

CHARAN SINGH BHANVARIYA Petitioner
Through : Mr. Arvind Nayar, Adv.

versus

UOI AND ORS Respondents
Through : Ms. Barkha Babbar, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

GITA MITTAL, J. (Oral)

1. The petitioner has assailed the refusal of the respondents to grant the requisite "No Objection Certificate" to him to enable him to accept and comply with the formalities towards his appointment to the post of Assistant Commandant in the CRPF respondent No.5 before us.

2. The petitioner was appointed as Aircraftsman (AC) with the Indian Air Force in the trade of IAF(S) on 16th December, 2002 and is stated to have signed for 20 years initial engagement with the Indian Air Force. Upon remustering to Environment Safety Support Assistant (ESSA hereafter) trade with effect from 12th July, 2006, the petitioner was posted with

the 23rd Wing of the Air Force.

3. At this stage, the petitioner is stated to have made an application dated 2nd September, 2009 seeking immediate discharge from his service on compassionate grounds. This application was considered and rejected on 28th April, 2010 by the competent authority who found the same without merit.

4. Mr. Arvind Nayar, learned counsel for the respondents has pointed out that the Indian Air Force has issued certain guidelines and instructions titled as "Giving Instructions for Airmen Trainee (Ab- Initio)" para 8 whereof reads as follows:-

"8. During your training, stress will be given to English language and by the time you pass out you will be well versed with written and spoken English. If you have the requisites qualification, you can apply for the class-I Government Job. After training, you may join any correspondence/part time course and obtain better qualification. Well-equipped library facilities exist at all the Air Force Stations. Eligible candidates are given guidance for commissioning (Pilot) in the Air Force. Selected candidates from the Institute/AF Station will not be required to appear in UPSE written examination held for the same. However, they will have to appear for \$58. Interview for final selection between the age of 37-42 years, an airman of the rank of Sgt or above can apply for Branch Commissioning, Honorary commission is given one year before their retirement to these airmen who have done very well in their career."

5. The submission is that, it is evident that the respondents themselves anticipated the normal desire of any person for a career progression and progress. On 9th May, 2003, respondents have issued Air Force order being AFO 05/2003

which is captioned as “Permission to Airmen/NCs(E) to Apply for Civil post/services under Central/State Governments/public sector undertakings”. The instructions thereunder states that Airmen/NCs(E) who have completed seven years of their engagement including the training period would be permitted to apply for Civil post/services under Central/State Governments and public sector undertakings.

6. This office order also provides the procedure which was to be followed in making such applications. This office order was followed by another order being AFO 14/2008 issued on 19th September, 2008. This has also enabled such personnel who had completed seven years of service from the date of enrollment to apply for Civil post under the Central/State Governments/public sector undertakings. However, it is noteworthy that the office orders specifically indicated para military forces as being included under the Central/State Governments and public sector undertakings to which the said Airman could apply for appointment. Categorization of posts, corresponding to length of service as well as eligibility of the Airman to so apply was also restricted under this office order. The office order also makes a reference to the authority of the Air Force to consider the application from the aspect of criticality of manpower where the Airman was engaged.

7. The petitioner places reliance on the exception provided in Clause 2 of this office order which specifically prescribed that the condition of criticality would not be applicable to the

applicants of category 1A and III in whose cases the applications would be forwarded despite criticality in their trades. We may note that category 1A provides that Group A was equivalent posts which carry a maximum of pay scale not less than Rs.13,500/-, as revised from time to time would fall in the permissible category of the Civil Posts to which an Airman having seven years of service with the Indian Air Force would be eligible to apply.

8. We may at this stage also refer to the amended Air Force order being AFO 16/2008 dated 19th September, 2008 which further provides a list of compassionate and other grounds for discharge from service by an Airman which has also been placed before us.

On 1st July, 2007, the petitioner was also promoted to the post of Corporal in the Indian Air Force.

9. The petitioner is stated to have applied for taking the examination conducted by the Central Police Organization for the post of Assistant Commandant (Central Para Military Forces) Examination, 2007. He is stated to have successfully undertaken the said examination.

