

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

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Date of decision: 5th August, 2020

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W.P.(C) No.3311/2020

SONU

.... PETITIONER

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra & Mr. Harsh Dhankar, Advs.

Versus

UNION OF INDIA & ORS.

...RESPONDENTS

Through: Mr. Vinod Diwakar, CGSC with Mr. Vishal Kumar Singh, Adv. for R-1 to 3. Mr. Anil Grover, Senior Additional Advocate General for the state of Haryana along with Ms. Noopur Singhal & Mr. Mishal Vij, Advs. for R-4&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a Corporal in the respondents no.1 to 3 Indian Air Force (IAF), having been denied No Objection Certificate (NOC) as well as discharge from service of the respondents no.1 to 3 IAF, for joining the post of Assistant Professor (College Cadre) in the subject of Economics in the Department of Higher Education of the Government of Haryana, on the ground of the petitioner not having skill grade 'A', has filed this petition seeking mandamus, directing the respondents no.1 to 3 IAF to issue NOC as

well as discharge from service to the petitioner for joining the post of Assistant Professor (College Cadre) in the subject of Economics in Haryana.

2. It is the case of the petitioner, that (i) the petitioner, after completing his 10+2 applied for the post of Aircraftsman with the respondents no.1 to 3 IAF and on being successful, was on 29th December, 2010 enrolled as an Aircraftsman; (ii) the petitioner was promoted to the rank of Corporal on 3rd January, 2016; (iii) the petitioner, with the approval of the respondents no.1 to 3 IAF, completed his post graduation in Economics while serving the IAF; (iv) the respondents no.1 to 3 IAF encourages career progression for all airmen, while in service of IAF; (v) Air Force Order (AFO) No.14/2008 in vogue at the relevant time provided for permission to airmen to apply for civil posts / services under the Central / State Government and Public Sector Undertakings (PSU) in Group 'A' or equivalent posts, on completion of seven years of service with the respondents no.1 to 3 IAF; (vi) another AFO No.04/2012 dated 31st May, 2012 laid down the eligibility and procedure with respect to Airmen/ Non-Combatant Employees [NCs(E)], for grant of permission to apply for civil post/service under the Central / State Government / PSUs and Government of India Undertaking / Corporation as well as for grant of NOC; (vii) the respondents no.1 to 3 IAF issued AFO No.33/2017, nullifying all earlier AFOs including AFO No.14/2008 and AFO No.04/2012 aforesaid, on the procedure of discharge; the said AFO No.33/2017 drastically changed the scenario for airmen seeking better career opportunities and imposed additional conditions on the eligibility criteria for applying in civil post under the State / Central Government; (viii) Clause 6 of AFO No.33/2017 provides as under:

“Eligibility Criteria

6. Airmen/NCs(E) of the IAF are eligible to apply for civil posts/services with prior permission from the Competent Air Force Authority. Airmen/NCs(E) including those on deputation shall be eligible for seeking permission to apply for the following category of posts:

Category	Description of Post	Eligibility Criteria	Competent Authority	Format of NOC
Category-I	Group A/I and Group B/II Gazetted posts through UPSC and State Public Service Commission only. (Recruitment advertisement must clearly mention the Group of the Post)	(a) Airmen with minimum Skill Grade A and seven years of service. (b) NCs(E) irrespective of length of service.	AOC, AFRO	Appendix A
Category-II	Any civil post in Govt/PSU/Private Sector	Airmen who are left with one year of residual service prior to expiry of their initial Regular Engagement (RE)/Extended RE Provided they have submitted unwillingness/denied further extension of service.	AOC/Stn Cdr /CO*	Appendix B

* CO in the AFO refers to CO of an independent Unit.”;

