



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

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Judgment reserved on: 18.12.2023

Judgment delivered on: 06.03.2024

+ W.P.(C) 5061/2023

TELASULA ANIL KUMAR

..... Petitioner

versus

UNION OF INDIA AND ORS.

.... Respondents

Advocates who appeared in this case:

For the petitioner: Mr. Himanshu Gautam, Advocate

For the Respondents: Mr. Ranvir Singh, CGSPC for Respondents No.
1 to 4 & 6

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner seeks quashing and setting aside of orders dated 26.12.2023 and 13.03.2023 whereby he has been denied 'No Objection Certificate' (NOC) for seeking job outside Coast Guard.

2. As per the averments made in the Writ Petition, petitioner joined Indian Coast Guard as Yantrik on 20.08.2014. He was put on probation for a period of two years. In the year 2016, he was confirmed as Yantrik. Thereafter, petitioner got promoted to the rank 'Sahayak Engineer' on 01.01.2022.



3. Respondent No. 5 i.e. M/s Garden Reach Shipbuilders and Engineers Ltd. (GRSE), a Government of India Undertaking functional under the Ministry of Defence, notified vacancies for various disciplines, including for the post of Supervisor (S-4 Grade).

4. The above advertisement was hosted by Coast Guard on its website i.e. BUVIK so as to facilitate serving and ex-employees to apply for the same. Intra Office Correspondence dated 17.11.2022 also indicated that 'No Objection Certificate' would be processed subsequently.

5. In response thereto, petitioner applied for the post of Supervisor through proper channel. He forwarded his request to GRSE Ltd. through his Commanding Officer who recommended such application. He thus applied for said post only after receiving due prior permission from the Coast Guard as is evident from letters dated 30.11.2022 and 01.12.2022.

6. Petitioner appeared in the written examination and cleared the same.

7. He was then directed to appear in the Trade Test/Interview on 07.02.2023. His Commanding Officer, again, permitted him to appear in the interview. However, to his utter shock, he received an e-mail on 30.01.2023 from respondents informing that his request for NOC had not been approved as he was not a confirmed employee. Along with such email, he was served with first impugned order dated 26.12.2022. NOC



was declined relying upon Para-1(c) of Coast Guard Policy dated 03.08.2017.

8. Petitioner, feeling aggrieved, made a representation which was rejected by respondents on 13.03.2023 (second impugned order) reiterating that he was not a confirmed employee.

9. Petitioner eventually got provisional appointment letter from Respondent No. 5 whereby he was directed to report for joining on or before 15.03.2023 with further direction to submit his credentials along with NOC.

10. The grievance of petitioner is that since he was already a confirmed employee of India Coast Guard and participated in the recruitment process with due permission, there was no reason for denial of NOC to him.

11. It is in the aforesaid premise that he has challenged the impugned orders.

12. According to the petitioner, he had participated in the recruitment process with due permission and through proper channel at every stage and in such a situation, subsequent refusal of grant of NOC is absolutely arbitrary and illegal. According to him, respondents are also unjustified in placing reliance upon Para-1(c) of the Policy as he is already a confirmed employee. He contends that he had joined as Yantrik in the



year 2014 and completed his probation and was confirmed way back in the year 2016. Mere fact that he was on probation on a promotional post would not mean anything significant in the present context. It is contended that there was no other reason for denial of 'No Objection Certificate'. It is thus prayed that respondents be directed to issue 'No Objection Certificate' in a time-bound manner so as to enable him to join M/s GRSE.

13. All such contentions have been resisted by Respondent Nos. 1 to 4 and 6.

14. It is contended by them that the question of grant of NOC is within the discretion of the competent authority under Rule 27(2) of Coast Guard (General) Rules 1986 and no one has absolute right or discretion to leave the Coast Guard as per his own whims and fancies and, therefore, petitioner is not entitled to any relief. It is also claimed that at the relevant time, petitioner was though promoted to the rank of 'Sahayak Engineer (Radio)' but he continued to be on probation on such promotional post at the relevant time and, therefore, NOC was rightly refused as NOC could not have been given to any employee who was under probation or whose confirmation was pending. During the course of arguments, it was also, additionally, contended that petitioner was currently at the Pay Level-VI whereas he had applied for a job of lower pay level i.e. Pay Level-IV and as per their policy, post applied for should be in higher pay level for the purpose of grant of NOC and since



the petitioner had applied for a post, which was in lower pay level than the current pay level, therefore, he was, even otherwise, not entitled to NOC. It is also argued that petitioner had undergone promotion-linked professional enhancement course and in such a situation, he cannot complain of any hardship. It is also contended that mere promulgation of any advertisement through Intra Office Correspondence and publication on BUVIK website cannot be construed as permission from the competent authority and, thus, it is prayed that Writ Petition may be dismissed.

