

(2019) 09 DEL CK 0129

In the Delhi High Court

Case No : Civil Writ Petition No. 3995 Of 2019, Civil Miscellaneous No. 18101, 38995 Of 2019

Dilip Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0129

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Nanda Devi Deka, Sudhir Yadav, Bharathi Raju

Judgement

Dr. S. Muralidhar, J

1. Aggrieved by an order dated 17th January, 2019, passed by the Air Headquarters, declining his request for issuance of a No Objection Certificate ("NOC") and discharge, the Petitioner, who is a Sergeant in the Indian Air Force ("IAF"), has filed this petition.

2. The facts relevant to the present petition are that the Petitioner joined the IAF on 28th June, 2005 as Airman and is at present, serving as a Sergeant. In 2014, an advertisement was issued by the Bihar State Public Service Commission ("BPSC") for filling up Administrative Police and Finance Posts. By a letter dated 15th October, 2014, the Petitioner sought permission from the Competent Authority to apply. That permission was granted to him by the Air Officer Commanding ("AOC") on 16th October, 2014. The Petitioner appeared for the preliminary examination and thereafter, for the main examination conducted by the BPSC. The Petitioner got an intimation to appear for an interview on 13th April, 2018 at Patna. According to the Petitioner, he did not seek any permission at that stage as he was under the bonafide belief that he had already obtained the NOC at the time of applying and that in terms of the policy spelt out in the Air Force Order-4 ("AFO-4") of 2012, the NOC could be obtained even at the

stage of submission of documents. In the final result that was declared by the BSPC on 18th August, 2018, the Petitioner was selected for the post of Sub Election Officer ("SEO").

3. On 31st August, 2018, the Petitioner filed an application seeking discharge along with the requisite documents. The Petitioner states that the concerned authority wrongly relied upon the amended Air Force Order ("AFO")-33 of 2017, whereas it is AFO-4 of 2012 which should apply. This application was returned on 27th September, 2019 with the observation that the NOC was not found attached with the application. A representation was again made by the Petitioner on 31st October, 2018, followed by another one on 3rd November, 2018, requesting for issuance of the NOC. It is stated that the AOC-49 Wing, AF on 18th December, 2018 recommended the Petitioner's case for issuance of NOC. Subsequently, when an appointment letter was issued on 8th January, 2019, this too was forwarded to AFRO through a proper channel for grant of discharge on 15th January, 2019.

4. On 17th January, 2019, the impugned order was passed, rejecting the Petitioner's request for issuance of NOC and for discharge. Inter alia, it was stated therein that the Petitioner had not applied for NOC before appearing for the interview on 13th April, 2018. Secondly, the application was liable to be rejected outright, since a false statement had been made for obtaining the same. In the final result published on 18th August, 2018, the Petitioner had been selected for a Group-B post of Bihar State Government, whereas AFO-4 of 2012 stipulated that the Airmen are permitted to apply only for a Group-A post. Further, ("AFO")-33/2017 was not applicable, as in terms thereof, Airman with minimum skill grade "A" and 7 years of service only were eligible to apply for Group-A and Group-B Gazetted posts through UPSC and BPSC, whereas the Petitioner possessed skill level "C" and had not made any effort to improve his skill level.

5. On 16th April, 2019, the following order was passed by this Court:

"2. Notice. Learned counsel for Respondent No.1 accepts notice. Reply be filed within three weeks. Rejoinder thereto, if any, be filed before the next date.

3. Learned counsel for the Petitioner points out that an identically placed SGT Pawan Kumar has been granted NOC to join the post which carries a maximum pay scale of not less than Rs39,1001-. According to the Petitioner, the post for which he seeks NOC also carries the same maximum pay scale not less than Rs. 39,1001-.

4. Learned counsel for Respondent seeks time for instructions."

6. Subsequently, CM 38995/2019 was filed by the Petitioner, since the Respondent No.5 State of Bihar issued a letter dated 7th August, 2019 to the Petitioner stating that if he did not report for duty on 9th October, 2019, his appointment would be cancelled. Notice was issued in this application on 30th

August, 2019, and the writ petition along with the application was listed for hearing today. In the meanwhile, the Respondents have filed a detailed counter affidavit, to which a rejoinder has also been filed by the Petitioner.