(ix) with the introduction of AFO No.33/2017, the respondents no.1 to 3 IAF have imposed additional conditions including skill level ‘A’, for applying in

civil post and which conditions have made it difficult for the airmen to seek discharge from service from the respondents no.1 to 3 IAF; (x) the additional conditions imposed vide AFO No.33/2017 destroy the career prospects of airmen; (xi) while under the earlier AFOs the only condition to seek discharge from IAF was to serve for a minimum period, under the AFO No.33/2017, an additional condition like the minimum skill grade 'A; along with minimum seven years of service is also required; (xii) on 8th March, 2019, the respondent no.4 Haryana Public Service Commission (HSPC) issued an advertisement inviting applications from eligible candidates for recruitment to 524 posts of Assistant Professor (College Cadre) in Higher Education Department, Haryana; (xiii) the petitioner applied online for permission of the respondents no.1 to 3 IAF, to so apply but could not proceed due to the fact that the petitioner was possessing skill level 'B', and the petitioner therefore on 20th March, 2019 sought offline permission from the respondents no.1 to 3 IAF, to apply for the civil post of Assistant Professor (College Cadre); (xiv) the respondents no.1 to 3 IAF neither accepted nor denied the same; (xv) the petitioner, so as not to lose out the lifetime opportunity, still applied for permission and appeared for the recruitment examination scheduled on 4th October, 2019; (xvi) the petitioner cleared the written examination for the post aforesaid of Assistant Professor (College Cadre) and was issued a call letter for interview; (xvii) the petitioner cleared all the stages of the examination and in the result declared on 15th January, 2020, was declared pass; (xviii) the petitioner, on 24th January, 2020 applied to the respondents no.1 to 3 IAF, for issuance of NOC, but no response was received thereto; (xix) the petitioner then learnt that vide order dated 22nd March, 2019 on the application of the petitioner for

permission to appear in the examination, the permission had been denied to the petitioner for the reason of having skill grade 'B'; (xx) respondent no.4 HPSC and respondent no.5 Department of Higher Education, Government of Haryana issued offer of appointment letter dated 29th January, 2020 to the petitioner for the post of Assistant Professor (College Cadre) in the pay scale of Rs.57,700 – 1,82,400/-; (xxi) the petitioner, vide letter dated 29th January 2020 to respondent no.4 HPSC and respondent no.5 Department of Higher Education, Government of Haryana sought extension to join the post he was selected for; (xxii) the respondent no.4 HPSC and respondent no.5 Department of Higher Education, Government of Haryana issued a letter dated 13th February, 2020 to the petitioner, of appointment to the post of Assistant Professor (College Cadre); (xxiii) the petitioner, on 14th February, 2020 again applied to respondents no.1 to 3 IAF for discharge from service but no response had been received till the filing of this petition; (xxiv) however the respondent no.4 HPSC and respondent no.5 Department of Higher Education, Government of Haryana vide letter dated 16th March, 2020 granted three months extension from 29th January, 2020 to 28th April, 2020 to the petitioner for joining as Assistant Professor (College Cadre), latest by 29th April, 2020 and informed the petitioner that else his selection will be cancelled; (xxv) though the petitioner applied for further extension but no response was received thereto; and, (xxvi) this Court vide judgment dated 11th March, 2020 in W.P.(C) No.634/2020 titled **Subhash Chand Vs. Union of India** has held the condition of having skill grade 'A', in Clause 6 of AFO No.33/2017 to be not having any relation to the objective thereof of granting NOC to airmen for civil posts and to be arbitrary and unreasonable and struck down the same to the said extent and issued mandamus to the

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respondents IAF to grant NOC to the petitioner therein viz. Subhash Chand, who was similarly placed as the petitioner.

3. The petitioner however still, besides the reliefs aforesaid in the petition, has also impugned Clause 6 of AFO No.33/2017 and sought quashing thereof.

4. The petition came up first before this Court on 1st June, 2020, when it was enquired from the counsel for the respondents no.1 to 3 IAF appearing on advance notice, why the petitioner should not be granted the same relief as granted in ***Subhash Chand*** supra.

5. The counsel for the respondents no.1 to 3 IAF contended that the discharge application filed by the petitioner was deficient and after the petitioner had made up the deficiency, has reached the deciding authorities only on 27th May, 2020 and was under consideration; it was argued that the petition was premature. It was also informed that respondents no.1 to 3 IAF were preferring Special Leave Petition (SLP) against the judgment in ***Subhash Chand*** supra.

