

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

O.A. No. 126 of 2012

Sgt. Shiva Murati

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Mr. Ajai Bhalla, Advocate for R-1 to R-4
None for R-5

CORAM:

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

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

ORDER
29.05.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to consider the request of the Petitioner for immediate discharge from service so that he can assume the charge of new appointment as early as possible. The Petitioner was enrolled in Indian Air force on 18th November 1996 as a Radio Fitter. From 1997 to 2008 he performed his duties in the various Units with sincerity and dedication.

2. Since the Petitioner was completing 15 years of service in November 2011 and was entitled to seek discharge by joining any other government service, he in response to the advertisement published by Uttar Pradesh Middle Education Service Selection Board in the Times of India dated 15th January 2009 applied for the post of Trained Graduate Teacher (TGT) through proper channel after obtaining proper permission of his Commanding Officer in accordance with Air Force Order No. 14 of 2008 while posted with

505 SU, AF and the application of the Petitioner was forwarded to Respondent No.5 by Unit of the Petitioner. He appeared in the written examination in March 2010 and the incumbent was finally selected for the post of TGT as per the intimation received by the Petitioner from Respondent No.5 on 11th January 2012. Then Petitioner applied for premature discharge from service on 19th January 2012. His application seeking discharge from service duly supported with the documents was recommended by the Commanders in chain including the Commanding Officer of the Petitioner and sent it to the HQ South Western Air Command for NOC. Thereafter on 29th February 2012 it was sent to 29 Wing Air Force (Station Adjutant) for further processing. The application of the Petitioner was returned on 1st March 2012 on the ground that the Petitioner belongs to critical trade and that the Petitioner has not obtained NOC before submitting application for discharge on being selected for the post of TGT. Petitioner tried to seek release from service through all efforts but he failed and ultimately filed the present petition before us for the aforesaid relief.

3. Respondents have filed their reply and took the position that the Petitioner applied for the post of TGT and it was duly recommended but the fact is that the Petitioner was inducted in service after passing 10+2 examination and after induction he was subjected to training in modules spanning 4 to 5 years before he was deployed independently on operational duties. The training consists of three months of basic Military Training followed by 6 to 9 months of specific trade training subsequent to which they are posted to field Units to undergo on-job training and gain requisite skills. On completion of 3 to 3 ½ years of service they are subjected to second-line

training before independent deployment for operationally duties. It is also pointed out that IAF invests heavily on its workforce for almost 3 to 4 years in moulding the Airmen to meet the operational needs of IAF in specific and the security requirements of the nation in general. They also pointed out further in their reply that the post of the Radio Fitter has gone into a critical trade and they pointed out in para 8 the 'criticality of trade' i.e. shortage of manpower in individual trades of IAF is worked out twice in a year by Air Force Record Office and relevant data is forwarded to all the Units with instructions to scrutinize applications submitted by Airmen seeking permission for civil employment and to forward their applications to prospective employer only after ascertaining their eligibility in terms of AFO 14/2008. It is also pointed out that NOC to the Airmen for civil employment is invariably issued by Air HQ. For the said purpose, the individual is to apply afresh through proper channel for grant of NOC 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. The NOC is issued after ascertaining the criticality of the trade of the individual at the time of considering such application. Request for NOC is liable to be rejected out rightly in the cases wherein the individual has either not obtained prior permission of his Commanding Officer for applying for the civil post or the Commanding Officer has erroneously granted the said permission in contravention to the provisions of this AFO. They have also stated that in the present case the Petitioner was earlier permitted to apply for the post by his parent Unit and later on his request for grant of NOC and discharge was rejected on the ground of criticality of service exigencies as his trade is facing critical manpower deficiency and that obtaining NOC is a prerequisite for

discharge from service. The long and short is that there is no defect which has been pointed out except that the trade in which Petitioner is working is a critical trade. Mr. Bhalla, learned counsel appearing for the Respondents has produced before us the original documents to show that this trade is in the category of critical trade from June 2011.

4. We have heard learned counsel for the parties and perused the record.

5. There is no doubt that this is a social measure to rehabilitate the persons who are serving in IAF. But the paramount consideration is the service requirements. Social measures are for the betterment of the individual. If the institutional requirements are greater than the requirement of the individual then that has to be sacrificed. The Petitioner is under an obligation to serve the IAF for a period of 20 years but his pensionable service is 15 years. Therefore he is not right to seek a discharge for promoting his individual interest. The paramount consideration is the consideration of the institution and of the nation. When the incumbent is trained in a particular speciality and when his services are required at that time he cannot be permitted to go because he owes a greater responsibility and duty towards nation. In the present case it is admitted that the application was duly forwarded by the Commandant, Petitioner passed the necessary test for employment in the civil service and when finally he sought to be discharged from service for joining the civil service the question of criticality of trade came up. Learned counsel for the Petitioner has tried to persuade that persons with 18 years of service for them there is no criteria of criticality and it is only when the person who has completed less than 18 years the question of criticality

comes into picture. These are exigencies of service and if according to terms and conditions of service the fact of criticality of trade is to be seen before he completes 18 years of service then it has to be seen. There cannot be a waiver as it is a part of service conditions. Learned counsel for the Petitioner has also invited our attention to the decision of this Tribunal in **Cpl Ashit Kumar Mishra v. Union of India & Ors. (O.A. No. 440 of 2010 decided on 15th September 2010)** where it was observed that the question of criticality of a trade of Radio Mechanic cannot be put as a block in the way of Petitioner for grant of an NOC. Meanwhile our attention was invited to the order of this Tribunal in the case of **Sgt. Ram Gopal v. Union of India & Others (O.A. No. 288 of 2010 decided on 29th September 2010)** wherein the Petitioner has rendered 17 years and 2 months service out of his term of engagement of 20 years. He was eligible to apply for an alternate civil employment. The Tribunal after considering the matter directed to release the Petitioner from IAF within two months from the date of issue of the order. Both these cases were decided on their peculiar facts. In the case of Cpl Ashit Kumar Mishr, this fact was not brought to our notice and it was merely stated that the trade was critical but now learned counsel for the Respondents has produced before us the documents showing that the trade was critical in June 2011 and periodically it is being reviewed after every six months and all the Units are being informed. May be in 2009 when Petitioner applied that exercise was not done and it was not brought to our notice. But it has now been brought to our notice that every Unit is informed and in that case all the Units before forwarding the application will see whether the trade in which incumbent is working is in critical category or not. If despite this the application of incumbent is forwarded then the CO will be held for committing a serious

violation of Rules. However, so far as present case is concerned we are satisfied that there is a criticality of trade and that is the reason for not permitting the Petitioner to be released from service. But at the same time we feel that incumbent has put in almost 15 years of service and shortly he will be released from service after completion of 18 years of service. Then in that case it will be too late in the day for the Petitioner to seek an employment. At present one employment is already in hands of the Petitioner and if he is not released he will loose that opportunity and after 2½ years whether he will get such a job or not that is the question. Therefore the matter is required to be considered by the authorities sympathetically. Keeping in view that the Petitioner has completed almost 15 years of service and getting a good opportunity of employment in civil service, the authorities should view the matter sympathetically, as far as possibly within three months.

6. With these observations, the petition is disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 29, 2012
dn