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

+ **W.P.(C) 868/2018**

MANOJ KUMAR Petitioner

Through: Ms.Nandadevi Deka, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Anurag Ahluwalia, CGSC for
UOI with W/C A.K.Chauhan with
JWO S.M.Pal, Air Force.
Mr.Jagat Arora with Ms.Ritu Arora &
Mr.Murad Khan, Advocates for
R3/IBPS.

+ **W.P.(C) 3637/2018 & CM APPL. 14443/2018**

CPL RAHUL KUMAR SANTOSHI Petitioner

Through: Mr.Manoj Gupta, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Jasmeet Singh, CGSC with
Mr.Aditya Madaan & Mr.Devank
Maheshwari, Advocates for UOI/R1
to R3.

+ **W.P.(C) 6300/2018 & CM APPL. 24243/2018**

PRAKASH KATIYAR Petitioner

Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Anurag Ahluwalia, CGSC for
UOI with W/C A.K.Chauhan with
JWO S.M.Pal, Air Force.
Ms.Praveena Gautam with Mr.Jitesh
P.Gupta, Mr.Pawan Shukla &
Mr.Raja Ram, Advocates for R5 &
R6/Bank of Baroda.

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W.P.(C) 8189/2018

CPL NAKUL CHANDRA BEHERA

..... Petitioner

Through: Mr.Manoj Gupta, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Dev P.Bhardwaj, CGSC with
Mr.Jatin Teotia, Advocate for
UOI/R1 to R3.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
25.03.2019

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Dr. S. Muralidhar, J.:

1. These are four petitions which arise under similar set of facts and seek almost identical reliefs. They are accordingly being disposed of by this common order.

2. All the four Petitioners have been declined a No Objection Certificate ('NOC') by the Indian Air Force (represented by Respondent No.2) for

taking up employment with Public Sector Undertakings ('PSUs').

WP (C) 868 of 2018

3. The facts in WP (C) 868 of 2018 are that the Petitioner, Corporal Manoj Kumar was enrolled in the services of Respondent No.2 on 31st March 2010 as an Airman. In terms of AFO No. 04 of 2012 issued by Respondent No.2, an Airman who has completed seven years' service can apply for civil posts having a maximum of pay scale not less than Rs. 39,100/- i.e. equal in to a group 'A' Government post. On 14th August 2017, a notification was issued by the Institute of Banking Personnel Selection ('IBPS') for the post of Probationary Officer (Group 'A') in the said institute which prepares candidates for appearing in the bank probationary exams.

4. In terms of AFO No. 04 of 2012, the Petitioner applied online for permission to apply for the said job. His attempts at filing up the form online on 18th August 2017 failed since the web site would not accept applications for a post having a pay scale of less than Rs.56,100/-. The Petitioner states that on same day he forwarded an online query seeking a clarification with respect to the non-acceptance of his application. The Petitioner received a reply from the AFRO Wing as under:

“Owing to implementation of 7th CPC, the pay scale criterion has been revised for grant of permission to appear by airmen/NCs(E) in Gp 'A' post in Central/State Govt as well as Govt undertaking & PSUs. The revised criterion as clarified by the Competent Authority, has already been disseminated to all concerned vide this office RRD/619 dated 06 Mar 17, hence the pay scale criteria as envisaged in AFO 04/12 in not to be taken into consideration after the dissemination of revised scale.

Please refer the *ibid* signal.”

5. The RRD/619 dated 6th March 2017 referred to above was the advice given by the AFRO to all Command Headquarters stating *inter alia* that after the implementation of the 7th Central Pay Commission (‘CPC’) recommendations with effect from 1st January 2001 that permission to apply for post in the PSUs in Category 1 in terms of AFO No.04 of 2012 was admissible only where the pay scale of the post for which an application is made is at par with level 10 and above of the Government of India notification issued for the 7th CPC.