6. In the aforesaid state of affairs, notice of the writ petition was issued, only to respondents no.1 to 3 IAF and respondents no.1 to 3 IAF directed to take a decision on the discharge application of the petitioner within one week thereof and to communicate the same to the petitioner on or before 12th June, 2020. The counsel for the petitioner during the hearing on 1st June, 2020 also stated that the petitioner had taken skill enhancement test to improve his skill to grade 'A' and the provisional result of the said test had been declared. The respondents no.1 to 3 IAF were accordingly, vide order dated 1st June,

2020 also directed to disclose whether the skill grade of the petitioner stood enhanced to 'A' and the writ petition posted next on 17th June, 2020.

7. On 17th June, 2020, the counsel for the respondents no.1 to 3 IAF stated that the skill grade of the petitioner stood enhanced to 'A' but the petitioner had been denied permission because of the petitioner having not approached through proper channel and having concealed facts and having manipulated his date of birth. With direction to file counter affidavit by 19th June, 2020, the matter was adjourned to 23rd June, 2020.

8. On 23rd June, 2020, though the counsel for the petitioner was heard on merits of the petition and the counsel for the respondents no.1 to 3 IAF was also heard substantially but agreeing with the counsel for the respondents no.1 to 3 IAF that this Court should await the outcome of the SLP filed against the judgment of this Court in **Subhash Chand** supra, it was deemed appropriate to adjourn the matter. However while so adjourning, we enquired from the counsels, whether the petitioner, in the interregnum would miss out the opportunity of employment which had already been offered to him. The counsel for the petitioner stated that the time for joining had been extended till 30th June, 2020. In the circumstances, notice of the petition was also ordered to be issued to the respondent no.5 Department of Higher Education, Government of Haryana, to explore whether the date of joining of the petitioner could be deferred

9. On the next date of hearing i.e. 26th June, 2020, the Additional Advocate General of the State of Haryana appeared in response to the notice issued and stated that the last date for the petitioner to join was 29th April, 2020 and on the petitioner not joining by then, the offer of appointment

made to the petitioner stood automatically lapsed. It was also informed that the panel constituted to make the appointments had a life of six months only and the panel also had since dissolved. On yet further enquiry, it was informed that there was no waiting list and thus the question of anybody else being appointed to the post offered to the petitioner, did not arise. Per contra, the counsel for the petitioner stated that he had been telephonically informed that owing to the prevalent Covid-19 and resultant suspension of academic session, a lot of candidates had not joined and the time of joining stood extended till 30th June, 2020, as he had informed on the earlier date.

10. The counsel for the respondents no.1 to 3 IAF, on 26th June, 2020 again sought adjournment stating that SLP preferred against the judgment in ***Subhash Chand*** supra was soon to be listed. The hearing was accordingly adjourned to 28th July, 2020.

11. On 28th July, 2020, a copy of the order dated 10th July, 2020 of Supreme Court in SLP(C) No.8061/2020 preferred by the respondents no.1 to 3 IAF against ***Subhash Chand*** supra was placed before us; vide the said order, though notice of SLP(C) No.8061/2020 had been issued but no interim relief restraining Subhash Chand from leaving the IAF granted. The counsel for the petitioner on 28th July, 2020 also stated that though the respondents no.1 to 3 IAF had represented before the Supreme Court that there were a number of other cases pending before the High Courts and in which the same relief as granted to ***Subhash Chand*** supra would follow, but no order was made by the Supreme Court.

12. We thus, on 28th July, 2020 proceeded to hear the counsel for the respondents no.1 to 3 IAF on, why the same relief as granted to **Subhash Chand**, should not follow in this petition also. After he had so concluded his arguments, we asked the Senior Additional Advocate General for the State of Haryana, whether the State of Haryana was still willing to take the petitioner, if discharged on that date from IAF. The Senior Additional Advocate General for State of Haryana reiterated that the offer of appointment made to the petitioner had lapsed. We thus proceeded to ask the counsel for the petitioner, whether the petitioner was willing to be discharged notwithstanding the said stand of the State of Haryana. On request of the counsel for the petitioner for adjournment, to take instructions, the matter was posted to today.

