



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

% *Date of decision: February 20, 2024*

+ W.P.(C) 7502/2023, C.M.APPLs. 29106/2023, 54125/2023 & 10230/2024

(30) SGT MURALIDHAR PAKAL AF FIT Petitioner
Through: Dr. Abhay Kant Upadhyay, Mr.
Madan Pal Vats and Ms. Ankita
Sharma, Advocates

versus

UNION OF INDIA AND OTHERS Respondents
Through: Ms. Garima Sachdeva, SPC with Ms.
Vidhi Gupta, GP

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J. (ORAL)

1. The facts before this Court are that the petitioner, after enrolling in the Indian Air Force¹ as an Airman on 27.12.2005 for a period of 20 years, had applied for a post in the Government of Orissa through the Odisha Civil Services Examination, 2020 advertised on 31.12.2020 through the IAF website on 16.01.2021.

2. Interestingly, the petitioner, despite facing rejection thereto on the ground that he did not possess the Skill Grade 'A' as required under the prescribed rules, first appeared in the preliminary examination on 27.08.2021

¹Hereinafter referred to as 'IAF'



and then in the written examination between 20.01.2022 and 02.02.2022 as well, albeit, without seeking permission as required under AFO 33/2017. In fact, after clearing, he appeared for the interview on 24.09.2022 and got selected for a Gazette post in Group B service of the Odisha Government on 07.10.2022.

3. It was under the aforesaid circumstances that the petitioner approached the competent authority for grant of a No Objection Certificate² and Discharge Order for discharge from service to join the appointed post vide two separate applications, which were rejected by the Air Force Record Office³ vide order dated 16.12.2022.

4. Aggrieved thereby, the petitioner filed O.A. No.216/2023 seeking quashing of order dated 16.12.2022 as also for directing the respondents to issue NOC and Discharge Order.

5. The learned Armed Forces Tribunal⁴, vide order dated 25.01.2023, initially directed the respondents to issue a provisional NOC to the petitioner for joining the civil service in view of the order dated 23.03.2022 passed by the AFT in O.A. 2670/2021 titled *Cpl Ayush Maurya v. Union of India and Ors.* which held that the rejection of an application on account of lack of Skill Grade 'A' was improper, and also directed the petitioner to apply to the respondents for discharge, whereafter, his application was dismissed by the Group Captain Personnel Airmen vide order dated 07.03.2023.

²Hereinafter referred to as 'NOC'

³Hereinafter referred to as 'AFRO'

⁴Hereinafter referred to as 'AFT'



6. Thereafter, the learned AFT dismissed O.A. 216/2023 vide its impugned order dated 19.04.2023 holding, *inter-alia*, as under:-

- a. The provision of seeking prior permission under AFO 33/2017 is an important ingredient and is a mandatory requirement for seeking discharge for joining a civil post.
- b. Even if the request of the petitioner to apply online and to participate in the selection process was rejected on account of the website not being updated in the view of the condition of possessing Skill Grade 'A' being struck off, which cannot be attributed to the petitioner, the mandate of AFO 33/2017 warranting intimation and seeking NOC after declaration of result of written test and on receipt of interview call letter is a mandatory provision, which was not complied with by the petitioner.
- c. There is no reason or justification given by the petitioner for the non compliance and violation of the mandatory provisions under Clause 11 and 12 of AFO 33/2017.
- d. Relying upon the judgement passed by this Court in ***CPL Manoranjan Kumar v. Union of India***, 2017 SCC OnLine Del 11865 holding that a member of the IAF must apply and comply with the rules, more so as they are part of a disciplined force, the failure of the petitioner to do so warrants rejection of his petition.

7. Faced with the above, the petitioner has filed the present petition seeking quashing and setting aside of the impugned orders dated 19.04.2023,



07.03.2023 and 16.12.2022 rejecting the grant of NOC and Discharge Order; as also directing the respondents to issue a NOC and Discharge Order to him to enable him to join the civil service; and further to direct the respondents nos. 7 and 8 i.e., The Additional Chief Secretary, Revenue and Disaster Management Department, Government of Odisha and The Chief Secretary, GA & PG (General Administration and Public Grievances) Department, Government of Odisha respectively to keep the post of Assistant Collector/ Additional Tehsildar/ Sub-Registrar/ CEO of Municipal Corporation) of the Cadre Odisha Revenue Service vacant during the pendency of the present petition.