6. In supersession of AFO No. 04 of 2012, Respondent No.2 issued AFO No. 33 of 2017 which came into effect on 8th December 2017. Para 21 made it clear that AFO No. 33 of 2017 “shall take effect from the date of issue”. It was clarified that “cases of permission and NOC already issued prior to the effective date of this AFO shall be processed by the Stations/Commands/AFRO as per provisions of the previous AFO.”

7. The results of the main exams were released on 28th December 2017. The Petitioner successfully cleared the main exam. He again on 1st January 2018 applied for issuance of an NOC. In this he mentioned that he could not apply for permission to appear in the exam because the online module on AFRO’s site was not accepting the basic pay below Rs.56,100/- whereas as per AFO No. 04 of 2012 the criterion for the pay band was Rs.15,600-Rs.39,100/- only.

8. The Petitioner again applied on 17th January 2018 to Respondent No.2 regarding issuance of NOC but received no reply.

9. The final interview for the post was scheduled on 31st January 2018. In the absence of an NOC from the Respondents, the Petitioner could not have appeared for the final interview. In those circumstances, the Petitioner filed the present petition on 29th January 2018. On 30th January 2018, the following order was passed by this Court:

“W.P.(C) 868/2018 & CM No.3683/2018 (bv the petitioner for stay)

1. Issue notice. Learned counsels for the respondents accept notice and seek time to file the counter affidavit.
2. Counter affidavit be filed within two weeks, with a copy to the other side. Rejoinder, if any, be filed within two weeks thereafter.
3. List before the Registrar on 17.04.2018 for completion of pleadings.
4. List in court on 10.10.2018.
5. At the end of the selection process including interview, the respondent N0.3/IBPS will place the result of the petitioner in a sealed cover and produce it on the next date.
6. A copy of the order be given DASTI, under the signature of the Court Master.”

10. Subsequently, the Petitioner applied for early hearing by filing CM Appl. 23693 of 2018 which was listed for hearing on 30th May 2018. The

following order was passed on that date:

“CM APPL. 23693/2018 (by the petitioner for early hearing)

1. Learned counsel for the petitioner states -that pursuant to the order dated 30.01.2018, the petitioner was permitted to participate in the selection process for the post of Probationary Officer. It was however directed, that the respondent.No.3/IBPS will place the result of the petitioner in a sealed cover and produce it on, the next date of hearing, i.e. on 10.10.2018. She states that the, petitioner, had duly participated in the selection process, whereafter the respondent No.3/IBPS has placed his result in a sealed coyer. She requests that if the sealed cover is opened and the Court finds that the petitioner has succeeded, then the hearing in the present petition may be expedited, else the petitioner may lose an opportunity for being appointed to the subject post.

2. Mr.Rajat Arora, learned counsel for the respondent No.3/IBPS is present and fortuitously, he has brought the results of the petitioner in a sealed, cover, which has been handed over and. opened. There are two documents in the sealed cover, one giving the details of the online main examination score of the petitioner, who is a OBC category candidate and the other is the combined result of the online main examination and interview for recruitment to the post of Probationary Officer/Management Trainee for the Vacancy, 2018-19 that reveals that his combined score is 45.69 out of 100. The petitioner has been provisionally allotted vacancy under OBC category in Canara Bank. The said documents are taken on record.

3. In view of the aforesaid position, the present application is allowed. The hearing in the writ petition is advanced to 17.07.2018. The date already fixed i.e., 10.10.2018 stands cancelled.

4. In the meantime, the petitioner shall amend the memo of parties and implead Canara Bank as a co-respondent within three days. Process fee be filed within the same timeline, for

effecting service on the newly impleaded respondent No.4/Canara Bank directly, as also through the nominated counsel along with a complete set of the paper book, by courier and speed post, returnable on the date fixed.

5. Till the next date of hearing, the proposed respondent No.4/Canara Bank shall keep one post of Probationary Officer vacant in the OBC category.

