

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

69.

MA 433/2024 IN OA 02/2023

Sgt Ashish Kumar	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant : Mr. Anshuman Mehrotra, Advocate
Mr. Ankur Chhibber, Advocate
For Respondents : Mr. R.S. Chhillar, Advocate

CORAM :

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

ORDER
05.02.2024

MA 433/2024

This is an application filed under Rule 45 of the Armed Forces Tribunal (Practice) Rules, 2009 seeking early hearing of the matter. For the averments made, we allow this application and take the OA on board for hearing today itself.

OA 02/2023

2. Seeking No Objection Certificate (NOC) for joining the civil service and calling in question the impugned order (*Annexure A-1*) dated 25th November, 2022, rejecting the prayer for grant of NOC, jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal, 2007 has been invoked by the applicant and the prayer made is to quash the impugned order and direct the respondents to issue NOC.

3. It is the case of the applicant that the NOC for joining on the gazetted post of Sub Registrar in the State of U.P. has been rejected on the ground that the applicant, an Air Warrior, does not meet the criteria as laid down in AFO 33/2017, his case has not been recommended for grant of NOC and it is also indicated that he did not seek permission, as required under AFO 33/2017 before participating in the selection process conducted by Uttar Pradesh Combined State/Upper Subordinate Services (PCS) Examination for recruitment to Group B Officers post.

4. Applicant was enrolled into the service of the Indian Air Force as an Airman on 27th December, 2005. While in service between the period 2010 to 2019, the applicant with permission from the competent authority graduated himself from Dr. Bhimrao Ambedkar University, Agra, MA from Chatrapati Sahuji University, Kanpur and B.Ed from Dr. Bhimrao Ambedkar University, Agra. It is said that the respondents have issued AFOs from time to time with regard to leaving the service of the Air Force, seeking permission to apply for civil posts for service with the Central Government, State Governments and Public Sector Undertakings and the AFOs in this regard were amended from time to time. At the relevant time when the applicant joined the service AFO 5/2003 was in operation and subsequently it was replaced by AFO 04/2007 with effect from 1st June, 2007 and presently AFO 33/2017, which has come into force on 08th December, 2017 occupies the field. According to

the applicant as he was eligible to seek appointment to a civil post as per AFO 33/2017 when he came across an advertisement issued by Uttar Pradesh Public Service Commission (UPPSC) on 5th February, 2021 calling for applications for recruitment to Group B Officers posts through the Combined State/Upper Subordinate Services (PCS) Examination 2021. The applicant having completed seven years of service as on 26th December, 2012 and being eligible applied through online portal of the AFRO website seeking permission to apply for the said post. However, the applicant was not able to apply online on account of the fact that he was holding Skill-B post and not a Skill-A post which was the requirement of the AFO. Referring to the AFO in question, which has been filed by the applicant as ***Annexure A-8***, it is his case that he is qualified to seek NOC for appointment to the post in question. The eligibility criteria prescribed in Para 6 of the aforesaid AFO, reads as under:

“Eligibility Criteria

6. Airmen/NCs(E) of the IAF are eligible for civil posts/services with prior permission from the Competent Air Force Authority. Airmen/NCs(E) including those on deputation shall be eligible for seeking permission to apply for the following category of posts:

<i>Category</i>	<i>Description of Post</i>	<i>Eligibility criteria</i>	<i>Competent Authority to issue NOC</i>	<i>Format of NOC</i>
<i>Category –I</i>	<i>Group A/I and Group B/II Gazetted posts through UPSC and State Public Service Commission only</i>	<i>(a)Airmen with minimum Skill Grade A and seven years of service</i>	<i>AOC, AFRO</i>	<i>Appendix A</i>

	<i>(Recruitment advertisement must clearly mention the Group of the Post)</i>	<i>(b)NCs(E) irrespective of length of service</i>		
<i>Category -II</i>	<i>Any civil post in Govt./PSU/Private Sector</i>	<i>Airmen in the last year of residual service prior to expiry of their initial Regular Engagement (RE)/ Extended R E provided they have submitted unwillingness/denied further extension of service</i>	<i>AOC/Stn Cdr/CO</i>	<i>Appendix B</i>

