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

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CPL ASIT KUMAR

**W.P.(C) 5467/2017**

..... Petitioner

Through: Mr Ajit Kakkar and Ms Sampanna  
Rani, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Rajesh Kumar with Ms Santvana  
Agarwal, Advocates for UOI.  
Mr Anil Nag, Mr Arun Singh and Mr  
Ankit Shukla, Advocates for R-4.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE I.S. MEHTA**

**ORDER**

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**11.03.2019**

**CM 11276/2019 (delay)**

1. For the reasons explained in the application, the delay in filing the petition is condoned and the application is allowed.

**W.P.(C) 5467/2017**

2. Aggrieved by the refusal of the Respondents to grant him a no objection certificate ('NOC') for permitting him to join the Bharat Sanchar Network Limited ('BSNL'), the Petitioner, an Airman with the Indian Air Force ('IAF'), filed the present writ petition.

3. The case of the Petitioner is that he joined IAF as Airman on 27<sup>th</sup> December, 2006. On 6<sup>th</sup> September, 2016, he applied and was granted permission to appear in the GATE 2017 examination. He secured 237<sup>th</sup> rank

in the exam.

4. On 1<sup>st</sup> March, 2017, an advertisement was issued for various posts in the BSNL. On 3<sup>rd</sup> March, 2017, the Petitioner was permitted to appear for the post of Joint Technical Officer ('JTO') at BSNL. When the Petitioner appeared before the AGM (R&E), Trivandrum for document verification on 13<sup>th</sup> June, 2017, his verification was not carried out. A revised date was given as 7<sup>th</sup> July, 2017.

5. Meanwhile on 19<sup>th</sup> June, 2017, the Respondents rejected the Petitioner's request for grant of NOC on that basis that he was "ineligible for applying for the post of HAL and BSNL. The Respondents informed the Petitioner that his application had not been approved.

6. It is under those circumstances that the present petition was filed.

7. On 4<sup>th</sup> July, 2017, while directing notice to issue in the petition, the Division Bench of this Court directed BSNL not to cancel the provisional selection of the Petitioner till the next date of hearing.

8. Subsequently, at the request of the Petitioner, the petition was permitted to be amended to implead Neyveli Lignite Corporation India Ltd. ('NLCIL') as the party Respondent since in the meanwhile the Petitioner had qualified to be appointed in NLCIL. On 23<sup>rd</sup> February, 2018, the following order was passed by the Court:

"1. Counsel for the petitioner states that at the time of filing the present petition, the petitioner had impleaded BSNL as respondents No.4 and 5 and on 04.07.2017, an order was passed

directing the BSNL not to cancel the provisional selection of the petitioner. Subsequently, the petitioner has impleaded M/s NLC India Ltd. as a respondent, having applied to the said organisation for appointment to the post of Graduate Executive Trainee. He states on instructions that the name of the respondents No.4 and 5/BSNL may be deleted from the array of the respondents and the interim order dated 04.07.2017 may be vacated.

2. Ordered accordingly. The name of the respondents No.4 and 5/BSNL is deleted from the array of the respondents and the interim order dated 04.07.2017 qua the BSNL is vacated. Amended memo of parties shall be filed by the petitioner within one week.

3. Counsel for the petitioner states that he may be permitted to amend the writ petition by making necessary averments in respect of M/s NLC India Ltd. Needful shall be done within one week with a copy to the other side. Counter affidavit to the amended writ petition shall be filed by the respondents, if necessary, within two weeks thereafter. Rejoinders, if any, be filed within one week thereafter.

4. List on 18.05.2018

5. Interim orders to continue.”

9. In the counter affidavit filed by the Respondents – Union of India, the stand taken is that the approval of the Petitioner’s application for the post of Junior Telecom Officer (‘JTO’), BSNL by the Competent Authority on 6<sup>th</sup> March, 2018, was erroneous. The Petitioner had only mentioned the post that he applied for as Group-A, but did not mention the pay structure. The Competent Authority mistakenly took the view that the said post was a Group-A post having pay scale of Rs.56100.

10. The Petitioner's application for NOC was not approved by the Air Force Authority as the pay scale for the post was Rs 16,400/- to Rs 40,500/- which was not meeting with the latest pay scale criteria (Rs 56,100/- and above) in vogue to grant NOG and Discharge from Air Force for Group "A" post.

