

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
OA 3068/2022

Cpl Nakhat Singh
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. R. S. Chillar, Advocate

Date- 6 December, 2023

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

OA 3068/2022

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant has filed this application and seeks grant of No objection certificate and discharge from service so as to join the Gazetted post of Assistant Professor (Hindi) in the Rajasthan Government. The endorsements and remarks made in the impugned orders dated 3rd October, 2022 and 14th October, 2022 rejecting the request of the applicant, are challenged in the application.

2. Facts in brief indicate that the applicant was enrolled in the Indian Air Force on 28th March, 2012 and presently is holding the post of Corporal. According to the applicant, he has 11 years and 07 months of unblemished service in the Indian Air

Force as on date. It is the case of the applicant that an advertisement was issued by the Rajasthan Public Service Commission on 2nd November, 2020 inviting applications for recruitment to the post of Assistant Professor (Hindi). Being interested in applying for the said post, the applicant filed the application in accordance to the requirement of AFO 33/2017 through the AFRO website on 25th November, 2020. However, as the current Skill Grade of the application was Grade 'C', the website did not accept the application. On the contrary, the applicant received annotation indicating that he is not permitted to apply for the civil post due to current Skill Grade.

3. It is the case of the applicant that when the AFRO website did not accept his application on 25th November, 2020, the applicant approached the respondents by way of offline application on 27th November, 2020 vide Annexure A-3 seeking permission to apply for the post of Assistant Professor. According to the applicant, this application was also not accepted by the Technical Control Room, 112, HU, AF C/o-AF Station, Yelahanka, Bangalore and he was informed by the officials that there is no procedure of seeking offline permission and in absence of any offline mode to seek permission from the respondent, the applicant was left with no other option for seeking permission as

required under the AFO namely 33/2017, as the last date for filling the application as per the advertisement was coming to an end, the applicant with a view to capitalize on the opportunity provided, applied without seeking permission from the authorities concerned. The Rajasthan Public Service Commission conducted the written examination on 22nd September, 2021 and 23rd September, 2021. The applicant appeared in the examinations on both these dates on the basis of the admit card issued for the same, and the result of the examination was declared on 13th April, 2022 vide Annexure A-1 wherein the applicant is said to have qualified in the written examination. Thereafter the applicant got a call letter for participating in the interview and further process of selection. Based on the call letter received for appearing in the interview it is said that the applicant participated in the interview and successfully cleared the interview for which the results were declared vide Annexure A-5 on 1st October, 2022. Thereafter the applicant received the offer for appointment also.

4. It is the case of the applicant that after he was declared successful in the selection process. The applicant approached the respondents vide general application dated 3rd October, 2022 requesting for grant of discharge along with NOC to join on the

Gazetted post. It is stated that the application was rejected by the Air Officer Commanding 3BRD C/o 56 APO, Air Force on 14th October, 2022 with the remark "Not Recommended".

5. It is the case of the applicant based on the provisions of AFO 33/2017 that the applicant has to participate in the selection process after seeking permission from the respondents for which the online application is to be submitted. The applicant's effort for submitting the online application on 25th November, 2020 having failed, he tried to submit the same offline on 27th November, 2020, this was also not accepted by the respondents, as such left with no other option the applicant appeared in the examination, cleared the same and now the respondents are not granting him discharge and NOC on the ground that as per AFO 33/2017, the applicant has to seek prior permission and NOC before participating in the selection process and the applicant having participated the selection process without seeking permission, he is being denied NOC and discharge.