7. This Court has heard the submissions of Ms Nanda Devi Deka, learned counsel for the Petitioner and Ms Bharati Raju, learned CGSC for the Respondents.

8. At the outset, it requires to be recorded that, learned counsel for the Petitioner sought to place reliance only on AFO-4 of 2012 and not on AFO-33 of 2017. Therefore, the issue boils down to the legality of the impugned order dated 17th January, 2019, in light of AFO-4 of 2012.

9. The further admitted position is that under paragraph 6 of AFO-4 of 2012, Airman/ NCs (E), who have completed 7 years of service, are eligible for seeking permission for applying for "Group-A posts in Central / State Government and equivalent posts in PSUs and Government of India undertakings/ corporations". In other words, the Petitioner in the present case, could have only applied for an NOC for a Group-A post and not a Group-B post in the State of Bihar. The Petitioner on 15th October, 2014, applied for the NOC in terms of AFO-4 of 2012. A copy of the application form has been enclosed. While seeking approval of the Air Commodore, in the Performa, the Petitioner stated "I have the honour to request that I may please be permitted to apply (offline) for Group 'A' post under Bihar Public Service Commission (BPSC), Bihar Govt".

10. He also submitted a typed proforma, in which again with the column which stated "category of post applied for", he stated "Group-A (State Government)". In this proforma, the Petitioner also had to type in the pay scale of the post that he was applying for, and he indicated that as Rs.15600-39100 with grade pay of Rs.5400. Along with the application, he gave following certificate of undertaking, which reads as under:

"It is certified-that I am not under obligation to serve; for any specific period due to re-mustering courses, deputation/posting within India/abroad, promotion under Grade-III. My date of enrolment is 28 JUN-05; date of present RE expiry 27-JUN 25 and date of discharge 30-JUN-25 in case my statement is found to be incorrect at any stage, I render myself liable for disciplinary action or any other action, as the competent authority deems appropriate, in addition to cancellation of permission to apply for civil post."

11. A similar certificate was contained in Appendix-D to the application form, there was a separate certificate of undertaking, which reads as under:

"I, 909989-A CPL DILIP KUMAR PMF (ELEC) am aware of the provision of AFO 04/12 and will seek NOC/Discharge only on selection to Group 'A' post carrying maximum of pay scale not less than 39,100/-(as revised from time to time)."

12. It is plain from the above undertakings that at the time of applying for the NOC, the Petitioner clearly held out that he was applying for a Group-A post, carrying a maximum pay scale of less than Rs.39100. By the time the Petitioner

qualified in the written examination, AFO-4 of 2012 was superseded by the AFO-34 of 2017. However, that is not relevant for the present petition since the Petitioner has maintained that the case should be decided on the basis of AFO-4 of 2012, which was applicable at the time he applied for the NOC. This is also the case of the Respondents.

13. The fact of the matter is that while at the time of applying for the post, the Petitioner did seek prior permission. Even at the time when he was called for the interview/ verification of documents, he did not seek NOC. AFO-4 of 2012 states in paragraph 11 as under:

"11. Application for grant of NOC for Gp 'A Govt. and equivalent posts under category-1 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. Request for NOC will be rejected in cases wherein the individual has not obtained prior permission of his AOC/Stn Cdr while applying for the post. Requests for grant of NOC will also be rejected in cases wherein the AOC/Stn Cdr has erroneously granted the said permission which is either based on the undertaking given by the individual as per Appendix 'C' of this AFO or in contravention to the express provisions of the AFO. In case, it is found at a later stage that individual was prima-facie not eligible for the said post, however obtained permission of Stn Cdr/AOC by rendering erroneous/false undertaking, it would render him liable for disciplinary/administrative action as per laid down procedure. In case permission has erroneously been granted for whatever reasons, the error will be rectified by writing to the prospective employer for cancellation of candidature of the concerned airman. In this regard, airmen would also render undertaking as per Appendix 'D' to the AFO at the time of submitting his application. Case for discharge from service on the grounds of selection to the civil post is liable to be rejected outrightly in cases wherein the individual has not obtained the requisite NOC or made false statements to obtain the same."