However, only because the Skill-A Grade was indicated in the AFO, the applicant's application was not accepted by the online portal. According to the applicant as the closing date for online submission of the application was nearing and when he found that he could not submit the online application, it is the submission in the original pleading of the applicant in the OA that he applied directly without seeking permission of the Competent Authority to appear in the preliminary written examination which was scheduled to be held on 24th October, 2021. He was successful in the preliminary examination, results for which were declared on 1st December, 2021. (*Annexure A-3*). Based on the results of the preliminary examination, the applicant participated in the main examination conducted by UPPSC between 23rd March, 2022, and 27th March, 2022. Clearing the same with flying colors vide

results declared on 12th July, 2022 (*Annexure A-4*), subsequently he appeared in the viva voce/interview and vide final results (*Annexure A-5*), he was selected for appointment to the gazetted post of Sub Registrar on 19th October, 2022. The applicant received information about his appointment on 24th November, 2022 (*Annexure A-6*). On receipt of the aforesaid information, the applicant on the very next date, i.e., on 25th November, 2022 vide his general application sought NOC from the Competent Authority and the Competent Authority in the application (*Annexure A-1*) made the following remarks on 9th December, 2022:

- “ (i) Air warrior does not meet the criteria as per AFO 33/2017
- (ii) Not recommended for grant of NOC
- (iii) Forwarded for perusal of AoC.”

5. The applicant was not granted NOC; on the contrary for having appeared in the examination for appointment to the civil post, without prior permission in violation to the requirement of AFO 33/2017, it is the case of the applicant that he was reprimanded. Applicant challenges the AFO on various grounds and further contends that the requirement of possessing Skill –A Grade to be eligible for appointment to the civil post has been held to be *ultra vires* and unsustainable in law by the Hon’ble Delhi High Court by a landmark judgment in the case of Subhash Chand Vs. Union of India and Ors. (WP (C) No.634/2020) decided on 11th March, 2020 wherein the condition of having Skill –A Grade in Clause 6 of the AFO 33/2017 is found to be *ultra vires* and contrary to law. The SLP (C) No.8061/2020 titled Union of India and Ors. Vs. Subhash

Chand filed by Union of India was also dismissed by the Hon'ble Supreme Court on 11th July, 2020 and subsequently Hon'ble Delhi High Court and a Coordinate Bench of this Tribunal have interfered into similar matters by holding that the online portal of the Air Force should be amended and the applicants having Skill –B Grade with seven years of experience should be permitted to take up the examination for appointment to the civil posts by applying online. Reference, in this regard, is made to the judgments in the cases of (i) Sonu Vs. Union of India and Ors. (WP (C) No.3311/2020) decided by Hon'ble Delhi High Court; (ii) Sgt Samant Singh Sengar Vs. Union of India and Ors (OA 2038/2018), decided by a Coordinate Bench of this Tribunal on 27th July, 2021 and (iii) Cpl Ayush Maurya Vs. Union of India and Ors. (OA 2670/2021) decided by a Coordinate Bench of this Tribunal on 23rd March, 2022, wherein following the law laid down by Hon'ble Delhi High Court in the case of Subhash Chand (supra), this Tribunal has also held that the portal of the Indian Air Force should be amended and the persons with seven years service in Skill –B Grade should be permitted to fill in the application form online and seek appointment to the civil posts.

6. In sum and substance submission of the applicant before us is two-fold. He challenges the amendment to the AFO from time to time and further argued that when the applicant was interested in seeking appointment to the UPPSC and tried to fill up the form online for the purpose of seeking NOC, which was to be done online, the

online portal of the Air Force did not accept his application on the ground that he did not possess Skill-A Grade and as a consequence thereof he appeared in the selection process, participated in the preliminary examination, the main examination and the interview and after his selection he applied for NOC on 25th November, 2022 which has now been rejected on grounds which are unsustainable in law.

7. In the OA filed, the applicant's case was that he could not seek prior permission because of the defects in the online portal of the Air Force and in spite of the directions issued by Hon'ble Delhi High Court in the case of *Subhash Chand* (supra) and by this Tribunal in the case of *Cpl Ayush Maurya*, (supra) the respondents did not bother to correct the portal and accept the applications of the candidates like the applicant with seven years of service and Skill- B Grade and because of the inaction on the part of the respondents the applicant has been deprived of the benefit to seek NOC prior to appearing in the examination and faced with the situation, that came into force, the applicant appeared in the examination and then sought NOC after clearing the examination. However, having made such a submission in the OA, in the rejoinder filed by the applicant on 30th October, 2023, he comes out with a plea that when the online portal did not accept his application, as detailed in the pleadings, he sought permission by filing applications

on 12th February, 2021 and 14th July, 2022 respectively which have also been rejected.

