

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A. No. 440 of 2010

Cpl Ashit Kumar Mishra (No.791365K) Petitioner

Versus

Union of India & Ors. ...Respondents

For the Petitioner : Sh. Keshav Kaushik, Advocate

For the Respondents: Sh. Ankur Chiber, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has challenged the Order dated 5.7.2010 and sought the directions to respondent no.1 to 3 to grant NOC and discharge the applicant from

the Indian Air Force to enable the petitioner to join as a Trade Tax Officer with UP Trade Tax Department.

2. The applicant joined the Indian Air Force on 19th June, 1998 as 'Airman' and since then he is working with the Respondent. The applicant's educational qualification was 10+2 at the joining of Indian Air Force. In 2002, the applicant completed his graduation from Indira Gandhi National Open University after taking necessary permission from the Indian Air Force.
3. On 19.3.2007, the applicant applied for UP State Combined State/Upper Subordinate Services(Preliminary) Examination, 2007 through proper channel which was forwarded by the Respondent No.1 to 3. On 5.3.2009, the applicant qualified the Preliminary Examination of UP State Combined State /Upper Subordinate Services(Preliminary) Examination, 2007 issued by UP Public Service Commission,

Allahabad. The applicant applied for mains examination and his application was duly forwarded through proper channel to the UP Public Service Commission, Allahabad. The applicant on 13.4.2010, successfully cleared the written examination and he was called for the interview by the UP Public Service Commission, Allahabad and directed to appear for interview on 14.5.2010. The applicant again sought the NOC from the Indian Air Force authorities to enable him to appear for the interview vide its letter dated 21.4.2010 i.e. on the same date when he received the intimation for appearing for the interview.

4. On 20.5.2010, the applicant was finally selected for the post of Trade Tax Officer by the UP Public Service Commission and appointment order was issued. Though at the time of appearing for an interview, no NOC was granted to the applicant in time, though he applied on

21.4.2010, but it was belatedly granted. As per the recommendation of the NOC which was received by the petitioner much after the interview i.e. 25.5.2010, that NOC is valid only for equivalent of Group 'A' posts, carrying maximum pay scale not less than Rs.13,500/- (Pre-revised) and will be null and void for equivalent of Group 'B' posts. But, when he received the appointment order, he requested authorities to release him from the service as he has been selected in the Group 'B' post carrying the pay scale of Rs.6500-10500 (Pre-revised). It was pointed out by the petitioner that he was working with Corporal in Indian Air Force, which is a class 'C' post, carrying a pay scale of Rs.4150-5200 (Pre-revised). It was also pointed out by the petitioner that his engagement is upto June, 2018 and thereafter he will be rendered jobless. His application was duly forwarded on 28.5.2010 by Wg Cdr V

Jayaraman, HRM Flt Cdr for AOC , 13 BRD and it was made clear that process has taken a very long time in conducting the examination by UPPSC and the petitioner is not at fault. But on 5.7.2010, respondent rejected the case of the applicant in unlawful manner and declined to grant NOC to the petitioner for joining as Trade Tax Officer by latest 4.6.2010 and the applicant made a request to UP Public Service Commission, Allahabad to give an extension for the time pending the NOC with the respondent.

5. In this background, petitioner has been forced to file this petition before this Tribunal seeking of quashing the order declining the granting of NOC to the petitioner being illegal and against the policy of the Government for permitting the non-commissioned officers for joining to the higher posts as a social measure and he has challenged it under the Article 21 of the Constitution.

6. A reply was filed by the respondent. The reason given in the order for rejection of the petitioner's grant of NOC was that the Trade of the petitioner i.e. Rdo Fit is facing criticality hence a NOC is not feasible on the grounds of service exigency and since the post is not Group 'A' or equivalent, hence case of petitioner is not covered even under relaxed criteria. Therefore, grant of NOC is not feasible.

7. A reply was filed by the respondent and respondent has taken position that petitioner did belongs to a trade of Radio Fitter which is facing criticality and deficiency of man power and only exception for airmen from critical trade with less than 18 years of service is Group 'A' posts or equivalent in pay scale and in this connection, the respondent relied on policy of AFO 5/2003 and para 9 of the AFO 4/2007. It is pointed out that as per the

criticality of the trade, it is not possible to relaxation in this case and the only permission can be granted is he has to be selected for a Group 'A' post and not for a Group 'B' post. And in that connection the reference was also made to the policy of AFO 14/2008. It is pointed out that petitioner was not selected for the maximum scale of Rs.13500/-(Pre-revised), therefore, his request for grant of a Group 'B' was not acceded.