DASTI under the signatures of the Court Master.”

11. When the matter was next listed on 1st August 2018, the following order was passed:

“1. Appearance is entered by learned counsel, Mr. Jasbir Bidhuri on behalf of the newly impleaded respondent No.4/Canara Bank, who states that he has not received a copy of the paper book. A complete set of the paper book shall be furnished to learned counsel for the respondent No.4/Canara Bank within two days.

2. Learned counsel for the respondent No.4/Canara Bank assures the Court that the Bank shall keep one post of Probationary Officer vacant under the 'OBC' category.

3. Learned counsel for the petitioner hands over a copy of the O.M. dated 06.12.2017 issued by the Department of Financial Services, Ministry of Finance, Govt. of India, which clarifies that the Govt. has approved principles for determining equivalence in respect of Public Sector Banks (PSBs), Public Financial Institutions (PFIs) etc., as conveyed vide O.M. dated 06.10.2017 issued by the DoPT to the effect that Junior Management Scale-I of PSBs/PFIs will be treated as equivalent to Group 'A' in the Government of India. A copy of the said O.M. has been handed over to Mr. Narula, learned counsel for the respondent No.1, who states that he may be permitted to obtain instructions in that regard. The said document is taken on record.

4. List on 05.9.2018, to await instructions.

5. Till further orders, the respondent No.4/Canara Bank shall continue to keep one post of Probationary Officer under the 'OBC' category, vacant.”

12. On the next date i.e. 5th September 2018, the following order was passed:

“1 Mr. Narula, learned CGSC states that the Department has forwarded certain clarifications in respect of O.M. dated 06.12.2017, issued by the Department of Financial Services, Ministry of Finance, Govt. of India, relied on by the learned counsel for the petitioner. He submits that it would be appropriate if the respondents- are permitted to file a brief affidavit furnishing the requisite clarifications along with the relevant documents.

2. Needful shall be done within two weeks with a copy to the learned counsel for the petitioner, who may file a reply to the affidavit, if necessary, within two weeks thereafter.

3. List on 25.1.2019.

CM No. 3683/2018 (stay)

1. The interim order dated 01.8.2018, is made absolute during the pendency of the present petition.

2. The application is disposed of.”

13. Pursuant thereto a short affidavit has been filed by the Respondents on 8th October 2018 enclosing the Central Civil Services (Revised Pay) Rules, 2016 notified on 25th July 2016 and the instructions dated 7th August 2018 issued by the Air Headquarters to the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training. Again, on

24th August 2018 the following Office Memorandum ('OM') was issued:

“OFFICE MEMORANDUM

Subject:- Equivalence of posts in PSUs, Banks, Insurance
Institutions with posts in Government.

The undersigned is directed to refer to your communication No. Air HQ/40722/6iRC/GENPA (CC) dated 07.08.2018, seeking clarification on the above subject.

2. In this regard, it is clarified that the OMs mentioned in the said communication were issued for establishing equivalence of post in Central Public Sector Undertakings (PSUs), PSU Banks and Insurance institutions with post in Government for establishing Creamy Layer Criteria amongst Other Backward Classes only.”

14. In the short affidavit it was further clarified that in terms of OMs dated 9th November and 8th December 2017, and 9th August 2018, the following was the position:

“(i) A Central Civil Post carrying the pay in the pay Matrix at the Level from 10 to 18 shall be classified as Group - 'A' posts.

(ii) A Central Civil Post carrying the pay in the pay Matrix at the Level from 06 to 09 shall be classified as Group - 'B' posts.

(iii) A Central Civil Post carrying the pay in the pay Matrix at the Level from 01 to 05 shall be classified as Group - 'C' posts.”

15. The objection on behalf of the Respondents to the grant of relief to the Petitioner is that since the Petitioner tried to seek online permission from the AFRO site, it showed that he was aware of the new revised pay scale prescribed for applying to the civil post. Despite that the Petitioner appeared

in the written exam without permission to do so and this was in contravention of the Air Force order 4 of 2012.