8. As far as the application dated 12th February, 2021 is concerned the same has been filed as **Annexure A1** (Colly) at page 314 of the paper book. Surprisingly, it does not bear any acknowledgement, remarks or comments by the Section Commander or other officers like UWO, Adjutant and Commanding Officer. On the contrary in the document submitted by the applicant after his selection vide the impugned **Annexure A-1**, the application bears the endorsement and signatures of all the authorities. As far as the second application, said to have been submitted on 14th July, 2022, is concerned, the same is also blank and does not bear the signatures or endorsement of any of the officers. The record also indicates that on 10th April, 2023 the applicant was counseled for having applied to participate in the examination without seeking permission.

9. Be that as it may, it is the case of the applicant that he tried to apply for appearing in the examination through the online portal but on account of the defect in the online portal and it not being in conformity with the law laid down by the Hon'ble Delhi High Court and this Tribunal, his application was not accepted by the online portal he, therefore, submitted two applications physically, as indicated in the rejoinder, on 12th February, 2021 and 14th July, 2022, and now these applications have also been

rejected and, therefore, he seeks a direction to grant NOC to him as he is entitled to the same in accordance with law.

10. Respondents have refuted the aforesaid contentions and submitted that as per the requirement of the AFO the applicant is required to seek prior permission before appearing in the examination and it is their case that as per the requirement of the AFO seeking prior permission is a mandatory requirement and without seeking prior permission the act of the applicant in appearing in the selection process and examination was illegal. Respondents, apart from contending that the applicant never applied through online portal and never submitted any application physically, as contended by him on 12th February, 2021 and 14th July, 2022, invite out attention to Clauses 11 and 12 of the AFO 33/2017 to say that even if the online portal did not accept the application, which is not admitted by the respondents, the applicant did not seek permission subsequently also in accordance to the requirement of Clauses 11 and 12 which read as under:

“ 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) Undertaking 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.”
(Emphasis supplied)

Respondents contend that similar issues have already been considered and decided by this Tribunal and identical submissions made have been rejected by Coordinate Benches of this Tribunal. They referred to a judgment rendered by this Tribunal in the case of Nakhat Singh Vs. Union of India and Ors. (OA 3068/2022) dated 6th December, 2023 wherein similar pleas were rejected and when the matter was challenged by Nakhat Singh before the Hon’ble Delhi High Court in Writ Petition (C) No.16521/2023, the Hon’ble Division Bench of the High Court by a detailed judgment passed on 23rd January, 2024 upheld the decision of this Tribunal. Respondents submit that in view of the aforesaid judgment and the fact that the applicant has not proved about submission of the application either online or physically in this case, the application is liable to be rejected. They also place reliance on the judgment of this Tribunal in the case of Mahendra Singh Gurjar Vs. Union of India and Ors. (OA 1388/2019) decided on 21.11.2019 and of the Hon’ble Delhi High Court in the case of Cpl Manoranjan Kumar Vs. Union of India and Ors. (WP (C) No.494/2017) decided on 16th November, 2017 to say that seeking of NOC is not a right and the respondents can very well deny the same on proper consideration. Reliance is also placed on the law laid down by Hon’ble Supreme Court in the case of Amit Kumar Roy Vs. Union of

India and Ors. [(2019) 7 SCC 369] (Annexure R-6) in support of the aforesaid contentions. Respondents submit that in this case the applicant's contention that he applied online and thereafter through physical mode on 12th February, 2021 and 14th July, 2022 is disputed and they deny the same. It is the case of the respondents that the applicant having appeared in the examination without seeking any permission; they have not committed any error in rejecting his claim. They submit that for the act of the applicant in appearing in the selection process in violation of AFO 33/2017, he has been reprimanded and the applicant has not challenged the reprimand order.

