
(2021) 07 AFT CK 0027
In the Armed Forces Tribunal
Case No : O.A. No. 2038 of 2018

Sgt Samant Singh Sengar

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 27-07-2021

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 37

Citation : (2021) 07 AFT CK 0027

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

Bench : Division Bench

Advocate : Rakesh Kumar Singh, J.S. Rawat

Final Decision : Disposed Of

Judgement

1. The applicant, who is presently serving as a Sgt (Air Frame Fitter) with the Indian Air Force, upon being denied "No Objection Certificate"

for joining the post of Assistant Professor (History) in Madhya Pradesh Public Service Commission, has filed the present OA seeking following reliefs:

A. To quash and set aside the order dated 06.11.2018 passed by the respondent No-04;

B. To issue direction to the respondent No. 1 to 5 to issue No Objection Certificate to applicant for joining as the Assistant Professor (History) in Madhya Pradesh Government;

C. To quash the AFO 33/2017 as arbitrary, illegal and unconstitutional;

D. To pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances.

2. The facts of the case, in brief, are that the applicant was enrolled on 28.09.2004 in the Indian Air Force (IAF) as an Airman with an educational

qualification of B.Sc. (Physics & Maths). Between the years 2007-2017, with due permission from IAF, he pursued and completed MA (History),

M.Sc. (Maths), B.Ed., LL.B and LL.M, which have been entered in his records. During the period from September, 2011 to January 2014, the

applicant faced medical problems and his medical category was downgraded to permanent lowest medical category A4G4(P), due to Obesity

(Old) and Bilateral Sensorineural Hearing Loss (Noise Induced) (Old). Additionally, he was also subsequently found to be suffering from

eye related problem i.e. Hypermetropic Amblyopia LE (Fresh). Thus with a permanent low category of A4G4(P), the chances of the applicant, for

further promotion and extension of service in IAF, beyond 20 years of initial engagement, have diminished significantly. The applicant has stated that

right from the time of his recruitment in the year 2004, the guiding AFO i.e. AFO 05/2003 and subsequent revisions of this AFO i.e. AFO 04/2007 and

AFO 04/2012 clearly stated that airmen who have completed 07 years of service could apply for Group-A civil posts under central/state Govts. and

public sector undertakings. The applicant further states that on 12.12.2017, he came across an advertisement by Madhya Pradesh Public Service

Commission for recruitment of Assistant Professor Exam-2017 with pay scale of Rs. 15600-39100 + AGP 6000/-. He further states that he came to

know that on 08.12.2017 a new AFO i.e. AFO 33/2017 has been issued which has added an additional eligibility criterion for applying for Gp-A posts

in civil i.e. in addition to 07 years service, a minimum of professional skill grade- will also be required. In view of the fact that he had already

completed 7 years of service, he attempted to apply for online permission on Air Force Record Office (AFRO) website (permissions are required to

be obtained online only), but the same was not accepted with the comment on screen that "you are not permitted to apply for the civil post due

to your current skill grade vide AFO 33/2017". The applicant also attempted to obtain permission through a normal application to his

Commanding Officer dated 19.01.2018, but the same was rejected at Section Incharge level itself, on grounds that the applicant does not possess skill

grade as per current policy. Since the applicant was not allowed to apply for getting permission from IAF to appear in the said exam, till the

very end, therefore, he applied directly for the said exam, without permission from the IAF. Subsequently, the applicant

successfully qualified in the examination and on 11.08.2018, he was declared selected for the post of Assistant Professor (History). Thereafter he

applied for necessary "No Objection Certificate" (NOC) from IAF. Subsequently, as asked for by the Department of Higher Education,

Madhya Pradesh, Bhopal, he appeared for verification of documents before the said department and submitted an undertaking that he will submit the

NOC shortly as he had already applied for the same. However, vide Speaking Order dated 06.11.2018, received on 23.11.2018, his request for

issuance of NOC was rejected on two counts, firstly being in violation of the policy in vogue as he was not having Skill Grade-"A" and secondly

on the ground that he had applied for the said job without obtaining prior permission from IAF. Aggrieved by this, the applicant has filed this OA.

