

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 288 of 2010

IN THE MATTER OF:

Sgt. Ram Gopal**Applicant**
Through Maj (Retd) S.S Pandey, counsel for the applicant.

Versus

Union of India and Others**Respondents**
Through: Ms Jagriti Singh, proxy for Mr A.K Bhardwaj counsel for the respondents.

CORAM:

HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT GEN Z.U. SHAH, ADMINISTRATIVE MEMBER

JUDGMENT

Date: 29/09/2010

1. The applicant has submitted O.A No 288/10 in the Armed Forces Tribunal praying for immediate discharge from the Indian Air Force to enable him to assume charge as teacher with Directorate of Haryana Secondary Education.
2. The applicant was enrolled as an Airman on 22/07/1993 as Air Craft Hand (General Duties)/ACH (GD) and subsequently rose to the rank of Sgt.

3. Pursuant to an advertisement on 20/07/2006 the applicant applied for the appointment as teacher under the Directorate of Haryana Secondary Education vide application dated 26/07/2006, after obtaining permission from Air Force authorities in terms of Air Force order (AFO) 05 of 2003 prevailing at relevant time. In fact the applicant avers that his application was forwarded by 23 Wing Air Force to Secretary Haryana Secondary Education on 10/08/2006.

4. The applicant states that he received a delayed call for interview on 17/06/2009 for interview on 19/06/2009 and did not have time to obtain No Objection Certificate (NOC) before he proceeded for interview. He was informally told that as per new AFO 14/2008 he was required to obtain NOC only after he sought discharge and was advised by the NCO in charge Orderly Room to proceed for an interview.

5. It is contended that in the last week of Jan 2010 the applicant learnt that he has been selected for the post of teacher (Annexure A-5) and applied for NOC on 01/02/2010 (Annexure R-6) as per AFO 14/2008 (Annexure A-8) which duly forwarded by competent authority on 08/02/2010 (Annexure A-1).

6. The applicant states that on 01/04/2010 he received the letter of appointment from the Directorate of Haryana Secondary Education and applied for discharge. He avers that no intimation was given to him on

his application. He has learned informally that his request would not be acceded to, as the respondents would be taking a stand that his trade, ACH (GD) had now come under a critical category as per AFO 14 of 2008. The applicant states that no such criticality existed in his trade when he applied for the civil job in 2006 after obtaining due permission from the IAF authorities.

7. The applicant contends that at present he has served the IAF for more than 17 years and as per rules and policy no NOC is required after completing 18 years. The applicant states that he has 3-4 years of service left and he is getting a civil appointment with better pay and opportunities near his native place. He has requested for immediate discharge so that he can join his civil appointment within the time stipulated.

8. The respondents in their counter affidavit have stated the applicant was enrolled on 22/07/1993 in the trade of ACH (GD) and signed for an initial engagement of service for 20 years.

9. The application of the applicant was recommended and forwarded to the Secretary Haryana Secondary Education on 10/08/2006 by his unit, 23 Wing/Air Force.

10. The respondents maintain that the applicant received the letter to appear for interview on 19/06/2009. He did not intimate the Air Force authorities about receipt of letter for interview nor did he apply for NOC before proceeding for the same.

11. The applicant came to know on 01/02/2010 that he has been selected a job as teacher. It was only then he applied for NOC on the same date i.e 01/02/2010 (Annexure R-6). The NOC was denied to him due to exigencies of service and also because NOC should have been applied for before proceeding on interview even as per new AFO 14 of 2008.

12. The applicant applied for discharge from service on 01/04/2010 and the same was rejected on the ground that NOC had not been obtained. The respondents further contends that Para 2 of AFO 14 of 2008 stipulates that forwarding of application should not be construed as grant of NOC, which is to be obtained prior to appearing for interview vide all orders on the subject i.e Para 5 of AFO 05 of 2003/ Para 8 of AFO 04 of 2007 (Annexure R-4) and AFO 14 of 2008 (Annexure A-8).

13. The respondents maintain that no advice was ever rendered to the applicant that NOC could be applied for after appearing for the interview and before discharge. The respondents maintain that the applicant

never informed IAF authorities that he would be appearing for the interview, whilst he was on leave.

14. The applicant applied for discharge on 01/04/2010. The same was rejected by Air Headquarters on the grounds that prior NOC had not been obtained and conveyed vide HQ Western Air Command letter of 23/04/2010 (Annexure -8).

15. The respondents maintain that the applicant applied for NOC after he had appeared for interview on 02/02/2010 and the same was forwarded by unit to HQ Western Air Command on 08/02/2010 and subsequently Air HQ on 10/02/2010. The request for NOC was rejected and since the applicant was on leave from 24/04/2010 to 10/05/2010 it was conveyed telephonically to him that NOC cannot be granted on the ground of exigencies of service. The same was also conveyed to the applicant on his return from leave.

