

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A NO. 91 OF 2011

CPL SANDEEP SRIVASTAVA

...APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

ADVOCATES

**MS. JAGRITI SINGH FOR THE APPLICANT
MS. BARKHA BABBAR FOR THE RESPONDENTS**

CORAM

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER**

J U D G M E N T

06.04.2011

1. This O.A has been preferred seeking direction to the respondents to issue "No Objection Certificate" to the applicant for applying for Group B post(s) and to quash A.F.O No. 14 of 2008 and any other subsequent policy, if any, prohibiting forwarding of the application of the applicant for Group B post.

2. The applicant was enrolled in the Air Force as AC (U/T) on 12.1.2004. His trade was Equipment Assistant. With effect from October 2010, the applicant has been posted to Station Logistics Flight at 13 BRD at Palam, New Delhi. Having successfully completed seven years of service, the applicant applied for a "No Objection Certificate" to apply for a Group B civil post, which was rejected by the respondents based on A.F.O No. 14 of 2008, evidenced by Annexure R1.

3. It is averred that the action of the respondents in not forwarding the application of the applicant for the civil post is illegal. As per the extant policy, any employee, who completes his tenure successfully, can apply for a civil post. However, the respondents refused to issue a no objection certificate to the applicant, which is contrary to the settled legal position and against the policy which is prevalent.

4. On the other hand, learned counsel for the respondents has justified the action of the respondents by contending, inter alia, that the applicant was refused no objection certificate taking into account the criticality of manpower. The Air HQ updates the criticality

of trades twice a year i.e. in June and December which would be intimated to the Stations/Units through respective Command HQs. The applicant had completed 7 years of service on 11.1.2011. However, because his trade "Equipment Assistant" is placed as "critical" in terms of Paragraph 2 of A.F.O No. 14 of 2008, his application for Group B post was not forwarded.

5. After hearing both sides, we feel that it would be appropriate if Paragraph 2 of the said Order (AFO No. 14 of 2008) is referred to, which is re-produced below:

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 applicants of Category 1A 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.”

The trade of the appellant admittedly falls in the category of “critical trade”. Counsel for the appellant has emphasised that such criticality is to be visited or re-visited twice a year, which has not been done since the last two years. Counsel for the respondents clarified this allegation by stating that the critical trade list has been updated/reviewed every six months by Air HQs, however, the trade of the appellant continued to be in the critical list for this period. The last such review was done by Air HQs on 24.12.2010 and the trade of the appellant has been specifically mentioned as critical. It was, therefore, incorrect to state that the respondents have not been periodically revising/reviewing the list of critical trades. Accordingly, there is no doubt that the applicant is in a “critical trade” and he cannot take advantage of the aforesaid order. Further, much emphasis was made that the Delhi High Court, while considering the scheme, took a benevolent view in W.P (C) No. 505 of 2001 (**Brajesh Jaiswal v. Union of India and others**), W.P (C) No.

524 of 2011 (**Divya Jyoti Singhal v. Union of India**), W.P (C) No. 722 of 2010 (**Sgt Gedela Yugandhar v. Union of India**), W.P (C) No. 1751 of 2010 (**Sgt Rakesh Kumar Sinha v. Union of India**) and W.P (C) No. 1751 of 2010 (**Ram Lakhan v. Union of India**). Suffice to mention that benevolent provisions are for the benefit or advancement of the service career of the personnel. But, when the applicant's trade falls in the category of "critical trade", the benevolent provision cannot be extended.

6. Viewed in this light, we do not find any reason to grant any relief to the applicant. The O.A is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER