

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

09.

O.A. No. 158 of 2011
With MA No. 395/2011

Cpl. Rakesh Kumar Suman

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Keshav Kaushik, Advocate.

For respondents: Ms. Barkha Babbar, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
11.11.2011

The petitioner vide this petition has prayed that order dated 16.03.2011 and show cause notice dated 05.04.2011 may be quashed and direct the respondents to grant the NOC in the prescribed form and discharge the applicant from the Indian Air Force, enabling the applicant to join as a Probationary Officer (PO) with the United Bank of India in order to meet the ends of justice.

The petitioner joined the Indian Air Force on 16.06.2003 as 'Airman'. The educational qualification of the petitioner at the time of joining the Indian Air Force was 10+2 and during service, he completed his Graduation from Annamalai University after taking necessary permission from the respondent i.e. Indian Air Force. During the service career, petitioner was promoted and classified as Leading Aircraftsman and was promoted as Corporal in October, 2008. On 06.09.2010, the applicant applied for the post of PO in the United Bank of India through proper channel and permission was granted to him to apply for civil post vide letter dated 06.09.2010 along with certificate of

undertaking. On 14.11.2010, applicant appeared in the said written examination and he successfully passed the examination. On successful passing of examination, petitioner was called for interview by the United Bank of India through e-mail asking him to appear for interview on 14.02.2011. On 07.02.2011, petitioner applied for grant of NOC for appearing in the interview from the respondents. On 16.03.2011, applicant was informed by the respondents denying the issuance of NOC on the ground of service exigency vide order dated 16.03.2011. On 08.03.2011, the petitioner was finally selected for the post of PO in the pay scale of Rs. 14500-25700. On 31.03.2011, petitioner received an e-mail from the United Bank of India apprising the petitioner about his final selection.

On 05.04.2011 respondents issued show cause notice informing the applicant that why action be not taken against him for not complying with the undertaking dated 06.09.2010 vide which it was informed that petitioner has applied for a lower post than Group A post or equivalent and also invoked the service channel to forward his application to Air HQ for issue of NOC which is in gross violation of the policy. Petitioner replied the show cause notice on 05.04.2011 and apprised the respondents that the pay scale mentioned in the advertisement was Rs. 14500–25700 which is more than Rs. 13,500/- as mentioned in AFO 14/2008. Petitioner also apprised the respondents that they have already issued the NOC for the same post after May, 2009 to Sgt. Amit Kumar Saini, Cpl. Rupesh, Cpl. Kesari and other persons, however same has been denied to the petitioner, therefore, this action of the respondents is arbitrary, unreasonable and discriminatory. Since petitioner could not get any relief from the respondents, therefore, he approached this Tribunal for redressal of his grievance.

Reply to the petition was filed by the respondents and it is pointed out in their reply that the petitioner has applied for a post which is not equivalent to the post as mentioned in the AFO 14/2008. They also submitted that in earlier cases, mistakes were committed and in the present case the application of the petitioner should not have been even forwarded as the petitioner was not carrying the pay scale as conditioned in AFO 14/2008.

In order to appreciate the controversy involving in the matter, it will be relevant to reproduce the AFO 14/2008 which is being reproduced hereunder;

“AFO 14/08

AIR FORCE ORDER

BY

AIR CHIEF MARSHAL FH MAJOR

PVSM AVSM SC VM ADC

CHIEF OF THE AIR STAFF

NO. 14

AIR HEADQUARTERS

NEW DELHI, Friday 19 Sep 2008

**PERMISSION TO AIRMEN/NCs(E) TO APPLY FOR CIVIL
POSTS/SERVICES UNDER CENTRAL/STATE GOVTS.
AND PUBLIC SECTOR UNDERTAKINGS**