10. Pursuant to the examination taken by the petitioner in June, 2007, the petitioner submitted an application on 2nd September, 2009 seeking discharge from service with the Indian Air Force on extreme compassionate grounds. This application was rejected by the respondents on the ground of "manning constraints in the trades". In the meantime, Central

Reserve Police Force -respondent No.5 informed the Indian Air Force of the selection of the petitioner by communication dated 8th October, 2009. The respondent No.5 addressed further letters dated 8th December, 2008, 17th June, 2009 and 31st July, 2009 to the Air Force Authorities requesting verification roll of character and antecedents along with police verification report verified during the year 2003. The Air Force was also requested to intimate whether the petitioner was free from vigilance angle and no departmental/criminal proceedings are pending/ contemplated against him. This rejection was followed with a notice to show cause dated 28th October, 2009 issued to the petitioner informing him that in terms of AFO 05/2003 revised vide AFO 04/2007 and AFO 14/2008, the Airmen who have completed seven years of service from the date of their enrollment are permitted to apply for civil posts under Central/State Governments and public sector undertaking including Para-Military Forces and are required to forward their application through their parent unit to prospective employer after verifying the eligibility criteria. The respondents called upon the petitioner to show cause as to why action should not be taken against him for violating the provisions of the said AFO read in conjunction with Para 561 (d) and 596 of the Regulation for the Air Force 1964 (Revised) Edition.

11. In response to a letter of the Air Force dated 24th November, 2009, the CRPF had informed that the undertaking/no objection certificate from the employer which

was required by it in terms of Rule 11 of the Rules for Recruitment of AC(GD) through CPF(AC) Examination-2007 which was conducted by UPSC and notified on 5th May, 2007 was not available in respect of the petitioner in its records.

12. We may note that despite these objections and the information from the Air Force, the respondent No.5 has given a no objection to the candidature of the petitioner. It has issued an offer of appointment to the post of Assistant Commandant (Company Commander/Quarter Master) by a letter dated 2nd April, 2010 calling upon the petitioner to join the said post by 15th May, 2010. The petitioner has been required to furnish a discharge certificate under the prescribed format from its employer at the time of his joining.

13. Upon receipt of this offer of appointment, the petitioner made a request dated 21st April, 2010 to his Station Commander requesting the Air Force for no objection certificate to enable him to join before the date intimated by the CRPF. We may note that on the date of this communication the petitioner had completed seven years, four months and five days of service with effect from his date of appointment. It has therefore been contended that the petitioner had requisite service which entitles him to issuance of no objection certificate.

14. The petitioner submitted a reply on 4th November, 2009 contending that the Air Force orders relied upon by the respondents were not known to him and that they were not

even part of the training which had been advanced to the petitioner. So far as overlooking the aspect of compliance of the said office orders is concerned, the petitioner had set up a plea of complete ignorance. It was again submitted that even in the application which he had made to the UPSC, the petitioner had set out complete details about his employer and service manifesting the petitioner's honesty.

15. On consideration of reply submitted by the petitioner to the notice to show cause, the respondents were of the view that blame attached to the petitioner and that he had violated the provisions of AFO 05/2003 as revised by the AFO 04/2007 and AFO 14/2008 as well as the aforementioned regulations. Consequently the respondents had issued a warning dated 8th January, 2010 to the petitioner to be more careful while applying for civil posts under Central/State Government and Public Sector Undertakings including Para-Military Forces.

16. It is petitioner's contention before the Indian Air Force as well as in the present proceedings that having issued a warning, respondents cannot punish him more than once for the same offence and deprive him of the no objection certificate to enable him to join service with the respondent No.5.

17. Aggrieved by the failure of the respondents to take action on his request for no objection certificate, the petitioner sought information under the Right to Information Act, 2005 with regard to any pending disciplinary/administrative action

against him. The respondent's response dated 16th March, 2010 has been placed on record which manifests that no disciplinary or administrative action is pending against the petitioner. In this background, in apprehension of the deadline which the petitioner was required to meet, the present writ petition has been filed by the petitioner seeking issuance of a writ of mandamus to the respondents to discharge him immediately from service in view of the offer of appointment to the higher post of Assistant Commandant issued by respondent No.5 dated 2nd April, 2010.

18. The respondents have vehemently opposed the writ petition primarily on the ground that the petitioner has violated the provisions of AFO 05/2003 as revised by the AFO 04/2007 and AFO 14/2008 as well as aforementioned regulations. It is contended that the petitioner ought to have made an application for appointment to a civil post in terms of the said office order only after completion of seven years of service on 16th December, 2009. Instead, the petitioner having applied in June, 2007, had not completed seven years of service as prescribed under Para -1 of the AFO 14/2008. It has further been contended that the petitioner has violated Rule 11 of the Rules for Recruitment of AC(GD) through CPF(AC) Examination-2007 conducted by the UPSC which have been notified by the Government of India in the extraordinary gazette on 5th May, 2007. The respondents also submit that the petitioner cannot be discharged as intimated to him in the letter dated 28th April,

2010 on account of manning constraints in his trade. The writ petition is opposed on the ground that the respondents have correctly exercised the discretion vested in them under the Air Force orders and the applicable regulations and that the petitioner has no right to issuance of a no objection certificate and grant of discharge under the applicable office orders.

