

(2022) 03 AFT CK 0018

In the Armed Forces Tribunal

Case No : O.A. No. 2670, 2716 Of 2021 with M.A. No. 163 Of 2022

Sgt Kuldeep Kumar Vibhuti

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 23-03-2022

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 33, 37, 50(1A)(k), 51A(j)
Armed Forces Tribunal Act 2007 — Section 14

Citation : (2022) 03 AFT CK 0018

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

Bench : Division Bench

Advocate : Ankur Chhibber, Harish V. Shankar

Final Decision : Allowed

Judgement

M.A. No. 163 of 2022 :

1. There being delay in filing the counter affidavit, through this application, respondents pray for condonation of delay. For the averments made therein, the application is allowed. Delay is condoned and the counter affidavit is taken on record. Accordingly, MA stands disposed of.

O.A. No. 2670 of 2021 and O.A. No. 2716 of 2021 :

Both the applicants, who are serving NCOs of the Indian Air Force (IAF), have filed applications under Section 14 of the Armed Forces Tribunal Act 2007, having been aggrieved by the fact that they were denied departmental NOC for applying for a civil post under the Central and State Govts., based on the criteria that they lack ?Skill Grade A? as laid down in AFO 33/2017. While the applicant in OA 2670/2021 applied for NOC to apply for the Civil Services under Union Public Service Commission (UPSC), the applicant in OA 2716/2021 applied for NOC for a job under the Bihar State Govt. Both have made identical prayers, in that the remarks endorsed on their respective applications for NOC stating that the applicant does not comply with the criteria as per current policy and thus was

not recommended for grant of NOC be quashed; and that the requisite NOC be issued.

2. Since the issue to be adjudicated in both the OAs are the same, they are being disposed of with this common Order, treating OA 2670/2021 as the lead case. The applicant in OA 2670/2021 has made the following prayer :-

(a) Quash the remarks on 08.10.2021 by the officials of the Respondents on the application dated 30.09.2021 submitted by the Applicant that he does not comply with the current policy and thus not recommended and to set aside Clause 6 of AFO 33/17 for being arbitrary and unreasonable.

(b) Direct the Respondents to issue NOC and discharge the Applicant from the post of Corporal so as to allow him to join the post he shall be allocated and also grant the same relief as has been granted by the Hon'ble High Court of Delhi in catena of judgments on the issue and affirmed by the Hon'ble Apex Court.

Brief Facts of the Case

3. The applicant was enrolled in IAF in 2010 and was promoted as Corporal in December 2016. An accomplished sportsman, due to an injury sustained during sports, the applicant was placed in permanent LMC A4G3(P) in September 2017. It is the applicant's case that due to his involvement he could not upgrade his skill category. It is also the applicant's case that the initial policy on criteria for seeking civil employment in Central/ State Govts had been periodically amended and that the policy currently in vogue is AFO 33/2017 which states that an individual should have a minimum of seven years of service and Skill Grade 'A'. Based on the UPSC advertisement dated 12.02.2020 for various civil services, the applicant applied for the preliminary examination. The applicant successfully cleared the selection process and the final results were declared on 24.09.2021. At each stage, the applicant's effort to apply online for the NOC did not materialise as the system would not accept his case as his skill grade was not 'A'. Thus, the applicant submitted an offline application dated 30.09.2021 requesting that he be given the requisite NOC and discharged from service to join the civil services. In the meanwhile, the applicant received instructions to join the 96th Foundation Course at Lal Bahadur Shastri National Academy of Administration, commencing on 05.12.2021. However, vide the impugned order, the application for NOC/ discharge was not recommended on the grounds that he did not seek prior permission and that he lacked the minimum criteria of Skill Grade "A". Hence this OA.

Arguments by the Counsel for the Applicant

4. The Counsel for the applicant initially reiterated the circumstances, time lines of the case and the final rejection of the applicant's application for grant of NOC and discharge. The Counsel then elaborated on AFO 33/2017 (Annexure A-1/ Page 71) which lays down the procedure including the eligibility criteria for grant of NOC to airmen/NCs(E) applying for civil posts. He further elaborated on Para 6

of the AFO which lays down the eligibility criteria for those applying under Category - I for posts through UPSC / State PSCs, in that, an airman should have a minimum Skill Grade 'A' and seven years of service.

5. The Counsel then relied on the following judgements and emphatically stated that the criteria of Skill Grade 'A' has been struck down by the Delhi High Court, being arbitrary and unreasonable. He also added that in the three cases before the Delhi High Court, the Respondents had filed SLP before the Hon'ble Apex Court and had fairly stated that whatever the outcome, the facts would not be disturbed.

(a) Delhi High Court judgement in Subhash Chand Vs Union of India and Ors., W.P. (C) 634/2020 dated 11.03.2020.

(b) Delhi High Court judgement in Sonu Vs Union of India and Ors., W.P. (C) 3311/2020 dated 05.08.2020.

(c) Delhi High Court judgement in Krishna Kant Yadav Vs Union of India & Ors., W.P. (C) 8002/2020 & CM 26058/2020 dated 12.01.2021

(d) AFT Principal Bench Order in Sgt Samant Singh Sengar Vs Union of India [OA 2038/2018] dated 27.07.2021.

6. The Counsel asserted and that since the criteria of Skill Grade "A" has been struck-down by the Delhi High Court, and in the SLPs filed by the Respondents in the Apex Court, the Hon'ble Apex Court has only issued notice on the question of law, Para 6 of AFO 33/2017 remains ultra vires, and that, therefore, it can no longer be the grounds for denying the requisite NOC. As regards the plea of the Respondents regarding the issue that prior permission was not taken, this too has been examined by Delhi High Court and it has held that such a prerequisite is not prescribed in the AFO and cannot be grounds to deny a legitimate requirement of NOC. Referring to OA 2716/2021, the Counsel said that the issue was the same that he has been denied an NOC on the grounds that he too did not have Skill Grade "A".

Arguments by the Counsel for the Respondents

7. The Counsel stated that the core issue was Para 6 of the AFO 33/2017 pertaining to the eligibility criteria and elaborated that this has been challenged before the Hon'ble Apex Court and is pending adjudication. He further elaborated that while the aspect of skill grade has indeed been struck down, the requirement of prior permission and the aspect of UPSC/ SPSC exam have been all upheld by the Apex Court. The Counsel briefly reiterated the salient aspects of the case and stated that the applicant had not sought prior permission to apply for the civil post and that he also disobeyed orders by applying, appearing for the exam and the subsequent interview without seeking permission.

8. The Counsel then went on to elaborate the terms of engagement of a soldier in the IAF. Whilst applying for employment in the IAF, the soldier has to

voluntarily submit an undertaking to serve for the initial regular engagement (RE) of 20 years. Moreover, during enrolment, a soldier is required to give express consent to serve the IAF until discharge in accordance with the condition of service. The counsel then went on to explain the adverse impact of premature discharge of trained manpower on the manning levels in the IAF; a service with a very high technical threshold. Thus, premature discharge is strictly regulated through AFO issued from time to time. The Counsel also stressed on the rights of the respondents to frame policies in the overall interest of the organisation and that Hon?ble Courts do not enter into the exercise of how policies ought to be framed.

9. The Counsel vehemently stated that having joined the IAF and having agreed to the terms and conditions of engagement, the applicant has no justifiable right for leaving the service without adhering to the policy, especially where applying for a civil job which is a privilege and which by itself is subject to certain policies. The Counsel thus added that the applicant cannot assert a general right in breach or defiance of existing orders. The Counsel then elaborated upon the career avenues available to airmen within the IAF and that even sportsmen like the applicant had many opportunities for the furtherance of their career.

10. The Counsel first took us through the details of AFO 33/2017 pertaining to grant of NOC for civil employment and then elaborated the details of AFO 16/2008 pertaining to discharge on compassionate grounds. He then elaborated the sequence of action and actions taken by the Respondents in the case of the applicant. The Counsel stated that the applicant had submitted an application dated 30.09.2021 for NOC and immediate discharge and that it was received by AFRO on 21.10.2021. Since grant/ sanction of NOC and discharge follow different channels, the AFRO vide its Signal dated 22.10.2021 instructed that two separate applications be forwarded; as per Appx "E" of AFO 33/2017 for NOC and as per Appx "A" of AFO 16/2008 for discharge. The applicant's Unit vide its Signal dated 28.10.2021 intimated that the applicant through a personal application to his CO had requested that his earlier application for NOC and discharge on compassionate grounds be treated as an application for discharge on compassionate grounds only. Thus, the case of the applicant for discharge was processed for approval of the Competent Authority. However, the Competent Authority did not approve the discharge and this was intimated to the applicant's unit vide Signal dated 10.12.2021 (Annexure R-6). The Counsel further stated that the applicant had filed the OA with his application dated 08.10.2021 and had not stated the issue of his change of stance in seeking discharge on compassionate grounds only. The Counsel further added that, though the applicant did not meet the criteria as per AFO 33/2017, he had appeared for the interview on 08.09.2021 and subsequent selection, knowing fully well that he did not meet the eligibility criteria of the Department.

11. Referring to the medical category of the applicant, the Counsel stated that the applicant was enrolled in IAF on 29.12.2010 in medical cat A4G1 and was

later diagnosed as a case of ACL Tear (rt) (Optd) and was placed in temporary LMC A4G4(T-24) on 23.03.2016 for six months. In the Recategorisation Medical Board held six months later, the applicant was placed in permanent LMC A4G4(P) and later upgraded to A4G3(P) on 22.09.2017; and has continued in this medical category since then; and his next medical board is due on 16.07.2022.

12. Referring to the various judgements relied upon by the Counsel for the applicant, the Counsel then stated that, the challenge to AFO 33/2017 needs to be examined on three important issues. The first issue related to the "Skill Level"; which has been struck down by the High Court in the Judgment of Subhash Chand (supra). The second issue related to the Examination process that a person has to undergo, i.e. whether the stipulation regarding SPSC or UPSC Examination is correct or not. This aspect too has been upheld by the Hon'ble High Court at Para 19 of the judgment in CPL Mukesh Singh Rajpoot Vs. Union of India & Ors. [2020 SCC OnLine Del 1599]. And that the third issue related to the aspect "Prior permission"; whether it is directory or mandatory, and that this required a proper examination. The Counsel further added that, therefore, it needs to be understood and emphasised upon, that the policies of the Air Force for seeking discharge for civil jobs has to be interpreted in light of the policy and not otherwise. He further added that, therefore, AFO 33/2017, the current operative policy, had to be interpreted in the manner as set out in the Policy itself and in favour of the Service, and that to give any other interpretation would be highly detrimental to the Services.

13. Elaborating on the issue of "Prior Permission" the Counsel then stated that though this aspect was integral to the policy of 2008, 2012 and 2017, it was more elaborately expressed in the policy of 2012 and 2017, including the prohibition on grant of "Ex post facto sanction". The Counsel further elaborated that in spite of the fact that the policy of 2008 was not as elaborate on "prior permission" the Hon'ble Supreme Court had interpreted the policy of 2008 too in favour and to the benefit of the Respondent Services. The Counsel then vehemently stated that therefore, subsequent policies cannot be interpreted in a manner contrary to the benefit of the Services. The Counsel then went on to read out the relevant para from the policy of 2012 and 2017 to illustrate this aspect and stated that the judgments of the Delhi High Court, including that of Subhash Chand (supra) and Krishna Kant Yadav (supra), had not examined these aspects of the 2012 and 2018 policy and had simply relied on the judgment in CPL NK Jakhar vs Union of India [2009 SCC online Del 3317(DB)] without examining the fact that "prior permission" was no longer directory and was now mandatory.

13. The Counsel further stated that the 2007 policy was in fact a precursor to the 2008 policy and that though the earlier policies of 2007 and 2008 policy advert to the aspect of seeking permission by applying online it is not as elaborate as mentioned in the 2012 and 2017 policies.

14. Furthermore, the Hon'ble High Court, in the judgment of Cpl N.K. Jakhar (supra) itself has provided at pg. 226, Para 18 as follows:

"18. That the Petitioner did not apply through proper channel relates to a procedure of the law and not the substance of the law. Unless otherwise mandate by the language of a procedural law which leaves no scope to interpret a rule governing a procedure as mandatory, every attempt has to be made to read a rule relating to a procedure as being directory and not mandatory."

15. Further referring to the Hon?ble Apex Court judgement in Amit Kumar Roy Vs Union of India & Ors. [(2019) 7 SCC 369], the Counsel stated that the policy had been interpreted as given in Para 14 of the judgement, which stated :-

"14. In the present case, the Appellants in breach of the provisions contained in AFO 14/2008 applied for the post of a probationary officer with the 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 14/2008."

16. The Counsel reiterated the issue that if the precursor to the 2012 and 2017 policies, which was less stringent has been interpreted to read as the stipulation of "prior permission" to be mandatory, by the Hon?ble Supreme Court, the subsequent policies which lay much higher emphasis on the aspect of prior permission cannot be interpreted in a contrary manner.