11. We have heard learned counsel for the parties at length and have also considered various aspects which have been brought to our notice. Even though after the judgment of the Hon'ble Delhi High Court in *Subhash Chand* (supra), following which a Coordinate Bench of this Tribunal decided the issue in the case of *Cpl Ayush Maurya* (supra), a person with seven years of experience in Skill –B Grade was eligible to seek appointment to civil post as per AFO 33/2017 and contention of the applicant that he was eligible to seek appointment is an admitted position. However, the AFO mandates that the candidate has to apply for NOC before filling up the application form to appear in the examination and appearing in the examination without seeking prior permission is not permissible. Clauses 11, 12 and 19 clearly stipulate that even if the candidate has

not taken permission through online process contemplated under para 9 of the AFO, he has to comply with the requirement of Clauses 11 and 12 by physically submitting the application/documents as mentioned therein. That being so, the only issue warranting consideration before us is as to whether before participating in the process of the selection conducted by UPPSC, the applicant took prior permission from the respondents or not.

12. In the OA filed by the applicant on 28th December, 2022, in para 4.10 it is the case of the applicant that he came across with an advertisement on 5th February, 2021 issued by the UPPSC for recruitment in question and having completed seven years of service on 26th December, 2022 tried to apply for permission on the Air Force website but the website did not accept his application as he did not possess the Skill –A Grade and was only a Skill –B Grade. Applicant has filed the advertisement as ***Annexure A-2*** but, surprisingly he does not give the date when he tried to fill up the application through the online portal. We may take judicial notice of the fact that under similar circumstances when few of the applicants tried to fill up the application online and when the online portal did not accept their applications, a message was conveyed to the applicants that their applications cannot be accepted because they did not possess Skill –A Grade and as all such applicants approached this Tribunal along with the screenshot that was displayed on the portal as proof of the online portal not accepting,

their applications, in all such cases we had allowed the applications. Surprisingly, the applicant in para 4.10 of the OA is silent as to on which date he tried to apply online and when the online portal indicated the fact about his not possessing the Skill –A Grade, why has he not saved the message received in this regard. It is also surprising to note that when the online portal did not accept his application, in the original pleadings from para 4.10 onwards it has never been the case of the applicant that he submitted any application physically thereafter or made any complaint about non acceptance of his application by the online portal. It is only when the respondents filed their counter affidavit on 27th March, 2023 and categorically came out with a case that the applicant never applied online nor did he submit any application before particularly in the selection process, that for the first time while filing the rejoinder on 30th October, 2023, the applicant made a pleading that he preferred physical application offline on 12th February, 2021 and 14th July, 2022. However, both these applications are only signed by the applicant and the remark columns of the Section Commander, UWO, Assistant Adit, Adit and the Commanding Officer are left blank in both the applications said to have been submitted on 12th February, 2021 and 14th July, 2022. On the contrary in the application submitted by the applicant on 25th November, 2022 after he was selected which has been filed by the applicant and marked as ***Annexure A-1*** all the columns have

been commented upon and remarks noted by the Station Commander, UWO, Assistant Adjutant, Adjutant and Commanding Officer. That being so, it is a case where the applicant seems to have appeared in the examination conducted by the UPPSC, took a chance and applied for grant of NOC only after the results were declared and he was selected. According to applicant's own showing the results of the examination were declared on 19th October, 2022 (*Annexure A-5*) and the applicant submitted the general application on 25th November, 2022 (*Annexure A-1*). In the original pleadings the applicant does not say (a) when he submitted the online application after seeing the advertisement; (b) if the online application was not accepted what was the communication received by him, which he has not produced; (c) if the online portal did not accept his application, why did he not make any complaint; and (d) why in the original pleadings he has not mentioned anything about submission of the offline applications on 12th February, 2021 and 14th July, 2022. This casts a serious doubt on the conduct of the applicant and on identical grounds in the case of *Nakhat Singh* (supra) this Tribunal after hearing all concerned recorded various opinions which have been reproduced by the Hon'ble Delhi High Court in its judgment passed on 23rd January 2024 in the following manner:

"13. After hearing both the parties, AFT was of the following opinion:-

i. Even though the petitioner did not fulfill the skill Grade 'A' eligibility criteria, as required under Clause 6 of AFO, the

requirement of skill-A has already been held ultra vires and illegal by this Court in the case of Subhash Chand (supra) and as such, the petitioner was eligible to participate in the process of selection conducted by Rajasthan Public Service Commission.