1. *Airmen/NCs(E) who have completed seven years of service from the date of enrolment, are permitted to apply for civil posts under Central/State Government and Public Sector Undertakings including Para-Military Forces. Non-Govt Organisations (NGOs)/Trusts, even if funded by the Govt., shall not be covered in the permissible category of civil posts. The categories of posts, corresponding length of service and eligibility are to be determined as given below:*

	Category	Length of Service	Permissible Categories of Civil Posts
(a)	I	7 Yrs	(A) Group 'A' or equivalent posts (maximum of the pay scale not less than Rs. 13500, as revised from time to time (B) Group 'B' or equivalent posts (maximum of the pay scale not less Rs.9000 but less than Rs. 13500 as revised from time to time).
(b)	II	15 Yrs	Category-I above and any other post except temporary/contractual post and Private Sector
(c)	III	18 years (having submitted unwillingness or denied extension of engagement)	Category I, II above and any other post in Private Sector including temporary/contractual posts or engagement on deputation

2. All applications for above categories of posts will be directly forwarded to the prospective employers by the units after verifying the eligibility including criticality of manpower. Application of airmen belonging to critical trades shall be rejected at unit level. However, the condition of criticality will not be applicable to the applicant of Category IA and III above, in whose case the applications will be forwarded despite criticality in their trades. The criticality of trades will be updated by Air HQ twice a year, in June and December and would be intimated to Stns/Units through their respective Command HQs. Units directly under Air HQ would be intimated the criticality of the trades by Air HQ. Airmen who are on deputation to ARC are also eligible to apply for civil posts as per Para 1 above and their applications to be processed through PHS C/O AFCAO, where unit copy of service documents of ARC deputationists are held. Forwarding of applications shall not be construed as acceptance to grant NOC, which shall be issued as per the procedure laid down in subsequent paras of this AFO.

3. At the time of forwarding the applications for civil posts, Station/Unit Commanders are to ensure the following :

(a) The application/bio data of the airman/NC(E) does not contain any classified information.

(b) Airmen/NCs(E), who have rendered certificate of undertaking to serve for any specific period owing to promotion under Grade III, Courses, Deputation/Posting within India/abroad, etc are not permitted to apply for any civil post within the specified period of undertaking.

(c) Advance copy of the application for civil posts is not to be forwarded even if asked by the prospective department/employer.

4. The Stations/Units will also ensure that Airmen/NCs (E) submit following documents/information along with the application for each post :

(a) Undertakings as per Appendices 'A' and 'B'

(b) Advertisement **in original** or attested photo copy (Hindi or English) having date/period of publication. Advertisement down-loaded from **WEB site** should be **in English/Hindi** and is to be attested by a commissioned officer.

(c) Advertisements in other languages are also to be submitted in original or photo copy with English or Hindi translated copy duly attested by a commissioned officer

(d) The relevant points of the advertisement namely **post applied for pay scale offered, address of the employer etc.** are to be highlighted/underlined by the applicant.

5. **Forwarding of On-line Applications** Several prospective employers in Govt. Departments/PSUs invite applications for civil employment through their web sites on the internet. Station/Unit Commanders are to ensure that the applicant meets the eligibility conditions enumerated in preceding Paras 1-3. The following guidelines are to be followed for 'on-line' registration of applications for civil posts.

(a) Individual to seek permission from his respective Station/Unit Commanders to apply for any civil post 'on-line' along with duly filled application and advertisement downloaded from the website.

(b) An undertaking is to be furnished by the individual, stating that information furnished by him to the Stn/Unit authorities will be submitted in the employer 'on-line' and no classified information will be communicated.