17. He further added that AFO 33/2017 has at various places emphasised and re-emphasised on the mandatory nature of a "prior permission". The Counsel therefore stated that in the light of the mandatory nature of "prior permission" as set out in AFO 33/2017, the judgment in Cpl N.K. Jakhar (supra), too should have highlighted that AFO 33/2017 be read in a manner that the aspect of "prior permission" is mandatory and not "directory" or a mere formality. The Counsel further elaborated that the judgement in Cpl N.K. Jakhar stands expressly overruled by the judgment in Amit Kumar Roy, as the judgement in Cpl N.K. Jakhar was rendered on 21.10.2009 whereas the Amit Kumar Roy judgment was rendered in 2019. Therefore, Cpl N.K. Jakhar's judgment which has been relied upon in both the Subhash Chand (supra) as well as Krishan Kant Yadav (supra) judgments and cannot be sustained as the said aspect is no longer good law. The Counsel further emphasised that it was also seen that in the various judgments rendered subsequently by the Hon?ble Delhi High Court, this aspect has not been considered.

18. The Counsel then stated that even in the judgment dated 25.03.2019 passed in the case of Manoj Kumar Vs. Union of India & Ors. [W.P. (C) No. 869/2018], the Hon?ble Court had simply relied upon Cpl N.K. Jakhar's Judgment without further elaborating or even examining the AFO 04/2012. Moreover, even this was prior to the Amit Kumar Roy judgment. He then stated that it was also pertinent to note that in Subhash Chand's case, 292-308, the Hon?ble Court notices Amit Kumar Roy, but not for the aspect of "prior permission". The Judgment of Cpl

N.K. Jakhar has been relied upon at Para 22 (pg. 307) without noticing the nuances of the mandatory nature of the policy of 2012 and 2017. As a result, the said Judgment of Subhash Chand, with the same flaw has been followed verbatim in Krishan Kant Yadav's Judgment at Para 13, pg. 340. The further aspect of the skill level mentioned in the said para cannot apply. None of the Applicants has most likely made any attempt to even apply for prior permission. No document has been annexed to support this aspect except bald averments.

19. The Counsel reiterated that the subsequent judgments of the Hon'ble High Court which examined the aspect of prior permission have verbatim relied upon Cpl N.K. Jakhar's judgment which relies upon a policy that is the precursor to the 2008 policy which has been interpreted by the Hon'ble Supreme Court to be read as "mandatory" and not directory". Since the policies of 2012 and 2017 have enshrined in them clauses that clearly emphasise the importance of prior permission and stipulate the mandatory nature of the same, this principle should hold. Further referring to reliance placed upon the Hon'ble High Court's judgments referring to the Directive principles of State Policy, the Counsel stated that when the Hon'ble Supreme Court had interpreted the policy for leaving the Air Force as a privilege, it was impossible to accord an interpretation that runs completely contrary to the same. Resultantly, the Tribunal will have to accord an interpretation that is in line with the Hon'ble Supreme Court's judgment. Thus, the reliance upon the various judgments of the Hon'ble High Court was not only erroneous, but was also contrary to the law.

20. The Counsel then relied on the following judgements:-

(a) Apex Court judgement in Amit Kumar Roy Vs Union of India [(2019) 7 SCC 369].

(b) Apex Court judgement dated in Sgt Pradeep Kumar Rai & Ors Vs Union of India & Ors. etc. etc., W.P. (C) 567/2019.

(c) Apex Court judgment dated 07.12.2017 in Union of India & Ors. Vs Cpl BK Verma Special Leave Petition (C) 16448/2017.

(c) AFT (PB) Order dated 21.11.2019 in Sgt Mahendra Singh Gurjar Vs. Union of India & Ors. in O.A. No. 1388 of 2019

(d) AFT(PB) order dated 11.03.2020 in Sgt Domendra Kumar Vs. Union of India and others in O.A. No. 1448 of 2019.

21. The Counsel concluded by vehemently asserting that the applicant had applied and participated in the selection process for the civil post under UPSC without having actually obtained the requisite permission to do so and without meeting the criteria in Para 5 (b) of the advertisement for the post where in the applicant was required to give an undertaking that he had informed his parent organisation that he was taking the exams. That he had been denied permission as he did not meet the criteria laid down in AFO 33/2017. That on the applicant's subsequent request to treat his application as an application for discharge on

compassionate grounds, it was so examined as per AFO 16/2008 and was rejected, being bereft of any merit. Thus the OA be rejected.

Consideration Of the Case

22. We find adequate force in the judgements relied upon by the Counsel for the applicant in which the eligibility criteria of Skill Grade "A" given at Para 6 of AFO 33/2017 has already been struck down by Delhi High Court being ultra vires, having found it arbitrary and unreasonable. And though the Union of India has filed SLPs in these cases, the Apex Court has only issued notice on the point of law

23. This has also been relied upon in this Tribunal Order dated 27.07.2021 in the case of Sgt Samant Singh Sengar Vs Union of India & Ors. [O.A. No. 2038 of 2018]. Relevant portions thereof are reproduced below:-

"10. Having heard both the parties and after perusal of records following facts are clear to us :

(a) That the IAF has a policy which permits Airmen to apply for Gp ?A? posts in centre and states. This policy is revised from time to time through an Air Force Order (AFO).

