

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

% *Judgment Reserved on : February 10, 2015*
Judgment Delivered on : February 13, 2015

+ **W.P.(C) 6369/2014**

CPL GAURAV BADHWARPetitioner
Represented by: Ms.Rekha Palli, Advocate with
Ms.Punam Singh and Ms.Garima
Sachdeva, Advocates

versus

UNION OF INDIA & ORS.Respondents
Represented by: Mr.Ajay Digpaur, CGSC with
Ms.Rishika Katyal, Advocate for
R-1 to R-3
Mr.Niraj Singh, Advocate with
Ms.Meenakshi Midha, Advocate
for R-4
Wing Commander
A.K.Chauhan/Air Force

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Cpl.Gaurav Badhwar was enrolled as an Air Craftman in the Indian Air Force at the tender age of 17½ years in the trade of instrument fitter. It is apparent that he comes from a humble background and was compelled to earn for his living at the tender age of 17 years and 6 months. He is a hardworking fellow and not only earned bread and butter to support himself, and his parents, but continued to educate himself

while in service and obtained AMIE Degree from the Institute of Engineers Calcutta which is equivalent to a Bachelors Degree in Engineering. He earned a promotion to the rank of a Corporal in September, 2008 on which post he is working for last over 6 years and in all likelihood would become a Sergeant in the year 2018. On December 05, 2012, he came across an advertisement issued by the Punjab State Power Corporation Ltd. inviting applications from eligible candidates for the post of Assistant Engineer (OT)/Electrical in the pay scale ₹16650-39100 + grade pay ₹5,800/- as also the post of Junior Engineer/Electrical in the pay scale ₹10900-34800 + grade pay ₹4,350/-. As per Air Force Order No.14, dated September 19, 2008, he was eligible to apply for both posts, which are in Group 'B' inasmuch as the order contemplates that Air Force personnel who have rendered 7 years' service would be eligible to apply for a Group 'B' post. However, the right to be given a discharge from the Air Force is not absolute. As per the policy, applications received from Airmen belonging to critical trades are liable to be rejected.

2. Cpl.Gaurav Badhwar was successful at the selection for the post of Junior Engineer and thus on November 07, 2013 he submitted an application seeking discharge from the Indian Air Force. The Chief of Aircrafts recommended on November 08, 2013 that his request should be accepted, but the request was declined vide communication dated November 13, 2013 on the ground that there is criticality in the trade. Cpl.Gaurav Badhwar has to rush to this Court because the Punjab State Power Corporation Ltd. issued letter offering appointment on June 03, 2014.

3. Cpl.Gaurav Badhwar made another application on June 11, 2014 to be discharged, which was rejected and a few weeks prior thereto on May 13, 2014 was issued an order directing him to undergo a Modern

Generation Aircraft Cross-Training Course relating to the subjects of Electrical, Radio and Radar.

4. As per Cpl.Gaurav Badhwar, with the modernization taking place in the Armed Forces, Instrument Fitters are becoming redundant and for which he relies upon an order dated May 18, 2012 which reads as under:-

“Sir,

1. I am directed to convey the ex-post facto sanction of the President of India for “Restructuring of trades” in IAF with effect from Apr 2006. The list of “Restructured trades” along with component trades is attached as Annexure-I to this letter and will be applicable to all airmen intakes/courses commenced from Apr 06 as well as subsequent cross training courses conducted for conversion to restructured trades.

2. In order to maintain a balance between the older and modern generation aircraft and systems at the supervisory stage, airmen from the old trade structure (prior to Apr 2006) would be retained along with those in the restructured trades till complete attrition of airmen from old trade structure gets effected. Induction in the new trade structure is to be effected against the attrition from old trades as per combination stipulated in Annexure-I, to ensure gradual transition from old trades to restructured trades.

3. The airmen cadre of IAF is to be reflected as per the restructured trades. However, the strength against this cadre will be reflected as a combination of old trades and restructured trades, in the proportion as outlined in Annexure-I till the attrition from old trades is complete. A sample sheet for reflecting the cadre and strength is placed at Annexure-II. The total strength of tradesmen in Group ‘X’ and Group ‘Y’ should not exceed the respective sanctioned cadre limit at any point of time.

4. In consonance with this approval for ‘Restructured trades’, IAF is to re-align the trade structure of all Air Force and related establishments as per the restructured trades in consultation with AFSEC ensuring no variance in the authorized manpower at each of the establishment. Similarly,

the “Reserve Pool” and “Not Available posts” will be re-aligned as per the restructured trades within IAF.”

5. Since the issue between the parties concerns whether there is criticality in the trade of Instrument Fitter, it is apparent that there would be pleadings to said effect in the writ petition, the counter affidavit filed thereto and the rejoinder affidavit filed thereafter.

6. In para 16 of the writ petition it has been pleaded by the petitioner as under:-

“16. That it may also be pertinent to mention that plea of the Respondents that there is a shortfall in the Petitioner’s trade of Instrument Fitter is also belied from the fact that

(a) In most of the Units, about 25% to 30% of Instrument Fitters are working out of section and are performing duties wholly unconnected with that of a Instrument Fitter and those include duties like that of working in the Bar, Canteen, Officer’s Mess, Escort Duties and Guard Duties in Air Force Wives Welfare Association which is an independent society and not a part of the Indian Air Force, etc.

(b) About 25% of the manpower in most of the sections which have no connection with technical duties like mess member, bar member, AFFWA is of Technical trades.

It is submitted that though the Petitioner is not in possession of the documents relating to Mess and Bar man duties in various Units but the Respondents are well aware that they are routinely asking the technically qualified personnel to perform those duties and therefore there is no justification on the part of the Respondents to deny opportunity to the technical qualified personnel to join public sector undertakings in order to be able to join a post commensurate with his qualifications. That even otherwise a perusal of AFO 14/2008 would show that the criticalities is to be examined every six months and therefore the action of the Respondents not to recruit fresh instrument fitters but to continue to deny NOC to the Petitioner on the ground of criticality of trade is thus mala fide.”

7. In response, in para 16 of the counter affidavit it has been pleaded by the respondents as under:-

*“Para 16. In reply to the contents of this Para, it is submitted that the criterion of assessing criticality of trade for issue of NOC for discharge is governed by Air HQ letter Air HQ/40307/1/PA-II dated 13.08.2008. A copy of the said letter along the list of critical trades are marked and annexed as **Annexure R4** (colly). The change in the trade structure is made to meet the challenges of technological modernization and impending induction of modern generation weapon systems. Moreover the Air Warriors are made to do some secondary duties in addition to their primary duty. But these are limited only to run many welfare ventures like AFWWA, BAR. So a few Air Warriors who are due to many reasons mostly with lower medical category cannot perform their trade duties are utilized at such places. Most of Air Warriors are made to perform these duties in addition to their primary duties. Hence if an Air Warrior works at some welfare venture it does not show that his trade is not critical. It is also worth mentioning that the Air Warriors are doing these duties only for a short period.”*

8. In para 7 of the preliminary objections in the counter affidavit, it has been pleaded by the respondents as under:-

“Para 7. Criticality of the trade i.e. shortage of manpower in individual trades of IAF is worked out twice in a year by Air Force Record Office and relevant data is forwarded to all the units with instructions to scrutinize applications submitted by airmen seeking permission for civil employment and to forward their applications to prospective employer only after ascertaining their eligibility in terms of AFO 14/2008. ‘No objection certificate’ to the airmen for civil employment is invariably issued by Air HQ. For the said purpose, the individual is to apply afresh through proper channel for grant of NOC after receiving call letter for appearing in the interview/verification of documents or after the result of written test where selection is based on success in written test only. NOC is issued after ascertaining the criticality of the trade of the

*individual at the time of considering such application. Request for NOC is liable to be rejected out rightly in the cases wherein the individual has either not obtained prior permission of his Commanding Officer for applying for the civil post or the Commanding Officer has erroneously granted the said permission in contravention to the provisions of this AFO. In this regard, it is also pertinent to highlight that Para 6 of AFO 14/2008 inter-alias provides that NOC is to be issued by Air HQ (Directorate of PA) on case to case basis subject to the exigencies of service and with the overriding condition being the overall cadre requirement in a particular rank/trade. The said provision is supported by the fact that at the time of applying for employment in IAF, the air warrior had voluntarily submitted an undertaking to serve in the Indian Air Force for an initial Regular Engagement period of 20 years in terms of AFI 12/S/48 as amended from time to time. In the enrollment form (IAFF(P)-5) filled at the time of enrollment, the individual is required to give express consent to serve the IAF until the discharge in accordance with the conditions of service (Para 18 of IAFF(P)-15). Further, in part-II of said form, it is specifically provided that individual is required to serve in the IAF for a period not less than 20 years. Relevant extract of AFI/12/S/48 and IAFF (P)-5 are annexed at **Annexure R-1**. Accordingly, at the time of applying for grant of NOC, the air warrior is required to submit a Certificate of Undertaking as per Para 4 (a) of AFO 14/2008, to the effect that he has read and understood the contents of AFO 14/2008 and grant of NOC would be subject to exigencies of service. Further, ignorance of rules and procedures on his part should not be an excuse for non-compliance with AFO 14/2008. Copy of such undertaking is placed at page-40 of Annexure P-3 of the petition.”*

