

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

% **Date of decision: 12th January, 2021.**

+ **W.P.(C) 8002/2020 & CM No.26058/2020 (for interim directions)**

KRISHNA KANT YADAV

..... Petitioners

Through: Mr. Ankur Chhibber, Ms. Nandadevi
Deka and Mr. Anshuman, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Alok Singh, Adv. For R-1 to 3.
Mr. Anil Mittal, Adv. for R-4&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, an Airman in the respondents No.1 to 3 Indian Air Force (IAF), has filed this petition seeking mandamus, directing the respondents IAF to grant 'No Objection Certificate' (NOC) / Discharge Certificate to the petitioner, thereby allowing the petitioner to join the post for which he has been selected in the recruitment process held by respondent No.4 Uttar Pradesh Public Service Commission (UPPSC) i.e. the post of Assistant Labour Commissioner in the respondent No.5 Government of State of Uttar Pradesh (UP).

2. The writ petition came up first before this Court on 15th October, 2020, when notice thereof was ordered to be issued and the respondents No.4&5 UPPSC and the Government of State of UP restrained from revoking / cancelling the offer of appointment made to the petitioner, on the ground of non-submission by the petitioner of the NOC of the respondents IAF, with which the petitioner was then and is presently employed.

3. On 21st October, 2020 and thereafter on 25th November, 2020, this petition was taken up along with W.P.(C) No.5759/2019 and orders reserved in both the petitions. Finding the factual context of this writ petition to be different from that of W.P.(C) No.5759/2019, it was not deemed appropriate to pronounce orders in the two petitions by a common judgment and vide judgment reported as ***CPL Mukesh Singh Rajpoot Vs. Union of India & Ors.*** 2020 SCC OnLine Del 1599, W.P.(C) No.5759/2019 has been dismissed.

4. It is the case of the petitioner, (i) that the petitioner, after completing his education till 10+2 stage, applied for the post of Airman with the respondents IAF and on being successful, was enrolled as an Airman, on 1st October, 2008 and underwent basic training and thereafter trade training of Accounts Assistant; (ii) that on 27th April, 2012, the petitioner was promoted to the rank of Corporal; (iii) that the respondents IAF encourages career progression for all Airmen, while in service of respondents IAF, by making provision therefor in various orders; (iv) that while the petitioner was in service, Air Force Order (AFO) No.14/2008 was in vogue, which provided for permission to Airmen to apply for civil posts/services under Central / State Government and Public Sector Undertakings (PSUs) in Group 'A' or

equivalent posts, on completion of 7 years of service with the respondents IAF; (v) that vide another AFO No.4/2012 dated 31st May, 2012, eligibility and procedure for grant of permission to apply for civil posts/services under Central / State Government / PSUs and Government of India Undertakings / Corporations, as well as for grant of NOC were provided; (vi) that as per the said Policy, any Airman who had completed 7 years of regular service, was eligible to apply for any Group 'A' post in Central/State Government/PSUs and Government of India Undertakings/Corporations, having the pay scale of Rs.15600-39100/- with Grade Pay of Rs.5400/- in Pay Band-III, was eligible for seeking discharge, on being selected to the said post; (vii) that the respondent UPPSC issued an advertisement dated 11th January, 2016 inviting applications for recruitment to various posts carrying pay scale of Rs.9300-34800/- with Grade Pay of Rs.4200/- to Rs.15600-39100/- with Grade Pay of Rs.5400/-; (viii) that the petitioner being eligible to apply in pursuance to the aforesaid advertisement, sought permission of the respondents IAF to apply for the posts advertised by the respondent UPPSC and recruitment whereto was through Combined State Upper Subordinate Examination-2016; (ix) that the respondents IAF, on 1st February, 2016 granted such permission to the petitioner in accordance with AFO No.4/2012; (x) that the petitioner participated in the recruitment process and the respondents IAF also issued NOC dated 12th December, 2018 for the petitioner to appear at the interview stage of the said recruitment process; (xi) however the petitioner was not selected; (xii) that the respondents IAF thereafter issued AFO No.33/2017, in supersession of AFO No.14/2008 and AFO No.4/2012, qua the procedure for discharge; (xiii) that AFO No.33/2017 drastically changed the procedure for Airmen to seek better