(b) The policy of IAF till 2017 was consistent that once airmen complete 07 years of service, they can apply for such Gp ?A? posts. However in the revised policy of 2017 vide AFO 33/2017, besides 07 years service, possession of professional Skill Grade ?A? was also added as a mandatory requirement to apply for Gp A/B civil exams.#

(c) IAF has a system of online applications for permission to appear in such exams. However, those who wanted to apply for a group ?A? job, but did not possess Skill Grade "A" were not permitted by the online system to apply for such exams, they got a simple screen message that you are not eligible as per AFO 33/2017, hence not permitted to apply.

(d) We find evidence which supports the claim of applicant that he had applied well in time for said exam both through online and through a manual application to his Air Officer Commanding, however, in both cases his application was turned down on grounds of not being eligible as per AFO 33/2017 in terms of not being in possession of Skill Grade "A".

(e) We also find that there is truth in the statement of Ld counsel for the applicant that as per current IAF policy on medical standards, the permanent low medical category of applicant i.e. A4G4(P) will result in no further promotion and no extension of service beyond, initial engagement period of 20 years. Thus the applicant is liable to be discharged from IAF after three years (2024) due to his low medical category in his present rank of Sgt.

(f) We have specifically noted that the respondents have not justified denial of NOC to the applicant to join Gp- "A" job in civil, due to any operational

commitment or shortage of manpower in the trade, but have clearly stated that NOC is denied to him because he had applied for the civil job without prior permission from the IAF. On the other hand, we have also noted the evidence available in the OA that the applicant was not permitted to apply either online or manually on the grounds that he does not possess Skill Grade-"A" as per AFO 33/2017.

(g) Lastly we have noted that the Delhi High Court in a series of judgements (as Quoted above in paras 4 and 8) has struck down the condition of having Skill Grade-"A" in clause 6 of AFO No. 33/2017 on grounds of being arbitrary and unreasonable and while issuing notice of the Special leave to appeal filed by respondents on question of law only, the Hon'ble Supreme Court has not stayed the orders of Delhi High Court.

11. In the above background of facts we have noticed that on the one hand, the applicant has been denied NOC by IAF on the ground that he had applied for the civil job without permission from IAF however we have also noticed that there is clear evidence that the applicant tried his best to obtain permission for the said exam but he was not permitted to apply because he did not have Skill Grade-"A" in terms of AFO 33/2017. We are, therefore, of the opinion that in light of Delhi High Court orders striking down the requirement of Skill Grade-"A" in AFO 33/2017 on grounds of being arbitrary and unreasonable, we have to answer only one question to meet the ends of justice i.e. Can the applicant be provided similar relief as provided by Delhi High Court to other similarly placed IAF personnel ?

12. However, before we answer the above framed question, we would like to go into the various judgements quoted by both the sides in support of their arguments. We are in agreement with the contention of learned counsel for respondents that IAF as a fighting force has to manage its operational requirements and manpower requirements and since fundamental rights of Armed Forces personnel are curtailed under Article 33 of the Constitution, an airman cannot decide at his sweet-will when to leave the organisation, he has to mandatorily seek permission as per policy in vogue for applying for another job in Gp "A"/ Gp "B" appointment under Centre and State. We also agree that IAF has every right to stop discharge of an airman or deny him permission due to operational constraints or shortage of manpower in a particular trade. However, the present case of the applicant is not a case of denial of permission/NOC for another job on grounds of operational constraint or manpower shortage in a particular trade. It is a case where permission/NOC has been denied on grounds of not possessing Skill Grade-"A" as per AFO 33/2017. This AFO provides guidelines for applying for a civil job in Group "A"/"B" post. Through this OA, the sum and substance of applicant's prayer is, for quashing of the inclusion of Skill Grade-"A" in the AFO 33/2017, as an eligibility criteria for applying for civil jobs in Group "A"/"B" posts and granting him NOC to join his new job. Thus in view of this clear distinction, the judgement passed by the Hon'ble Supreme Court in

Amit Kumar Roy (supra), does not help the respondents because it was dealing with a different set of facts and circumstances. This very judgement was considered by Hon?ble Delhi High Court in the case of Subhash Chand (supra) and it was observed as under:

"19. The counsel for respondents has also referred to Amit Kumar Roy Vs Union of India (2019) 7 SCC 369. The counsel for the respondents contends that the Supreme Court therein negated the contention of the airmen, of having a fundamental right under article 19(1)(g) to choose his place of employment, holding that the citizen has a right to choose his employment but once has exercised the said choice, is bound by the rules of the service.

