

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

+ **W.P.(C) 494/2017**

Reserved on: 10th October, 2017

Date of decision : 16th _November, 2017

CPL MANORANJAN KUMARPetitioner

Through Mr. Ankur Chhibber, Advs.

Versus

UNION OF INDIA & ORS Respondents

Through Ms. Monika Arora, CGSC with
Mr. Harsh Ahuja, Adv. for UOI.
Mr. Buddy A. Ranganadhan,
Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

The petitioner, who is working as an Airman in Weapon Fitter Trade in the Indian Air Force (hereinafter referred as IAF), complains that the IAF has arbitrarily rejected his application for grant of No Objection Certificate (hereinafter referred as NOC) to his discharge from service to take employment in Kolkata Port Trust/ Haldia Dock

Complex as Assistant Manager (Class- 1 Officer). He therefore, seeks a direction to the IAF to issue NOC.

2. The petitioner was enrolled in the IAF as an Airman in Weapon Fitter Trade on 28.09.2004. He was granted 05 weeks sick leave from 03.12.2015 to 06.01.2016 after open globe injury operation at Military Hospital, Ambala. During his sick leave, the petitioner applied for the post of Assistant Manager (Class- 1 Officer) in Kolkata Port Trust/Haldia Dock Complex. The petitioner, however, had not taken prior permission from the competent authority in the IAF before making this application. After completing the period of his sick leave, the petitioner reported to the unit on 23.01.2016.

3. The petitioner thereafter, received letter for interview on 03.06.2016 from the Kolkata Port Trust and filed an application with the Air Officer Commanding for grant of NOC on 14.06.2016.

4. The Competent Authority of the Air Force Record Office, however, rejected grant of NOC vide letter dated 08.07.2016. The relevant portion of the letter is quoted below:

“2.The a/n airman had applied for the post without obtaining prior permission from the Competent Authority while he was on sick leave from 03 Dec, 2015 to 06 Jan, 2016. Subsequently, he also appeared in the written test without

*NOC, violating the existing provisions of AFO 04/12. As per para 6 of said AFO “No airman/NC(E) of the IAF is eligible to apply for civil posts/services under Central/State Govts including PSUs, Govt. of India Undertakings/Corporations and jobs in private sector **without prior permission from the Competent Air Force Authority**”. Para 11 clearly spells that “Request for NOC will be rejected in cases wherein the individual has not obtained prior permission of his AOC/Stn Cdr while applying for the post”. Hence the instant case is clear violation of AFO 04/12 by the applicant and subject application could have been rejected at Station itself. Para 13(d) also stipulates that “In no case, ex-post facto sanction for online-registration is to be accorded”.*

3. In view of the above the subject application is returned unactioned. It is requested that the units under your AOR may suitably be instructed to follow the AFOs/instructions in letter and spirit.”

5. The above decision was informed to the petitioner vide communication dated 27.07.2016.

6. The petitioner, however, was issued an appointment letter dated 21.12.2016 by the Kolkata Port Trust for the post of Assistant Manager. The petitioner, therefore, again filed an application dated 03.01.2017 seeking discharge from service on compassionate ground. However, the same was not recommended by his parent unit/authority.

7. The petitioner has filed the present petition praying for issuance of Writ of Mandamus directing the competent authority in the IAF to

grant No Objection Certificate to discharge him from service so as to enable him to join Kolkata Port Trust.

8. This Court, vide its order dated 20.01.2017, while issuing notice of the petition to the respondent, also ordered that steps, if any, taken shall abide by the result of the writ petition.

9. The petitioner has placed reliance on the judgment dated 21.10.2009 of this Court in the case of **CPL N.K. Jakhar v. UOI & Ors**, WP(C) 9088/2008 to contend that making of an application through proper channel is a matter of procedure and therefore cannot be treated as mandatory. He has further contended that IAF has itself issued Air Force Order No.04/2012 dated 31.05.2012 wherein it has recognized the need to grant career enhancement opportunity for airmen. He has further placed reliance on the judgment of this Court dated 16.12.2008, in the case of **Pradeep Kumar v. UOI & Ors.**, WP(C) 8760/2008. As far as the reason for not seeking prior permission while applying to the Kolkata Port Trust, learned counsel for the petitioner submits that as the petitioner was on sick leave at his home town, he could not send his application through to his unit due

to short time and this was the last opportunity for the petitioner to apply for the said post.