ii. The petitioner should have applied through the online mode before participating in the selection process and even if online application was not accepted, then under Clause 11, an Airman desirous for applying to the Civil Post, is required to submit documents as mentioned in Clause 11 of AFO;

iii. As far as the submission of online application is concerned, there is no proof of its submission and its non-acceptance. Even if it is assumed that petitioner had tried to submit the application online and it was not accepted by the software, the petitioner is qualified enough to make a representation or file a complaint, to the competent authority about failure in submitting the online application. The petitioner only after being appointed for the first time submitted an application on October 3, 2022 seeking grant of discharge from service along with NOC to join the civil post. Interestingly, in the said application, the petitioner did not mention anything about seeking offline permission, on November 27, 2020;

iv. Perusal of the application dated November 27, 2020 would reveal that the petitioner had in his own handwriting indicated that he may be permitted to apply for the post of Assistant Profession. However, there is no acknowledgement of this letter by any authority and also there is no receipt or remark of the Section Commander;

v. Even if it is assumed that the petitioner has tried to submit the application online (which is not established) as per the requirement of law, the petitioner has made false averment with regard to submission of offline application on November 27, 2020;

vi. Even if it is assumed that the petitioner could not apply online, he should have taken action in conformity with Clause 11, by submitting the documents as contemplated in the paragraph 11(a) to 11(e) of the said Clause;

vii. There is no proof that the petitioner had taken any action as required in paragraph 11. Even the undertakings as prescribed in Appendices (c) and (d) were neither submitted by the petitioner, nor counter-signed by the officers indicated in in Appendices (c); nor the certificate of undertaking in Appendices (d) was submitted by the petitioner.

viii. Only after the selection of the petitioner, he undertook the process of seeking permission to discharge from the service of IAF;

ix. As per Clause 12 of AFO, the NOC for applying for the civil post is required to be submitted by an individual 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. In the present case, after receiving the call letter for appearing the interview, the petitioner has neither filed any application nor after declaration of the result of the written test, the petitioner made any application for grant of

NOC. It is an admitted position that the petitioner has not indicated as to whether had even requested for grant of NOC in conformity with Clause 12;

x. The order passed by AFT in OA 216/2023, title as Sgt Muralidhar Pakal v. Union of India & Ors., decided on April 19, 2023 shall squarely apply to the facts of this case;

xi. Even it is assumed that efforts of the petitioner to apply online under Clause 9 got failed, the requirement under Clauses 11 and 12 has also not been complied with. Thus in absence of requirement of complying with the AFO, no relief can be granted to the petitioner. (Ref. Amit Kumar Roy v. Union of India & Ors., Civil Appeal No.4605-4606/2019, decided on July 3, 2019 and Sgt Pradeep Kumar Rai v. Union of India & Ors., W.P> (C) 567/2019, decided on January 21, 2019}.

13. In our considered view the same position exists in the case of the applicant. These grounds were challenged before the Delhi High Court also on identical submissions which have been recorded by the Delhi High Court in para 14 which reads as under:

“14. Suffice to state, though Ms. Pallavi Awasthi, has made the similar submissions as were made before AFT, which have already been reproduced above, the submissions made exclusively before us, are as under:-

i. AFT has committed an error by not considering the fact that AFO 33/2017 is procedural and once there is no procedure of offline application under Clause 9, the respondents, not accepting the offline application under Clauses 11 and 12 is contrary and impermissible as per their own Rules;

ii. Aft has filed to consider the fact that AFO 33/2017 does not provide any alternative medium of offline/general application and the general applications are accepted by the respondents as being contrary to the AFO;

iii. AFT has not considered the fact that the orderly room does not accept any application without recommendation of Commanding Officer and in the present case the application of the petitioner was not accepted because the respondents themselves have stated that offline application is not allowed as per AFO;

iv. AFT has not taken into consideration that this Court in the CPL N.K. Jokhar v. UOI & Ors., W.P. (C) 9088/2008, decided on October 21, 2009, has held that no applying through proper channel relates to a procedure of the law and not the substance of the law and unless otherwise mandatory by the language of the procedural law which leaves no scope to interpret a rule governing a procedure as mandatory;

v. The offline application of the petitioner was not accepted for the reason there was no procedure of seeking offline permission;

vi. The respondents refused to accept the offline application submitted by the petitioner on November 27, 2020 by stating there exists no procedure for taking offline application and as such the petitioner was under an impression that he has been impliedly permitted to appear in the examination;

vii. The respondents are at fault for not amending their AFO for seeking the permission through offline/general application as an alternate medium in case online application is not being accepted by the respondents' website;