3. Factual matrix of the case has not been denied by the respondents in their counter affidavit. It is alleged that the applicant was enrolled on

28.09.2004 and his regular engagement for a period of 20 years is going to expire on 27.09.2024. It is further stated that the applicant applied online

for the post of Assistant Professor, in response to the advertisement dated 12.12.2017, issued by Madhya Pradesh Public Service Commission

(Assistant Professor Exam) 2017, without taking the mandatory prior permission from the competent authority of Air Force as required vide AFO

33/2017. He appeared in the examination conducted by Madhya Pradesh Public Service Commission and cleared all the stages. He was selected for

the post of Assistant Professor under Madhya Pradesh Government. He had submitted an application dated 24.08.2018 which was received by

Respondent No. 3 on 25.10.2018 seeking NOC from the Air Force to join the said post. The application submitted by the applicant was considered by

the Competent Authority and having taken into account the entire material on record, it was found that the applicant was not possessing skill grade

"A" which is a mandatory criterion for applying for civil post as per the provisions laid down in AFO 33/2017; hence the NOC as sought by the

applicant to join the post of the Assistant Professor under Madhya Pradesh Govt. was not granted vide Air Force Record Office Signal No. RRD/656

dated 01.11.2018. Subsequently, the applicant was issued with a speaking order dated 06.11.2018 informing him about denial of grant of NOC. Hence,

it has been prayed in the Counter Affidavit that the application filed by the applicant be rejected.

4. Learned counsel for the applicant submits that the applicant, whose entry qualification was B.Sc. at the time of his enrolment in IAF, with due permission of the respondents, pursued post-graduation qualifications i.e. MA, M.Sc, B.Ed, LLB and LLM. Initially, as per AFO 05/2003, the only requirement for permission to apply for the civil posts and for obtaining NOC was completion of 07 years of service. Subsequently, as per AFO 04/2012, the Airmen could apply for Gp-A post only and not for Gp-B posts. Thereafter, a new AFO 33/2017 was issued dated 08.12.2017. This new AFO stipulated the eligibility criteria for applying for Group A/I and Group B/II Gazetted posts through Union Public Service Commission (UPSC) and State Public Service Commissions, as 07 years of service along with Skill Grade-â??Aâ??. It was submitted that while the applicant has completed over 07 years of service, the applicant has been denied permission to join as Assistant Professor (History) only for the reason that the applicant was not having Skill Grade-â??Aâ??, as per the requirement of AFO 33/2017. He further submitted that this condition of Skill Grade-â??Aâ?? in AFO 33/2017 has already been held to be arbitrary and has been struck down by the Honâ??ble High Court of Delhi in W.P. (C) No. 634 of 2020 titled as Subhash Chand Vs. Union of India & Ors. decided on 11.03.2020 and the same has been reiterated in subsequent judgments, namely, in W.P. (C) No. 3311 of 2020 titled as Sonu Vs. Union of India & Ors. decided on 05.08.2020 and W.P. (C) No. 8002 of 2020 titled as Krishnan Kant Yadav Vs. Union of India & Ors. decided on 12.01.2021. Learned counsel further avers that Union of India approached the Honâ??ble Supreme Court by way of Special leave petitions being S.L.P. (C) No. 8061 of 2020 [Union of India & Ors. Vs. Subhash Chand & Ors.]and S.L.P. (C) No. 15441 of 2020 [Union of Inida & Ors. Vs. Sonu & Ors.] but the Honâ??ble Apex Court has declined to stay the judgments passed by the Honâ??ble Delhi High Court.

5. It was further submitted by the learned counsel for the applicant that the applicant has been initially placed in permanent low medical category of IAF i.e. A4G4 (P) due to â??Obesityâ?? and â??Bilateral Sensorineural Hearing Lossâ??. Subsequently, he has also developed medical limitations in his left eye and, therefore, as per new policy of the respondents on medical standards, there is no further chance of promotion/extension of his

service beyond 2024. That being so, for career progression of the applicant, it is all the more required that the respondents should issue NOC to the applicant for joining to the post of Assistant Professor in the State of Madhya Pradesh. He further submits that on request of the applicant, vide letter dated 17.06.2021, Department of Higher Education, Madhya Pradesh has provided a last opportunity to submit NOC on or before 31.07.2021, failing which, his candidature will not be considered and his seat may be allotted to the next selected candidate in the supplementary list, whereby the applicant will lose future prospects of advancement of career and will be left with no option/opportunity to earn his dignified livelihood on completion of the present term of engagement i.e. 27.09.2024.

