



Neutral Citation Number 2023:DHC:5683-DB

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

% Judgment delivered on: 09.08.2023

+ W.P.(C) 8874/2023 & CM APPL. 33531/2023

SANAPALA JANARDHANA RAO

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Himanshu Gautam & Mr. Lokesh Sharma Advocates

For the Respondents: Mr. Vikrant N. Goyal, Ms. Prerna Dhall, Ms. Tania Sharma & Mr. Mritunjay Mishra, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns orders dated 06.10.2022 and 16.06.2023 whereby the *No Objection Certificate* sought for by the petitioner for job outside the Indian Coast Guard was declined and the representation of the petitioner was dismissed, respectively.
2. Petitioner had joined the Indian Coast Guard as a *Navik* on 08.02.2018.
3. The Ministry of Railways issued advertisement for filling up certain posts for which petitioner applied. Petitioner appeared in the qualifying examinations and qualified the same for the Railways.



Neutral Citation Number 2023:DHC:5683-DB

4. As per the guidelines for grant of NOC for outside job of Indian Coast Guard dated 03.08.2017, any individual applying for a job had to apply for grant of *No Objection Certificate* prior to making the application. One of the conditions stipulated is that he should have completed four years of service in the Indian Coast Guard.
5. As per petitioner, when the advertisement was issued by the Railways, petitioner had not yet completed four years in service and as such he did not seek prior permission for applying for the said job as the same would not have been granted in absence of petitioner having completed four years.
6. Learned counsel for petitioner submits that in case petitioner would secure outside job, there would be substantial career progression as he has already been selected for the post of Commercial-cum-Ticket Clerk in Level-III in the South-Central Railways. He submits that even his age of retirement would increase.
7. Petitioner had earlier approached this Court in WP (C) No. 7131/2023 impugning the order dated 06.10.2022. Said petition was disposed of on 23.05.2023 directing the respondents to treat the petition as representation and decide the same within four weeks.
8. Said representation has been disposed of vide order dated 16.06.2023 declining the same which has also been impugned in this petition.
9. Learned counsel for petitioner relies on decision of Co-ordinate Bench of this Court in *Corporal Sandeep Kumar Shukla Vs. Union of India 2012(193) DLT 144* wherein the Co-ordinate Bench was considering a similar



Neutral Citation Number 2023:DHC:5683-DB

rule in respect of Airman in the Indian Air Force. Relief was granted to the petitioner therein considering that petitioner therein came from a humble socio-economic background and taking an outside job would be beneficial for his career progression.

10. In the present case, representation has been rejected citing two grounds i.e. he has not completed four years of service while applying for the job and that he had appeared in the examination without seeking prior approval.

11. We may notice that as on date petitioner has already put in five years of service. With regards to the seeking of prior approval, case of the petitioner is covered by the decision of the Co-ordinate Bench in *Corporal Sandeep Kumar Shukla (supra)*. Securing an outside job would be certainly beneficial for his career progression and his service tenure would also be extended.

12. Per contra, learned counsel for respondents relies on Rule 27 & Rule 27A of the Coast Guard (General Rules) 1986(hereinafter referred to as the Rules) to contend that no member of the Coast Guard has a right to resign of his own and the relief is subject to exigency of services and decision by the competent authority.

13. Rules 27 and 27A of the Rules 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.



Neutral Citation Number 2023:DHC:5683-DB

(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 Deputy 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 on 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.*

27A. 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.”*

14. 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*



Neutral Citation Number 2023:DHC:5683-DB

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*



Neutral Citation Number 2023:DHC:5683-DB

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.”

15. We may notice that the representation of the petitioner has been rejected only on two grounds i.e. non-completion of four years of service and not taking prior approval which grounds, in our view, do not survive in the facts and circumstances of the present case. Firstly, because Petitioner has now already put in five years of service and secondly in view of the ratio of the Judgment of the Co-ordinate Bench in *Corporal Sandeep Kumar Shukla (supra)*.

16. The order on representation, however, does not cater 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)*.

17. In that view, 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 Rule 27 & Rule 27A of the Indian Coast Guard (General Rules) 1986 and the judgment in *R.P. Yadav (supra)*.

18. Respondents should keep in mind the fact 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.



Neutral Citation Number 2023:DHC:5683-DB

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

20. Keeping in mind the facts and circumstances of the case, we request the concerned Railways i.e. Respondent No. 5 to take a sympathetic view in the matter qua the Petitioner.

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

SANJEEV SACHDEVA, J

MANOJ JAIN, J

AUGUST 9, 2023/dr

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