19. We have given our considered thought to the rival contentions aforenoticed. The issues which have been raised before us are not arising for the first time. We find that these very questions with regard to discharge from the Air Force on the ground of appointment to civil posts have been raised on several occasions prior hitherto.

20. Before we deal with the judicial precedents which have been placed before us, it is essential to note the relevant provisions of AFO 14/2008 issued on 19th September, 2008 which enables an Airman/NCs (E) who has completed seven years of service from the date of enrollment to apply for the Civil post/services under Central/State Governments/public sector undertakings including para-military forces. The categories of posts for which such an Airman having seven years of service is permitted to apply, are Group A or equivalent posts which carry a maximum pay scale not less than Rs.13,500/- as revised from time to time and having been labeled as Category IA in the Office Order. Para 2 of this order deserves to be considered in extenso and reads as follows:-

“2. All applications for above

categories of posts will be directly forwarded to the prospective employers by the units after verifying the eligibility including criticality of manpower. Application of airmen belonging to critical trades shall be rejected at unit level. However, the condition of criticality will not be applicable to the applicants of Category IA & III above, in whose case the applications will be forwarded despite criticality in their trades. The criticality of trades will be updated by Air HQ twice a year, in June and December and would be intimated to Stns/Units through their respective Command HQs. Units directly under Air HQ would be intimated the criticality of the trades by Air HQ. Airmen who are on deputation to ARC are also eligible to apply for civil posts as per Para 1 above and their applications to be processed through PHS C/O AFCAO, where unit copy of service documents of ARC deputationists are held. Forwarding of applications shall not be construed as acceptance to grant NOC, which shall be issued as per the procedure laid down in subsequent paras of this AFO."

21. The petitioner is covered under the Category IA and his request has to be considered accordingly.

22. On 12th May, 2010 when the writ petition was listed before this Court, this Court directed the respondents to consider the case of the petitioner in the light of the afore noticed prior judgments of the Court (which stand annexed as Annexure P-12 to the writ petition), more specifically referring to para 18 of the decision in WP(C)No.9088/2008. At the same time, this Court directed that the date of joining of the petitioner with respondent No.5 would stand extended and the vacancy of the petitioner would not be filled up. This interim order has been continued and subsists even on date.

23. In the meantime, in compliance with the directions made,

the respondents have stated that they have considered the matter and have passed a speaking order dated 3rd June, 2010 which is before us. Perusal thereof shows that the respondents have once again rejected the request of the petitioner holding that he had improperly applied for said civil post in contravention of para 1 AFO 14/2008 before completing the seven years of Air Force service without seeking due permission from the competent authority and that he had also failed to apply for the grant of a no objection certificate before receipt of the call letter for interview/verification of documents from CRPF. The respondents have further submitted that the request for discharge from the Air Force on being selected to the post of Assistant Commandant in the CRPF was rejected by the competent authority in view of the criticality of manning constraints in the trade of the petitioner.

24. The petitioner has assailed the consideration of rejection by the respondents in the rejoinder which has been placed before us.

25. Right at the outset, we may first of all deal with the rejection of the petitioner on the ground of criticality in the trade of the petitioner is concerned. It is evident from a bare reading of the office order which applies to the case at hand, that so far as the issue of criticality of manning constraints in the trade is concerned, the respondents have prescribed that such conditions would not be applicable to the applicants who fall in the category 1A and III. The respondents have

specifically prescribed that in such case, the application would be forwarded despite criticality in their trade. As noticed above, category 1A relates to movement by an Airmen who are Non Commissioned Officers (NCOs) in the Indian Air Force to Group A or equivalent posts in the prescribed services including the para-military forces. In the instant case, we are concerned with appointment of the petitioner, who is a corporal to the post of Assistant Commandant in the CRPF which is clearly a Group A post in the para-military forces. Therefore, so far as criticality of manning constraints in the trade of petitioner is concerned, by virtue of the stipulation in AFO 14/2008, the same could not come in the way of his request for discharge from service.

