
(2022) 06 AFT CK 0002

In the Armed Forces Tribunal

Case No : M.A No. 1000 of 2022 in O.A No. 2716 of 2021

Sgt Kuldeep Kumar Vibhuti

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 01-06-2022

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2022) 06 AFT CK 0002

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Ankur Chhibber, Harish V. Shankar

Final Decision : Dismissed

Judgement

M.A No. 1241 of 2022:

This miscellaneous application has been filed seeking condonation of delay in filing the review application. The delay is condoned and the M.A is disposed of.

R.A No. 14 of 2022:

2. This review application has been filed by the Union of India under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking review/recall of the order passed by us on 23.03.2022 in O.A No. 2716 of 2021.

3. Cpl Ayush Maurya and the respondent herein Sgt Kuldeep Kumar Vibhuti invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 by filing O.A Nos. 2670 of 2021 and O.A No. 2716 of 2021 respectively, wherein they had, inter alia, prayed for quashing the orders passed by the competent authority in the matter of applications submitted by them seeking civil employment. Both the O.As were allowed on 23.03.2022 by a common order and in Para 25, the following directions were issued:

25. In view of the above consideration, we find adequate merit in both the O.As and the same are therefore allowed and we direct the following:

(a) Respondents to issue necessary NOC to both applicants within two weeks of this order,

(b) Respondents to also Issue necessary discharge order to both applicants to facilitate the applicants join the civil job.

(c) Respondents to review AFO 33/2017 and issue necessary amendments to facilitate applicants applying for prior permission without Skill Grade A'; and also modify the online application process to facilitate seeking of prior permission.

In the O.A filed by the respondent herein Sgt Kuldeep Kumar Vibhuti i.e. O.A No. 2716 of 2021, it was his case that he had applied for a civil post in the Government of Bihar pursuant to an advertisement issued by the Bihar Public Service Commission on 02.08.2018 inviting applications for various vacancies in different services/cadres through the 64th combined competitive examinations. He had appeared for the examination and after undergoing the selection process, when he was selected to the post of Supply Inspector in the State of Bihar, he sought NOC for joining on the post. When the same was rejected, he had invoked the jurisdiction of this Tribunal.

4. This Tribunal having allowed the application, the respondents have filed this R.A on the ground that an error apparent on the face of record has occurred while allowing O.A No. 2716 of 2021. Referring to the eligibility criteria contained in AFO No. 33 of 2017, it was submitted before us that for appointment to Group A/I and Group A/II Gazetted posts only through UPSC or State Public Service Commission, NOC can be granted. Para 6 of the said AFO is reproduced hereunder:

Eligibility Criteria

6. Airmen/NCs(E) of the IAF are eligible to apply 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:-

Category

Description of Post

Eligibility Criteria

Competent Authority to issue NOC

Format

Of NOC

Category-I

Group A/I and

GroupB/II Gazetted

posts through UPSC and State Public Service Commission Only (Recruitment advertisement must clearly mention the

Group of the Post)

a) Airmen with

minimum Skill Grade A and seven years of service.

b) NCs(E) irrespective of length of service.

AOC, AFRO

Appendix A

Category-II

Any civil post in Govt/PSU/Private

Sector

Airmen in the last year of residual service prior to expiry of their initial Regular Engagement

(RE)/Extended RE

provided they have submitted unwillingness/denied

further extension of service

AOC/Stn Cdr/CO#

Appendix B

CO in the AFO refers to CO of an independent Unit.

It is the case of the Union of India before us that the respondent Sgt Kuldeep Kumar Vibhuti had applied for the post of Supply Inspector in the Food and Consumer Protection Department under Bihar Government and he has been selected for the said post. This is not a Gazetted post and as the selection of the applicant is for a non-Gazetted post, in the light of the criteria laid down in AFO No. 33 of 2017, the applicant in O.A No.2716 of 2021 is not entitled to the reliefs claimed for. It is argued that this Tribunal committed an error in not appreciating this vital aspect i.e. the respondent Sgt Kuldeep Kumar Vibhuti has been selected for a Group B non-Gazetted post carrying the pay scale of Rs.44900-142000 in Pay Level 7 through the BPSC. Though this fact had been pointed out in the Counter Affidavit filed in the O.A, ignoring the eligibility criteria contained in the AFO, this Tribunal allowed the OA thereby committing an error apparent on the face of the record, therefore, the order is to be recalled or modified.

5. Taking note of all these factors, on 18.04.2022, we issued notice to the

respondent herein Sgt Kuldeep Kumar Vibhuti and the said order passed by us is reproduced hereunder:

Issue notice to the respondent (original applicant). Shri Ankur Chhibber, Advocate takes notice. Respondent (original applicant) is directed to file an affidavit indicating the post for which he (sic) has been selected by the Bihar Government a Gazetted Post and he is entitled for seeking appointment in accordance to the policy of the respondents. The foresaid affidavit be filed within one week from today. (Emphasis supplied)

Pursuant to the notice issued by this Tribunal, the respondent Sgt Kuldeep Kumar Vibhuti has filed a counter affidavit on 04.05.2022 and in Para 5(b), 5(d) and 5(e), he made the following assertions:

b. It would also be pertinent to mention here that nowhere in the aforesaid advertisement was it mentioned that the posts so advertised is a Group A' or Group 'B' or a Gazetted or a non-Gazetted post, but rather what is mentioned was just the pay scale or the grade pay. Be that as it may, the post against which the Respondent/Original Applicant has been selected, is a Supply Inspector in Food and Consumer Protection Department, which, as per the advertisement, has been indicated as a Level-7 post. The said Level-7, as per the 7h CPC, carries pay scale of Rs.9300-34800 with grade pay of Rs.4600 in pay band-2.

XX

XX

XX

XX

XX XX

d. That moreover, the Respondent/ Original Applicant herein even applied against the 65th Combined Competitive Examination issued by the BPS having the same recruitment/selection process as indicated above and the result dated 07.10.2021 has even been selected for the post of Rural Development Officer. Now, on bare perusal of the aforesaid RTI reply, the said post despite being in level-7 has been categorized as a Gazetted post.

e. That keeping in the view the above, the Respondent/ Original Applicant herein would like to mention that the selected post, i.e. Supply Inspector upon which O.11 No. 2716/2021 was judiciously adjudicated and the post upon which the Respondent/ Original Applicant has been subsequently selected against 65th advertisement, both of such posts carries level 7 pay scale, being a Group 'B' post however, only the latter has been specifically mentioned as Gazetted whereas in the former there is no categorization. That being the position, one cannot draw a fictitious distinction between a Gazetted or a non-Gazetted post but rather it depends upon the pay level that deserves to be a criteria for categorization of posts in such scenario.

From the aforesaid, it is clear that in the advertisement nowhere was it mentioned that the post advertised was a Group A Gazetted post or non-gazetted post. It was only indicated that the post of Supply Inspector in the

Consumer Food and Department carried the pay scale in Level-7 as per the 7th CPC i.e. the pay scale of Rs.9300-34800 with a Grade Pay of Rs.4600 in Pay Band II. The respondent Sgt Kuldeep Kumar Vibhuti has also brought on record the information received by him under the Right to Information Act vide Annexure R3 and other documents available at page 43, wherein it is seen that the Bihar PSC has classified the post in various categories. At SI. No. 1, the post of Police Deputy Superintendent in Bihar Police Service has been classified as a Gazetted post. Similarly, at SI. No. 13 of this document, the post of Supply Inspector has been classified in Level 7. Likewise, in SI. No. 14, the post of Labour Rehabilitation Officer is classified in Level 7, whereas at SI. No. 10, the post of Additional District Transport Officer is classified as a Gazetted post and in bracket it is mentioned that it is a Level 7 post. Similarly, at SI. No. 11, the post of City Executive Officer is classified as a Gazetted post in Level 7 and at SI. No. 12, the post of Rural Development Officer is also classified as a Gazetted post in Level 7. That being so, it is clear from Annexure R2 issued by the competent authority under the Right to Information Act on 14.02.2022 that the competitive examination for selection was held for various posts and that the posts are classified as Gazetted/non-Gazetted with a particular pay level or pay band. Similarly, in Annexure R2 at page 46 filed by the respondent herein, Sgt Kuldeep Kumar Vibhuti, which is a translated version of Annexure R2, the post of Supply Inspector is shown in Level 7, whereas the post of Rural Development Officer is shown as a Gazetted post in Level 7. It is, therefore, clear that the post for which the applicant was selected viz. Supply Inspector was a non-Gazetted post in Level 7 and he had sought NOC for joining on that post.