16. It is further pointed out that the application made by the Petitioner on 1st January 2018 to his Commanding Officer ('CO', 33 Squadron Air Force) seeking NOC to appear in the interview conducted by the IBPS for selection for the post of BPO was not recommended by the 'CO', 33 Squadron Air Force and forwarded to Air Officer Commanding ('AOC'), 43Wing. The AOC, 43Wing also did not recommend the said application of the Petitioner and forwarded the same to the Southern Air Command ('SAC'). The Senior Personnel Staff Office ('SPSO') of the SAC also did not recommend the Petitioner's application and forwarded to the Air Force Record Office (AFRO) in Subroto Park. It is stated that the AFRO was still considering the said application and, therefore, the prayer of the Petitioner was premature. On its part the IBPS has filed an affidavit pointing out that no relief has been claimed against it.

WP (C) 3637 of 2018

17. The facts in WP (C) 3637 of 2018 are that the Petitioner Corporal Rahul Kumar Santoshi was enrolled as an airman in the Indian Air Force ('IAF') on 1st October 2008. He was promoted to the rank of Corporal. He too applied pursuant to the advertisement dated 22nd July 2018 published by the IBPS for recruitment of Officers Scale-I, II and III as Group 'A' Officers. He too could not upload his application for permission because the website would not accept the request as the scale of the advertised post was less than Rs. 56,100/-. It is pointed out that the criteria for applying in Group 'A' civil

post had been altered after the 7th CPC but the pay scale of the banking sector remained pre-revised.

18. The Petitioner appeared and qualified in the prelim and main examination and appeared in the interview after being shortlisted in the merit list. He was provisionally selected for the post of Officer Scale-I in the Baroda UP Gramin Bank. After verification of the documents on 28th February 2018 the Petitioner applied for NOC for the above post. His application was recommended by his Section Commander and Chief Engineering Officer, Air Force Station Tambaram. On 9th March 2018 he received an appointment letter from the bank asking him to join on 19th March 2018.

19. When the application for NOC submitted by the Petitioner was not disposed of even on 28th February 2018, the Petitioner filed the present petition in which on 13th April 2018 a notice was issued to the Respondents including the Respondent No.4 Bank. The Court directed that the bank till the next date of hearing shall not cancel the offer of appointment made to the Petitioner in terms of letter dated 9th March 2018. This was continued from time to time. In reply to the said petition the Respondents contend it is pointed out *inter alia* that:

“IAF invests heavily on its workforce in moulding the airmen to meet the operational needs of IAF in specific and the security requirements of the Nation in general.”

20. It is further contended:

“Airmen are permitted only in exceptional cases to apply and

seek premature discharge from service at their own requests. Additionally, Rule 15 of Air Force Rules, 1969, stipulates authorities empowered to authorize discharge to airmen. As per said Rule, power to authorize discharge to airmen at his own request is vested with Service Headquarters (Air Headquarter Directorate of personnel Airmen). As per Para 917 of the Regulations for the Air Force, Chief of the Air Staff can issue Air Force Orders (AFOs) on matters of administrative nature affecting the Air Force formation and units as a whole.”

21. It is pointed out that there are three mandatory stages for obtaining discharge on selection to the civil post as under:

“(a) An individual has to obtain prior permission to apply for civil post from his respective Air Officer Commanding/Station Commander specifically to apply for civil posts through "online/offline registration"

(b) Application for grant of NOC (No Objection Certificate) for Group-"A" Govt and Equivalent posts under category-I is to be submitted by the individual through proper channel after receiving call letter for appearing in interview/verification of documents or after the result of written test where selection is based on success in written test only.