26. The orders of the respondents rejecting the petitioner's request on such grounds failed to take into consideration the specific exception made in para 2 of AFO 14/2008 dated 19th September, 2008 so far as perceptible and visible shift in the career progression of the Airman is concerned. The respondent have themselves given emphasis and importance to the natural and normal desire for improving the career prospects of an Airman who is only a non commissioned officer with the Indian Air Force and is seeking appointment to Grade A or equivalent post with the para-military force. The respondents have completely failed to consider the fact that the petitioner who was working as Corporal with the Air Force had been selected to the post of Assistant Commandant in CRPF which is a

Group A post. We can take judicial notice to the remoteness of the possibility of immediate appointment of the petitioner to the officer grade in the Indian Air Force. In any case, we cannot lose sight of the exception provided by the respondents themselves in their office orders.

27. It has now become necessary to consider the further objection of the respondents for a favourable consideration of the petitioner's request for discharge from service. The same are premised on the ground that the petitioner had made the application prior to completion of seven year of service from the date of his enrollment. It is an admitted position before us that on the date when the petitioner sought discharge, he had completed more than seven years of service after his enrollment with the Indian Air Force. So far as the failure of the petitioner to comply with the procedure of not having made the application at the correct stage is concerned, the respondents noticed the same and have already issued a warning to him.

28. We also find that this very issue is not res integra and has been adjudicated upon by not one, but three judicial pronouncements of this court. Mr. Arvind Nayar, learned counsel for the petitioner has placed before us the judgment dated 16th December, 2008 passed in WP(C) No.8760/2008 titled ***Pradeep Kumar Vs. Union of India and the Ors.*** wherein on this issue the Court has held as follows:-

“We heard learned counsel for the parties. In our considered view, there can be no doubt that the policy of release of Airmen

after completion of 7 years of service is with the object of furthering career prospects. It is not as if for every post such permission can be granted. A special importance is attached to Group A (Class I) posts because those provide for a jump in the stature and career prospects of a person. A mandatory period of 7 years service is still required. The object of providing application to be submitted after 7 years is to ensure that a person has put in this mandatory period of service before discharge.

In the facts of the present case, the application of the petitioner was made undoubtedly before completion of 7 years of service, but was forwarded by the unit in its wisdom or the lack of it. A problem would have arisen if the release of the petitioner in pursuance to the selection would have resulted in the petitioner not completing 7 years of service. This is not so in the present case as the petitioner completes 7 years of service on 18.12.2008 while the last date of joint with the BSF is 20.12.2008. Thus, release of the petitioner from service would be after 7 years of service. We do feel that the respondents cannot get away from their responsibility by merely claiming it as a mistake, especially when the very object of the policy is satisfied, i.e. a minimum 7 years of service in the Air Force. We also cannot lose sight of the fact that the petitioner is being recruited as an Assistant Commandant in the BSF, a para-military organization. This is a movement from the Air Force to the BSF where the petitioner will be an officer in Group A service as against the post of an Airman in the Air Force. This would even satisfy the test of a compassionate ground laid down in the policy as enunciated in the AFO 16/2008. If the three reasons for rejection of the application of the petitioner are examined, it is found that though the petitioner had volunteered to serve for a period of 20 years in the Air Force, the policy of the Air Force itself allows exit after 7 years and the conditions of the policy are satisfied by the petitioner. This discharge to be issued by the Air Force would be after the petitioner completes 7 years of service and would not

violate any policy of the Air Force. This is also the reason why the second ground of rejection is unsustainable.”

29. This judgment of the Division Bench was relied upon when identical issues arose in WP(C)No.9088/2008 titled ***CPL. N.K. Jakhar vs. Union of India and Others*** (page 54). Placing reliance on the aforementioned judgment, this court by a detailed judgment dated 21st October, 2009 rejected the very contentions which have been before us to oppose the writ petition. The Court has reiterated the above principles laid down so far as the issue of completion of seven years of service prior to making of an application for discharge is concerned. The court also considered the question as to the failure of the petitioner to apply through proper channel. On these issues, the court observed as follow:-

“18. That the petitioner did not apply through proper channel relates to a procedure of the law and not the substance of the law. Unless otherwise mandate by the language of a procedural law which leaves no scope to interpret a rule governing a procedure as mandatory, every attempt has to be made to read a rule relating to procedure as being directory and not mandatory.

19. A co-ordinate Division Bench of this Court has already held that the policy in question is a salutary policy and is a beneficial policy and hence must be construed liberally.

20. We allow the petitioner and issue a mandamus to the Air Force Authorities directing the authorities to issue a discharge certificate to the petitioner with a week from today.”