10. Contesting the submission of the petitioner, the respondent relying on the same AFO No.04/2012 submits that seeking permission from the Competent Air Force Authority prior to applying for the post is a mandatory condition. The respondent has also placed reliance on the judgment of this Court dated 14.10.2015 passed in WP(C) 8108/2015, *Deepak Yadav v. UOI & Ors.* wherein a similar plea of mistake in not making a prior application for seeking approval was rejected. The respondent further relies upon the judgment of the Supreme Court in *UOI & Ors. v. R.P. Yadav*, (2005) 5 SCC 325, where the Supreme Court held that grant of such NOC cannot be claimed as a matter of right.

11. We have considered the rival submissions of the parties. At the outset, we may note that we are not impressed by the explanation given by the petitioner for not seeking prior approval and routing his application through proper channel while applying to the post of Assistant Manager in Kolkata Port Trust. If the petitioner could make an application to the Kolkata Port Trust directly and even appear in the

examination, there is absolutely no justification for him not having routed his application through proper channel on applying for prior permission to the competent authority in the IAF before making such application.

12. Equally, the judgment of ***CPL N.K.Jakhar (supra)*** would not be applicable to the facts of the present case as it was given in the context of Air Force Order No.4/2007. Air Force Order No.4/2012, which is applicable to the present case, in paragraph 11 of the order clearly provides that request for NOC will be rejected in cases where the individual has not obtained prior permission of his AOC/Stn. Cdr while applying for the post. Paragraph 19 of the said order further clarifies that permission to apply to civil posts as well as grant of NOC are privileges and hence cannot be claimed as a matter of right.

13. At the same time, as noted above, this Court in the case of ***Deepak Yadav(supra)***, has observed that the Court has to be mindful of the fact that in many cases, young boys, due to family constraint and large scale of unemployment, enroll with IAF. Declining of application for grant of NOC might lead to dampening of their career advancement prospects. In the present case also, the petitioner had

joined IAF after clearing 10+2 examination. While in service, he did his Graduation in Arts, completed his MA in History and MBA in HR. The respondent had earlier given NOC for interviews to the petitioner on two different occasions for the post of Traffic Officer (SH.& CH.) in Kolkata Port Trust. The petitioner was further granted NOC by the respondent for interview for the post of Assistant Traffic Manager, GR-1 in Kandla Port Trust.

14. As noted above, in the present case, NOC has been rejected only because the petitioner had failed to follow the procedure of applying for prior permission. No other reason or ground is given. We do not feel that the petitioner should be denied an opportunity for career enhancement merely because of this fault.

15. In view of the above discussion and in light of the peculiar facts and circumstances of the case, we direct the Competent Authority in the Indian Air Force to grant No Objection Certificate in favour of the petitioner to be discharged from service to take up appointment to the post of Assistant Manager with Kolkata Port Trust.

16. This order and direction should not be construed as acceptance of conduct of the petitioner who did not obtain the NOC. Officers and

members of IAF must abide and comply with the Rules, more so because they belong to a disciplined Force. Possibly, we would have rejected the prayer made by the petitioner even in the present writ petition but for his accepting the said lapse and apologizing for the same. We would observe that this decision should not be construed as ratio that such directions could be issued where there is lapse and failure to apply for NOC. To bring the controversy to an end and to ensure that such litigation does not arise in future, the respondents may be well advised to issue a fresh circular or a notification stating that in case any Airman applies for a civilian post he must seek prior permission or NOC from the competent authority and in no circumstances an ex post facto sanction or claim would be granted.

17. The petition is disposed of in the above terms with no order as to costs.

NAVIN CHAWLA, J

SANJIV KHANNA, J

NOVEMBER, 16, 2017/vp