16. The Air HQ decision was conveyed by HQ Western Air Command letter dated 23/04/2010 (Annexure R-10).

17. The respondents concede that the applicant was given permission, in 2006, to apply for the post of teacher under earlier policy of AFO 05 of 2003. In any case the applicant has not completed 20 years of initial engagement, as per undertaking signed by him at the time

of enrolment. The respondents recommend the application be rejected and had cited the following judgements:-

(a) Sachin Kumar Pravin Vs Union of India (2008 (4) AD Delhi 313).

(b) Corporal Anup Naskar Vs Union of India & Ors (O.A. 03/2010, AFT, Kolkata Bench).

(c) Corporal Jayabrata Ghatak vs Union of India & Ors T.A No 03/2010, AFT, Kolkata Bench.

18. In a rejoinder affidavit the applicant states that the grounds for rejection of NOC due to exigencies of service are incorrect. The applicant avers that the IAF had issued a large No of NOCs to similarly situated individuals. The applicant maintains that he applied for civil posts on 10/08/2006 when AFO 05 of 2003 was applicable. This states that **“request for NOC is to be made when an Airman fulfils all eligibility conditions”**. The applicant maintains that there was no ban on “service exigencies” under AFO 05 of 2003. He further contends that the said policy of 2003 has superseded by policy of 2007 and 2008 and under last policy of 2008 he is required to obtain NOC before discharge. In support of his contentions the applicant refers to Para 7 of AFO 14 of 2008 which reads **“However, in all cases NOC is to be obtained by the individual invariably before submitting application for discharge on being selected for civil posts”** and as per policy he has

applied for NOC before discharge. That should have been granted to him.

19. The applicant avers that he is a Sgt and the strength of Sgt in the IAF is over and above the authorised strength. Since Sgts are surplus, no service exigencies exist with regards to Sgts. The applicant also avers that his trade is the least trained in the IAF and there have been no recruitments in the same trade for the last six years. In support of his contentions the applicant has quoted the contents of Para 1 of AFO 05 of 2003 which reads **“Airmen/NC(E) who have completed 07 years of their engagement including training period will be permitted to apply for civil posts under Central/State Governments and Public Sector Undertakings”**.

20. The applicant has cited the observation of Hon'ble Delhi High Court in judgement dated 16/12/2008 given in WPC No 8760 of 2008 Pardeep Vs Union of India which states that **“The respondents themselves forwarded the application of the Applicant and the allegation as to shortage of manpower is clearly a motivated subsequent thought process to somehow prevent the Applicant for seeking an exit ”**.

21. The applicant states that the respondents are maintaining a “placement cells” to facilitate reemployment of servicemen but they are

denying him an opportunity to avail for a better job with greater avenues. In support of his contentions, the applicant also cited the following judgements:-

(a) Pradeep Kumar Vs Union of India & Ors WP(C) No 8760/2008 of Hon'ble Delhi High Court.

(b) Cpl N.K Jakhar Vs Union of India & Ors WP(C) No 9088/2008 of Hon'ble Delhi High Court.

(c) Charan Singh Bhanvariya Vs Union of India & Ors WP(C) No 3257/2010 of Hon'ble Delhi High Court.

(d) Cpl Ashit Kumar Mishra Vs Union of India & Ors, O.A No 440 of 2010 of AFT, Principal Bench, New Delhi.

22. We have heard the arguments and perused the record as well as the judgements cited by both sides. The applicant has rendered 17 years and 02 months service out of his term of engagement of 20 years. He was eligible to apply for an alternate civil employment, which he did on 10/08/2006 after obtaining the necessary permission from Air Force Authorities in accordance with AFO 05 of 2003. This AFO and subsequent AFOs of 04 of 2007 and 14 of 2008 all stipulate that NOC is to be obtained before appearing for the interview. The applicant failed to apply for an NOC before appearing for the interview on the grounds that he received only two days notice prior to the date for the interview. However AFO 14/2008 also stipulates that "However, in all cases NOC is to be obtained by the individual invariably before submitting application for discharge on being selected for civil post". In this case

the applicant had applied for NOC before he applied for premature discharge. This application was forwarded by the unit of the applicant on 08/02/2010 (Annexure A-1). Since the applicant now has a very good opportunity for lateral induction as a teacher with the Government of Haryana we direct that his request for NOC and premature discharge be acceded to. The individual will be relieved from the IAF within a period of two weeks from the date of issue of this order. All previous orders on the subject are to be ignored. Application is accordingly allowed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open court
Dated: 29/09/2010