viii. Any action/application which is not as per policy/provision of AFO leads to issuance of show cause and charge sheet and other coercive action could also be taken against the airmen to make them ineligible for applying further for any other civil post, as the AFO dealing with NOC has a clause, if any disciplinary action is pending or contemplated, the NOC can be denied, hence Airmen has no choice rather than applying without permission;

ix. The respondents while denying NOC to one similar candidate, have admitted that the general application for NOC is contrary to the provisions of AFO 33/2017 and the same has been observed by AFT while allowing OA No.616/2022 titled as Sgt Vishwajeet Kumar v. UOI & Ors.;

x. The AFO 33/2017 is unconstitutional in nature as it is violating fundamental rights guaranteed under the constitution. As with the introduction of AFO 33/2017, the respondents have imposed additional conditions including skill level 'A' through AFO 33/2017 on the eligibility criteria for applying to a civil post, which has made it difficult for airmen to seek discharge from service. The same is arbitrary and unreasonable on the ground that it puts airmen in a state of absolute dilapidation in his career prospects. In all previous AFOs the only condition to seek discharge from service was to serve for a minimum period, however, in the impugned AFO 33/2017, an additional condition like the minimum skill grade 'A' along with minimum 7 years of service is also required;

xi. The AFO 33/2017 on one hand, allows airmen to seek better career opportunities, however, on the other hand, it has imposed additional and unjust conditions by laying down the eligibility criteria on applying for a civil post. The said act of the respondents is contrary to the very objective of the prevailing policy as the whole and sole purpose of issuing AFOs is that if an airman like the petitioner herein on fulfilling the eligibility criteria of the prevailing AFO wants to seek discharge from service, then in such case, they should selflessly grant the discharge;

xii. IAF and this Court have adopted a broad and liberal approach on this issue and not only NOC has been issued in many cases, but discharge has also been permitted. (Ref. Corporal NK Jharkhar v. Union of India & Ors., W.P. (C) 9088/2008, decided on October 21, 2009, and Corporal

Praveen Kumar v. Union of India & Ors., W.P. (C) 13420/2009, decided on November 30, 2009].

Finally, the Delhi High Court after hearing all concerned from para 31 onwards decided the issue in the following manner:-

“31. We have already reproduced the findings of the AFT in that regard in paragraph 13 above. There is a finding of fact by AFT in paragraph 13 (iii) above to the effect that the petitioner has not placed any proof of submission of online application and its non-acceptance by the respondents. Even before us, Ms. Awasthi was not able to place any evidence to show that the petitioner had in fact made an attempt to submit the online application. Even the plea of the petitioner that the same could not be submitted because the respondents have not updated their software in view of the judgment in the case of Subhash Chand (supra), wherein, the prescription of Skill ‘C’ Grade was held to be ultra vires, does not appeal us. The best proof to show that the online application was not accepted/submitted was to place on record the screenshot of the computer window, specifically, the website of the respondents showing that the petitioner had in fact tried to submit the online application, which, admittedly has not been filed by the petitioner. Also, there was no complaint made qua that to the respondents.

32. Insofar as the plea that even on November 27, 2020, an attempt was made to submit the offline application, the finding of AFT is noted in paragraph 13 (iv), which we agree. Suffice to state, that in the absence of any acknowledgement qua such an offline application alleged to have been submitted by the petitioner would not satisfy the requirement of submission of offline application. So it follows that neither an online application nor any offline application was submitted by the petitioner seeking permission of the respondents to take up the civil post. Insofar as, the plea of Ms. Awasthi that the officers/respondents had refused to give an acknowledgement is concerned, the same cannot be accepted, as the petitioner has not named the officer who was present at the spot, specifically, at the time of submission of the offline application and no such allegations are alleged anywhere.

33. The plea of Ms. Awasthi, that AFO 33/2017, being a procedural order, and as such directory in nature, is a misconceived plea, more particularly, in the facts of this case, specially, when this Court has come to a conclusion that the petitioner has neither submitted the online application nor an offline application. The fact that the petitioner has challenged the legality of the AFO 33/2017, shows the contradiction in the stand of the petitioner, inasmuch as, when his stand is of making an effort to submit the online application, as per AFO 33/2017. Thus, the petitioner cannot challenge the vires of the same AFO, under which he has sought to submit the online application.