8. Learned counsel for the petitioner submits that the impugned orders are liable to be set aside as both the Authorities of the IAF and the AFT failed to consider that once the online application of the petitioner was rejected, the provisions of AFO ceased to apply and there was no requirement for the petitioner to comply with the same. In fact, relying upon a decision of a Co-ordinate bench of this Court in **CPL N.K. Jakhar v. Union of India** 2009 SCC OnLine Del 3317, he submits that, in any event, the provisions of AFO 33/2017 were procedural in nature and hence should be considered as being directory and not mandatory.

9. Learned counsel further, relying upon **Subhash Chand v. Union of India and Ors.** [Order dated 11.03.2020 in W.P.(C) 634/2020], **Sonu v. Union of India and Ors.** [Order dated 05.08.2020 in W.P.(C) 3311/2020] and **Krishna Kant Yadav v. Union of India and Ors.** [Order dated 12.01.2021 in W.P.(C) 8002/2020], submits that despite the requirement of having Skill



Grade 'A' under Clause 6 of AFO 33/2017 being struck down, the online application was rejected for the reason that the petitioner did not possess Skill Grade 'A'. As such, he submits that it was the failure of the respondents to upgrade their website that led to the online application being rejected and the petitioner cannot be faulted therefor.

10. Learned counsel for the petitioner lastly submits that once the petitioner was granted provisional NOC in compliance of the directions of the AFT by the AFRO, it was arbitrary and illegal to thereafter reject grant of NOC and Discharge Order only for the reason that the petitioner had not sought prior permission at the requisite stage.

11. In counter thereto, learned SPC opposing the present petition, submits that the learned AFT had rightly dismissed the O.A. filed by the petitioner as he had failed to comply with the provisions and conditions enumerated in AFO 33/2017 which are mandatory in nature. She, in fact, submits that the present petition is an attempt to seek NOC and Discharge, by somehow circumventing the procedure established for the same, which, in any event, is impermissible in law.

12. Learned SPC further submits that the opportunity granted to the members of IAF to seek civil employment cannot be sought as a matter of right, as it is a matter of privilege, and that too, subject to relevant policies. She, thus, submits that at the relevant time AFO 33/2017 was in vogue and it was incumbent upon the petitioner to follow the proper channel and seek NOC at the appropriate stage. She also submits that even if the online application of the petitioner was not accepted, in terms of Clause 11 of AFO



33/2017, he was required to submit documents alongwith an appropriate application, which he failed to do.

13. Learned SPC also submits that though the petitioner could have applied for NOC anytime later, however, he made no efforts to even intimate the competent authorities and instead only chose to seek NOC and Discharge Order, after the result of the interview was declared, which is in complete violation of Clause 12 of AFO 33/2017.

14. Learned SPC then submits that though the condition of possessing Skill Grade 'A' has been set aside, however, the remaining provisions of AFO 33/2017 including the aspect of seeking prior permission at the appropriate stage has been upheld and hence the judgments relied upon by the petitioner have no significance as none of the judgments deal with the non-compliance of Clause 12 of AFO 33/2017.

15. This Court has heard the learned counsel for the parties and has perused the documents on record and has also gone through the judgments cited.

16. As per the documents on record, despite the fact that the Airmen in the IAF are enrolled for an initial term of regular engagement for 20 years, AFO 33/2017 has been formulated to grant privilege to such Airmen/NCs(E) to seek permission to apply for civil posts and issuance of NOC thereof before the completion of the term of 20 years. In fact, the said AFO 33/2017 specifically lays the eligibility criteria and procedure for the same. Since AFO 33/2017 is in issue in the present petition, the procedure as prescribed therein is enumerated as follows:-



“Actions by Airmen/NCs(E)

11 . Airmen/NCs(E) desirous of applying for civil posts shall submit following documents to AOC/StnCdr/CO through Orderly Room:-

- (a) Application seeking permission to apply for civil post.*
- (b) Undertaking as per Appendices C and D to this AFO.*
- (c) Undertaking as per Para 9(c)*
- (d) Advertisement in original or self attested photo copy (Hindi/English) having date/period of publication. Advertisement downloaded from Website should be in English/Hindi and to be self attested*
- (e) Advertisements in other languages are also to be submitted in original or self attested with a translated copy in English or Hindi highlighting relevant points of the advertisement namely post applied for, pay scale offered, address of the employer etc.*

12 . Application for grant of NOC for civil posts is to be submitted by the individual through proper channel after receiving call letter for appearing in the interview/verification of documents or after the result of written test where selection is based on success in written test only.”