6. Referring to the judgment of the Delhi High Court in WP(C) No. 634/2020 Subhash Chand Vs. Union of India and Ors. decided on 11th March, 2020, learned counsel for the applicant argues that the requirement of having Skill Grade A

under Clause 6 of AFO to be eligible for seeking civil appointment has been held ultra vires, SLP filed for the same was dismissed and the Delhi High Court has directed the respondents not to insist upon having Skill Grade A for participating in the selection process for appointment to civil post. The action of the respondents in not accepting the online application on the ground of applicant not being a Skill Grade 'A' employee is unsustainable in law. In support of the said submission, learned counsel invites our attention to orders passed by the Delhi High Court on 5th August, 2020 in WP (C) 3311/2020 **Sonu Vs. Union of India and Ors.**, order dated 12th January, 2021 passed by the Delhi High Court in WP(C) 8002/2020 **Krishna Kant Yadav Vs. Union of India and Ors.** and an order by a Coordinate Bench of this Tribunal passed on 27th July, 2021 in OA 2038/2018 **Sgt Samant Singh Sengar Vs. Union of India and Ors.** to canvass the contentions that once the Delhi High Court and this Tribunal have held that for seeking the civil employment Skill Grade 'A' cannot be insisted upon and when the AFO mandates submission of online application and when the online application was not being accepted in view of the non-availability of Skill Grade 'A' certificate, act of the respondents in

denying the benefit to the applicant to appear in the examination and selection process is unsustainable in law.

7. Learned counsel also invites our attention to an order passed by another Coordinate Bench of this Tribunal in OA 2670/2021 Cpl Ayush Maurya Vs. Union of India and Ors. on 23rd March, 2022 wherein the respondents were directed to review AFO 33/2017 and issue necessary amendments to facilitate eligible persons to apply for permission without Skill Grade 'A' and to modify their online process system for grant of permission, it is emphasized by the learned counsel appearing for the applicant that the applicant was prevented from appearing in the selection process conducted by the Rajasthan Selection Board only because the applicant could not apply online. All efforts made by the applicant to apply online on 25th November, 2020 failed because the software was not upgraded to accept the application submitted by an employee who did not possess Skill Grade 'A'. Even when the applicant on 27th November, 2022 tried to submit the offline application, the same was not accepted by the respondents and in this process, it is the case of the applicant that the applicant had no other option but to appear in the selection process without seeking prior permission and having now succeeded in the examination, the respondents

cannot deny discharge from service and NOC to the applicant only because the applicant did not possess the requisite NOC or permission from the respondents.

8. Learned counsel invites our attention to the eligibility contained in Clause 6 of the AFO. The online registration system contemplated in Clause 9, the action to be taken on the applications vide Clause 11 and Clause 12 and argued that when the system of submitting online application is prescribed by the respondents and when the system itself was not accepting the application, the applicant cannot be denied the benefit of participating in the selection process and once he has been selected, the respondents cannot deny discharge or NOC to the applicant. Learned counsel took us through the judgment in the case of Subhash Chand (Supra), Para 22 thereof and argued that once requirement of Skill Grade 'A' to participate in the selection process is held to be unsustainable by the Delhi High Court, the respondent's action in not upgrading the software system and not permitting the applicant to appear in the examination only because he did not have Skill Grade 'A' is unsustainable in law. Reference is also made to the observations made in the case of Sonu (Supra) in Para 15 and 23 wherein the law laid down in

the case of Subhash Chand is reiterated in the following manner:-

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15. We have thus heard the counsel for the petitioner in response to the arguments of the counsel for the respondents no.1 to 3 IAF on 28th July, 2020. It was the contention of the counsel for the respondents no. 1 to 3 IAF on 28th July, 2020, that the petitioner is not entitled to the relief as granted to *Subhash Chand* supra, because (i) the petitioner has fabricated the document at the page 122 of the paper book and is thus not entitled to any discretionary equitable relief and his petition is liable to be dismissed; (ii) while *Subhash Chand* supra had applied for online permission and which was not processed owing to online process not entertaining applications for discharge without the requisite qualifying criteria of skill grade 'A', the petitioner, without even applying and merely to take advantage of the judgment in *Subhash Chand* supra, had fabricated the document at page 122 of the paper book, to show that the petitioner had attempted online permission, when in fact the petitioner had not; and, (iii) had the petitioner attempted to seek permission as claimed, there would have been a date at the top of page 122 of the paper book.