30. These very questions were again tested before this Court in WP(C)No.13420/2009 titled **Praveen Kumar vs. Union of India & Others**. In this detailed judgment pronounced on 30th November, 2009, the court held as follow:-

“17. Deciding WP(C)No.8760/2008, a Bench comprising Sanjay Kishan Kaul, J. and Mool Chand Garg, J. held that the requirement of the order in question which prescribes a mandatory service of 7 years means 7 years of service before being entitled to be relieved and not 7 years service when application is made for a civilian appointment.

18. Same is the ratio of law laid down in the decision penned by this Bench disposing of WP(C)No.9088/2008.”

The Court also observed that the petitioner having completed seven years of service in the Indian Air Force on the date of consideration of the writ petition, was entitled to issuance of the requisite certificate/letter to enable him to join the service as Assistant Commandant in the CRPF. A mandamus was issued to this effect. It was further directed by the Court that in case the Air Force failed to issue the necessary certificate/letter, the decision of the court would be treated as sufficient authorization in favour of the petitioner for being relieved from the service of the Indian Air Force.

31. Ms. Barkha Babbar, learned counsel for the respondents has placed strong reliance on a decision of this court dated 14th March, 2008 in a bunch of writ petitions including WP(C)No.6272/2007 titled **Sgt. Sachin Kumar Pravin vs Union of India and Others**. In this case, the court had

reiterated the legal position that grant of no objection certificate and discharge certificate was in the nature of privilege and not a right. This legal position is well settled and is not disputed before us. However, we find that the issues which have been raised in the present writ petition did not arise for consideration before the court in the judgment dated 14th March, 2008. The court was not concerned with the appointment to Group A posts and the posts to which appointments were being sought were not covered under the exceptions prescribed by the respondents in para 2 of AFO 14/2008 as aforenoticed. The questions raised in the present case did not arise in the ***Sgt. Scabin Kumar Vs. Union of India & Ors.*** In this background, the reasoning and the adjudication of this court in the decision dated 14th March, 2008 would not apply to the facts of the instant case.

32. We may also notice that the judgment dated 14th March, 2008 was assailed by way of Special Leave to Appeal (Civil) No.9222/2008 before the Supreme Court of India. The matter came up for hearing on 4th December, 2009 with statement was made by the learned Additional Solicitor General appearing for the Union of India that without treating the matter as precedent, the Government was prepared to issue a no objection certificate to the petitioners. Even though issuance of no objection certificate cannot be treated as precedent, however, it is apparent that despite the contentions with regard to criticality of the manpower in the trades concerned,

the respondents had opted to issue no objection certificates to the several petitioners.

33. We may also observe at this stage that so far as criticality of the manpower in the trade is concerned, other than a bald assertion to this effect nothing more has been placed before us. This was not the position before the Bench which had passed the judgment on 14th March, 2008. We find that in the several aforesaid decisions, this court has held the requirements of the policy as being directory and not mandatory. This position has not been assailed by the respondents before the Supreme Court of India and the adjudication by the court in the aforenoticed three judgments would bind consideration of the same issues which have been raised in the present case.

34. It has also been contended by Mr. Arvind Nayar, the learned counsel for the petitioner that so far as the trade of the petitioner is concerned, the respondents have approved premature discharge to other Airmen who are similarly situated as the petitioner. There is no dispute to this submission.

35. For all these reasons, in our view, the petitioner is entitled to the same relief as has been granted to the petitioners in the WP(C) Nos.8760/2008, 9088/2008 and 13420/2009 and which have been noticed hereinabove.

36. In view of the above, we direct as follows:-

- (i) The competent authority of the Indian Air Force shall issue requisite certificate/letter sought by the

petitioner within a period of two weeks so that he is able to join the service with the CRPF.

- (ii) The respondent No.5 shall permit the petitioner to join as Assistant Commandant with it having regard to the interim order dated 12th May, 2010 passed by this Court.
- (iii) The interim order made on 12th May, 2010 shall remain extended till the period of four weeks within which period, the petitioner would report to respondent No.5 for joining in accordance with prescribed procedure
- (iv) If for some reason, the necessary certificate/letter is not issued to the petitioner, we direct that the present decision would be treated as sufficient authorization in favour of the petitioner for being relieved from service by the Indian Air Force and in such eventuality, we direct respondent No.5 to accept the joining report submitted by the petitioner pursuant to the present order. The formalities, if any, shall follow later.

This writ petition is allowed in the above terms.

DASTI.

GITA MITTAL, J

J.R. MIDHA, J

JULY 28, 2010

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