

(2015) 10 DEL CK 0339

In the Delhi High Court

Case No : W.P. (C) 8018/2015 and C.M. Nos. 16429-16430/2015

Deepak Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Citation : (2016) 226 DLT 470

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : S.S. Pandey and H.S. Tiwari, Advocates, for the Appellant; Rakesh Kumar, CGSC, Shraddha Bhargava and A.K. Chauhan, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner, a Sergeant in the Indian Air Force (IAF) complains that the IAF arbitrarily declined his application for a No Objection Certificate to enable his discharge and eventual employment in the Central Government. He, therefore, seeks a direction to the IAF to issue the No Objection Certificate.

2. Briefly the facts are that the petitioner was enrolled in the IAF on 17.06.2002, as Airman. He was promoted to various positions and eventually to the current rank he is holding, i.e. Sergeant. Apparently during this period he pursued his studies and successfully completed his graduation in law (LLB) and MBA in Human Resources. The petitioner alludes to the IAF's policy contained in its Order No. 14/2008 containing guidelines applicable for an Airman to be permitted to apply for selection to civil posts and services under the Central and State governments and PSUs. This Order replaced by AFO 04/2012. It is contended that any Airman, who completes 7 years of service is at liberty to apply for a Group A post or equivalent in the civil services or under the Central Government or its equivalent, after seeking prior permission. The petitioner states that pursuant to the advertisement issued by the Union Public Service

Commission [UPSC] of July 2014, inviting applications for filling the post of Assistant Director [Regulation and Information] in the Directorate General of Civil Aviation ("DGCA"), he applied as he was eligible for the post.

3. It is stated that the petitioner was under a bona fide impression that the selection process would involve a written examination and that he could seek permission at a later stage. He concedes that, therefore, he did not seek any prior permission. The petitioner refers to having applied and obtained permission for applying for another Group A post and that consequently he did not visualize any difficulty in seeking permission for other jobs as well considering that he had completed the eligibility condition of 7 years of service. It is contended that after his application was processed, UPSC directly called him for interview for the post he applied for on 19-01-2015. The petitioner appeared in the interview on 19.02.2015 whilst on leave. He was selected by the UPSC and it declared the results on 12.03.2015.

4. The Petitioner avers to having received the Offer of Appointment for the post of Assistant Director (Regulation and Information) by a letter dated 08.04.2015. After so receiving the offer of appointment the petitioner applied to his Commanding Officer (CO) on 13.05.2015 seeking discharge. Apparently the very next day he was issued a Show Cause Notice requiring him to explain why he had applied for the post of Assistant Director in the DGCA without seeking prior permission. He replied to this Show Cause Notice explaining that he was under the bona fide impression that the No Objection Certificate had to be applied just after the results of the written examination were declared and that in the present case he was called directly for an interview with the UPSC without a written examination. The Commanding Officer issued a warning letter on 25.05.2015 to the petitioner. It is contended that though the petitioner had completed 13 years of service and should have been issued the required No Objection Certificate he was shocked to learn by letter dated 24.07.2015 that his request was returned by the competent authority without it being processed.

5. Mr. Pandey, learned counsel contends that the IAF's action in denying any relief and the declining no objection sought for in the present case is arbitrary and discriminatory. It is contended that the requirement of prior permission was not followed in the present case due to a bona fide mistake. It is submitted that the IAF has been adopting a broad and liberal approach in that whenever deserving airman qualified in recruitment processes with or without prior permission, given that educational attainments acquired under trying conditions and circumstances, discharge was permitted. Learned counsel relies upon a previous division bench ruling of this Court in Cpl. N.K. Jharkhar v. Union of India & Ors. (W.P.(C) No. 9088/2008, decided on October 21, 2009) and Cpl. Praveen Kumar v. Union of India & Ors. (W.P.(C) No. 13420/2009, decided on November 30, 2009).

6. Counsel for the Indian Air Force contends that merely because in the past lenient view was recommended by this Court, cannot be a ground for the

petitioner to seek a direction as a matter of right given that in the present instance he did not seek prior permission. The petitioner's argument about his bona fide impression with respect to the circumstances that persuaded him not to apply for above prior permission are denied. In this respect learned counsel submits that the request was declined for good and valid reasons because the relevant provisions of the AFO 04/2012 were violated. It is contended furthermore that the conditions in the office order applicable to the Indian Air Force personnel clearly clarify that permission has to be sought prior to the incumbent applying for a civil posts through online registration. Learned counsel placed special reliance on Para 13(b) and Para 19 to submit that in the present case it cannot be denied that the petitioner did not follow the procedure stipulated and, therefore, cannot claim a direction as a matter of right