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23. We have already, in *Subhash Chand* supra referred to Part-IV titled 'Directive Principles of State Policy of the Constitution of India, provisions whereof per Article 37 though are not enforceable but principles laid down wherein are nevertheless fundamental in the governance of the country and the State obliged to follow those in making laws. It was further held that it is the duty of the IAF as

State to enable a citizen to upgrade himself from a group 'C' to a group 'A' post, to be able to have much more dignity and pride in his vocation, than as a driver, even if of a Specifically Operated Vehicle (SOV) in the IAF. It was observed, that the society in general bestows more respect to an Assistant Professor (College Cadre), than to a driver, even if of a SOV in the IAF. IAF, in the said judgment was reminded (a) of the duty of its airmen/Corporals, as citizens, under Article 51 A (j) of the Constitution, to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievements; and, (b) of Article 51A (k), imposing a duty on a parent or guardian to provide opportunities for education to his child or ward between the ages of six to fourteen years. It was held that it was the duty of the State in its role as *parens patriae*, to not come in the way of airmen enhancing their social if not financial status."

9. Reliance is also placed on the law laid down in the case of Krishna Kant Yadav (Supra) wherein also the same principles have been upheld by the Delhi High Court. Learned counsel also placed heavy reliance in the observations made by this Tribunal in the case of Sgt Samant Singh Sengar (supra) and Cpl Ayush Maurya (supra) and argued that the respondents having not upgraded the website and the software cannot deny the benefit to the applicant. Learned counsel argued that the respondents were duty bound to amend the AFO 33/2017 issued on 8th December, 2017 to bring it in line with the law laid down in the case of

Subhash Chand(Supra) and the directions issued in the case of Cpl Ayush Maurya(Supra) and having not permitted the applicant to apply offline to participate in the examination have deprived the applicant of his valuable right for career progression and to seek civil employment to which he was eligible and entitled to seek discharge under AFO 33/2017.

10. Respondents have refuted the aforesaid and filed a detailed counter affidavit and it is the categorical case of the respondent that the applicant has not complied with the directions issued by this Tribunal on 18th January, 2023 which reads as under:-

“ We find that after a Coordinate Bench of this Tribunal decided O.A. No. 2670/2021 [Cpl Ayush Maurya Vs. Union of India & Ors. with O.A. NO. 2716 of 2021 (Sgt Kuldeep Kumar Vibhuti Vs. Union of India and Ors.)], a large number of petitions are being filed on the ground that the applicant applied online but as the applicant was not possessing the Skill ‘A’ category, the online system was not accepting the application and therefore praying for condonation of seeking prior approval, petitions are being filed. However, in the pleadings, no specific date as to when the online application was submitted and action, if any, taken for representing the matter is not indicated. In this particular case, we find that the advertisement was issued on 02.11.2020 and the last date for submission of the application was a month thereafter. If the online application was not accepted in December 2020 or January 2021, the applicant should specify on which date, he tried to submit online application and what action was taken by him to seek permission once

the online application was not accepted. Let an affidavit clarifying the above positions be filed within four weeks from today and thereafter we will consider the prayer of the applicant.

List the matter on 2nd March, 2023.”

11. It is the case of the respondents that in accordance with the aforesaid directions, even though applicant has filed MA 629/2023 and MA 634/2023 and submitted the purported application said to have been filed on 20th July, 2020 through the offline mode. Respondents refuted the submission of such an application by the applicant. They referred to the application filed by the applicant in pursuance to the order passed and submitted that the applicant has filed a vague application without any details in the affidavit to say as to whom, in which office, which section and to which officer, the application was submitted. The affidavit filed by the applicant according to the respondents is lacking in specific details, it is vague and the application is filed with the signature of the applicant, and remark column of the Section Commander is left blank. It does not bear the signature of any officer. There is nothing to indicate as to who received this application, there is no acknowledgment about its submission to any office. It is the case of the respondents that neither did the applicant submit any online application as alleged nor did he submit any offline

application on 27th November, 2020 as contended. No such applications were received by the respondents either in online system or in the physical mode on 25th November, 2020 and 27th November, 2020 as alleged.

12. The applicant participated in the selection process without seeking any permission as required under the AFO 33/17 and sought permission for discharge only after having participated in the examination conducted on 22nd September, 2020 to 23rd September, 2020 in the interview which was held on 23rd September, 2022 and for the first time applied to the respondents on 3rd October, 2022 after the result were declared on 1st October, 2022 and he was selected for the appointment of the civil post. In a detailed counter affidavit filed by the respondents running to about 170 pages, the respondents have tried to demonstrate before us that the applicant has come out with a false case only with a view to take advantage of the law laid down in the case of Subhash Chand (Supra) and by this Court in the case of Cpl Ayush Maurya (Supra) as an afterthought. The applicant has fabricated the story of submitting applications online on 25th November, 2020, and offline on 27th November, 2020 and now wants to take advantage of the said judgments whereas

in fact no such application was submitted either in the offline mode or online mode as alleged.

13. Learned counsel for the respondents took us through the AFO 33/17 and submitted that even if for the sake of the arguments it is assumed that the applicant tried to submit the online application under Clause 9 of the AFO and because the offline application was not accepted, he appeared in the examination even without seeking any permission, the counsel invites our attention to Clause 11 and 12 and argued that after the applicant cleared the written examination and when he was called for the interview, then under Clause 12, the applicant was required to submit the application for grant of NOC after the call letter for the interview or verification of documents or after result of the written examination was declared. Relying heavily on the above provision respondents contended that the applicant failed to comply with this requirement of the AFO and inviting our attention to a judgment rendered by a Coordinate Bench of this Tribunal in the case of Sgt MD Rafiqul Islam Vs. Union of India (OA 2879/2022 decided on 20th February, 2023, argued that identical arguments advanced and submissions made have been rejected by this Tribunal. Respondents also placed heavy reliance on order passed by this Tribunal on 19th April, 2023 in

(OA 216/2023) Sgt Muralidhar Pakal Vs. Union of India and Ors. to say that the requirement of Clause 12 of the AFO 33/17 having not being complied with in the light of the view taken by this Tribunal in the case of Sgt MD Rafiqul Islam (supra), the application is liable to be rejected. They submit that the effect of Para 12 of the AFO and the effects of its non-compliance have been considered by this Tribunal and similar arguments were rejected. In view of the above, learned counsel for the respondents submits that no case is made out for interference and the application is liable to be rejected.

14. In rebuttal, learned counsel for the applicant, Ms. Pallavi Awasthi, argued that once the online application was tried to be submitted in Clause 9 could not be complied then insisting on the requirement of Clause 12 is unsustainable. Clause 12 is required to be complied with only if the candidate applied for online permission, appears in the examination and then only the second part, i.e., Clause 11 and 12 would follow.

15. We have heard learned counsel for the parties at length and perused the records. The issue that warrants consideration by us in this application is:-

- (a) Whether the applicant tried to submit the applications seeking permission online on 25th November, 2020 or offline on 27th November, 2020.
- (b) Whether the requirement of Clause 12 was required to be complied with by the applicant in this case and what is the effect of its non-compliance and
- (c) Whether the applicant is entitled to the relief of seeking discharge and NOC for joining the selected civil post.

16. Before adverting to consider various aspects of the matter it is appropriate to take note of AFO 33/2017 which pertains to grant of NOC to Airmen for seeking appointment in a civil post. The eligibility criteria for seeking appointment in a civil post is contained in Clause 6, even though the applicant does not fulfill the Skill 'A' Grade eligibility criteria as required in this Clause. But as the requirement of Skill 'A' Grade has been held ultra vires and illegal by the Delhi High Court in the case of Subhash Chand(Supra) it is the admitted position that the applicant was eligible to participate in the process of selection conducted by the Rajasthan Public Service Commission for appointment to the post in question. Clause 9 of the AFO mandates a prospective candidate to seek permission through the online mode and thereafter Clause 11 and 12 mandates for

action to be taken by the Airmen who are desirous of seeking civil employment. For the case convenience Clause 9, 10, 11 and 12 are reproduced herein under:-