11. Reference is made by the Respondents 1 and 2 to the judgment dated 11<sup>th</sup> August, 2015 of this Court in W.P.(C) No.6619/2011 (***Rajesh Kumar v Union of India***). It is submitted that on the date of processing his request for NOC, the pay scale for the post of Graduate Executive Trainee ('GET') in NLCIL had not been revised in terms of the recommendations of the 7<sup>th</sup> Central Pay Commission (CPC). Consequently, the Petitioner did not meet the criteria at the relevant time and the NOC was rightly refused.

12. It is pointed out by the Petitioner that the letter sent by the NLCIL to him informed him that during probation, his pay scale would be 50,000 to 160000 and after one year of probation, he will be given the pay scale of Rs.60,000-160000. This is supported by the NLCIL.

13. This Court has heard the submissions of Mr Ajit Kakkar, learned counsel appearing for the Petitioner; Mr Rajesh Kumar, learned counsel for the UOI/R-1 to 3 and Mr Anil Nag, learned counsel for the Respondent No.4/ NLCIL.

14. The response of the Respondents by referring to the circular dated 16<sup>th</sup> December, 2016, is that at the time when the NOC was refused the Petitioner did not satisfy the criteria as far as his pay scale in the post to which he had applied was concerned. It is however not disputed that the pay

scale eligibility criteria for the Group-A post was revised after the implementation of the 7<sup>th</sup> CPC as clarified by circular dated 11<sup>th</sup> January, 2017. It was subsequently disseminated to all concerned units through signal dated 16<sup>th</sup> January, 2017.

15. In the Petitioner's case, his request for discharge was refused only on the criteria of the pay scale. However, after the 7<sup>th</sup> CPC, the pay attached to the post of GET in NLCIL after the first year of probation would be in the pay scale of Rs.60000-160000. This, therefore, meets the requirement that the pay should be Rs.56,100 and above.

16. The Court finds that the decision in ***Rajesh Kumar v Union of India*** (*supra*) of this Court is distinguishable on facts. Moreover, the Court has been shown an order dated 29<sup>th</sup> November, 2017 of the Armed Forces Tribunal ('AFT') in OA 1802/2017 (***CPL Ajit Kumar Das v. Union of India***) and 1804/2017 (***Cpl Aseem Das v Union of India***) wherein in similar circumstances, the refusal to grant NOC to the two applicants who were in the IAF on the ground that they did not meet the criteria of minimum pay scale of Rs.56100 was negated by the AFT. It was observed that the insistence of starting pay scale of Rs.56100 appeared to be "a hyper technical approach" when admittedly the posts that had a pay band of Rs.50000-160000 had been applied for. Related to that pay scale, the arbitrary pegging of starting of pay scale of Rs.56100 was held to be a restrictive factor. Just as in the present case, the AFT was informed that the Applicants who tried to join the starting scale of Rs.50000-160000 would transcend to the pay scale of E-3 Rs.60,000-Rs.1,80,000 within a year. Mr

Nag appearing for NLCIL reiterated this position before this Court.

17. It is not disputed by learned counsel for the IAF that the decision of the AFT directing the Respondents to grant NOC to the two applicants in order to enable them to take up assignment in another PSU, namely Coal India Limited ('CIL') by the judgment dated 29<sup>th</sup> November, 2017 has been accepted by the Respondents.

18. The policy that the starting scale should be Rs.56100 does not appear to be to a rigid one as is evident from the fact that the aforesaid judgment of the AFT in respect of two of the member of the IAF has been accepted by the Respondents. There is no reason why a different approach should be taken as far as the present case is concerned.

19. For all of the aforementioned reasons, the Court sets aside the impugned order dated 9<sup>th</sup> December, 2016 issued by the Respondents declining grant of NOC to the Petitioner to join the NCICL as GET. A direction is issued to the Respondent No.3 to grant the NOC to the Petitioner permitting him to be discharged from service to join NLCIL not later than six weeks from today.

20. The petition is allowed in the above terms but, in such circumstances, with no orders as to costs.

**S. MURALIDHAR, J.**

**I.S. MEHTA, J.**

**MARCH 11, 2019**

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