15. Respondent No. 5 i.e. M/s GRSE Ltd. has also filed counter affidavit. It is, *inter alia*, stated therein that there is urgent requirement of supervisor in GRSE Ltd. and the delay was causing hardship to them.

16. We may note that when this Writ Petition was taken up for consideration for the first time on 21.04.2023, this Court had directed Respondent No. 5 to keep one post of supervisor (S-4 Grade) and such interim order continues to be in operation.

17. We have gone through the material placed before us and given our thoughtful consideration to the rival contentions.

18. There is no dispute with respect to the following facts: -

- i. *Petitioner was appointed as Yantrik in Indian Coast Guard on 20.08.2014.*



- ii. *He completed his probation period and confirmed as Yantrik in the year 2016.*
- iii. *He got promoted to the rank of Sahayak Engineer (Radio) on 01.01.2022.*
- iv. *An advertisement issued by M/s Garden Reach Shipbuilders and Engineers Ltd. was circulated by Indian Coast Guard for its employees and ex-employees through Intra Office Correspondence and also by way of publication of same on its website i.e. BUVIK website.*
- v. *Petitioner applied for the said post through proper channel.*
- vi. *His application was forwarded with strong recommendation by his Commanding Officer. He participated in recruitment process with due permission.*
- vii. *Petitioner qualified the examination and has got appointment letter.*

19. We may now see the relevant policy of Indian Coast Guard. The guidelines contained in Policy dated 03.08.2017 which read as under: -

"1. With immediate effect, the following guidelines are to be adopted for consideration of application for grant of NOC for job outside the Service.

*(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 NOIC 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

2. *However, EP undergoing any basic/professional training may be permitted to resign on own request after reimbursement of mandatory training charges*

3 *Regardless, NOC will be issued only after due consideration of service exigencies like cadre position, promotional prospects of the EP for the next five years and impending induction of new assets*

4 *Disseminated for compliance*

20. 'No Objection Certificate' has been declined in terms of Para-1 (c) of the aforesaid Policy which is obvious from the impugned order dated 26.12.2022. There is no other reason for which petitioner might have been held disentitled for grant of NOC.

21. A similar question had cropped up before this Court in *Abhishek Manoj Warthi Vs. Union of India & Ors. 2023 SCC OnLine Del 5143* and vide judgment dated 11.08.2023, we had observed that such reason for declining NOC was not sustainable. Para 8 to 12 of said judgment read as under: -

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.

22. Thus, evidently, respondents were not justified in declining 'No Objection Certificate' on the ground that petitioner was not confirmed or that he was still under probation. Needless to reiterate, he was already a confirmed employee and was simply on probation on a promotional post which does not disentitle him to have the requisite NOC.

23. Though, there is no other reason assigned for rejection of NOC, we have taken note of additional contentions raised by the respondents during the course of arguments.

24. Fact remains that if at all, the respondents were of the view that petitioner was not eligible to apply for a post outside the Coast Guard on



a lower pay scale, it should not have, in the first place, permitted him to participate in the recruitment process. Not only, the advertisement in question was circulated amongst all employees, the application was strongly recommended to be forwarded at each and every stage and in such a peculiar backdrop, respondents cannot now be permitted to take a somersault and agitate that he was not eligible for applying for a post which was carrying lower pay scale.

25. The contention raised by the respondents regarding proceeding to a post carrying lower pay scale does not, even otherwise, hold any water as it has not been made clear as to how this would be prejudicial and detriment to the interest of the respondents. Moreover, as per Fundamental Rule 15 (a), a government servant can even be transferred on his own request to a post carrying less pay than the pay of the post on which he was holding a lien and, therefore, there cannot be any kind of absolute prohibition or embargo in this regard. As already noticed above, even otherwise this was never a ground when the NOC was rejected.

26. We are mindful of the fact that no enrolled member of such Service has any unqualified right to seek discharge as the interest of such Services are paramount. However, respondents have come up with guidelines for grant of NOC and in the case in hand, NOC has been denied on the erroneous assumption that petitioner was under probation. If the respondents were of the view that petitioner was not entitled to



NOC on account of service requirement or exigency of service, it could have easily mentioned such fact while declining NOC. To make things worse for themselves, they kept on giving him permission to participate in recruitment process despite fully aware about the post for which he had applied and has sought NOC. They cannot take the things for granted and turnaround in a whimsical manner.

27. Viewed thus, we have no hesitation in holding that impugned orders are not sustainable.

28. We accordingly allow the Writ Petition and direct the concerned respondents to immediately issue 'No Objection Certificate' to the petitioner so as enable him to join as supervisor with Respondent No. 5 i.e. M/s Garden Reach Shipbuilders and Engineers Ltd.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

MARCH 06, 2024

dr