“On-line Registration

9. Several prospective employers invite applications for civil employment through their websites on the internet. In the past, there had been some instances where applicants had inadvertently divulged classified information while applying on-line for civil employment. This is against the existing security regulations of the IAF. The following guidelines are to be followed for on-line registration of applications for civil posts under both the Categories (I and II):-

(a) Individual to seek prior permission from his respective AOC/Stn Cdr/CO specifically to apply for civil posts through ‘on-line’ registration.

(b) Blank application form along with advertisement downloaded from the website is to be filled and submitted while obtaining permission for on-line registration. In case application cannot be downloaded, contents of the application form are to be submitted while seeking permission.

(c) Individual has to give an undertaking in his application stating that no classified information shall be communicated to the employer while registering on-line.

(d) Before granting permission, the unit administration is to examine the contents of the application keeping security consideration in mind. *In no case, ex-post facto sanction for on-line registration is to be accorded.*

10. Certain Government organizations and autonomous bodies like IBPS, prescribe the format of NOC in the advertisement itself. Competent Air Force Authority may issue such NOCs as per the specified format.

Actions by Airmen/NCs(E)

11. Airmen/NCs(E) desirous of applying for civil posts shall submit following documents to AOC/Stn Cdr/CO through Orderly Room:-

- (a) Application seeking permission to apply for civil post.
- (b) Undertaking as per Appendices C and D to this AFO.
- (c) Under as per Para 9(c).
- (d) Advertisement in original or self attested photo copy (Hindi/English) having date/period of publication. Advertisement downloaded from Website should be in English/Hindi and to be self attested.
- (e) Advertisements in other languages are also to be submitted in original or self attested with a translated copy in English or Hindi highlighting relevant points of the advertisement namely *post applied for, pay scale offered, address of the employer etc.*

12. Application for grant of NOC for civil posts is to be submitted by the individual through proper channel 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.”

17. From the aforesaid it is clear that the applicant was eligible to seek appointment to the civil post and as per the AFO, the applicant should have applied through the online mode before participating in the selection process and even if the online application was not accepted then also under Clause 11, the Airmen desirous for applying to the civil post is required to submit the documents as detailed in Clause 11.

18. According to the applicant he tried to submit the online application on 25th November, 2020 and the offline application on 27th November, 2020. As far as the submission of the online application is concerned there is no proof of its submission and its non-acceptance. Even if for a moment it is assumed that the applicant tried to submit the application online on 25th November, 2020 and it was not accepted by the software then the applicant who is a well qualified person who is applying for seeking appointment on the post of Assistant Professor (Hindi) and whose qualifications in Para 4.4 of the pleadings indicates that he has passed his 10+2 examination, had graduated in arts, has the Masters Degree in Arts and has cleared the NEET examination and also the National Testing Agency examination, could have been made a representation or complaint to the Competent Authority about the online application not being accepted. Even if such a representation was not made, we find that after being appointed the applicant, for the first time submitted an application on 3rd October, 2022 vide Annexure A-1 requesting for grant of discharge from service along with NOC to join on the said post.

19. A perusal of this request letter indicates that in Para 1 applicant speaks about his enrolment in the Indian Air Force

on 28th March, 2012, the present post held by him thereafter he speaks about advertisement issued in November 2020 enclosed a copy of the advertisement as Annexure A and in Para 1.3, a vague statement is made by him to say that *'I made an attempt through online on AFRO Site but my application was not processed'*. He, however, does not disclose the date on which he tried to submit the application online thereafter in Para 4 the application goes on to say that as the AFRO site did not process his application. Left with no other option he applied for the post advertised by the RPSC and cleared the written examination, interview and as now is selected to the appointment to the post. Surprisingly, nowhere it is in this letter does the applicant mention about seeking permission offline on 27th November, 2022 (AnnexureA-3). A perusal of the A-3 indicated that it is an application said to have been submitted on 27th November, 2020 seeking permission for applying the civil post Class 'A'. The applicant in his own hand writing indicates that he may be permitted to apply for the post of Assistant Post (Hindi) under the RPSC as the online process did not process his application. However, surprisingly, there is no acknowledgement of this letter by any authority, there is not receipt or remark by the Section

Commander, the adjutant or recommendations of the Commanding Officer as each and every column is left blank.

