

(2019) 11 AFT CK 0008

In the Armed Forces Tribunal

Case No : Original Application No. 1388 Of 2019

Mahendra Singh Gurjar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 31(1)

Citation : (2019) 11 AFT CK 0008

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Nandadevi Deka, Harish V. Shankar

Final Decision : Dismissed

Judgement

Category-1,"Airmen/NCs(E) who have completed 07 years of regular service.", "Gp A' posts in Central/State Govt and equivalent posts in FSUs and Govt of India undertakings/ Corporations

Category-II,"Airmen who are le with one year of residual service prior to expiry of their Regular Engagement (RV /Extended RE provided they have submitted Unwillingness/denied for further extension of service.", "Any civil post in Govt/Private sector.

enhancement to the Airman and when the respondents did not have any objection in relieving the applicant and discharge him in case he is selected on,,

any Group-A post, then merely on the hyper technical ground that he is selected for a Group-B post which was not the one for which NOC was",,,

issued, the discharge is denied. Learned counsel invites our attention to a judgment rendered by a Coordinate Bench of this Tribunal in OA 1381/2017",,,

OA 1517/2017, OA 1518/2017 and OA 1519/2017" Sst Sabha Prakash Kanungo Vs. Union of India and Ors. decided on 30th January, 2018, to say",,,

that on exactly identical facts, grounds and legal principles the said OAs have been allowed wherein also the applicants had applied for participating in",,,

a selection process conducted by Odisha Public Service Commission-Odisha Civil Services Examination 2015 and they were granted NOC by the Air",,,

Force authorities to apply and seek employment in the civil services examination against a Group-A post. Like the applicant, they were selected for a",,,

Group-B post and when NOC was denied to them on identical considerations, the matter came to this Tribunal and by taking us in detail through the",,,

aforesaid order, it is argued that identical grounds canvassed by the respondents have been rejected. Learned counsel for the applicant took us in",,,

detail to the entire judgment and canvassed a contention that when identical issue has been decided by a Coordinate Bench of this Tribunal, there is no",,,

reason as to why the benefit claimed by the applicant should be denied",,,

6. Learned counsel for the applicant took us through the reasoning and the justification given by the Coordinate Bench in the case of Sgt Subha",,,

Prakash Kanungo (supra), particularly the observations in para 11 and 12, which read as under:",,,

11. Further the policy for 'career enhancement opportunities for airmen'" clearly' demonstrates to take liberal and supportive view.",,,

Further, the applicants have categorically stated in their applications that after serving for more than 13 years in Indian Air Force, they will",,,

be having better career if they join Odisha State Government Services and they can come up to the higher level as compared to their career",,,

in Indian Air Force. The applicants have come from rural background and belong to poor families and hence, by joining the Group B posts",,,

offered by Odisha State Government, they can improve their economic' and career growth and therefore, on that ground also, the discharge",,,

from service has to be granted to the applicants so as to enable them to join in Odisha State Public Services. It is relevant to point out that",,,

the applicants have applied to Odisha State Public Service Commission through proper channel, after obtaining, due permission from the",,,

respondents. The said NOC has been issued by the competent authorities to the applicants, after taking into consideration the policy matter",,,

domain of the employer, criticality of the trade of the applicants, manpower needs and operational interests of the respondents. In the",,,

circumstances, it is seen that the applicants can be spared by the respondents under the service requirements and operational requirement",,,

for appointment to Group "A" post, and it is justified to extend the same benefit to Group "B" posts also, as the respondents have not",,,

demonstrated ,that the Air Force would suffer if the applicants are discharged from service for their better career; which is envisaged by",,,

their own policy for career enhancement / advancement opportunities for airmen.,,,

12. Further, the career advancement policy requires liberal approach to the beneficiary and the said beneficial provision cannot be taken",,,

away by giving the super technical / hyper -technical interpretations by the respondents. It is also seen that Group 4B-"post is beneficial to",,,

the applicants financially as well as status-wise. It is also the fact that the applicants have been selected for Group aB" Gazetted posts",,,

which is beneficial to the applicants and they are willing to join the new assignment and to avail the said opportunity the necessary",,,

permission and NOC have already been granted by the competent authorities / respondents. Therefore, discretion has to be exercised by the",,,

competent authority in a just and bona fide manner with due caution, prudence and the merits of the case. On the perusal of the impugned",,,

order of denying the grant of discharge from service to the applicants herein, it is amply clear that it is not done in a just and fair manner.",,,