17. As per above and even otherwise, the phraseology used in the said AFO 33/2017 is amply clear and unambiguous for this Court to infer that the aforesaid conditions stipulated therein are mandatory and not directory. The said AFO 33/2017 is thus a sacrosanct document carrying sufficient weightage and which requires to be given sanctity by all the Airmen including the petitioner herein, as also the respondents, equally. As the mandatory conditions stipulated therein are binding upon all the Airmen of the IAF like the petitioner herein and have thus to be compulsorily complied with at the time of seeking NOC to apply and join civil posts before the completion of 20 years of regular engagement, it was incumbent upon the petitioner to comply with the mandatory requirements therein.



18. It was despite thereto that, *admittedly*, as already considered and concluded by the IAF authorities as also the AFT, the petitioner has failed to comply with the said prescribed mandatory procedures without any reasonable explanation for the same.

19. This Court further finds that the petitioner herein has neither challenged the process adopted by the respondents nor the procedure prescribed by them in AFO 33/2017. As such, the conditions enumerated in AFO 33/2017 remain unchanged as also unchallenged. In view thereof, the petitioner is estopped from availing any benefit of his own non-compliance of the said mandatory requirements of AFO 33/2017.

20. In any event, it is not the case of the petitioner that the act of the respondents is vitiated or that it is *mala fide* or that it suffers from any bias or that it suffers from some arbitrariness or that it is unreasonable or that it was unfair. Thus, there is hardly any scope of interference by this Court at this stage in the present petition. More so, when the petitioner himself was in default of having not done so. It is also an admitted position that the petitioner had never made any efforts to either intimate the respondents or sought any (subsequent) permission from the competent authority or given any intimation to them qua the (subsequent) developments after the rejection of his online application on 16.01.2021.

21. Even otherwise, the judgments relied upon by the petitioner cannot come to his aid as those judgments only deal with the removal of the requirement of the condition of possessing Skill Grade 'A' whereas none of them have considered the mandatory requirement of complying with Clauses



11 and 12 of AFO 33/2017. On the contrary, this Court in *Nakhat Singh v. Union of India & Ors.* 2024 SCC OnLine Del 439 as also in *CPL Manoranjan Kumar (supra)* has held that non-compliance of the mandatory provisions of AFO 33/2017 warrants rejection of grant of NOC and Discharge Order to the applicant.

22. In view of the aforesaid, this Court finds no reason for interfering with the impugned orders dated 19.04.2023, 07.03.2023 and 16.12.2022 rejecting grant of NOC and discharge to the petitioner. Furthermore, agreeing with the findings of the learned AFT, this Court finds that there is no infirmity therein, as such the said order is also upheld.

23. It is in view of the aforesaid prevailing facts that this Court has no hesitation in denying the reliefs prayed for by the petitioner in the present petition.

24. Lastly, before parting, this Court while going through the records, finds that respondent no.7 herein has since issued an order dated 04.09.2023 stating as under:-

“RDM-CON-PM-0005-2023-31872/R& DM, The appointment of Sri Muralidhar Pakal to Odisha Revenue Service, Group-B vide Revenue & DM Department Notification No. 294/R&DM dated 03.01.2023 is automatically lapsed w.e.f. 03.07.2023 since he did not join in ORS Group-B cadre as TRO, Keonjhar within the extended time period granted upto 02.07.2023 as per the G.A. & P.G. Department O.M. No. 26540/Gen dated 20.09.2019.”



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25. It is thus clearly apparent that the prayers seeking directions in the present petition by the petitioner to the respondent nos.7 and 8 to keep a post vacant for the petitioner has, in any event, become infructuous.

26. Accordingly, the present petition, along with the pending applications, being devoid of merit, is dismissed, with no order as to costs.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

FEBRUARY 20, 2024/akr