20. Under such circumstances, it is the case where even if it is assumed that the applicant tried to submit his application online which is not established in accordance to the requirement of law, the applicant has in our considered view made false averments with regard to submission of the offline application on 27th November, 2020. Had the applicant made such an effort, the same should have been mentioned in his requisite letter dated 3rd October, 2022. Now, even if we assume that the contentions of the applicant were correct and he could not apply online then also under Clause 11, the applicant should have taken action as contemplated in the matter of submitting the documents as indicated in the Para 11-(a), (b), (c), (d) and (e). There is no proof or averment of the applicant having taken action as required in Para 11. Even the undertakings as prescribed in Appendices (c) and (d) is not submitted by the applicant nor counter signed by the officers indicated in Appendices (c), nor is the certificate of the undertaking in Appendices (d) submitted by the applicant. It is only after he was selected for appointment to the post with a letter dated 3rd October, 2022 the applicant undertakes the process of

seeking permission for discharge. At this stage it is appropriate to take note of the requirement of Clause 12 of the AFO, the NOC for applying to the civil post is required to be submitted by the individual as per this Clause after receiving the call letter for appearing in the interview or for verification of documents or after the result of the written test is declared.

21. Admittedly, neither after receiving the call letter for appearing in the interview any application is filed by the applicant nor after declaration of the result of the written test, the applicant made any application for grant of NOC. It is the admitted position and nowhere does the applicant indicate as to whether he requested for grant of NOC in accordance to the requirement of Clause 12. In the case of Sgt Muralidhar Pakal Vs. Union of India and Ors. this aspect has been considered by a Coordinate Bench of this Court and after taking note of the mandatory provision of AFO 33/17, and on considering the requirement at Para 11 and 12 it has been observed by this Tribunal in Para 10 as under:-

“10. From the aforesaid, it is clear that seeking prior permission or NOC from the competent authority is a mandatory requirement for seeking appointment to the civil post. That being so, it is a case where even if the applicant could not seek prior permission before applying for participating in the selection post, he did not make any effort to intimate the respondents about his selection in the written examination and

thereafter receipt of the call letter for interview, accordingly he did not follow the mandate of para 12 of the AFO in its letter and spirit. The second default committed by the applicant in not complying with the requirement of para 12 cannot be overlooked and relief granted to the applicant. Even if the first default in not complying with the requirement of seeking prior permission before submitting the application is overlooked or condoned in the light of the law laid down in the case of Cpl Ayush Maurya (supra), the second default in the matter of non-compliance with the requirement of Para 12 of the AFO cannot be brushed aside, ignored or overlooked by this Tribunal, this being a mandatory requirement. The applicant's conduct shows that after his request was rejected on 16.01.2021, he appeared in the preliminary examination on 27.08.2021, results of which were declared on 02.11.2021, thereafter he appeared in the main examination between 20.01.2022 to 02.02.2022 and when the results were declared on 09.09.2022, he did not intimate the respondents about the same as required under Para 12 of the AFO. Again, when he received the call letter to appear in the interview on 07.10.2022 and appeared in the interview on 24.09.2022, then also he did not seek permission or NOC from the respondents as required under Para 12. It was only after the results were declared and he was selected to the post on 07.10.2022 that he sought NOC on 15.10.2022. This action of the respondents is in clear violation to the mandate of Para 12 of the AFO and in the impugned order passed, the respondents have clearly stated in Para 3(a) and 3(b) as under:

3. AND WHEREAS, your said application dated 07 Nov 2022 submitted by you has been considered in entirety and after according a careful consideration to the entire material on record, policy on the subject and relevant documents with regard to your case, the following has emerged:-

(a) That you had applied for the posts of Combined Competitive Examination 2020 conducted by Odisha Public Service Commission without obtaining the

mandatory prior permission in violative of Para 6 of AFO 33/2017 which stipulates; "No airman/ NC(E) of the IAF is eligible to apply for civil post/ services under Central/ State Govts without prior permission from the Competent Air Force Authority.