career opportunities, by imposing additional conditions on the eligibility criteria for applying for a civil post under Central/State Government; (xiv) that under AFO No.33/2017, Airmen with minimum Skill Grade 'A' and 7 years of service, are entitled to Group A/I and Group B/II gazetted posts through Union Public Service Commission (UPSC) and State Public Service Commission only; (xv) that the imposition of additional conditions, particularly the condition of possessing Skill Grade 'A' along with minimum 7 years of service, in AFO No.33/2017, is arbitrary; (xvi) that on 6th July, 2018, respondent UPPSC issued an advertisement inviting applications for recruitment to various posts through Combined State/Upper Subordinate Services Examination carrying pay scale of Rs.9300-34800/- with Grade Pay of Rs.4600/- to pay scale of Rs.15600-39100/- with Grade Pay of Rs.5400/-; (xvii) that the petitioner, on 12th July, 2018 applied online for permission to apply for the aforesaid posts advertised by the respondent UPPSC; however since the petitioner did not possess Skill Grade 'A' and was having Skill Grade 'B', online application was not accepted, compelling the petitioner to, on 13th July, 2018, apply offline for permission to apply for the civil post of Assistant Professor pursuant to the aforesaid advertisement dated 6th July, 2018; (xviii) however the respondents IAF refused to accept the offline application also; (xix) that the petitioner, with a view of not losing this once-in-a-lifetime opportunity, applied for the post of Assistant Professor (*sic*) in the State of UP and appeared in the preliminary examination and after succeeding therein appeared in the main examination and cleared the same also; (xx) that in the interregnum, the petitioner, in an attempt to upgrade his skill level, even took a skill upgradation examination of the respondents IAF but scored 118 marks i.e. 2 marks short of the cut off

required for Skill Grade 'A'; (xxi) that the petitioner, in January to June, 2020, yet again took the skill upgradation examination of the respondents IAF and at the time of filing of the petition, result thereof was awaited; (xxii) that the petitioner, on being called for interview on 16th July, 2020 by the respondent UPPSC, intimated the respondents IAF of the same and yet again applied to the respondents IAF for sitting in the interview to be held by the respondent UPPSC; (xxiii) that the respondent UPPSC made the petitioner sign an undertaking stating that the petitioner will obtain and submit the NOC of the respondents IAF, within 30 days of the date of the interview; (xxiv) that the respondent UPPSC, in the result of the recruitment process announced on 11th September, 2020, declared the petitioner provisionally selected for the post of Assistant Labour Commissioner; (xxv) that the petitioner, on 15th September, 2020, yet again applied to the respondents IAF for issuance of a NOC / Discharge Certificate, so as to join the post for which the petitioner has been selected; (xxvi) that though the Section Commander of the respondents IAF recommended favourable consideration of the application but no response was received thereto; and, (xxvii) that the petitioner, so as to save the job for which he has been selected, has applied to the respondent UPPSC and the respondent State of UP for extension of time for submitting the NOC.

5. The petitioner, in the petition itself has relied on (a) order/judgment dated 21st October, 2009 of this Court in W.P.(C) No.9088/2008 titled ***CPL N.K. Jhakar Vs. Union of India***, holding that not applying through proper channel cannot be a ground for denying NOC/Discharge Certificate; (b) ***Charan Singh Bhanvariya Vs. Union of India*** 2010 SCC OnLine Del 2508 (DB), judgment dated 30th May, 2016 in W.P.(C) No.1465/2016 titled