(c) If the individual is finally selected, then the individual concerned has to apply for discharge from service along with a copy of the prior permission by competent authority (AOC/Stn Cdr), copy of No Objection Certificate (NOC) issued by Air Officer Commanding, Air Force Record Office. Case for discharge from service on selection to civil post is liable to be rejected outrightly in cases wherein the individual has not obtained the requisite NOC or made false statements to obtain the same.”

22. Thus it is seen that even according to the Respondents there is a three-stage process for obtaining NOC. The Petitioner falls in the category of

Airmen who had completed seven years of service and would be eligible for seeking permission to apply for Group 'A' posts in Central /State Government and "equivalent post in PSUs and Government of India undertakings/Corporations." It is contended that it is mandatory for the Petitioner to have sought prior permission before applying for the said post and obtain an NOC not after he was called for interview but before attending it. Reliance is placed on the order passed by the Supreme Court on 7th December 2017 in SLP (C) 16448 of 2017 (*Union of India v. Corporal V.K. Verma*) to the effect that even if a Court is not satisfied with the policy, if any modification has to be made therein it is for the Air Force to take a call and that "the Court ought not to substitute its opinion to that of the Air Force."

23. Significantly, Respondent No.2 does not dispute that at the relevant point in time, the web portal did not allow the uploading of an application for permission if the pay scale of the post applied for was below Rs.56,100/- (pre-revised). It is also not the case of the Respondents that any express instructions were issued by the Respondents to indicate that in the event that permission could not be applied for online for any reason, it could be sought by submitting a hard copy application manually.

WP (C) 6300 of 2018

24. The facts in WP (C) 6300 of 2018 (filed by Prakash Katiyar) are that the Petitioner was enrolled as an Airman (Electronic feeder) in the Indian Air Force on 27th December 2006. After completing the initial training, he was posted to the 414 Air Force Station, Yelahanka, Bangalore. He was

promoted to the post of Corporal on 1st July 2011.

25. In May 2016, an advertisement was issued for the post of Probationary Officer in the Bank of Baroda. On 2nd August 2016 the Petitioner sought permission of the competent authority which was granted on 5th August 2016. Pursuant thereto the Petitioner sat for the examination on 25th September 2016.

26. Having qualified in the written exam he was called for an interview on 8th November 2016. However, he appeared on 9th November 2016 as he was only granted leave for that day. Despite the fact that Respondents gave prior permission, they did not issue the NOC. Ultimately, the Petitioner was in the waiting list and could not be selected.

27. In July 2016 another advertisement was issued for the post of Probationary Officer in Bank of Maharashtra. The Petitioner again applied for permission which was granted on 18th August 2016. After qualifying the written exam the Petitioner was called for the interview by a letter dated 13th January 2017. The Petitioner applied for NOC which was declined. Without the NOC the Petitioner still appeared in the interview. He filed WP (C) 876 of 2017 praying for issuance of NOC. During the pendency of the writ petition Respondents issued two NOCs on 25th April and 2nd May 2017. However, since the NOCs were granted too late and the Petitioner could not qualify in the final result. As a result, WP (C) 876 of 2017 was disposed of by this Court on 17th May 2017.

28. On 22nd February 2017 another advertisement was issued for recruitment of Group 'A' Officers in the regional rural banks by common written process. This time when the Petitioner went to apply online on the web portal of the Respondents on 16th August 2017, his application could not be uploaded since the pay scale given in the advertisement was of Rs.15,600/- – Rs.39,100/- with grade pay of Rs.5400/- whereas the minimum pay scale shown by the system was Rs.56,100/-. The revised pay scale of Rs.15,600/- – Rs.39,100/- with grade pay of 5400/- under the 7th CPC was Rs.56,100/-. However, it could not be revised by the PSUs and was pending for consideration with the competent authority. When the Petitioner informed his seniors about the refusal of the authorities to accept the application, they informed him that there was no other option except to apply online.