13. Today, the counsel for the petitioner states that (i) the petitioner had telephonically contacted the concerned officials of the State of Haryana on 30th July, 2020 and was assured that even if he is discharged now, he will be absorbed; (ii) this is a lifetime opportunity for the petitioner, to make a quantum jump, from being a airmen / Corporal in the respondents no.1 to 3 IAF, to join a Class 'A' service of the State of Haryana and the petitioner, on the verbal assurance given to him that he will be absorbed, is willing and still seeks a discharge, even if ultimately he is not appointed as Assistant Professor (College Cadre) in the respondent no.5 Department of Higher Education, Government of Haryana; and, (iii) Subhash Chand, petitioner in W.P.(C) No.634/2020, had appeared in the same examination conducted by respondent no.4 HPSC and has joined respondent no.5 Department of Higher Education, Government of Haryana on 15th July, 2020 and the petitioner is confident that he will also be permitted to join.

14. The Senior Additional Advocate General of State of Haryana though confirms the telephonic conversation of the officials of the respondent no.5 Department of Higher Education, Government of Haryana with the petitioner but states that his instructions remain the same as disclosed on the previous date of hearing.

15. We have thus heard the counsel for the petitioner in response to the arguments of the counsel for the respondents no.1 to 3 IAF on 28th July, 2020. It was the contention of the counsel for the respondents no.1 to 3 IAF on 28th July, 2020, that the petitioner is not entitled to the relief as granted to **Subhash Chand** supra, because (i) the petitioner has fabricated the document at page 122 of the paper book and is thus not entitled to any discretionary equitable relief and his petition is liable to be dismissed; (ii) while **Subhash Chand** supra had applied for online permission and which was not processed owing to online process not entertaining applications for discharge without the requisite qualifying criteria of skill grade 'A', the petitioner, without even applying and merely to take advantage of the judgment in **Subhash Chand** supra, had fabricated the document at page 122 of the paper book, to show that the petitioner had attempted online permission, when in fact the petitioner had not; and, (iii) had the petitioner attempted to seek permission as claimed, there would have been a date at the top of page 122 of the paper book.

16. The counsel for the petitioner, in response, has today (a) drawn our attention to paragraph 12 of the writ petition and paragraph 13 of the counter affidavit filed by the respondents no.1 to 3 IAF (which though was not on record but copy of which has been e-mailed to us) to show that the

respondents no.1 to 3 IAF have admitted that the petitioner submitted an application dated 20th March, 2019 seeking permission for applying for the post aforesaid; (b) on enquiry has informed that the last date for applying for the post aforesaid advertised by respondent no.4 HPSC, was 15th April, 2019 and thus the application dated 20th March, 2019 of the petitioner was within time; (c) that though the petitioner on 20th March, 2019 attempted to apply to respondents no.1 to 3 IAF for permission to apply for the post advertised by respondent no.4 HPSC but since the software of the respondents no.1 to 3 IAF is not designed to process the application for permission of those not having skill grade 'A', the petitioner failed; (d) that it is not in dispute that NOC sought by the petitioner has been declined only for the reason of the petitioner at the relevant time not possessing skill grade 'A' though has since achieved the same; and, (e) that there is thus no reason for petitioner being not granted the same relief as granted to **Subhash Chand** supra.

17. The counsel for the respondents no.1 to 3 IAF has in rejoinder contended that the falsity of the document at page 122 of the paper book is evident from the fact that the petitioner therein has filled up the length of his service as on the date of applying, of "9 years 21 days" but which length the petitioner completed only on 19th January, 2020 and thus the document at page 122 of the paper book is not relating to any alleged online permission attempted on 20th March, 2019