- (c) *Before granting permission, the unit administration is to examine the contents of the application keeping security consideration in mind.*
6. *No Objection Certificate (NOC) for applicants under Cat II will be issued two years before completion of their engagement by their respective AOC/Stn Cdr/CO as per the format placed at Appendix 'E' while all other NOCs will be issued by Air HQs (Dte of PA) on case to case basis, subject to the exigencies of service and with the overriding condition being the overall cadre requirement in a particular rank/trade as per format given at Appendix 'C'.*
7. *Application for NOC is to be submitted by the individual after receiving call letter for the interview/verification of documents or after the result of written test where selection is based on success in written test only. However, in all cases NOC is to be obtained by the individual invariably before submitting application for discharge on being selected for the civil post.*
8. *NOC is not required for CDS, NDA, IMA, OTA examination including commissioning in Army, Navy and Air Force.*
9. *NOCs to NCe(E) will be issued their respective Command Headquarters. However, in case of NCs(E) working in the Stations/Units directly under Air HQs NOC will be issued by Air HQ (Dte of PA) as per format given at Appendix 'D'.*
10. *The eligibility criteria for civil posts reserved for ex-servicemen category are to be ascertained by the individual before applying for such posts.*
11. *While approaching Air Headquarters/Command Headquarters for issue of NOCs, Station/Unit will invariably forward the following documents/certificates –*
- (a) *Personal application from the Airman/NC (E) requesting for issue of NOC.*
 - (b) *A copy of call letter duly attested by a commissioned officer.*
 - (c) *Advertisement in original or xerox copy duly attested by the commissioner officer.*
 - (d) *A certificate to the effect that there is no disciplinary case in progress/contemplated against concerned Airman/NC(E).*
 - (e) *A certificate from Station/Unit Commanders/Adjutants as per Appendix 'A' to this AFO.*

(f) A xerox copy of the forwarding letter vide which the application of the Airman/NC(E) was forwarded to the concerned employer.

(g) Copy of permission granted for registration 'on-line', if applicable

12. Expenditure incurred on the movement for appearing in the examination/interview/submission of documents for verification for the civil posts will be borne by the Airmen/NCs(E) themselves, and the period of absence on the account of this shall be treated as on leave, if granted, within the normal entitlement.

13. Permission to apply for civil post is a privilege and hence issuance of NOC can not be claimed as a matter of right. No provisional or conditional NOC is to be issued by the Stations/Units.

14. This supersedes AFO 4/2007 and will take immediate effect from the date of issue and all preceding letters issued by Air HQs on the subject also stand cancelled.

Case No Air HQ/40726/PA (RC)

(FH Major)
Air Chief Marshal
Chief of the Air Staff"

As per AFO 14, a person who have completed 7 years of service are illegible to apply for Group A or equivalent posts. The maximum pay scale of Rs. 13500 has been revised to Rs. 39100 and this AFO 14 was further clarified by the another notification issued by Air HQ on 22.05.2009 which reads as under;

"Tele : 23010231/7168

Air Headquarters
Vayu Bhawan
New Delhi – 110 011

Air HQ/S 40726/PA (RC)

22 May 09

HQ WAC, IAF
HQ EAC, IAF
HQ CAC, IAF
HQ SWAC, IAF (SPSOc/CPSOs)
HQ SAC, IAF

HQ TC, IAF
HQ MC, IAF
HQ A&N, Command
HQ IDS, IAF
HQ SFC, IAF
HQ ARTRAC

**CLASSIFICATION OF GROUP 'A'/'B'/'C' IN CENTRAL GOVT/STATE
GOVT OR EQUIVALENT CIVIL POSTS IN PUBLIC SECTOR
UNDERTAKINGS (PSUs)**

1. Reference is made to Government of India, Department of Personnel & Training Notification No. 13012/1/98-Estt (D) dated 20 Apr 98 and Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) order dated 09 Apr 09 (Copy annexed).

2. As per AFO 14/2008, airmen/NCs(E), depending on length of service and subject to service exigency) are permitted to apply for Gp 'A', 'B' and other categories of civil posts in Central/State Govt or equivalent posts in Public Sector undertakings (PSUs). Since civil posts in PSUs are not classified as Gp 'A'/'B'/'C' or Gazetted/Non-Gazetted, hence, equivalent pay scales as per the criteria laid down by Department of Personnel and Training (DoP&T) vide Notification No. 13012/1/98-Estt. (D) dated 20 Apr 98 (Copy enclosed) for all civil posts under the Union were so far taken into consideration for the equivalent category of posts in PSUs.