(b) That you subsequently appeared for interview for the posts of Combined Competitive Examination 2020 conducted by Odisha Public Service Commission without applying for NOC in violation of Para 12 of AFO 33/2017 which stipulates; "Application for grant of NOC for civil posts is to be submitted by the individual through proper channel 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".

Even if based on the law laid down in the case of Cpl Ayush Maurya (supra), the speaking order vide Para 3(a) reproduced herein above is held to be unsustainable in law the reason given in para 3(b) is a clear violation by the applicant and there is no reason or justification given by the applicant for this violation and if taking note of the violation of para 12 of the AFO, the respondents have rejected the prayer of the applicant for NOC we cannot find any illegality or irregularity in the same warranting interference into the matter. The reliance placed by the applicant on various judgments like Sgt. Amar Kant and Sgt Samant Singh Sengar (supra) do not help the applicant for the simple reason that they referred to the requirement of seeking prior permission under Para 6 of the AFO and the effect of the judgment of the Delhi High Court in the matter of not possessing skilled A grade. None of the judgments relied upon by the applicant deals with the issue of non-compliance with the requirement of Para 12 of the AFO and once we are of the considered view that the requirement of para 12 of the AFO is also a mandatory requirement which should be fulfilled by the airmen and when in a case like that of the applicant the requirement of this mandatory requirement is not fulfilled, if

the respondents have rejected the same by the speaking order on such consideration, we see no error in the same for making any indulgence into the matter. The Delhi High Court in the case of Cpl Manoranjan Kumar (supra) has clearly held that a member of the Indian Air Force must apply and comply with the rules, more so because they belong to a disciplined Force. Accordingly, finding the applicant not to have complied with the mandatory requirement as stipulated in the AFO, we reject the prayer made by the applicant.”

22. Admittedly, the aforesaid principle will apply in the case of the applicant also even if for arguments sake it is assumed that the effort of the applicant to apply online under Clause 9 failed, requirement of Clause 11 and 12 has not been complied with by the applicant and thus it is sufficient enough to hold that in the absence of the requirement of the AFO being complied with by the applicant, no relief can be granted to the applicant. The requirement of complying with the mandatory requirement of a procedure laid down for seeking discharge from military service has been considered by the Hon'ble Supreme Court and the Delhi High Court in the case of Amit Kumar Roy Vs. Union of India and Ors. Civil Appeal No. 4605-4606/2019 and by the Delhi High Court in WP (C) 567/2019 Sgt Pradeep Kumar Rai Vs. Union of India and in the case of Amit Kumar Roy (Supra) in Para 14, the requirement of complying with the provision of AFO has been laid down in the following manner by the Hon'ble Supreme Court:-

"14. In the present case, the appellant in breach of the provisions contained in AFO 14/2008 applied for the post of a Probationary Officer with the bank of India, participated in the written test and appeared at the interview without intimation or approval. There was, therefore, a failure of the appellant to comply with his obligations both in terms of this engagement as an enrolled member of the force and in relation to the requirements which were to be fulfilled under the terms of AFO 14/2008."

23. Similar is the view taken by the Delhi High Court in various other cases. Keeping in view the aforesaid principles of law as detailed hereinabove and the facts and circumstances of the case, we have no hesitation in holding that the applicant participated in the selection process without following the requirement of AFO 33/17 and therefore in denying him NOC and discharge, the respondents have not committed any error which warrants interference.

24. The application is therefore dismissed.

Pronounced in open Court on this 6th day of December, 2023.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

Priya