6. The statutory order governing grant of NOC to join public sector undertaking or Government Department i.e. AFO No.33 of 2017 lays down eligibility criteria under Clause 6 and as per this criterion, Airmen are eligible to apply for civil posts/services with prior permission from the competent Air Force authority and in the categories for which they can be appointed, it is clearly stipulated that they are eligible to seek NOC for appointment to Category I posts i.e. Group A1 or Group B2 Gazetted posts through UPSC and State PSC.

7. On going through the original records of the case i.e. O.A No.2716 of 2021, we find that in Para 2 of the counter affidavit filed by the respondents, it has been clearly stated that the applicant in the O.A Sgt Kuldeep Kumar Vibhuti, in blatant disregard to the Rules and Regulations, appeared for the interview and managed to get selected for a Group B post carrying the pay scale of Rs.44900-142400, a Pay Level 7 post, through the Bihar PSC, which is not a Group B Gazetted post and, therefore, rightly the NOC was denied to him. There being a specific averment in the counter affidavit that AFO No. 33 of 2017 clearly lays down the criteria and parameters under which NOC can be granted, in our considered view, this Tribunal has committed an error which is apparent on the face of record in giving direction to issue NOC to the respondent herein, contrary to the mandate of AFO No. 33 of 2017.

8. With regard to the present respondent, as the direction was without taking note of the averments made in the counter affidavit filed by the respondents in the O.A, so also the requirement of AFO No. 33 of 2017, an airman can be permitted to join only a Group B Gazetted post and as the respondent was appointed as a Supply Inspector in Pay Level 7, which is a non-Gazetted post, we are of the considered view that the applicants herein are right in contending that there is an error apparent on the face of the record while disposing of the O.A. Even though, as directed by us, the respondents had filed a detailed counter affidavit and tried to indicate that based on the pay scale, which is in Pay Level-7 his appointment should be approved, but once the documents available on record pertaining to the advertisement and the post in question clearly indicate that even if the post is in Pay Level-7, once it is found to be a non-Gazetted post, the requirement of AFO being not fulfilled, contrary to the requirement of the AFO, we cannot issue any direction to grant NOC to the respondent herein.

9. Before parting, we may indicate that during the course of hearing, Mr. Ankur Chhibber, learned counsel for the respondent in the R.A invited our attention to a judgment of the Division Bench of the Delhi High Court in the case of Bikram Singh v, Union of India and others reported in (2011) SCC Online Delhi 2278 (Annexure R4) to contend that when the pay band is identical and the pay level is also same, NOC can be granted. On going through the said decision, we find that it pertains to seeking selection and appointment as Specialist Officer-PIG-Scale 1 to various banks and that the issue of granting NOC contrary to the AFO, particularly the post being categorised as a Gazetted or Non-Gazetted post, did not arise. There the question was with regard to appointment to a post carrying a particular pay scale and the issue was decided in the backdrop of the facts and circumstances of that case and, therefore, cannot be applied to the facts and circumstances of the present case where there is specific violation of the requirement of AFO No.33 of 2017.

10. Accordingly, there being an error apparent on the face of record, we allow the R.A, recall the order passed by us in O.A No. 2716 of 2021 dated 23.03.2022 so far as it relates to Sgt Kuldeep Kumar Vibhuti and hold that as the respondent has been selected to a post which is not a Gazetted post and as the NOC claimed by him is contrary to AFO No.33 of 2017, O.A No. 2716 of 2021 is dismissed,

11. In view of the above finding, M.A No. 1000 of 2022, which has been filed for execution of the order dated 23.03.2022 in O.A No. 2716 of 2021, is also dismissed as the reliefs granted in the said O.A stand withdrawn and the O.A has been dismissed by this order.

12. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this the 1st day of June, 202.