3. Consequent to the implementation of recommendations of Sixth Central Pay Commission the grade pay in various scales of pay and Pay Bands has been accepted as the criterion for classification of all civil posts under the Union as Group 'A'/'B'/'C'/'D' posts vide Department of Personnel and Training (DoP&T) dated 09 Apr 09 (Copy enclosed). Consideration of Grade Pay as criterion for determining Group 'A'/'B'/'C'/'D' posts in Central/State Govt. and equivalent posts in PSUs has the following difficulties:-

(a) PSUs may not have the concept of Grade Pay

(b) Even in Central Civil Posts the same Grade Pay has been applied for different categories of posts; for example the Grade Pay of Rs. 5400

figures in Gp 'A' as well as Gp 'B' classification of posts in ibid DoP&T Order dated 09 Apr 2009.

4. *In order to ensure uniformity and clarity in determining equivalence of categories of Civil Posts in PSUs vis-a-vis those in Central/State Govt for the purpose of permissibility to apply for civil posts by airmen/NCs(E) and subsequently issue of NOCs, the following criteria are to be followed:-*

- (a) *Gp 'A' & equivalent posts – Maximum of the pay scale not less than Rs. 39,100/-*
- (b) *Gp 'B' & equivalent posts – Maximum of the pay scale not less than Rs. 34,800/- but less than Rs. 39,100/-*
- (c) *Gp 'C' & equivalent posts – Maximum of the pay scale not less than Rs. 20,200/- but less than Rs. 34,800/-*

5. *It is requested to disseminate the above information to all units under your command/HQ for compliance.*

*(N. Munirathanam)
Gp Capt
DPA*

Copy to :-

<i>DG, NCC</i>	<i>412 A F Station (For AOC)</i>
<i>AFCAO (For AOC)</i>	<i>AFCME (For AOC)</i>
<i>CASB (President)</i>	<i>APRO (For AOC) – Please including in AFRO</i>
<i>PHS, C/O AFCAO</i>	<i>News Letter</i>

Internal : All BCOs”

A reading of both these documents makes it clear that for persons who are applying for Group A or equivalent posts maximum pay scale should not be less than Rs. 13500 as revised from time to time which has been revised to Rs. 39100. In this connection learned counsel for the applicant invited our attention to the notification issued by Ministry of Finance dated 13.07.2010, relevant portion of the same are being reproduced as under :

"MINISTRY OF FINANCE
(Department of Financial Services)
NOTIFICATION
New Delhi, the 13th July, 2010

S.O.1663(E).- *in exercise of the powers conferred by section 29 of the Regional Rural Banks Act, 1976 (21 of 1976) read with section 17 thereof and in supersession of the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 except as respects things done or omitted to be done before such supersession, the Central Government after consultation with the National Bank and the Sponsor Banks specified in 1. Short title and commencement.*

.....

.....

3. Category of Posts :

(1) (a) *The officers and employees of the Bank shall be classified as follows:*

(1) *Group "A" - Officer*

(i) *Scale I (Assistant Manager) – Junior Management*

(ii) *Scale II (Manager) – Middle Management*

(iii) *Scale III (Senior Manager) – Middle Management*

(iv) *Scale IV (Chief Manager) – Senior Management*

(v) *Scale V (Assistant General Manager) – Senior Management*

.....”

As per the above notification, officers employed with the bank shall be classified as Group A Officer in Scale 1 (Assistant Manager) Junior Management. Learned counsel for the petitioner while pointing out the above notification dated 13.07.2010 argued that the petitioner was selected as PO which is a Group A post in Scale 1 Assistant Manager – Junior Management and, therefore, he was illegible for this post and his application was rightly processed. Learned counsel for the Respondent specifically invited our attention to the order 22.05.2009 issued by the Air HQ clarifying the policy of 2008 which clearly says that for Group A and equivalent posts maximum of the pay scale shall not be less than Rs. 39100. Had this circular not been on

record or had not been it come to our knowledge perhaps petitioner would have succeeded in the matter.