6. Learned counsel of the respondents, on the other hand, submits that the applicant was enrolled in IAF for an initial term of regular engagement of 20 years. Premature discharge of Airmen from the Air Force, prior to completion of their regular engagement is bound to affect the manning levels in the respective trades of IAF. Such premature discharges are bound to have an adverse impact on the operational preparedness of the Air Force.

Therefore, to achieve the organisational aim and at the same time also cater for individual aspirations, a balancing act has been done by framing

administrative policies by the IAF, to regulate premature discharge of the Air warriors from IAF. As per Para 6 of the AFO 33/2017, Airmen with the

minimum Skill Grade-â??Aâ?? and 07 years service, are only eligible to apply for Cat-I post in the UPSC and State Public Services Commission(s).

The post of Assistant Professor in Madhya Pradesh Public Service Commission is Cat-I post however Skill Grade of the applicant is â??Câ??.

Therefore, the applicant was not eligible to apply for the said post. The whole process of seeking permission was â??Onlineâ?? and once the

applicant failed to obtain permission from IAF to apply for the said post he has applied as a General candidate. Due to said reason, when he

subsequently applied for NOC from IAF after his selection, the same was declined vide a detailed speaking order dated 06.11.2018.

7. Ld Counsel for the respondents further submitted that the applicant had applied for the said exam without valid permission of the IAF. He submitted

that manning levels and operational preparedness are important issues for a fighting force and, therefore, the applicant could not have decided of his

own to apply for an alternate job. He stated that Article 33 of the Constitution is clear on this aspect and Honâ??ble Supreme Court in its judgement

dated 03.07.2019 in the case of Amit Kumar Roy Vs. Union of India & Or.s [(2019) 7 SCC 369] in Civil Appeal Nos. 4605-4606 of 2019 (D No.

27372/2015) hasâ??adequatelyâ??clarifiedâ??thisâ??aspect.â??Heâ??furtherâ??referredâ??to following three other judgements in support of his

arguments i.e. W.P. (C) No. 494 of 2017 titled Cpl Manoranjan Kumar Vs. Union of India & Or.s, passed by the Delhi High Court dated

16.11.2017, O.A. No. 1388 of 2019 titled Sgt Mahendra Singh Gurjar Vs. Union of India and Ors, .AFT (PB) New Delhi dated 21.11.2019 and

O.A. No. 1448 of 2019 titled Sgt Domendra Kumar Vs. Union of India and others, AFT (PB) New Delhi dated 11.03.2020. He concluded by pleading

for the OA to be dismissed.

8. At this stage, learned counsel for the applicant rebutted the claim of learned counsel for respondents that the applicant had not taken permission to

apply for the said job. He claimed that he has produced two documentary evidences in the OA indicating that the applicant tried his best to obtain

permission but the online system of Air Force refused to process his application, on the grounds that he does not possess Skill Grade-â??Aâ?? and,

therefore, he is not eligible to apply for permission i.e. NOC. He drew the attention of the Bench to a sample online response print out annexed to the

OA for such cases being refused. He further drew the attention of the Bench to the manual application of the applicant dated 19.01.2018 annexed to

the OA, addressed to his Commanding Officer, seeking permission to appear for the said exam. The application was turned down by the Warrant

Officer incharge of his section at his level itself, with his signatures on the application, stating that since the applicant is not possessing Skill Grade-