Rajeev Ranjan Vs. Union of India, judgment dated 28th July, 2016 in W.P.(C) No.5145/2016 titled *CPL Ranjeet Kumar Vs. Union of India* (SLP(CC) No.22476/2016 preferred whereagainst was dismissed on 2nd December, 2016), *CPL Manoranjan Kumar Vs. Union of India* 2017 SCC OnLine Del 11865 (DB) and several others, wherein *N.K. Jhakar* was followed by this Court and mandamus issued to the IAF to issue NOC; (c) judgment dated 25th March, 2019 of this Court in W.P.(C) No.6300/2018 titled *Prakash Katiyar Vs. Union of India & Ors.*, where judgment dated 21st January, 2019 in W.P.(C) No.567/2019 titled *Sergeant Pradeep Kumar Rai Vs. Union of India* was distinguished by holding that the NOC had been denied to the petitioner therein because he had been selected for a Group 'B' and not a Group 'A' post; (d) *Subhash Chand Vs. Union of India* MANU/DE/0794/2020 (DB) where the condition in AFO No.33/2017 of having Skill Grade 'A' was held to be arbitrary, unreasonable and was struck down by a bench comprising one of us (Justice Rajiv Sahai Endlaw) and in SLP(C) No.8061/2020 preferred whereagainst, on 10th July, 2020 though notice had been issued but no interim stay granted; and, (e) other judgments of this bench where *Subhash Chand* supra was followed.

6. It is not deemed necessary to record herein the grounds urged by the petitioner in support of his claim in the petition, since the matter has been threshed out by one of us (Justice Rajiv Sahai Endlaw) in *Subhash Chand* supra and by us in other judgments following *Subhash Chand* supra.

7. The respondents IAF, in their counter affidavit have pleaded (i) that the jurisdiction of this Court to entertain the petition is barred by Section 14 of the Armed Forces Tribunal Act, 2007; (ii) that the petitioner, even

otherwise, has statutory remedy under Section 26 of the Air Force Act, 1950, for redressal of his grievance; (iii) that the petitioner was enrolled in the respondents IAF for an initial term of 20 years and had signed an undertaking to serve for 20 years and/or till discharge; (iv) that discharge of Airmen prior to completion of their regular engagement is bound to affect the manning level in the respective trades of the respondents IAF and has an adverse impact on the operational preparedness of the respondents IAF; (v) that considering the functionality of the respondents IAF, it requires well trained and experienced manpower and each Airman is trained for specific role and his continuance in the service is essential not only to make good the expenditure incurred on him by the nation on his training but also to man all the required posts at all levels, to achieve desired operational preparedness at all times; (vi) that Airmen are inducted in the respondents IAF with basic educational qualification criteria of 10+2/Intermediate or equivalent and are subjected to training spanning 1 to 2 years, before they are deployed independently on operational duties and the respondents IAF invests heavily on its workforce, to mould the Airmen to meet its operational needs; (vii) that administrative policies are framed from time to time for the purposes of carrying into effect the provisions of the Air Force Act; (viii) that in order to regulate pre-mature discharge of Airmen and at the same time balance some of their personal aspirations for better career progression in the civil life, Air Force Orders are issued from time to time; (ix) that earlier, vide AFO No.18/2001, Airmen were permitted to apply for civil posts under Central / State Government and equivalent jobs in PSUs, after completion of 15 years of service; vide AFO No.5/2003, it was decided to grant permission to Airmen for civil posts, even after completion of 7 years of service; (x) that

vide AFO No.4/2007, Airmen with 7 years of service were additionally permitted to apply for paramilitary forces; (xi) that vide AFO No.14/2008, Airmen with 7 years of service were permitted to apply for civil posts under Central / State Governments and equivalent posts in PSUs only; (xii) that pursuant to implementation of Sixth Pay Commission and induction of grade based pay structure, AFO No.14/2008 was superseded by AFO No.4/2012, whereunder Airmen with 7 years of service were entitled to apply for posts in Central / State Governments and equivalent posts in PSUs and Government of India Undertakings/Corporations; (xiii) that after implementation of the report of the Seventh Central Pay Commission which introduces pay matrix system and abolished grade system, AFO No.33/2017 was issued; (xiv) that Skill Grade criteria has not only been made eligibility criteria for applying in civil service but since 2015, has also been incorporated in Annual Report/Annual Confidential Report; the Skill Grade criteria was introduced, considering the casual approach of Airmen towards upgrading skill level; skill level of an Airman is a direct measure of his professional capability to undertake tasks in his area of deployment and Airman Promotion Examinations are conducted in this regard; that Airman of Skill Grade 'A' are considered for selection as Ultra Skilled in Trade and Development; (xv) it was observed that Airmen, though capable of clearing civil services exams conducted by UPSC / State Public Service Commission / PSUs / GATE, NTA (UGC) and other national level examinations, but were not upgrading their skill as Airmen, to achieve perfection in their trade work, where they have been trained intensively and had served—they were not taking any interest to upgrade their skill level and rather concentrating for civil job; the skill and perfection of airmen is required in handling highly