The whole arguments of the learned counsel for the petitioner rest on this point that the clarification of the AFO 14/2008 was issued on 22.05.2009 before the petitioner applied for the post of PO in United Bank of India on 06.09.2010. Had the circular dated 22.05.2009 come into force after the petitioner applied for PO, the petitioner would have succeeded in the matter but because of this circular, our hands are tied down and we cannot overreach this circular of 22.05.2009 wherein pay scale has specifically been mentioned for the Group A and equivalent posts which is maximum of the pay scale not less than Rs. 39100.

With respect to the judgment of Hon'ble High Court of Delhi dated 25.05.2011 passed in the case of **Sunil Prasad Versus Union of India and Ors. bearing WP(C) No. 2908/2011** relied by the petitioner, with great respect, we can say that circular dated 22.05.2009 was brought to the notice of the Hon'ble Division Bench. Learned counsel for the petitioner also relied on the judgment of Hon'ble Delhi High Court dated 18.05.2011 in the batch matter titled **"Bikram Singh and Others Vs. UOI and Ors." bearing W.P.(C) No. 3024/2011**. This judgment of Hon'ble Delhi High Court was reviewed by the Division Bench of Hon'ble Delhi High Court and Hon'ble Delhi High Court after considering the policy decision has also observed that this circular was not brought to their notice and, therefore, the earlier judgment in which one of the judge was also a party clarified that this circular had made a difference in the matter and Hon'ble Division Bench has dismissed the petition filed by the petitioner.

Learned counsel for the petitioner cited the decision dated 23.09.2011 given by the Hon'ble Regional Chandigarh Bench of this Tribunal in the case of **“Mohit Kumar Versus Union of India & Others” bearing OA No. 858 of 2011**. In that case, circular dated 22.05.2009 was brought to the notice of Hon'ble Division Bench but with great respect, Hon'ble Division Bench did not express any opinion on this circular and circumvent by saying that in other matters Government has shown benevolence and the same should be shown in the present case and, therefore, parting with the case the Hon'ble Bench of Chandigarh Regional Bench clarified that *“thus clarifying this decision to be not setting a precedent for any other person, who may now think to lay claim, as a special case, we think it proper to direct respondents to grant NOC to the petitioner”*. This observation nullifies the whole purpose of the petitioner in citing the present case before us.

We will be failing in our duty if we do not mention the arguments raised by the learned counsel for the respondents with regard to various defects in the application moved by the applicant for PO in United Bank of India, namely, he was not having NOC to attend the interview and other objections. We need not to go into details. Suffice it to say that in number of cases such action of benevolence has been done by the Government. It is a high time now. Government should put their record straightway and clarify the position so that a CO while processing the application of a person of the like nature should stop at the beginning. In this case, the CO has forwarded the application of the petitioner and it gives a false hope to the petitioner that in case he passes, he will better his career prospect, therefore, such false expectation should not be aroused. CO's should adhere to relevant circular of Government and Air HQ so that such litigation can be discouraged.

Secondly, we would like to observe that Government should improve their own circular. On one hand, they put the condition of length of service as 7 years and on the other hand they deprive the people because of the higher pay scale as prescribed which almost become impractical. This is not the first case which has come before us. Similar matters are pending before other benches and creating unnecessary litigation. It is a high time now, the Air HQ or Defence Ministry should take proper steps and amend their circular. Had the circular dated 22.05.2009 not been brought to our notice, perhaps the applicant would have got the relief in the present case. We are bound by the rules and regulations and, therefore, are not granting any relief to the petitioner. The petition is accordingly dismissed. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
November 11, 2011**