
(2002) 05 DEL CK 0106
In the Delhi High Court
Case No : C.W.P. No. 1370 of 2002

Sgt Sarkar J.C.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 05 DEL CK 0106

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Narender Kaushik, for the Appellant; Manisha Dhir, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioner herein has filed this writ petition questioning an Air Force Order (in short, "AFO") bearing No. 18 issued by the Chief of the Air Staff dated 07.09.2001 as also for issuance of a writ, order or direction of or in the nature of Mandamus directing the respondent to issue discharge order and No Objection Certificate (in short, "NOC") to the petitioner for Group "A" Post Civil and release him.

2. The petitioner joined as Electrical Fitter Group I in the year 1987. Allegedly as per joining instructions at Airmen Training Centre, the petitioner was given an assurance that in the event of his attaining requisite qualifications, he can apply for any job in Government/State Government/ Public Sector Undertaking in a higher pay scale.

3. The petitioner is presently posted at Suratgarh, Rajasthan. He obtained a higher qualification of B.Sc., A.M.I.E. (Electrical) and completed M. Tech except two papers.

4. An order bearing No. AFO 7 of 1995 was issued by the respondents prescribing the procedure and guidelines for applying in the Group "A" post in

Central Government/ State Governments and Public Sector Undertakings.

A fresh criterion was laid down in April, 2001 bearing No. AFO 9 of 2001 whereby and whereunder it was directed that NOC would not be issued in case the last basic pay is less than Rs. 13,5000/- whereas in cases of similarly situated persons, who joined defense Services, the basic pay should not be less than Rs. 10,050/-.

5. The petitioner appeared for Group "A" post in various banks and public sector undertakings, but was denied NOC. However on 04.04.2001, he applied for the post of Management Training Engineering (Electrical) in West Bengal State Electricity Board (in short, "the Board") upon obtaining permission Therefore from the respondents.

6. According to the petitioners, various persons were granted NOC, who has approached this Court by filing writ petition under Article 226 of the Constitution of India (in short, "the Constitution"). Some of these writ petitions are C.W.P. Nos. 4579, 4726 and 4928 of 2001. However, such NOCs were granted taking into consideration, the cut-off date as 06.09.2001.

7. By reason of the impugned AFO, a total ban was imposed to apply for civil posts under Central Government/State Governments and Public Sector Undertakings for initial 15 years of their service.

8. According to the petitioner, the said order is contrary to the assurance given to him at the time of joining the services of the respondents. It is contended that the career of the petitioner cannot be blocked in an arbitrary manner as he has a fundamental right to be considered for a better career.

9. The petitioner appeared at an interview on 03.12.2001 and he was offered an offer of appointment by the West Bengal Electricity Board on 06.02.2002, but he could not join the same within the stipulated time as allegedly he had received the same at a later date. The petitioner sought for and was granted an extension for joining up to 11.03.2002. NOC as prayed for by the petitioner was denied to him by the respondents in view of the aforementioned AFO No. 18 of 2001.

10. Mr. Narender Kaushik, the learned counsel appearing on behalf of the petitioner, would submit that having regard to the fact that the petitioner had been granted permission to apply for an employment in the Board the same could not be withdrawn. It was pointed out that when several writ petitions were filed, which came up before a learned Single Judge of this Court, NOC(s) had been granted by the respondents and, thus, there is no reason as to why the petitioner would be discriminated.

11. Ms. Manisha Dhir, the learned counsel appearing for the respondents, on the other hand, would contend that the petitioner is not eligible for grant of NOC.

According to the learned counsel, the petitioner had never applied for grant of NOC. He merely applied for permission" to appear at the examination.

It was urged that it was obligatory on the part of the petitioner in terms of the AFO, which was in existence at the relevant point of time, as also in terms of the provisions of the Indian Air Force Act (in short, "the said Act") and Air Force Rules, 1969 (in short, "the said Rules"), to apply for NOC before he appeared in an interview and, thus, requirements of law having not been complied with, he is not entitled to any relief, as prayed for.

It has been pointed out that the permission to appear at the examination is granted by the Unit whereas NOC was to be granted by the Headquarters.

12. Air Force Order bearing AFO-18 dated 07.09.2001 read as under :-

"PERMISSION TO AIRMEN/NCs (E) FOR APPLYING FOR CIVIL POSTS/SERVICES UNDER CENTRAL/STATE/GOVT AND PUBLIC SECTOR UNDERTAKINGS

1. Airman/NCs (E) who have completed 15 years of their engagement period are permitted to apply for civil posts under Central/State Govt. and equivalent jobs in PSUs.

2. This AFO deals with the procedure to be followed when an Airman/NCs (E) applies for a civil post under Central/State/PSUs. Eligible Airmen/ NCs (E) desirous of applying for civil posts may route their applications to be concerned department/employer through AIR HQ (Dte of PA). While recommending such applications/bio-data, unit commanders/station adjutants will ensure that the post for which the application is being recommended belongs to civil posts under Central/State and PSUs and that the Airmen/ NCs (E) have completed 15 years service in Air Force including training period. Unit commanders will also ensure that the application/bio-data does not contain any classified information.

3. Airmen/NCs (E) who have given undertaking to service for a particular period (after undergoing courses within the country/abroad, posting/deputation abroad, NIS qualified coaches etc.) are not permitted to apply for civil posts under provisions of this AFO within the specified period for which they are under obligation to serve in the IAF. They will however, be eligible to apply for civil posts on completion of the prescribed obligatory period of service as per the undertaking. Station adjutants/unit commanders are to obtain a certificate from the Airmen/NCs (E) applying for civil posts to be effect that they have not undergone any such courses or qualified as NIS coach and are not under obligation to serve for any specific period.