18. On enquiry it is informed that the petitioner enhanced his skill grade to 'A', in January, 2020.

19. We have considered, whether the petitioner is not entitled to the same relief as **Subhash Chand** supra, for the reasons argued by the counsel for the respondents no.1 to 3 IAF but are not able to find any force therein, because (i) the respondents no.1 to 3 IAF admits the petitioner having made a physical application for applying for the post of Assistant Professor (College Cadre) in the respondent no.5 Department of Higher Education, Government of Haryana on 20th March, 2019; and, (ii) the respondents no.1 to 3 IAF admits that the application for online permission for so applying is not processed unless the applicant possess skill grade 'A'; it is thus irrelevant whether the petitioner attempted online permission on 20th March, 2019 or not, inasmuch as even if the petitioner had attempted so, the same would not have fructified and reached the respondents no.1 to 3 IAF and would have been aborted. Else, the *bona fides* of the petitioner are established from the petitioner making a physical application and wherefrom the respondents no.1 to 3 IAF were aware of the intent of the petitioner.

20. We have however considered, whether mandamus as issued in the case of **Subhash Chand** supra to the respondents IAF, to discharge the petitioner should follow when the petitioner as of today, as per the statement of Senior Additional Advocate General of State of Haryana has no offer to join a group 'A' post in the State of Haryana. The policy of the respondents no.1 to 3 IAF permits such discharge only to join a group 'A' post, *inter alia* in a State Government.

21. In this connection, the Senior Additional Advocate General of the State of Haryana, on enquiry, how **Subhash Chand** supra was permitted to join on 15th July, 2020, states that **Subhash Chand** was permitted to join in terms of the judgment dated 11th March, 2020 supra of this Court. However in the said judgment, a mandamus only to the respondents IAF was issued, to discharge **Subhash Chand** from service, though it was observed “.....for joining the post of Assistant Professor (College Cadre) (Mathematics) in the respondent no.4 State of Haryana.”. No mandamus to the State of Haryana was issued.

22. Else, it is not in dispute that the petitioner otherwise fulfills the conditions of AFO No.33/2017 and no other reason of service exigency or otherwise has been given for denying permission to the petitioner, save on the ground of the petitioner not possessing skill grade ‘A’ at the relevant time.

23. We have already, in **Subhash Chand** supra referred to Part-IV titled ‘Directive Principles of State Policy’ of the Constitution of India, provisions whereof per Article 37 though are not enforceable but principles laid down wherein are nevertheless fundamental in the governance of the country and the State obliged to follow those in making laws. It was further held that it is the duty of the IAF as State to enable a citizen to upgrade himself from a group ‘C’ to a group ‘A’ post, to be able to have much more dignity and pride in his vocation, than as a driver, even if of a Specially Operated Vehicle (SOV) in the IAF. It was observed, that the society in general bestows more respect to an Assistant Professor (College Cadre), than to a driver, even if of a SOV in the IAF. IAF, in the said judgment was reminded

(a) of the duty of its airmen / Corporals, as citizens, under Article 51A(j) of the Constitution, to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement; and, (b) of Article 51A(k), imposing a duty on a parent or guardian to provide opportunities for education to his child or ward between the ages of six to fourteen years. It was held that it was the duty of the State in its role as *parens patriae*, to not come in the way of airmen enhancing their social if not financial status.

24. The same thought process applies with equal force here. The country needs as many teachers at all levels, as airmen / Corporals in its IAF. Once IAF itself has designed a policy, enabling its airmen / Corporals to seek discharge after seven years of service and have not stated that the services of the petitioner are required for any service exigency, though it is generally argued that a large number of airmen are leaving under the said policy, and once the condition of having skill grade 'A' for such discharge and for the reason whereof the petitioner has been denied discharge, has been struck down, we see no reason to deny the petitioner the same relief as **Subhash Chand** supra has already availed of.

25. We thus have no hesitation in holding, the petitioner entitled to the same relief as granted by us to **Subhash Chand** supra. The petition thus succeeds and is allowed.

26. A writ of mandamus is issued to the respondents no.1 to 3 IAF, to forthwith discharge the petitioner from service, for joining the post of Assistant Professor (College Cadre) (Economics) in the respondents no.4 HPSC and respondent no.5 Department of Higher Education, Government of Haryana.

27. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 05, 2020

‘gsr’..

