AFO 4/2007 has ceased to exist. And thus, petitioner's application for reconsideration of NOC was considered under AFO14/2008. The respondents have contended that mere forwarding of application does not accrue the right of issuance of

NOC and also that the petitioner was well aware at the time of applying for the civil post that despite forwarding of his application by his unit, NOC can still be denied by the Air Headquarter as service exigencies keep changing from time to time. The criticality of the trade is updated by the AIR HQ twice a year i.e. in the month of June and December. There is considerable gap between initial forwarding of the application to civil employer somewhere in January and consideration of issue by through Air Headquarter. Thus the service exigency cannot be anticipated at the stage of initial consideration. The respondent has contended that petitioner has willfully ignored para 9 of the AFO 4/2007 and dwells upon at length other provisions which are relevant for initial forwarding of the application and not for grant of NOC and thus has been trying to misrepresent the policy.

7. As per respondents appraisal to this court NOCs are issued as a welfare measure with the objective of career enhancement of the Airmen's settlement subsequent to expiry of engagement period. In the petitioner's case there was no such enhancement in career/status of Airmen as the civil post in question is a non-gazetted post.

8. The petitioner's application for screening of posting was not approved after due consideration at Air Force record office as one year beyond the normal posting tenure would result in over stay in metro and the grounds forwarded by the petitioner were held to be common in nature. As per the tenure policy, tenure at metro cities is 4-5 years. The petitioner has been posted to Gurgaon from 22nd March 2004 and is completing his 5 years of stay in Gurgaon and thus he has been posted according to the policy to Tanjapur.

9. The respondents also rejected the petitioner's application for discharge from service on compassionate ground which was not approved due to constraints in his trade.

10. The question for determination is whether the petitioner is entitled to be discharged from Air Force or not and whether the grounds for rejection of petitioner's application for NOC are discriminatory and arbitrary.

11. To support his case learned counsel of the petitioner has relied upon the decision in the case of Pradeep Kumar Vs Union of India and Another, **(W.P.(C) No.8760/2008)**, decided on 16.12.2008. The facts and circumstances of that case are however, different from the present petition. In the referred case, the petitioner's claim was for an officer level post which was career

advancement for the petitioner. Apart from that, the respondent's reasons for rejection of petitioner's application for discharge was held to be "*a motivated subsequent thought process...to prevent petitioner from seeking an exit and an attempt to cover the mistakes of the concerned officers*" by Court. For this reason, the court had given relief to the petitioner even though the petitioner had not completed the mandatory 7 year period of service. Thus, we do not find any support from that case.

12. Another case on which the petitioner had relied upon is that of Sgt Narender Yadav vs Union of India and Others, **W.P.(C) 10147/2006**, decided on 06.09.2006. We uphold the contention of the respondents that in that case, the petitioner had claimed relief under AFO 5/2003 and also that there was delay in issuing NOC due to some ambiguity regarding the criteria for processing of application which were not known to the petitioner.

13. We have observed that the respondents have duly followed the procedure for forwarding the application of petitioner for NOC to the Air Force Headquarter as well as the Secretary, DSSSB. We uphold the contention of the respondents that mere permission to apply for a civil post does not automatically give the petitioner a right to get NOC as well. The policy is clear on this point that the

NOC has to be obtained from the Air Force Headquarter upon being forwarded through proper channel. Para 9 of AFO 4/2007 as well as para 6 of the AFO 14/2008 in clear words declare that NOC is to be issued on case to case basis with the overriding condition being the overall cadre requirement in a particular rank/trade.

14. *It is appropriate to take note of para 9 of the AFO 4/2007 which indicates that issuance of such a NOC is not a right conferred upon the airmen within the engagement of 20 years and the petitioner is well covered under the engagement period. The respondents are well within their right to examine each request on case to case basis keeping in view the service exigencies. At the time of enrolling with the Indian Air Force, petitioner had given an undertaking and agreed to serve the Air Force for a period of 20 years. Normally they are required to complete their tenure of 20 years with the Air Force. If at the time of consideration of petitioner's application for NOC it was found that the trade to which petitioner belongs (MTD Driver) is critical and there is a shortage of drivers in this trade. The respondents have the right to reject the application. Thus, the argument of the petitioner that the order is arbitrary or discriminatory fails. The respondents have denied the NOC in terms of para 9 of the AFO 4/2007, which the petitioner has*

already acknowledged to know by submitting an undertaking to that effect. Thus, it cannot be said to be a non-speaking order.

15. The respondents have relied on a case of Sgt. Sachin Kumar Pravin Vs. Union of India, **(WP(C) No.6272/2007)**, decided on 14.03.2008. In the given case, this court has observed that *“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 are irrational or there is procedural impropriety or it is perverse or contrary to some law, the court cannot interfere with such a decision.”*

16. In Sgt. Sachin Kumar Pravin’s case (supra), this court came out with the following twin propositions:

- “(a) The officer is expected to serve for the period of engagement or reengagement as the case may be and such a measure is required in 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 matter of release from the force.”

17. Apart from the above reasons, in the application for reconsideration of NOC, the petitioner himself has stated that he is well aware that nature of task, salary and status with the new

employer (DTC) is in no way better than the Air Force organization. Thus, objective of the policy of applying for civil posts in certain cases, which is a welfare measure with objective of career enhancement, is defeated.

18. The scope of judicial review of administrative decisions is very limited. The court cannot ordinarily sit in appeal over the decision of the administrative authorities but can only look into the manner of reaching the said decision. In the present case we cannot question the decision taken by the competent authority under their prescribed power. It is well established that jurisdiction of this court for judicial review of Administrative decision is limited.

19. In the light of the contentions put forward by the respective side and after a careful perusal of the entire material placed before us, we are disinclined to accept the petition.

20. For the reasons recorded herein above, we find no merit in the instant writ petition and the same is, accordingly, dismissed.

21. No orders as to costs.

S.L.BHAYANA, J.

B.N. CHATURVEDI, J.

July 17, 2009

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