8. We heard learned counsel for both the parties. It may be relevant to mention here that first policy for rehabilitation of the Airmen in the Civil post brought to our notice dated 9.5.2003 and the petitioner applied under this policy. In the para-6 of this policy, it was contemplated that NOC will be issued by the Air HQrs as per format given at Appendix to this AFO on case by case basis subject to service exigencies and after approval by

ACAS (PA &C). it is also pointed out that issue of NOC is a privilege and it cannot be claimed as matter of right within the engagement of 20 years. The broad condition as per this policy filed by Respondent -3 was incumbent should have completed 07 years of service of their engagement including training period, he will be permitted to apply for civil post under Central / State Government and Public Undertakings.

9. It is also directed that Unit should ensure that the Bio-Data of the incumbent do not contain any classified information. It was also mentioned that Airmen/NCs (E) who have given undertaking to serve for a specific period beyond regular engagement owing to courses, deputation/posting within India / abroad are not permitted to apply for any civil post under provision of this AFO within the specified time period of undertaking. However,

they are eligible to apply for civil posts after completion of specified period of undertaking. It is further contemplated that as and when Airmen qualifies for the interview, Air HQrs used to be approached directly by the Station / Unit for issue of NOC. The NOC is to be obtained from the Air HQrs before attending the interview irrespective of the fact whether the NOC has been asked for by the prospective department/employer or not. It is further contemplated that NOC will not be issued once the interview is over or offer letter has been received. And at the time of seeking NOC, certain requirements have been laid down like:

- (i) Written request from the Airman asking for NOC
- (ii) A copy of interview call letter
- (iii) Advertisement in original or Xerox copy.
- (iv) A certificate to the effect that there is no disciplinary case in pending

- (v) A certificate from Station / Unit Commander / Adjutant to the effect that the concerned Airman/NC (E) is not under obligation to serve beyond RE due to an undertaking given by him.
- (vi) A Xerox copy of the covering letter received from Command HQrs

Then the NOC will be issued by the Air HQrs as per the format subject to the service exigencies and after approval by ACAS (PA&C).

10. The petitioner's applicant was forwarded under this Circular which was in force i.e. 5/2003 dated 9.5.2003. As the advertisement was issued in the year 2007 and this was current. Vide this Circular, Airmen /NC (E) who have completed 07 years of their engagement including training period were permitted to apply for civil posts under Central / State Governments and Public Sector Undertakings.

11. Thereafter, another Circular was issued i.e. 4/2007 on 1.6.2007. In this also, the condition of 07 years was same and Airman / NC(E) were permitted to apply and Group 'A' and 'B' Gazetted post under Central / State Government or Public Sector Undertakings including Para Military Forces, however, such restriction will not be applicable to those Airmen who have completed 15 years of service.
12. In the AFO No.5/2003, there was no condition that it should be Group 'A' post or Group 'B' post. In the AFO No.4/2007 Circular also it permitted for both posts Group A & B. Then came another Circular AFO. 14/2008 which was issued on 19.9.2008 and for the first time, the condition was laid down that for Group A post maximum of the pay scale not less than Rs.13,500, as revised from time to time and for the Group 'B' post maximum of the pay

scale not less than Rs.9,000 but less than Rs.13,500 as revised from time to time with the 7 years of service. By this Circular, the earlier Circular of 04/2007 was stand superseded.

13. Now in this background, question is whether the denial of grant of NOC in the present case by the Respondent to the applicant is justified or not. We don't want to comment on the policy which has been laid down. We have to examine only two conditions which has been mentioned by the Respondent in their impugned order denying the grant of NOC to the petitioner.
14. Before we proceed to that, we would like to make it very clear that giving opportunity to the persons from the services is a policy of the Government for the welfare of these Services without compromising the need of the services. But by that it does not mean that authorities are

free to be unfair to their Airmen. These are social measures and it is not easy for a persons who are serving in the forces to compete to get into Civil Services on the Gazetted post. Competition is always a very uncertain state of affair, one can make and one may not be able to make it. However, when a man from the forces by dint of his merit and by burning the midnight oil, makes to the Civil Services, the authorities should not act in arbitrary manner rather deal with them like a human being. It is a welfare measure and as and when such situation arises, the authorities should be liberal in their approach instead of high handed manner decline the request of a person from the forces. It does not seem well when such a reasonable request are being turned down, it leads to disaffection amongst the subordinate staff. The government policy has been for welfare whereas in operation the authorities

enter into web of subtlety of the rules to deny a reasonable request is not a positive approach.