In the above mentioned circumstances, the respondents are stopped by their own act and conduct, to raise objections at the stage when",,,

applicants have been selected for Group "B" posts." [Emphasis supplied]",,,

It is said that on the basis of the above judgment the grant of NOC by the department even though for a Group-A post now as the applicant on,,

selected for a Group-B post, once the NOC was granted and the departmental authorities were willing to relieve them, there should be no impediment",,,

for permitting them to join even on a Group-B post. Learned counsel argues that when under identical situation similarly placed applicants have been,,

allowed, the applicant should also be extended identical benefit. Primarily based on the aforesaid judgment of the Coordinate Bench and also relying on",,,

similar views with regard to Airmen of the Indian Air Force who were granted NOC to join the service in a public sector undertaking, our attention is",,,

invited to a judgment by a Division Bench of the Delhi High Court rendered in W.P. (C) No.5487/2017 CPL Asit Kumar V s. Union of India and Ors.,,,

on 1 Ph March, 2019 to argue that once NOC has been granted to permit a candidate to participate in a selection process in the civilian establishment",,,

merely because the selection is for some other category of post, the action of refusing to discharge on such a hyper technical ground has been",,,

quashed by the High Court. Accordingly, in sum and substance placing heavy reliance on the aforesaid two judgments and various other judgments",,,

pertaining to purposeful interpretation and advancement of beneficial policy legislation involving a person like the applicant, learned counsel",,,

emphasized that the act of the respondents in denying discharge to the applicant is unsustainable in law and should be interfered with.,,,

7. Refuting the aforesaid contentions, respondents have filed their counter affidavit and Mr. Harish Vaidyanathan Shankar, learned counsel for the",,,

respondents, took us through the provisions of the AFO and argued that permission to apply for civil posts and grant of NOC is nothing but a privilege",,,

and the policy itself contemplates that the permission granted under the policy for applying to a civil post as well as grant of NOC are only privileges,,

and cannot be claimed as a matter of right. That apart, referring to para 4 of the policy and the exceptional circumstances under which NOC has been",,,

granted, he argues that once the policy contemplates grant of NOC and when the NOC is granted as a privilege available to the applicant in pursuance",,,

to the policy, the privilege can always be withdrawn once it is seen that the discharge is being sought in contravention to the policy in question.",,,

Learned counsel relies on a recent judgment of the Hon'ble Supreme Court in the case of Amit Kumar Roy Vs. Union of India and Ors. [(2019) 7,,

SCC 369] particularly the law laid down in the aforesaid case which is based on interpretation of the similar AFO based on which NOC has been,,

granted in the present case and argues that the Hon'ble Supreme Court in the aforesaid case has laid down the law that grant of NOC is only a,,

privilege and does not give any right which could be enforced and, therefore, it is the case of the respondents before us that in the light of the law laid",,,

down in the case of Amit Kumar Roy (supra), the applicant is not entitled to any benefit.",,,

8. We have heard learned counsel for the parties at length and have considered various aspects as were canvassed before us.,,,

9. The moot question which warrants consideration is as to whether grant of NOC under the AFO gives a legal right to the incumbent to seek its,,

enforcement and whether the department having granted the NOC, may be for a particular post, can deny discharge which has the effect of",,,

withdrawal of NOC on the ground that the appointment now being sought is on a different post contrary to the grant made in the NOC. That apart",,,

another question that warrants consideration is as to whether in the light of the law laid down in the case of Sgt Subha Prakash Kanungo (supra) by a,,

Coordinate Bench of this Tribunal the applicant is entitled to similar benefit as claimed by him in the present case.,,,

10. As already indicated by us in the preceding paragraphs, para 6 of the AFO permits an Airman to apply for a civil post not only under the Central",,,

Government or the State Government but also Public Sector Undertakings, Corporations and even some jobs in the private sector also in certain cases",,,

in the categories enumerated there under. However, he should have completed seven years of service to become eligible for appointment in a Group-",,,

A or Group-B post. The policy clearly contemplates that an Airman can apply for a Group-A post after completing seven years of service and it is an,,

admitted position that the applicant applied in pursuance to the said policy and the NOC given to him, which is available as Annexure A-7 at page 68",,,

reproduced herein above, clearly mandates that the Air Force does not have any objection for his appearing in the interview to be conducted by the",,,

Rajasthan Public Service Commission for selection to Group-A post in the Rajasthan State and Subordinate Service Examination. There is not even a,,

iota of doubt that the application submitted by the applicant in accordance to the policy, namely, AFO was to participate in a selection process for a",,,