20. Supreme Court therein, as distinct here from, was concerned with an airman who wanted to leave Air Force before completing the mandatory period of service of 7 years. From a reading of the judgement, there does not appear to be any challenge in that case to the rule prescribing minimum service of 7 years for being eligible to seek NOC. The petitioner here has qualified on that account and has led challenge inter alia to clause 6 of AFO No. 33/2017 prescribing eligibility condition of skill grade A for grant of NOC on the ground of same being arbitrary."

13. We have also noticed that the other judgements of Delhi High Court and AFT (PB), as submitted by the learned counsel for respondents, dealt with AFO No. 04/2012 and do not help the respondents in this case. On the other hand, we find that all the judgements of the Delhi High Court, as submitted by learned counsel of applicant, were dealing with AFO No. 33/2017 which is also the subject-matter of present OA and are, therefore, fully relevant to the present case and totally support the case of the applicant.

14. A perusal of speaking order dated 06.11.2018 goes to show that NOC has been declined to the applicant on twin grounds:

1. Non-seeking prior permission before applying for civil post.
2. Applicant did not possess Skill Grade-?A?.

15. On both these aspects, it will be advantageous to reproduce the observations of the Hon?ble High Court in Subhash Chand (supra):

"13. I have enquired from the counsel for the respondents, whether or not airman with skill grade "A" is better qualified than an airman with skill grade "B?". The counsel for the respondents replied in the affirmative. I have further enquired from the counsel for the respondents, that if that is so, why are the respondents not insisting on retaining those with higher skill grade in the service instead of retaining those with a lower skill grade, by refusing permission to them to apply for/join a civil post. Attention of the counsel for respondents is drawn to part-IV titled "Directive Principles of State Policy", of the Constitution of India, provisions whereof per article 37 though are not enforceable but principles laid down wherein are nevertheless fundamental in the governance of the country and the state obliged to follow those in making laws. It has been

enquired whether not it is the duty of the IAF as state to enable a citizen to upgrade himself from a group C to a group A post, to be able to have much more dignity, and pride in his vocation, than as a driver, even if of a SOV in the IAF. The society in general bestows more respect to an Assistant Professor (College Cadre) (Mathematics) than to a driver even if of a SOV in the IAF. The counsel for the respondents is reminded of the duty of the petitioner as a citizen, under article 51 A(j) of the Constitution, to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement and to article 50 1A(k) imposing a duty on a parent or guardian to provide opportunities for education to a child or ward between the ages of 6 to 14 years. It has been enquired, whether or not the respondents as state, in their role as *parens patriae*, are coming in the way of the petitioner enhancing social, if not financial status. Supreme Court in *Charan Lal Sahu Vs Union of India* (1990) 1 SCC 613, relating to Bhopal gas leak disaster, held that the words *parens patriae* mean 'father of the country' were applied originally to the king and are used to refer to state's obligation to protect the rights and privileges of its citizens in discharging its obligation.

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22. The counsel for the petitioner, to meet the argument of the counsel for the respondents having flouted rules and have not sought clear permission, has drawn attention to *CPL NK Jakhar vs Union of India* 2009 SCC online Del 3317(DB) holding that not applying through proper channel relates to a procedure of the law and not the substance of the law and unless otherwise mandated by the language of a procedural law which leaves no scope to interpret rules governing a procedure as mandatory, every attempt has to be made to read the rules relating to procedure as being directory and not mandatory. Reliance in this context is also placed on (i) *Charan Singh Bhanvariya vs Union of India* 2010 SCC online Del 2508 (DB); (ii) *Rajiv Ranjan Vs Union of India* 2016 SCC online Del 3593; and (iii) order dated 28 July 2016 in *W.P.(C) No. 5145/2016* titled *CPL Ranjeet Kumar Vs Union of India* (SLP (C) No. 22476/2016 preferred where against was dismissed on 2 December 2016).

23. The condition of having skill grade "A" in clause 6 of AFO No. 33/2017 is thus not only found to be having no relation to the objective thereof, of granting NOC to Airmen for civil posts, but is also found to be arbitrary and unreasonable and is thus struck down to the said extent.