sophisticated and specialized equipment and aircraft system; (xvi) that the skill grade system was evolved to motivate personnel to upgrade their skill to achieve operational preparedness; (xvii) that the respondents IAF has changed its policy for grant of NOC for civil posts as per changing scenario and in line with the pay structure in Civil Government Sector; (xviii) that the intent in granting permission to the Airmen possessing Skill Grade 'A' to apply for the said civil posts, is to give incentive to the personnel who achieve high skill grade by involving themselves in hard work; such personnel are entitled to get benefit of career enhancement, rather than the personnel who only desire career enhancement without dedication towards service; (xix) that during 2015 to 2019, approximately 2706 trained Airmen left service, before initial term of engagement of 20 years and which resulted in shortage of trained manpower and for which reason AFO No.33/2017 was brought out; (xx) that the petitioner participated in the recruitment process of the respondent UPPSC, without permission/NOC of the respondents IAF; (xxi) that the application of the petitioner for issuance of NOC was examined in the light of AFO No.33/2017 and the petitioner was not found eligible for NOC in terms of AFO No.33/2017, because the petitioner had applied for the post, without seeking permission of the respondents IAF and without possessing Skill Grade 'A'; (xxii) that the Courts, even if not satisfied with the policy, ought not to make any modifications thereto and should leave it to the respondents IAF to take a call; the Court ought not to substitute its opinion for that of the respondents IAF; and, (xxiii) that the facts of *CPL Mukesh Singh Rajpoot* supra are different as in that case grant of NOC/Discharge Certificate was denied because of having not applied for civil post under UPSC or any State Public

Service Commission. Reliance is placed on *Amit Kumar Roy Vs. Union of India* (2019) 7 SCC 369.

8. The counsel for the petitioner argued that the case of the petitioner is squarely covered by *Subhash Chand* supra.

9. The counsel for the respondents IAF drew attention to paragraph 6 of AFO No.33/2017 laying down the condition of possession Skill Grade 'A' and paragraph 7, laying down that permission to apply for civil post is a requisite for grant of NOC and which permission is required to be in the format as per Annexure A to the AFO and argued that since the petitioner did not fulfill the conditions of the format for applying for permission to apply for civil post and was not eligible to apply and applied without permission, the petitioner cannot seek mandamus for issuance of NOC / Discharge Certificate. It was further argued that the petitioner never made / submitted any application offline and the claim to that effect is false. It was further argued that issuance of NOC / Discharge Certificate is not a matter of right. Attention is drawn to Clause 20 of AFO No.33/2017 providing that "permission to apply for civil post as well as grant of NOC are privileges and hence cannot be claimed as a matter of right".

10. The counsel for the petitioner, in rejoinder refuted that the petitioner did not submit any application; it was stated that the application was submitted to the Section Officer of the respondents IAF but who did not forward the same. Else, it was argued that the aspect of prior permission has already been considered in *Subhash Chand* supra. It was also informed that the petitioner, since then has upgraded his skill grade to Grade 'A'.