34. That apart, we find that without taking the permission of the respondents as required under Clause 9 of the AFO 33/2017, the petitioner sat in the written examination on September 22 and 23, 2021, and also appeared in the interview on September 27, 2022. Though, a submission has been made by Ms. Awasthi that the petitioner also approached the respondents for seeking permission to appear in the interview, surprisingly, no document in that regard has been filed by the petitioner. Moreover, when the result was

declared much before on April 13, 2022, it is not understood, at least it defies logic that the petitioner had sought the permission of the respondents to appear in the interview only on the date of the interview, i.e., September 27, 2022. There is no explanation as to what prevented him to not apply much before September 27, 2022. The bald averments in the petition are that the petitioner had approached the respondents to seek the permission. However, as noted above, no name of the officer to whom he had approached has been depicted in this petition. Even, the request for discharge/NOC was made on October 3, 2022, two days after the petitioner was declared successful in the selection process. A perusal of the communication dated October 3, 2022, seeking discharge would reveal that the same does not refer to the fact that the petitioner had even made an attempt to file an offline application on November 27, 2020. That apart, we find that no NOC, was sought by the petitioner for appearing in the interview, as contemplated under Clause 12 of the AFO. Therefore, the AFT is right in concluding that the petitioner herein had participated in the selection process without following the requirements of AFO 33/2017.

35. In view of our discussion, we do not find any infirmity in the impugned order passed by the AFT. The petition being without any merit, the same is dismissed."

14. The facts of the present case, the conduct of the applicant and the issues involved are identical to the one considered and decided by this Tribunal on 6th December, 2023 in OA 3068/2022 – *Nikhat Singh* (supra) and the said having been upheld by Hon'ble Delhi High Court, as indicated hereinabove, we see no reason to make any indulgence into the matter. It is a case where the applicant participated in the selection process conducted by the UPPSC without seeking prior permission, as was required under the Rules, and sought permission only after he was selected to the post. This being contrary to the requirement of the AFO 33/2017, in rejecting his prayer for grant of NOC, the respondents have not committed any error.

15. We may also take note of the fact that even if the applicant was unable to submit the application and seek permission prior to participating in the selection process; he has also failed to comply

with the requirement of Clauses 11 and 12 of the AFO in question. Clause 11 (a) to (e) mandates submission of the documents indicated therein to the officer concerned through the Orderly Room. These documents are to be submitted physically and the applicant does not say as to when and to whom he submitted these documents. Similarly, he is also required to submit an application for grant of NOC after receiving the call letter for appearing in the interview/ verification of documents or after the result of written test for the selection process is declared. In this case the applicant did not submit any application for NOC at any of these stages. On the contrary he submitted only after he was appointed on conclusion of the entire selection process. Even after the interview and verification of documents, he did not submit any application.

16. The law laid down by the Hon'ble Supreme Court in the case of *Amit Kumar Roy* (supra) may also be taken note of wherein the Hon'ble Supreme Court after considering the requirement of AFO 14/2008 in para 28 and 29 dealt with the issue in the following manner.

"28. In the present case, the appellant in breach of the provisions contained in AFO 14 of 2008 applied for the post of a Probationary Officer with 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 his 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 of 2008.

29. We are unable to accept the submission of Mr. Sankaranarayanan that the appellant had an unqualified right under Article 19(1)(g) of the Constitution to leave the service of the Air Force. The provisions of the Air Force Act, those contained in the rules and the terms of engagement of the appellant belie such an assertion. AFO 14 of 2008 emphasizes aspects such as the criticality

of the trade and the exigencies of service. They need to be verified and assessed before permission is granted. A person who has been enrolled as a member of the Air Force does not have an unqualified right to depart from service at his or her will during the term of engagement. Such a construction, as urged on behalf of the appellant, will seriously impinge upon manning levels and operational preparedness of the Armed Forces. With the rapid advancement of technology, particularly in its application to military operations, there has been a reconfiguration of the human and technological requirements of a fighting force. The interests of the service are of paramount importance. A balance has to be drawn between the interests of the service with situations involving requests by persons enrolled to take civilian employment. This balance is reflected in the provisions contained in the Air Force orders, in this case AFO 14 of 2008. A person enrolled cannot assert a general right to act in breach or defiance of those orders.”

17. In our considered view in the facts and circumstances of the case, we see no ground to interfere into the matter. The OA is accordingly dismissed with no order as to costs.

18. Pending application(s) also stands closed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

/vks/