24. The petitioner otherwise fulfils the conditions of AFO No. 33/2017 and no other reason of service exigency or otherwise has been given in the speaking order dated 26 December 2019 for denying permission to the petitioner, serving as corporal and driving SOV in the Air Force, as Assistant Professor (College Cadre) (mathematics) in the Education Department of State of Haryana. The refusal of permission by the respondents to the petitioner to improve his status in life is also found to be a misapplication of AFO No. 33/2017 in governing its personal and contrary to Part-IV of the Constitution of India prescribing the

Directive Principles of State Policy.

25. The petition thus succeeds and is allowed. A writ mandamus is issued to the respondents No. 1 to 3 to forthwith discharge the petitioner from service, for joining the post of Assistant Professor (College Cadre) (Mathematics) in the respondent No. 4 state of Haryana."

16. Subsequently, after SLP was filed by UOI in Hon'ble Supreme Court challenging the order passed in Subhash Chand (supra), Hon'ble High Court in the case of Sonu (supra) observed as under:

"11. On 28 July 2020, a copy of the order dated 10 July 2020 Supreme Court in SLP (C) No. 8061/2020 preferred by the respondents No. 1 to 3 IAF against Subhash Chand supra was placed before us; vide the said order, though notice of SLP(C) No. 8061/2020 had been issued but no interim relief restraining Subhash Chand from leaving the IAF granted. The counsel for the petitioner on 28 July 2020 also stated that though the respondents No. 1 to 3 IAF had represented before the Supreme Court that there were a No. of other cases pending before the High Courts and in which the same relief as granted to Subhash Chand supra would follow, but no order was made by Supreme Court.

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19. We have considered; whether the petitioner is not entitled to the same relief as Subhash Chand supra, for the reasons argued by the counsel for the respondents No. 1 to 3 IAF but are not able to find any force therein, because (i) respondent No. 1 to 3 IAF admits the petitioner having made a physical application for applying for the post of Assistant Professor (College Cadre) in the respondent No. 5 Department of higher education, government of Haryana on 20th March, 2019; and(ii) the respondents No. 1 to 3 IAF admits that the application for online permission for so applying is not processed unless the applicant possesses skill grade 'A', it is thus irrelevant whether the petitioner attempted online permission on 20th March, 2019 or not, inasmuch as even if the petitioner had attempted so, the same would not have fructified and reached the respondents No. 1 to 3 IAF and would have been aborted. Else, the bona fides of the petitioner are established from the petitioner making a physical application and where from the respondent No. 1 to 3 IAF were aware of the intent of the petitioner.

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24. The same thought process applies with equal force here. The country needs as many teachers at all levels, as airmen/corporals in its IAF. Once IAF itself has designed a policy, enabling its airmen/corporals to see discharge after 7 years of service and have not stated that the services of the petitioner required for any service exigency, though it is generally argued that a large No. of airmen are leaving under the said policy, and once the condition of having skill grade 'A' for such discharge and for the reason where of the petitioner has been denied

discharge, has been struck down, we see no reason to deny the petitioner the same relief as Subhash Chand supra has already availed of.

25. We thus have no hesitation in holding, the petitioner entitled to the same relief as granted to Subhash Chand supra. The petition succeeds and is allowed."

17. Again in Krishna Kant Yadav (supra) it was held:

"13. As far as the reason pleaded for opposing grant of NOC/discharge certificate of the petitioner having participated in the recruitment process of the respondent UPPSC without prior permission of the respondents IAF is concerned, not only have we dealt there with in Subhash Chand supra and the need to reiterate is not felt but we may add that the respondents IAF cannot be permitted to impose the condition of skill grade 'A' which has been struck down in Subhash Chand supra by making it impossible for an airmen to apply for prior permission because of not having skill grade 'A' and then contend that the airmen is not entitled to NOC/discharge on the said ground.

14. Resultantly, the petitioner succeeds and the petition is allowed. Mandamus is issued to the respondents IAF forthwith, within 15 days, Grant NOC/discharge certificate to the petitioner for the unemployment as assistant labour Commissioner in the respondent No. 5 government of state of Uttar Pradesh pursuant to be selection in the recruitment process undertaken by the respondent No. 4 UPPSC and government of state of Uttar Pradesh were restrained from revoking/cancelling the offer of appointment made to the petitioner, on the ground of non-submission of NOC to the respondents IAF, it follows that the petitioner, on submission of such NOC/discharge certificate, would not be denied appointment by the respondent No. 4 & 5 UPPSC and government of state of Uttar Pradesh, for the reason of delay, in submission of NOC/discharge certificate".