29. Since the date for submission of application was running out, the Petitioner directly applied to the Bank. He qualified in the written exam and was called in for an interview on 22nd December 2017. After appearing for the interview, the Petitioner was informed on 4th February 2018 that he has been provisionally selected against the vacancy in the OBC category in the Baroda Gujarat Gramin Bank. On 27th April 2018 the Petitioner was issued an appointment letter for the post of Officer JMG Scale-I Assistant Manager in Group 'A' in the aforementioned bank.

30. On receiving the said letter the Petitioner applied for discharge from service. On 11th May 2018 the Commanding Officer recommended the Petitioner's application and forwarded it to the competent authority. At the time when the application was still pending the present writ petition was

filed.

31. On 31st May 2018, the Court passed the following order:

“W.P.(C) 6300/2018 and CM APPL. 24243/2018 (stay)

1. Mr. Chhibber, learned counsel for the petitioner states that fact position in the present petition is similar to the one in W.P.(C) No.3637/2018 entitled "*CPL Rahul Kumar Santoshi Vs. Union of India and Ors.*", wherein notice was issued on 13.04.2018.

2. Issue notice.

3. Mr. Ahluwalia, learned counsel enters appearance and accepts notice for the respondents No.1 to 4. Counter affidavit shall be filed by the respondents No.1 to 4 within four weeks, with a copy to the learned counsel for the petitioner.

4. Issue notice to the respondents No.5 and 6/Bank by speed post, courier as also through electronic mode, on the petitioner filing the process fee within two days. Notice to be issued to the respondents No.5 and 6/Bank shall indicate that a counter affidavit shall be filed within four weeks, with a copy to the learned counsel for the petitioner, who may file rejoinders, if necessary, one week before the next date of hearing.

5. List on 24.07.2018.

6. Learned counsel for the petitioner requests that till the next of hearing, the respondents No.5 and 6/Bank be restrained from cancelling the appointment letter issued to the petitioner for the post of Officer JMG/Scale-I Assistant Manager. He states that initially, vide letter dated 27.04.2018, the respondents No.5 and 6/Bank had directed the petitioner to report for duty on 14.05.2018, which period has recently been extended at his request to 18.06.2018. In support of the said submission he hands over a letter dated 28.05.2018, addressed by the respondents No.5 and 6/Bank to the petitioner, which is

taken on taken on record, with a copy furnished to the counsel for the respondents No. 1 to 4.

7. It is directed that the respondents No.5 and 6/Bank shall not cancel the offer of appointment of the petitioner, in terms of the letters dated 27.04.2018 and 28.05.2018, till the next date of hearing.

DASTI under the signatures of the Court Master.”

32. Thereafter, on 24th July 2018, the following order was passed:

“1. Learned counsel for the respondent nos.1 to 4 seeks further time to file counter affidavit.

2. Mr. Ankur Chhibber, learned counsel for the petitioner states that while the respondents have not found the time to file the counter affidavit, they have proceeded to issue a notice dated 22nd June, 2018, to the petitioner calling upon him to show cause as to why disciplinary action should not be taken against him for failing to take permission from the Competent Authority before applying for a civil post. A copy of the aforesaid notice to show cause has been handed over to the learned counsel for the respondent.

3. Mr. Ahluwalia, learned counsel for the respondent nos.1 to 4 states on instructions, that the respondents will not take any coercive action against the petitioner pursuant to the aforesaid notice to show cause, during the pendency of the present petition.

4. Respondent Nos. 1 to 4 shall remain bound to the statement made hereinabove. They are granted two weeks further time to file the counter affidavit with a copy to the counsel for the petitioner and the respondent nos.5 & 6.

5. List on 27th September, 2018.

6. Interim orders shall continue till the next date of hearing.”

33. The reply to the present application is more or less on the same lines as in the other petitions. It is contended that without prior permission from the Respondents the Petitioner could not have proceeded to apply for appearing in the exams etc. It is maintained by the Respondents that:

“after being unsuccessful in applying for permission to appear in written examination through AFRO site, the Petitioner did not bother to apply in black and white for the said permission.”