9. In response to para 7 of the preliminary objections, in the rejoinder filed by the petitioner, it has been pleaded as under:-

“7. Contents of Para 7 as stated are wrong and denied. It is submitted that even though criticality of trade is to be worked out twice a year but as pointed out by the Petitioner in his writ petition around 30% of the technical Airmen are being deployed for non technical jobs and they are working as Mess

members, Bar men, Assistants and Security guards in Provisional stores, Thrift shops & Coaching centers as run by AFWWA (Air Force Wives Welfare Association), in Gas Agencies, CSD Canteen, Mail orderlies, Personal Assistants and it is apparent that on the one hand Respondents are treating trade with even 5% deficiency as critical & on the other hand deploying around 30% of technically trained airmen to carry out non-technical functions not only in IAF but also in a private body like AFWWA. For kind perusal of this Hon'ble Court, the Petitioner is giving hereinbelow a list of some of the technically qualified airmen (belonging to critical trades) who are carrying on non-technical functions for last many years in 3 BRD, Chandigarh & other places:-

<i>S No</i>	<i>Name & Rank</i>	<i>Section/ Period</i>	<i>Trade</i>	<i>Deployed in other section since/or</i>
<i>01</i>	<i>Cpl Appu Kumar</i>	<i>Officer ARS-II 3 BRD</i>	<i>Instrument Fitter</i>	<i>since Sep 2010</i>
<i>02</i>	<i>Cpl Rahul Kumar</i>	<i>Airmen Training Grant (ATG) 3BRD</i>	<i>Air Frame Fitter</i>	<i>since Oct 2010</i>
<i>03</i>	<i>Cpl Kesharwani</i>	<i>Airmen Training Grant (ATG), 3 BRD</i>	<i>Eng Fitter</i>	<i>since two years</i>
<i>04</i>	<i>Cpl Rai</i>	<i>Personal Assistant of Chief of Aircraft 3BRD</i>	<i>Elect Fitter</i>	<i>since three years</i>
<i>05</i>	<i>Cpl Mishra</i>	<i>Personal Assistant of Chief</i>	<i>Technician</i>	<i>Has worked for more</i>

		<i>of Aircraft 3BRD</i>		<i>than one year</i>
<i>06</i>	<i>Cpl Chakrawarti</i>	<i>Instructor AFWWA 3 BRD</i>	<i>Eng Fitter</i>	<i>For four years</i>
<i>07</i>	<i>JWO Shrivastava</i>	<i>Airmen Mess No.1, 3 BBRD,</i>	<i>Technician</i>	<i>for one year</i>
<i>08</i>	<i>Cpl Mishra</i>	<i>Officer's Mess 3 BRD</i>	<i>Technician</i>	<i>since one year</i>
<i>09</i>	<i>Cpl Ravi</i>	<i>Officer's mess 3 BRD for one year</i>	<i>Air Frame/Structure Fitter</i>	<i>for one year</i>
<i>10</i>	<i>Sgt RK Chadda</i>	<i>7(T) Mess E&ITI</i>	<i>Instrument Fitter</i>	<i>for one year</i>
<i>11</i>	<i>Sgt Arun Kumar</i>	<i>7(T) Mess E&ITI</i>	<i>Elect Fitter</i>	<i>for more than 1 year</i>
<i>12</i>	<i>Sgt RK Sharma</i>	<i>7(T) Mess E&ITI</i>	<i>Elect Fitter</i>	<i>for more than one year</i>
<i>13</i>	<i>Sgt VKV Kumar</i>	<i>Suruchi Thrift Shop AFFWA (L) AF Station</i>	<i>Technician</i>	<i>for 1 year</i>
<i>14</i>	<i>Sgt CVC Kumar</i>	<i>CSD Canteen AF, Mohanba</i>	<i>Photo/Fit</i>	<i>since posting i.e. 2011</i>

		ri		
15	LAC DK Malik	AFFWA AF STN Mohanba ri	Propulsion fit.	