18. After going through the relevant aspects of Hon'ble Supreme Court and Delhi High Court Judgements, it becomes clear that the requirement of seeking prior permission before applying for civil post relates to the procedure of law and not the substance of law as held in CPL N.K. Jakhar Vs. Union Of India & Ors. [2009 SCC OnLine Delhi 3317 (DB)]. Moreover, in Cpl Manoranjan Kumar's case (supra) relied upon by learned counsel for respondent, NOC was denied only on the ground of not seeking prior permission before applying for civil post.

Hon'ble High Court relied upon the observations made in W.P. (C) 8108 of 2015 titled Deepak Yadav Vs. Union of India & Ors., wherein it was observed that the court has to be mindful of the fact that in many cases, young boys, due to family constraints and large scale of unemployment, enrol with IAF. Declining of applicant for grant of NOC might lead to dampening of their career advancement prospects.

19. Relying on these observations coupled with the fact that 'No Objection Certificate' was rejected only since the petitioner had failed to follow the

procedure of applying for prior permission, court directed the competent authority to grant No Objection Certificate in favour of the petitioner to be discharged from service. Thus, this judgment instead of helping the respondents rather support the case of the applicant which stands on a much better footing as we have noticed that the applicant has done everything possible to seek prior permission for appearing in the said exam, however, he was denied the right to even apply for the same on the grounds that he does not possess Skill Grade-“A” as required by AFO 33/2017.

20. As regards the inclusion of Skill Grade-“A” in AFO 33/2017 same has been struck down by Delhi High Court. That being so, the respondents cannot justify denial of NOC to the applicant on the ground that prior permission was not taken by the applicant to apply for the said exam. It is absolutely clear that after removal of Skill Grade-“A” criterion from AFO 33/2017, the applicant meets the eligibility criteria to apply for Group “A” job right from the date of issuance of AFO i.e. 08.12.2017.

21. Additionally, we are also of the considered opinion that the applicant being a case of permanent low medical category i.e. A4G4 (P) has no future in IAF and he will be forced to retire without any promotion or extension of service after three years in 2024, when his 20 years initial engagement in service will be over. Thus while the IAF will not lose much by releasing the applicant three years before the engagement period, however, the applicant will lose a lot if he is not released because he will retire as a Sgt in his early forties and lose the opportunity to accept appointment as a Group “A” officer who could retire in his sixties. Additionally, the applicant will have no residue age left to appear in any competitive exams in future.”

24. We also found adequate force in the argument of the Counsel for the Respondents on the ground that the issue of seeking “prior permission” is an important ingredient to various issues in service matters and that the AFO 04/2012 and AFO 33/2017 are adequately explicit in language to make it mandatory, rather than directory as in the earlier AFOs on the subject. While we uphold the fact that “prior permission as enunciated in AFO 33/2017 is a mandatory matter, the AFO also states that applicants need to apply for permission online, and the fact that the online process permits personnel to apply for prior permission ONLY if the individual has Skill Grade A. Thus, while the issue of “prior permission” is mandatory, the Respondents till date have not modified the existing process to facilitate applying for such permission, specially in the light of the fact that the requirement of “Skill Grade A” has been struck down by the Hon’ble Delhi High Court and has held this position in numerous cases. In particular, the High Court in the case of Krishna Kant Yadav (supra) held:

“13. As far as the reason pleaded for opposing grant of NOC/discharge certificate of the petitioner having participated in the recruitment process of the respondent UPPSC without prior permission of the respondents IAF is concerned, not only

have we dealt there with in Subhash Chand supra and the need to reiterate is not felt but we may add that the respondents IAF cannot be permitted to impose the condition of skill grade 'A' which has been struck down in Subhash Chand supra by making it impossible for an airmen to apply for prior permission because of not having skill grade 'A' and then contend that the airmen is not entitled to NOC/discharge on the said ground.

14. Resultantly, the petitioner succeeds and the petition is allowed. Mandamus is issued to the respondents IAF forthwith, within 15 days, Grant NOC/discharge certificate to the petitioner for the unemployment as assistant labour Commissioner in the respondent No. 5 government of state of Uttar Pradesh pursuant to be selection in the recruitment process undertaken by the respondent No. 4 UPPSC and government of state of Uttar Pradesh were restrained from revoking/cancelling the offer of appointment made to the petitioner, on the ground of non-submission of NOC to the respondents IAF, it follows that the petitioner, on submission of such NOC/discharge certificate, would not be denied appointment by the respondent No. 4 & 5 UPPSC and government of state of Uttar Pradesh, for the reason of delay, in submission of NOC/discharge certificate"

25. In view of the above consideration, we find adequate merit in both the OAs 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.

26. No orders as to costs.

Pronounced in open Court on this 23rd day of March, 2022.