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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 11.08.2023

+ **W.P.(C) 8830/2023**

ABHISHEK MANOJ WARTHI

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant:

Mr. Raj Singh Phogat, Advocate

For the Respondents:

Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai and Mr. M. Sriram Krishnan V., Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns letter dated 31.01.2023 whereby the application of the petitioner for grant of No Objection Certificate for taking up an outside job has been declined.

2. Petitioner joined the Indian Coast Guard on the post of Navik on 12.02.2013. On 19.04.2016, petitioner successfully completed the probation period and was confirmed in the service. On 01.11.2022,



petitioner was promoted to the post of Pradhan Navik.

3. On 28.11.2022, Visvesvaraya National Institute of Technology, Nagpur advertised posts of Technical Assistants. Petitioner applied for the post through online mode and also requested the respondent for grant of a No Objection Certificate. Application of the petitioner was recommended by the Commanding Officer on 30.12.2022. However, said application was rejected by the impugned letter dated 31.01.2023. The impugned letter dated 31.01.2023 rejects the application on the ground that the same was not approved in terms of para 1(c) of Policy dated 03.08.2017.

4. Learned counsel for the petitioner submits that petitioner had joined the Indian Coast Guard, initially on probation, however, on completion of his probation he was confirmed in service on the rank of Uttam Navik and subsequently he was promoted to the rank of Pradhan Navik on 12.11.2022 and he submits that though he was put on probation in the rank of Pradhan Navik, however, petitioner is confirmed in service and no longer on probation as required by the Policy.

5. Learned counsel for the petitioner relies on the Office Memorandum dated 23.12.2013 on the subject “*consolidated instructions and forwarding of applications of Government servants for outside employment - regarding*”.



6. Per contra, learned counsel for the respondent submits that on earning promotion to a next rank, all individuals have to be on probation for a period of two years and since petitioner was on probation in the rank of Pradhan Navik the permission has been declined.

7. The guidelines for grant of NOC for job outside Coast Guard in the form of Policy dated 03.08.2017 read as under:

(a) *The post being applied for is in a State Government or the Central Government and is in a higher pay level, or*

EP has officially acquired requisite academic qualification whilst in service and is desirous of applying for Group 'A' Gazetted post through UPSC, or

Applicant is an EF and intending to enhance his job profile and social status, or

EP is superannuating or seeking VR after completion of 25 Years.

(b) *EP has completed four years of service in the Coast Guard.*

(c) *EP is not under probation or pending confirmation in the service.*

(d) *EP has not been issued NOC in the calendar year.*

(e) *EP has not availed more than five NOCs during entire service.*

(f) *EP has no disciplinary proceedings pending against him.*



- (g) *EP has no charge-sheet filed against him in a Court of Law for criminal prosecution.*
- (h) *EP is not undergoing any punishment at the time of application.*

8. Guidelines 1(c) stipulates the factors that have to be applied for considering an application for grant of NOC. One such condition is that the enrolled person should not be under probation or pending confirmation in the service.

9. In our view, the Guidelines 1(c) applies to the probation period prior to confirmation of enrolled person in service.

10. Expression 'probation' cannot be read disjoint from the expression 'pending confirmation in service'. Clause 1(c) when read as a whole indicates that the enrolled person should not be on probation or 'pending confirmation in the service'.

11. In the instant case, petitioner was initially on probation, however, was subsequently confirmed in service on completion of his probation. Mere fact that petitioner has been put in probation in the next rank of Pradhan Navik would not be embargo in terms of 1(c). As petitioner is confirmed in service, if the petitioner does not successfully complete his probation in the rank of Pradhan Navik, he would revert back to the rank of Uttam Navik and that also on a confirmed post.



12. In view of the above, we are of the view that the reason for declining the NOC is not sustainable.

13. Normally, the sequitur to holding that the reason to decline NOC is not sustainable would have meant that petitioner would be entitled to a discharge from service. However, reference may be had to Section 9 of the Coast Guard Act, 1978 read with Rules 27 and 27A of the Coast Guard (General) Rules, 1986 (hereinafter referred to as the Rules) which stipulated that no member of the Coast Guard is at liberty to resign his appointment during the term of his engagement and the relief is subject to exigency of service and the decision by the competent authority.