“The Petitioner is also relying on the judgment of this Hon’ble Court in the case of Sgt Bijumon N.V. vs Union of India and Ors. W.P.(C) No.21717/2011 wherein this Hon’ble Court has dealt with and rejected the plea of criticality of trade of the Respondents.

It is submitted that the Respondents have also concealed the fact that more than 50% of the mess members working in the airmen mess of 3 BRD belong to critical trades and the Petitioner is giving herein below a tabular form of approximate percentage of mess members in the airmen mess from Jan-June 2012:-

Mess Member – Airmen Mess 3 BRD

Month	Total Mess Members	Mess Members from Critical Trades		Mess Members from non-critical trades	
		Mess Memb ers	In %	Mess Memb ers	In %
Jan 12	07	03	42%	04	58%
Feb 12	08	05	63%	03	37%
Mar 12	06	02	33%	04	67%
Apr 12	07	03	42%	04	58%
May 12	07	04	57%	03	43%
June 12	06	05	83%	01	17%
Average			53%		47%

10. The categorical pleadings in para 16 of the writ petition to the effect that 25% to 30% of Instrument Fitters are performing duties wholly

unconnected with that of an Instrument Fitter like working in the Bar, Canteen, Officers' Mess, Escort Duties and Guard Duties in the Air Forces Wives Welfare Association have not been denied. If one peruses para 16 of the counter affidavit, the deployment of 25% to 30% Instrument Fitters to perform duties wholly unconnected with their skill is admitted, but sought to be explained by pleading that Air Warriors are sometimes made to perform secondary duties in addition to their primary duty.

11. Now, if 25% to 30% of holders of a rank are made to perform duties not pertaining to their rank, it would be a mockery of English language to justify the same by saying *sometimes secondary duties in addition to primary duties* is assigned. Further, the tabular chart given by the petitioner while responding to para 7 of the preliminary submissions in the counter affidavit filed by the respondents, has not been refuted by the respondents. Not only no request was made to file a sur-rejoinder, but we would be positively noting that during arguments in the writ petition, the contents of the tabular data was not denied.

12. There is something more fundamental. It is the order dated May 18, 2012 issued by the respondents, contents whereof have been noted by us in paragraph 4 above.

13. The office order gives confirmation to the case pleaded by Cpl.Gaurav Badhwar that with the modernization in the Air Force the trade of Instrument Fitter has been rendered useless and this is the reason why Instrument Fitters, including him, are being required to undergo training in the field of communications such as Radio and Radar. Para 2 of the order dated May 18, 2012 records that Airmen from the Old Trade Structure would be retained till complete attrition gets effected. The para shows that these personnel would be inducted in New Trade Structure.

Annexure 1 gives the list of trades which are dying and would result in attrition thereof. Concededly, the trade of Instrument Fitter is included in Annexure 1.

14. The current salary of Cpl.Gaurav Badhwar is in the pay band ₹5200-20200 with grade pay ₹2,800/- and he gets a quantum jump not only in status and salary if he joins as a Junior Engineer (Electrical) in the pay scale ₹10900-34800 with grade ₹5,350/-.

15. It may be true that assessment of criticality in a trade would ordinarily be within the domain of the employer, but where it is pleaded that due to dying nature of the work due to modernization in the equipment of the employer, some category of employees are being rendered without work and are being adjusted in other activities, and for which we highlight the evasive denial by the respondents to the pleas of Cpl.Gaurav Badhwar in para 16 of the writ petition that 25% to 30% Instrument Fitters are being made to work in the Bar, Canteen and other establishments where they perform duties wholly unrelated to their skills of Instrument Fitters, it would be a case requiring it to be held that the employer has failed to make good the defence of there being criticality in the trade. Of course, if there were countervailing facts pleaded by the employer, this Court would have had to adopt a hands of approach for the reason it is settled law that pertaining to a discretionary decision it would be sufficient to plead objective facts on which the subjective satisfaction was accorded because the said subject satisfaction has to be the satisfaction of the employer and cannot be substituted by the subjective satisfaction of the Court. But if no objective facts are pleaded or shown, the subjective satisfaction justified would suffer from the vice of arbitrariness.

16. We allow the writ petition and issue a mandamus to the respondents to accept request made by Cpl.Gaurav Badhwar to be discharged from service under the Indian Air Force.

17. Compliance shall be made with this order within a week from today.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 13, 2015
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