15. However, in the impugned order passed by the authorities dated 5.7.2010, the two reasons have been given - (1) that the trade is facing a criticality and (2) since this post is not a Group 'A' or equivalent, therefore, he cannot be granted the permission.
16. Now taking into the first question with regard to Group 'A' or Group 'B' post is concerned. The petitioner applied for the post under the policy of 5/2003 dated 9th May, 2003 and policy No.04/2007 dated 1st June, 2007. So far as the first policy No.05/2003 is concerned, there was no condition that he shall be only permitted to apply for a Group 'A' or 'B' post. In the second policy no.04/2007, the condition was he should have completed seven years of the engagement and permitted to apply for civil posts under

Central / State government in Group 'A' and 'B' (Gazetted) and equivalent in Public Sector Undertakings. His application was forwarded under both these Circulars which were in force, it is unfortunate that the selection in UP Public Services Commission was belated, but at the time when he applied there was no condition of that he is eligible to apply only for Group 'A' post. Therefore, putting this condition against the petitioner is totally wrong.

17. Secondly, at the time when he went for the interview, it was mentioned that he shall be eligible only for a Group 'A' post, that was also not at all warranted, because the petitioner had applied on the basis of a policy which was in vogue and when the post was advertised by UPPSC. Subsequently, the conditions for Group 'A' & 'B' posts came later on and infact we failed to appreciate that every now and then condition is put, when he qualifies a written test

he has to seek an NOC, and when he qualifies for a interview, then he has to seek an NOC. This appears to be nothing but typical bureaucratic approach to harass air warrior to every now & then run after clerk & officers. This is nothing but a suicidal approach. Once a man applies for a post, he need not to apply for NOC at the every stages of examination. It is only when final examination results in selection, then he should approach for the grant of NOC for release from services. In the present case, we would like to highlight that when the interview was fixed on 14.5.2010 and he received the intimation on 21.4.2010, he immediately made a request for grant of a NOC for appearing in interview, and that NOC was received by him on 25.5.2010 and the letter was issued by the Air HQrs on 19.5.2010 much after the interview had taken place i.e. 14.5.2010. The way the machinery works speaks

eloquently, if petitioner had not appeared on 14.5.2010 after taking the permission from Station Hqrs for leave, this belated grant of permission would have permanently defeated the cause of the petitioner. Therefore, in all fairness, policy should be for betterment of the Airman and not in order to put hurdles and to see that justice is defeated. Be that, as it may, fact remains that the condition which has been put in the NOC that it should be applicable if post of Group 'A' post is totally without justification & unwarranted. Even so much so in the policy no.14/2008 of 19.9.2008, here also person with 07 years of service can apply for both the posts Group 'A' & 'B' and it does not prohibit, but that policy has no relevance so far as case of petitioner is concerned. The petitioner will be governed by the policy which was in force then i.e. AFO .05/2003 and 04/2007. There was no such condition,

therefore, putting this condition at the time of interview as well as taking resort to this condition in final order is totally unwarranted and illegal.

18. Now second condition which comes in the way of the petitioner is criticality. The condition of exigencies of service was there in earlier Circulars of AFO.05/2003 and AFO. 04/2007 also. But it is not a case of a person of a high trade like a fighter pilots, it is a case of a very small person who belongs to a radio mechanic trade and for that to plead that it is a criticality of the trade, therefore, we are denying him permission to join is totally nothing, but an afterthought. At the time when petitioner applied, there was no such criticality and if the criticality has arisen now, that cannot put a block in the way of petitioner for grant of NOC. We fail to appreciate the plea of criticality for a person like a radio mechanic, a trade which is almost going

to be obsolete now after the information technology is advanced and to defeat the case of a person on this ground in our opinion is totally unwarranted is nothing but an unfair approach on the part of the Respondent.

19. Learned Counsel for the petitioner has invited our attention to a decision of the Delhi High Court in *Sachin Kumar Pravin Vs. UOI*. where the policy of 2003 and 2007 was under challenge and which was upheld by the Delhi High Court and against that a Special Leave petition was taken up in the Hon'ble Supreme Court and in that Hon'ble Supreme Court without going into the merit of the policy disposed of the petition on an undertaking given by the Addl. Solicitor General that they will permit the petitioner to join Civil Service. Therefore, this case does not help in any manner. Our attention was also invited to the decision of the AFT, Kolkata bench in the cases *of*

Corporal Jayabrata Ghatak Vs. UOI & Ors. and Corporal Anup Naskar Vs. UOI & Ors. These cases were decided on their own facts, therefore, we don't want to comment on those cases. Learned Counsel also invited our attention to decision given by division bench of the Delhi High Court in *Charan Singh Bhanwariya Vs. UOI & Ors. (W.P.(C) No.3257 of 2010)* where it directed to Respondent to release the petitioner by giving him a NOC. We don't want to overburden this judgement. With reference to other cases and sufficed to say that we examined the case on merit and we are satisfied that denial of grant of NOC to the petitioner was totally unwarranted, unfair and arbitrarily. Consequently, we quash the order dated 5.7.2010 passed by the Respondent and direct the respondent to grant NOC to the petitioner so as to enable the petitioner to join the post of a Trade

Officer in the State of UP and release him forthwith. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
15th September, 2010