14. Section 9 reads as under:

Resignation or withdrawal from post. - No member of the Coast Guard shall be at liberty -

- (a) to resign his appointment during the term of his engagement or*
- (b) to withdraw himself from all or any of the duties of his appointment, except with the previous permission in writing of the prescribed authority.*

15. Rules 27 and 27A of the Coast Guard (General) Rules, 1986 read as under:

27. Procedure for discharge/release or retirement on own request –



- (1) *A member of the Coast Guard may, in exceptional cases, obtain his discharge, release or retirement from the service on extreme compassionate grounds, i.e. in cases where it is clear that undoubted material hardship will be caused to the member of the Coast Guard or his family members by his retention in the service.*
- (2) *The Central Government or the Additional Director General may, having regard to the circumstances of any case, permit discharge, release or retirement of an officer from the service before attaining the age of retirement. The question of discharge, release or retirement shall be a matter within the discretion of the Central Government or the Additional Director General as the case may be.*
- (3) *The Additional Director General in the Coast Guard Headquarters may discharge, release or retire a member of the Coast Guard other than an officer on compassionate grounds.*
- (4) *Application for discharge, release or retirement on compassionate grounds shall be forwarded by the Commanding Officer through the Regional Commander, to Coast Guard Headquarters for further necessary action.*

27 A. Resignation –

- (1) *No person subject to the Act shall have a right to resign his appointment or withdraw himself from the duties of his appointment. But in this regard, he may submit an application through proper channel to the Deputy Director General or the Director General at Coast Guard Headquarters or to the Central Government, as the case may be. He shall not be relieved of his duties until the Central Government or the authority*



empowered by the Central Government has accepted his resignation.

- (2) *A member of the Coast Guard before his application to resign being accepted by the prescribed authority may apply for withdrawal of his application. The Central Government or the authority empowered by Central Government may at its discretion, grant withdrawal of such application.*

16. Reference may also be had to the decision of the Supreme Court in *Union of India & Ors. Vs. R.P. Yadav* (2000)5 SCC 325 wherein the Supreme Court has held as under:-

“24. An incidental question that arises is whether the claim made by the respondents to be released from the force as of right is in keeping with the requirements of strict discipline of the naval service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon the security of the nation. It has to be borne in mind that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in the Regulations like Regulations 217 and 218 that persons who in the opinion of the



prescribed authority, are not found permanently fit for any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high-degree expertise and skill for which substantial amounts are spent from the exchequer.

25. *Therefore, it is in the fitness of things that the strength of the Naval Force to be maintained is to be determined after careful planning and study. In a situation of emergency the country may ill-afford losing trained sailors from the force. In such a situation if the sailors who have completed the period of initial engagement and have been granted re-engagement demand release from the force and the authorities have no discretion in the matter, then the efficiency and combat preparedness of the Naval Force may be adversely affected. Such a situation has to be avoided. The approach of the High Court that a sailor who has completed 15 years of service and thereby earned the right of pension can claim release as a matter of right and the authority concerned is bound to accept his request, does not commend itself to us. In our considered view, the High Court has erred in its approach to the case and the error has vitiated the judgment.”*

17. Reference may also be had to the judgment of the Supreme



Court in *Amit Kumar Roy Vs. Union of India & Ors. (2019) 7 SCC 369* wherein the Supreme Court has held that prior to grant of permission to leave the Force, the aspect such as tropicity of the trade and exigencies of service need to be verified and assessed before permission is granted and a person who is enrolled as a member of the Force does not have an unqualified right to depart from service at his or her will during the term of engagement. The interests of service are of paramount importance. A balance has been sought to be drawn between the interests of the service with situations involving requests by persons enrolled to take civilian employment.

18. Section 4 of the Coast Guard Act which stipulates that the Coast Guard is an Armed Force of the Union.

19. The order passed by the respondent on the representation rejecting the NOC is on a technical ground and does not refer to the provisions of Rule 27 & Rule 27A of the Rules and also does not deal with the aspect referred to by the Supreme Court in *R.P. Yadav (supra)* and *Amit Kumar Roy (supra)*.

20. In view of the above, we dispose of this petition with a direction to the respondents to once again decide the case of the petitioner in light of the provisions of Section 9 of the Coast Guard Act, 1978 and Rules 27 and Rule 27A of the Indian Coast Guard (General Rules) 1986 and the judgment in *R.P. Yadav (supra)* and



Amit Kumar Roy (supra).

21. Respondent shall also consider as to whether the Office Memorandum dated 23.12.2013 referred to by the petitioner is applicable to the case of the petitioner or not. In case applicable, the same shall also be taken into account.

22. Respondents should keep in mind the facts that petitioner has already secured an appointment and has to join on an early date and as such the decision be taken and communicated to the petitioner positively within four weeks.

23. It is, however, clarified that the decision be taken by the competent authority without being influenced by anything stated on merits in this order.

24. Order *dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 11, 2023
‘rs’

MANOJ JAIN, J