â??Aâ??, therefore, he is not eligible to apply for the said permission to appear in the exam. The learned counsel submitted that the applicantâ??s

case is not a case where he has appeared for the said exam without seeking permission. He, on the other hand, contended that it is a case where the

applicant has applied for permission but the same has been denied to him on the grounds that he did not possess Skill Grade-â??Aâ??. He further

stated that the eligibility criteria for applying for a Gp-â??Aâ?? job was always seven years of service, however, the same was modified in 2017

through a new AFO, a few weeks before the applicant wanted to apply for the said job. He stated that now that the Delhi High Court in its judgement dated 11.03.2020 in W.P.(C) 634 of 2020 in the case of Subhash Chand (supra) has struck down the condition of having Skill Grade-â??Aâ?? in clause 6 of AFO 33/2017 on grounds of being arbitrary and unreasonable, therefore, the earlier refusal of respondents to grant permission to the applicant to appear for the said exam, and the subsequent refusal of respondents to issue an NOC, has lost its legal basis. Additionally, since the Honâ??ble Supreme Court, despite best efforts of the respondents in Special leave to appeal, did not stay the Delhi High Court order, and also because Delhi High Court is continuing to give relief in similar cases, therefore, the case of the applicant deserves sympathetic consideration. The learned counsel concluded by stating that after 11.03.2020, judgement of Delhi High Court in the case of Subhash Chand (supra), Delhi High Court has provided relief to many other IAF personnel who were refused permission and NOC for Group â??Aâ?? job by IAF on grounds of not possessing Skill Grade-â??Aâ??. He quoted following two recent Delhi High Court judgements to support his contention i.e. judgement dated 05.08.2020 in W.P.(C) No 3311 of 2020 in the case of Sonu (supra) and judgement dated 12.01.2021 in W.P.(C) 8002 of 2020 & CM 26058 of 2020 (for interim directions) Krishna Kant Yadav Vs UOI & Ors. (supra). He pleaded that the applicant is permanently medically down and has no future in IAF. In 2024 he is bound to retire as a â??Sgtâ?? because with his present medical category he will neither get promotion nor extension beyond 2024, while on the other hand he has a bright future awaiting him in a Group â??Aâ?? job. He stated that it will be travesty of justice if the applicant has to retire as a Sgt after three years when a Group â??Aâ?? job is presently available to him. He pleaded for similar relief to the applicant as was being provided by Delhi high Court to similarly placed IAF personnel.

9. Learned counsel for respondents further submitted that though the Honâ??ble Supreme Court has not granted stay in the Special Leave to Appeal, in the case of Subhash Chand (supra), however, the question of law has been kept open and a final judgement in this matter is yet to come.

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-â??Aâ?? 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-

â??Aâ?? 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 Honâ??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-â??Aâ?? 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-â??Aâ?? 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 â??Aâ??/ Gp â??Bâ?? 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-â??Aâ?? as per AFO 33/2017. This AFO provides guidelines for applying for a civil job in Group â??Aâ??/â??Bâ?? post. Through this OA, the sum and substance of applicantâ??s prayer is, for quashing of the inclusion of Skill Grade-â??Aâ?? in the AFO 33/2017, as an eligibility criteria for applying for civil jobs in Group â??Aâ??/â??Bâ?? posts and granting him NOC to join his new job. Thus in view of this clear distinction, the judgement passed by the Honâ??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 Honâ??ble Delhi High Court in the case of Subhash Chand (supra) and it was observed as under:

â??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.â??

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-â??Aâ??.

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

â??13. I have enquired from the counsel for the respondents, whether or not airman with skill grade â??A? is better qualified than an airman with skill grade

â??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 â??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 â??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), Honâ??ble High Court in the case of Sonu (supra) observed as under:

â??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 â??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 â??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 the succeeds and is allowed.â??

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

â??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 â??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 â??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 certificateâ??

18. AfterÂ goingÂ throughÂ theÂ relevantÂ aspectsÂ ofÂ Honâ??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 & Or.s [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.

22. In view of the aforesaid, the OA succeeds and is accordingly allowed. The Respondents are directed to issue 'No Objection Certificate' in

favour of the applicant to be discharged from service by 30.07.2021, for joining as Assistant Professor (History) in Madhya Pradesh Government.

23. The OA stands accordingly disposed of. MA, if any, also stands disposed of.

Copy of this order be given 'Dasti' to the learned counsel for the applicant as well as learned counsel/OIC representing the respondents for

doing the needful.

Pronounced in open Court on this 27th day of July, 2021.