7. It is also highlighted that whilst career advancement of airman who acquire higher qualifications is a larger social goal to be encouraged, at the same time IAF is faced with severe manpower constraints. Learned counsel submitted that Airmen are enrolled and mandated to serve for 20 years. Consequently when an Airman seeks advancement or better career prospects, he has to follow the prescribed procedure to facilitate his smooth exit and at the same time enable assessment by IAF as to his dispensability given the nature of his training, experience and expertise. This, it is contended, is also in public interest. It is further highlighted that the procedure applicable was known to the petitioner, because in the past, he had sought prior permission to apply to another Group A post, and was permitted to do so. It is lastly argued that the petitioner is not stating accurate facts, because he was forced to apply to the IAF because the said organization found out independently that he had not asked for permission despite which he had attended the interview, and was issued with an appointment letter.

8. This Court notices that the controversy presented in the present case is in the nature of a dilemma, where the aspirations of a diligent man for career advancement is at odds with the constraints with his present situation in public employment. This dilemma was noted in a previous case- *Corp. Sandeep Kumar v. Union of India* (WP 4684/2012, decided on 21.08.2012). The Court had then observed that:

"15. It may be true that if the petitioner is directed to be discharged by the Air Force Authorities we may be encouraging a breach of discipline and would be condoning wrong information furnished by prospective candidates while filling up the application forms. On facts we have noted that the petitioner furnished a wrong declaration when he submitted the application form that he had informed his department of so doing: a declaration which is admittedly wrong.

16. But, declarations which relate to a vital information which would have a bearing on public employment i.e. eligibility, declarations pertaining to character etc. would stand on a footing different than declarations which relate to procedures.

17. Courts often face a dilemma where competing interests clash, but then it is the duty of the Court to solve the same. The dilemma which we face in the instant case is of a young man who stands before us and beseeches us that coming from a humble socio- economic background, standing by his family by taking up a job at a young age of 18 and having served the nation for 7 years, first as an Airman and then as a Corporal with the Air Force, he should be pardoned for a technical wrong information supplied by him and the consequences of he being accountable for an action be factored i.e. he would continue to languish and would retire as a JCO whereas joining CISF as an Assistant Commandant at the age of 26 years (this is the petitioner's current age) his career prospects may take him to the top most post.

18. Aspirations of the youth of this country, and especially of those who come from humble origins need to be nurtured and protected, and in our opinion not sacrificed on the altar of punishments. That apart, what purpose would it serve if we hold it against the petitioner: he would always have a brooding ill will against the system and would always feel cheated in life of not being permitted to achieve what he could by dint of hard-work. He would be a disgruntled Airman and suffice would it be to state that it is better not to have any employee rather than to have a disgruntled employee in the organization."

After making the above observations, the Division Bench was of opinion that a direction was warranted; it ordered that the writ petitioner in that case should be discharged from IAF.

9. At the outset, it is noticed that the Petitioner's eligibility to apply is not in dispute; he has undoubtedly completed 7 years service in the IAF. The post he applied for was also a Group A post. The question is, whether it can be said that he committed a bona fide mistake in thinking that prior permission was not warranted. Here, we are not inclined to agree with his submissions; firstly, Para 13 (a) is clear that prior permission is necessary before applying online for any recruitment or post. It reads as follows:

"13. Several prospective employers in Govt. Departments/PSUs invite applications for civil employment through their web-sites on the internet. In the past, there have been some instances where applicants have inadvertently divulged certain 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 online registration of applications for civil posts:-

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

Para 19 of AF 04/2102 also unambiguously states that claiming a no objection is not as of right. Secondly, the petitioner himself had sought prior permission before responding to the invitation for another Group A post in the past. The contention of bona fide mistake, therefore, cannot be accepted.

10. At the same time, this Court is mindful of the fact that in the present case - as in most instances, the petitioner had applied to join as an Airman, when barely out of school. He avers to family constraints; the Court can also take into account large scale unemployment; it in all likelihood, drove the petitioner to enroll with IAF. Whatever be the reason, it is not in dispute that the petitioner bettered his educational qualifications, by completing LL.B and an MBA. Given these, and that the IAF found that he could apply in the past, the Court is of opinion that declining the application altogether might lead to dampening his career advancement prospects. In the circumstances, even though this Court is disinclined to exercise discretion and issue the directions sought, the IAF is directed to consider the petitioner's application on its merits taking all facts into consideration and make an appropriate order with respect to his discharge and consequent issue of "No Objection" Certificate within three weeks from today and communicate its order directly to the petitioner. The writ petition is partly allowed in these terms.