14. In the petition, the Petitioner claimed that he got to know the date of the interview, which was to be held on 13th April, 2018, "at the very last moment". He claims that there was paucity of time, and since NOC could have been obtained at the time of documents verification, he went ahead and appeared for the interview. The fact of the matter is that he did not apply for the NOC, even at the time of verification of documents.

15. The Petitioner straightway applied for discharge from service, after the results were declared on 18th August, 2018.

16. Therefore, the case of the Respondents that he did not comply with paragraph 11 of AFO-4 of 2012, is undeniable. Paragraph 11 of AFO-4 of 2012 itself states that the case of discharge from service is liable to be rejected outright where the individual has not obtained the requisite NOC or has made a

false statement to obtain it.

17. The central point, however, is that the post for which the Petitioner has been selected, is that of Sub Election Officer. This is a Group-B post, having a pay scale of Rs.9300-34800, with Grade Pay of Rs.5400. This is contrary to the declaration made by the Petitioner that he was seeking permission for a Group-A post, having pay scale of Rs.15600-39100, with Grade Pay of Rs.5400.

18. The Respondents appeared to have checked up with the BPSC and have also placed before the Court the complete text of the entire advertisement. All of the posts advertised, have turned out to be Group-B posts with the pay scale of Rs.9300-34800, with only variation in the Grade Pay, ranging between Rs.4200 to 5400. The advertisement could not have left the Petitioner in any doubt that all the posts advertised for, were Group-B posts.

19. In the rejoinder filed to the counter affidavit, the only defence put forth is that the Respondents had issued NOC and discharge to Sergeant Pawan Kumar, who followed the same procedure, and was selected for the said post. The second defence put forth is that in the appointment letter dated 8th January, 2009, the pay scale indicated is Rs.53100-167800. This, however, still does not make it a Group-A post. AFO-4 of 2012 clearly indicates that the post for which the application can be made, while still serving has to be a Group-A post. As far as the example of Sergeant Pawan Kumar that was given, the obvious response of the Respondents is that two wrongs cannot make a right. The Court has been informed that steps are being taken to rectify the mistake made in the said case. This is despite the Respondents in the counter affidavit in reply to Ground-D, not making a categorical statement to that effect. All that is said is that Sergeant Pawan Kumar was permitted for a Group-A Bihar Administrative Service post and that he had obtained NOC for interview. Learned counsel for the Respondents states that it was only subsequently realized that even the NOC given to Sergeant Pawan Kumar was on a misrepresentation made by the said candidate and that steps were being taken to proceed against him in that regard.

20. Learned counsel for the Petitioner placed reliance on the order dated 11th March, 2019 passed by this Court in W.P.(C) No.5467/2017 (CPL Asit Kumar v. Union of India). The only controversy in the above case was regarding the pay scale for the post for which the Petitioner was applying. The pay scale was Rs.16400-40500, which according to the Respondents did not meet the latest pay scale criteria of Rs.56100 and above. The employer of the Petitioner had sent a letter to him, informing him that during probation, his pay scale would be Rs.50000-160000, and after one year of probation, he would be given a pay scale of Rs.60000-160000. It was in those circumstances that the Court held that the requirement of pay scale of Rs.56100 and above was met.

21. The facts in the present case are entirely different. Here, it is plain that the Petitioner, even at the time of applying for permission to apply for the post in the State of Bihar, made a false declaration that he was applying for a Group-A post,

with a Group-A pay scale, whereas in fact, he was applying for a Group-B post, with a different pay scale. In the circumstances, the refusal of NOC by the Respondents to the Petitioner appears to be justified.

22. There is no merit in the petition and the same is accordingly dismissed. No costs. The pending applications are also dismissed.

23. The next date of hearing i.e. 21st January, 2020 stands canceled.