4. If an Airmen/NCs (E) qualified for an interview. Air HQs is to be approached directly by the units for issue of "No Objection Certificate" required to be produced to the employer at the time of interview, on specific written request from the Airmen/NCs(E) NOC will be issued by ADPA(RC)/DPA Air HQs only for civil posts under Central/State and PSUs. While requesting for, "No objection Certificate", a copy of the interview call letter with specific date and venue of interview copy of advertisement indicating civil posts, a certificate as per para 3 above and no disciplinary case is in progress/contemplated against the Airman/

NCs(E) may be closed along with the application, requisite NOC will be issued by ADPA(RC) Air HQs as per lay out at Appendix to this AFO on case by case basis subject to Air Force Exigencies, on approval by ACAS(PA&C). Issuance of NOC is privilege and cannot be claimed as a matter of right within the engagement period of 20 years. Request for NOCs are to be made when and Airman/NCs(E) fulfills all the conditions to apply for such a post and if issued, the same is to be attached either as part of the application for the post or at the time of interview as per the requirement of the employer. In no case NOC will be sought once the post has been offered after interview nor it will be issued *expose facie*. No provisional or conditional NOC will be issued by units for appearing in the interview. Any endorsement required to be made as part of application may complete by unit adjust ant before forwarding to prospective employer. Airmen/NCs (E) while applying for such posts he briefed properly about the procedure.

Airmen/NCs (E), if selected, should apply for discharge and take up new appointment only after approval of discharge by the competent authority, this HQ.

Expenditure incurred on the movement for appearing at the Examination/ interview will be borne by the Airmen/NCs (E) himself and the period of absence on the account shall be treated as leave, if granted, within no normal entitlement.

This supersedes AFO 9/2000 and will take immediate effect from the date of issue."

13. We may notice that according to General Duties and Miscellaneous Provisions framed under the said Act Air Force Orders will be issued by the Chief of the Air Staff on matters of an administrative nature affecting the air force formations and units as a whole.

14. The purported representation made to the petitioner by the respondents, as notice hereinabove, was in the following terms:-

"During your training, stress will be given to the English language and at the time you pass out, you will be well versed with written and spoken English. If you have the requisite qualification, you can apply for any government job with a higher pay scale than yours. After training, you may join any correspondence/ part time course and obtain better qualification."

The said representation, thus, could not have been pressed into service after a long time, particularly when the situation held undergone sea change.

15. The submission of the learned counsel for the petitioner is that the impugned AFO has been given a retrospective effect inasmuch as the same was made applicable even in respect of employees, who had joined the Air Force prior to the issuance thereof. It cannot be accepted, inasmuch as the petitioner did not have any vested right in this behalf. There did not exist any statute or statutory rule to the effect that he can be permitted to join Central Government /State Governments or any other Public Sector Undertakings, as and when he wishes.

Submission of the petitioner to the effect that he was assured that in the event he attained requisite qualification, he could apply in any Government/State Governments or the Public Sector Undertakings in a higher pay-scale is denied and disputed by the respondents.

It is not in dispute that the petitioner had furnished an undertaking for 20 years" engagement for serving the Indian Air Force. According to the respondents, the petitioner is required to serve the Organization for the said period and only upon completion of 15 years of service, if he is eligible for the Government job, he may be issued with a NOC, as by reason of the impugned AFO, a minimum 15 years of service has been provided.

16. The respondent in its counter affidavit has contended that a decision was taken at the highest level at Air Headquarters in consultation with the Judge Advocate General (Air) that all Airmen who were given initial permission to apply for civil post by the Air Force Units prior to 06.09.2001 were all issued with NOCs to join the civil posts as and when they applied, but from 07.09.2001, grant of NOC would be governed by AFO 18 of 2001 inasmuch as thereby the eligibility condition is stated to be 15 year"s of service. In that view of the matter, evidently the petitioner had not been discriminated against.

17. It has been contended that such a decision had been taken having regard to the fact that costly training is imparted to the Airmen and thus the upward trend of misutilization should be curtailed. It has been pointed out that the petitioner also applied for permanent commissioning and branch commissioning in Indian defense Forces within the engagement period.

In the instant case, the petitioner had not been able to show that the said AFO No. 18 of 2001 is unconstitutional.

18. The terms and conditions of service, particularly with regard to the right of a person to leave services after some time for a better job cannot be claimed as a matter of right keeping in view the fact that the petitioner agreed to serve the respondent for a period of 20 years where for he entered into a requisite contract.

19. From the petitioner"s letter dated 03.04.2001, it appears that he had only applied for permission to appear in the Civil Examination for Class I post conducted by the Board. Only the said application was forwarded. There is nothing on record to show that the petitioner had in fact applied for grant of NOC from the Competent Authority.

20. So far as the contention of the petitioner that NOC(s) had been granted to other persons is concerned, suffice it to notice that such NOC(s) had been granted in terms of the old Rules, but the petitioner had sought for grant of NOC by way of this writ petition only after expiry of the cut-off date.

The petitioner cannot also be granted any relief on the basis of the purported representation, as the rule of estoppel must give way to a statutory rule. Even assuming that doctrine of promissory estoppel in a case of this nature has any

role to play, having regard to the changed situation, we are of the opinion that sufficient reasons have been assigned by the respondents to resile there from. The decision taken by the respondents in terms of the statutory regulations must be held to be in public interest.

21. A decision of the statutory authority cannot be interfered by the Court, unless it is held to be wholly unreasonable attracting the principles of *Wednesbury* unreasonableness. See *Nottinghamshire County Council v. Secretary of State for the Environment* and Anr. 1986 (1) All E.R. 199.

22. For the reasons aforementioned, we do not find any merit in this writ petition, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no orders as to cost.