34. According to the Respondents the Petitioner ought to have obtained permission even at the stage of clearing the main written exam. The failure to take permission before appearing in the interview is considered a breach of mandatory requirement.

35. The Baroda Gujarat Gramin Bank has filed a separate affidavit *inter alia* contending that the trial period within which the Petitioner had to join had expired and that post no longer be kept available for him. This, however, is without accounting for the interim order passed by this Court on 31st May 2018 whereby the Bank was directed not to cancel the offer of appointment.

W.P. (C) 8189 of 2018

36. In the fourth petition i.e. W.P. (C) 8189 of 2018 by Corporal Nakul Chandra Behera the facts are that the Petitioner was enrolled as Airman in the IAF on 2nd July 2008. He received an intimation from the Orissa Gramin Bank (Respondent No.4) on 25th July 2017 confirming his recruitment as Officer Scale-I (CRP RRB-VI) asking him to join between 1st and 10th

August 2018 despite obtaining an NOC dated 31st January 2017 prior to the interview, the Petitioner could not make it on merit.

37. A second attempt between 24th July and 2nd August 2017 was also unsuccessful. On 22nd July 2017 the Petitioner applied pursuant to the advertisement published by the IBPS. He too was unable to apply online for the permission since the web portal would not accept the request where the upper pay scale of the advertised post was less than to Rs.56,100/-. Pointing out that the revision of pay scales in the banks was due from November 2017 in terms of which the Petitioner would get a basic pay from Rs.57,000/- to Rs. 1,04,100/-, the Petitioner sought to argue that the Respondents were unjustified in declining the NOC. His application was duly recommended by the Unit Authorities but was denied by the AFRO on the ground that post the 7th CPC, the definition of Group 'A' civil post has been changed.

38. The present writ petition was heard first on 7th August 2018, when the following order was passed by this Court:

“1. Learned counsel for respondent Nos. 1 to 3 enters appearance and states that he may be permitted to obtain instructions from the department in respect of the OM dated 06.12.2017 issued by the Department of Financial Services, Ministry of Finance, Government of India, which clarifies that the Government has approved principles for determining equivalence in respect of Public Sector Banks (PSBs), Public Financial Institutions (PFIs) etc. as conveyed vide CM dated 06.10.2017 issued by the DOPT to the effect that Junior

Management Scale-1 of the PSBs/PFIs will be treated as equivalent to Group 'A' in the Government of India.

2. As learned counsel for the petitioner states that a similar matter W.P.(C) No.868/2018 entitled Manoj Kumar vs. Union of India & Ors. wherein the issue raised is of identical nature, was listed on 01.08.2018 and is listed on 05.09.2018 for awaiting instructions, renotify the present petition on 05.09.2018.

3. Till the next date of hearing, it is directed that respondent No.4 shall keep one post of Junior Management Officer Scale-I in the Bank available.

4. DASTI under the signatures of the Court Master.”

39. Here too the Respondents have sought to justify the decision on the ground that the Petitioner did not seek prior permission before appearing in the exam.

Analysis and reasons

40. At the outset, it must be noticed that in all these cases it is not the case of the Respondents that even if the Petitioners would have correctly applied for permissions as and when they were required to be obtained, they would still not be granted the NOC because on merits it had been decided not give such permission. In other words, the permission was refused only because each of the Petitioners did not apply at the right time.

41. The second common feature is that the Respondents do not deny that at the relevant point of time the web portal would not accept the online request

because the pay for the post for which such NOC was sought carried a pay of less than Rs.56,100/-. It is not, therefore, as if the Petitioners deliberately failed to make the application in time.

42. Thirdly, there was no clear instruction or alternative provided to the personnel in service that where the web portal declined to accept a request they could make a manual application ‘in black and white’ as suggested by the Respondents. On the contrary the Petitioners were given to understand that except applying online there was no other method for applying for the NOC.