11. Though the factual position in this case is squarely covered by *Subhash Chand* supra but we opted to, hereinabove set out in detail the pleas of the respondents IAF, only to demonstrate that the denial of NOC / Discharge Certificate to the petitioner in the present case also is only on the grounds of, (a) the petitioner having participated in the recruitment process of the respondent UPPSC, without obtaining permission therefor; and, (b) the petitioner being not entitled to NOC / Discharge Certificate, for the reason of not possessing Skill Grade 'A'. We emphasize, that the respondents IAF, though has filed a detailed counter affidavit, has still not pleaded that the respondents IAF needs the petitioner or cannot let go of the petitioner and would have not granted the permission / NOC / Discharge Certificate to the petitioner, even if fulfilled the requirement, for the reason of being required / needed by the respondents IAF for the service of the country. Had that been so, then, under Clause 20 of AFO No.33/2017, it could have been said that the petitioner is not entitled to a mandamus directing the respondents IAF to discharge the petitioner or to grant NOC to the petitioner, inasmuch as, there is no right of the petitioner to demand so, notwithstanding that the petitioner fulfils all the conditions prescribed to apply for such permission. Clause 20 of AFO No.33/2017 also does not clearly provide so. Rather, from the language and tenor of AFO No.33/2017, it appears that any Airman who fulfils the prescribed eligibility for applying for permission/discharge, is entitled thereto as a matter of right. Though the counsels for the respondents IAF in this petition as well in several other petitions entailing similar controversy have been arguing that it is not possible for the respondents IAF to grant permission to all who apply therefor, even if fulfilling the eligibility conditions, at the cost of depleting

its own strength but till now we have not come across any case where the respondents IAF have denied permission in national interest or for the sake of its own operational preparedness. The denial even in this case is for the same reasons which did not find favour with this Court in ***Subhash Chand*** supra and other judgments, where the same was followed. Though we have again heard the counsels at length on the said aspect in ***CPL Mukesh Singh Rajpoot*** supra, arguments wherein were heard along with this petition, but we did not find any reason to change our view.

12. We may notice another interesting aspect. Though the respondents IAF has pleaded that the condition of possessing Skill Grade 'A' for seeking NOC / Discharge Certificate, after 7 years of service, was introduced as an incentive to Airmen to upgrade their skill and which is pleaded to be in the interest of operational preparedness of the respondents IAF, but surprisingly, there is no condition, that an Airman, after upgrading his skill grade to Level 'A', will serve the respondents IAF for any minimum period during which he will contribute with Skill Grade 'A' to the benefit of the respondents IAF. Thus, technically it follows that an Airman, the very next day or shortly after upgrading his skill grade to Grade 'A', would be entitled to be discharged from the respondents IAF, much before his initial term of engagement of 20 years. We could have understood that if the incentive given to upgrade to Skill Grade 'A' were to benefit the respondents IAF in any way. It is also not very clear that the said benefit of upgradation to Skill Level 'A' of the respondents IAF would be of any use in the civil employment, for joining which for career enhancement, the Airman is being discharged. We thus remain of the opinion, as taken in ***Subhash Chand***

supra regarding arbitrariness of the condition in AFO No.33/2017, of upgradation to Skill Grade 'A'.

13. As far as the other reason pleaded for opposing grant of NOC / Discharge Certificate, of the petitioner having participated in the recruitment process of the respondent UPPSC without prior permission of the respondents IAF is concerned, not only have we dealt therewith in ***Subhash Chand*** supra and the need to reiterate is not felt, but we may add that the respondents IAF cannot be permitted to impose the condition of Skill Grade 'A' which has been struck down in ***Subhash Chand*** supra by making it impossible for an Airman to apply for prior permission because of not having Skill Grade 'A' and then contend that the Airman is not entitled to NOC/discharge on the said ground.

14. Resultantly, the petitioner succeeds and the petition is allowed. Mandamus is issued to the respondents IAF to forthwith, within fifteen days, grant NOC/Discharge Certificate to the petitioner for joining employment as Assistant Labour Commissioner in the respondent No.5 Government of State of Uttar Pradesh pursuant to his selection in the recruitment process undertaken by the respondent No.4 UPPSC. Since during the pendency of this petition, the respondents No.4&5 UPPSC and Government of State of Uttar Pradesh were restrained from revoking / cancelling the offer of appointment made to the petitioner, on the ground of non-submission of NOC of the respondents IAF, it follows that the petitioner, on submission of such NOC/Discharge Certificate, would not be denied appointment by the respondents No.4&5 UPPSC and Government of State of Uttar Pradesh, for the reason of delay, in submission of NOC/Discharge Certificate.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JANUARY 12, 2021

‘bs’