Group-A post. The NOC granted was also for a Group-A post, but as is evident from the record the selection of the applicant was made for a Group-",,,

B post. The question as formulated by us is whether the discharge could be denied in view of the selection of the applicant to a different group post.,,,

Even though in the case of Sgt Subha Prakash Kanungo (supra) a Coordinate Bench of this Tribunal in its detailed order passed has answered the,,
issue in favour of the applicant herein on the ground that merely because NOC is granted for a Group-A post, selection of a candidate in Group-B post",,,
cannot be a ground for refusing discharge. The learned Bench refers to the policy for Career Enhancement of Airmen and comes to the conclusion,,
that once the policy requires liberal approach beneficial to the employee concerned, super technical or hyper technical interpretation by the",,,
respondents should be prevented. The Bench holds that Group-B post is beneficial to the applicant, both financially as well status wise, and once the",,,
department by issuance of a NOC has indicated its willingness to permit discharge for joining the Group-A post, merely because the appointment is on",,,
a different post after following the same examination process for which NOC was granted, denial of discharge is unsustainable. It has been found that",,,
the reason given is not only hyper technical but it is also un-natural and unsustainable in law. The law laid down by the Hon'ble Supreme Court with,,
regard to interpretation of a statutory provision, the language used and purposeful interpretation of beneficial policy has been relied upon by the Bench",,,
to grant benefit to the applicants therein.,,

11. However, we are now required to consider the question in the back drop of policy as contained in the AFO, and the law laid down by the Hon'ble",,,

Supreme Court in the case of Amit Kumar Roy (supra) which has been relied upon by learned counsel for the respondents. In the case before the,,

Hon'ble Supreme Court the applicant therein, an Airman in the Air Force, had also applied for a NOC. Provisional NOC was granted to him for",,,

appointment on a civil post of General Banking Officer Scale-I and thereafter the matter went to the Supreme Court. When the Bank found that a,,

clear discharge certificate has not been granted the Bank terminated his services.,,

12. Be that as it may, we find when the matter went to the Hon'ble Supreme Court, the Hon'ble Supreme Court had the occasion to consider the",,,

similar policy, i.e., the statutory provision pertaining to discharge in the Air Force, AFO 14/2008, Clause-1 thereof which is para material to the AFO in",,,

question. The provision for grant of NOC was taken note of. Clause 13 of the AFO 14/2008, which again is identical to para 19 of the present AFO",,,

was considered which indicated that permission to apply for civil post is a privilege and grant of NOC is also a privilege and not a right and thereafter,,

in paras 27, 28 and 29 the matter has been dealt with by the Hon'ble Supreme Court in the following manner:",,

27. AM 14 of 2008 held the field at the material time and governs the facts of the present case. Under the terms of AFO, a requirement of" ,,

completing seven years of service from the date of enrolment has been mandated for permission to be granted to apply for a civil post under,,

the Central or the State Governments or public sector undertakings, including paramilitary forms. AM 14 of 2008 stipulates that a Category!" ,,

individual with a length of service of seven years may apply for civilian employment in a Group A or equivalent post carrying the stipulated,,

pay scale as revised from time to time. Applications have to be forwarded to the prospective employer by the units, after verification of" ,,

eligibility including the criticality of manpower. Where the Airman belongs to a critical trade, the application shall be rejected at the unit" ,,

level. Where online applications have been invited the station or, as the case may be, unit commanders are required to ensure fulfillment of" ,,

the conditions of eligibility specified in Paras 1 to 3. Permission is required from the station/unit commanders to submit an online,,

application for a civil post. NOCs (other than those in Category III) are to be issued by Air HQs on a case-to-case basis having regard to the,,

exigencies of service.,,

28. In the present (vise, 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. Sankar Narayanan 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 emphasises 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 impact 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 been sought",,,

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 Rules, in this case AFO 14 of 2008. A person enrolled cannot assail a",,,

general right to act in breach or defiance of those orders"". [Emphasis supplied]",,,

13. For the aforesaid enunciation of law as laid down by the Hon'ble Supreme Court, we find that even the Supreme Court has held that in breach of",,,

the AFO the applicant therein had applied for appointment to the post of Probationary Officer inasmuch as he did not fulfill certain conditions with,,

regard to length of service of seven years, the purpose for grant of NOC and the right accruing has been discussed by the Hon'ble Supreme Court in",,,

para 29. The legal principle envisaged is to the effect that the right accruing to the Airman under the policy is an unqualified right under Article 19(1),,,