43. It must be noted here that while Petitioners have relied on the decision of this Court dated 11th March 2019 in W.P.(C) 5467 of 2017 (***Corporal Rasit Kumar v. Union of India***), the Respondents have relied on the decision dated 21st January 2019 in W.P.(C) 567 of 2019 (***Sergeant Pradeep Kumar Rai v. Union of India***).

44. As far as the decision in ***Sergeant Pradeep Kumar Rai*** is concerned, it was in relation to NOC for applying for a Group ‘B’ post and not a Group ‘A’ post. On the other hand the decision in ***Corporal Rasit Kumar*** which helps the case of the Petitioners was in relation to an application for Group ‘A’ post. There again the Petitioner’s application for NOC had not been approved by the Air Force as his scale of pay was less than Rs.56,100/- and above. The revised pay scale was going to be higher than Rs.56,100/- and accordingly, the Court while granting the request of the Petitioner for the NOC characterised the refusal to be “hyper-technical approach.” There the

PSU involved was Coal India Ltd.

45. In the present cases, it is not in dispute that the revised pay scale in each of the posts is above Rs.56,100/- as per the 7th CPC. Therefore, as far as the posts for which the Petitioners applied are meeting the criteria of the revised pay scale for Group 'A' post, the clarification dated 8th December 2017 issued by the Respondents themselves makes the position clear.

46. On the question of the Petitioners having to apply for NOC at three stages, the Court finds that there is no deliberate failure on the part of the Petitioners in that regard. In this context it needs to be noticed that in similar circumstances this Court has granted relief to the Petitioners similarly placed. A reference may be made to the decision dated 16th November 2017 in W.P.(C) 494 of 2017 (*Corporal Manoranjan Kumar v. Union of India*). In that case the Petitioner had not applied before sitting for exam and the Court was of the view that the Petitioner should not be denied an opportunity for career enhancement "merely because of this point."

47. In the decision dated 21st October 2009 in WP(C) 9088 of 2018 (*Corporal N.K. Jakhar v. Union of India & Ors.*) the Petitioner was granted relief notwithstanding that he did not apply through proper channel. It was noted that this related to "A procedure of law and not the substance of law." A reference is made to the decision of the Division Bench dated 16th December 2008 in WP(C) 8760 of 2008 (*Pradeep Kumar v. Union of India*) where the policy was characterised as beneficial policy which must be construed as liberal.

48. Again in its decision dated 28th July 2010 in WP (C) 3257 of 2010 (*Charan Singh Bhanvariya v. Union of India*) the Court adopted a liberal approach and condoned the lapses on the part of the Petitioners in seeking NOC before appearing for the exam and then for the interview. This approach is also reflected in the order dated 30th May 2016 in WP (C) 1465 of 2016 (*Rajeev Ranjan v. Union of India*) and the order dated 28th July 2016 in WP(C) 5145 of 2016 (*Corporal Ranjeet Kumar v. Union of India*). Incidentally, the SLP against the said decision (SLP (C) 2476 of 2016) was dismissed by the Supreme Court on 2nd December 2016.

Conclusion and directions

49. For all of the aforementioned reasons the Court finds that in the present cases the grounds for refusal of NOC by the Respondents were not justified.

50. Accordingly, in each of the cases a writ of mandamus is issued to the Respondents to grant NOC to the Petitioners to be appointed for the posts in the respective PSUs for which they have applied for not later than 4 weeks from today.

51. By interim orders in each of the writ petitions the Court has already directed that one post should be kept vacant in the PSUs concerned. Subject to meeting all other criteria each of the Petitioners will, after the issuance of such NOC by the Respondent No.2, be issued the appointment letters by the concerned PSUs within a further period of 8 weeks.

52. The writ petitions are allowed in the above terms but no orders as to

costs. The pending applications are disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 25, 2019

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