(g) of the Constitution to leave the services of the Air Force has been negated and after dealing with the purpose for appointment to the Air Force",,,

requirement of exigencies of service, it has been held that the right available under the AFO is not an unqualified right, it is only a privilege and it is",,,

held that a person who has been enrolled as a member of the Air Force does not have any unqualified right to depart from service at his or her will,,

during the term of engagement. If it is permitted, it would certainly impinge upon manning levels and operational preparedness of the Armed Forces.",,,

The interests of the service are of paramount importance. A balance has been sought to be drawn between the interests of the service with situations,,

involving requests by persons enrolled to take civilian employment. A person enrolled cannot assert a general right to act in breach or defiance of,,

statutory orders, i.e., AFO. If we analyse the aforesaid law laid down by the Hon'ble Supreme Court, it is very clear that grant of NOC is only a,,

privilege and not a right. Under the AFO only under an exceptional circumstance can an Airman be permitted to apply and seek premature discharge.,,

That apart a person enrolled in the service can seek civil employment, but not in breach or defiance of the order.",,

14. Admittedly, in the present case the AFO contemplates a provision whereby an Airman like the applicant can seek appointment on a Group-A post",,

and can claim discharge in case he is appointed to a Group-A post for which NOC has already been obtained. In this case neither the applicant was,,

appointed to a Group-A post nor NOC was granted for participating in the selection process for an appointment to a Group-B post. Once these facts,,

are admitted, we cannot in ignorance of the AFO, particularly in the light of the law laid down by the Hon'ble Supreme Court, permit the applicant to",,

seek discharge and join a Group-B post. The judgment in the case of Sgt Subha Prakash Kanunso (supra) rendered by a Coordinate Bench of this,,

Tribunal was rendered much before the law laid down by the Hon'ble Supreme Court in the case of Amit Kumar Roy (supra) and once the law laid by,,

the Hon'ble Supreme Court prohibits any deviation from the requirement of the AFO and when the right accruing under the AFO is only a privilege",,

we cannot interfere with the matter and grant benefit to the applicant as was granted in the case of Sgt Subha Frakash Kenunso (supra). Even though,,

learned counsel for the applicant emphasized during the course of hearing that in the case of Amit Kumar Roy (supra) he was not eligible for seeking,,

appointment as he has not completed seven years of service and therefore the judgment of the Hon'ble Supreme Court is distinguishable on facts, we",,

find the aforesaid submission to be wholly misconceived for the simple reason that the Hon'ble Supreme Court clearly lays down the law to say that a,,

right accruing under the AFO is only a privilege and not a legal enforceable right. That apart, the Hon'ble Supreme Court held that nothing can be",,

done in derogation to or in breach of the AFO. That being the position, in this case the NOC granted to the applicant to participate in the process for",,

selection to a Group-A post was a privilege extended to him by the competent authority and once the competent authority found that he was seeking,,

discharge to join a civil post contrary to the privilege extended, it was well within the right of the competent authority to withdraw such a privilege.",,

That apart, the AFO clearly stipulates that an Airman who has completed seven years of service can seek discharge on certain conditions being",,

fulfilled for seeking appointment to a Group-A post and if the appointment now sought for is for a post not contemplated under the AFO, i.e., Group-B",,

post, it would be nothing but an order or direction issued by us in breach of the AFO which is not permissible in view of the law laid down by the",,

Hon'ble Supreme Court.,,

15. Accordingly, keeping in view the facts and circumstances of the case and the reasons as indicated hereinabove, we have no hesitation to hold that",,

the benefit claimed by the applicant cannot be granted. The direction issued by the Coordinate Bench in the case of Sst Sabha Frakash Kanungo,,

(supra) cannot be enforced now in favour of the applicant in the light of the law laid down by the Hon'ble Supreme Court in the case of Am? Kumar,,

Roy (supra). Consequently finding no merit in the contentions advanced by learned counsel for the applicant before us, we dismiss this Original",,

Application.,,

16. On the OA being dismissed, the learned counsel for the applicant makes an oral prayer to seek leave to appeal to the Hon'ble Supreme Court",,

under Section 31(1) of the Armed Forces Tribunal Act, 2007. We are of the considered 'view that as we have only followed the law laid down by the",,

Hon'ble Supreme Court, there appears to be no point of law much less any point of law of general public importance involved in the order rendered by",,

the Tribunal, therefore prayer for grant of leave to appeal stands dismissed.",,