

SUPREME COURT OF INDIA

Amit Kumar Roy

Vs.

Union of India

C.A.No.4605 - 4606 of 2019

(Dr.D.Y.Chandrachud and Hemant Gupta,JJ.,)

03.07.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

1. These appeals arise from a decision of the Armed Forces Tribunal dated 2nd April 2012 together with its order dated 25 May 2012, declining to review the initial decision.

2. The appellant was enrolled on 12 January 2004 as an Airman in the Indian Air Force . His regular engagement was to come to an end on 11 January, 2024. An advertisement was issued by the Bank of India on 7 August 2010 inviting applications for filling up 2,000 posts of Probationary Officers. While posted at the Three Base Repair Depot, the appellant responded to the advertisement and applied for the post of General Banking Officer in the pay scale of Rs 14,500–25,700 in August 2010. The appellant did so without completing the mandatory period of service of seven years. Moreover, he did not obtain the prior permission of his unit authorities. This was (according to the Air Force authorities) in breach of the provisions of Air Force Order 14/2008 which was then in force. The appellant applied for the issuance of a No Objection Certificate and a Discharge on 30 May 2011. By then he had appeared at the written test held by the Bank on 16 March 2011 and for an interview at which he was declared to be successful. His application for an NOC and discharge was forwarded to the competent authority at Air Headquarters by the Headquarters Maintenance Command on 4 July 2011. On 28 July 2011, the appellant received an order of appointment as a Probationary Officer with the Bank. On 16 August 2011, he moved the AFT at its Regional Bench in Chandigarh seeking directions for the grant of an NOC and for discharge from the IAF to join a civil post with the Bank of India. On 18 August 2011, the AFT issued an interim direction to the IAF authorities to provisionally issue an NOC and to discharge the appellant so as to enable him to take up the new assignment before 24 August 2011. This was subject to the condition that in the event of his OA being dismissed, the appellant would have to give up his appointment and join the IAF within a reasonable period of time failing which he would be liable to action as a deserter absent without leave. On 2 September 2011 after the rejection of an application for review filed by the Air Force authorities before the AFT and faced with a contempt petition, Air Headquarters issued a provisional NOC to the appellant permitting

him to take up the appointment in a civil post of a General Banking Officer (JMG Scale-I) with the Bank of India. A discharge order was issued on 20 September 2011 on a provisional basis on the conditions stipulated by the AFT. The appellant joined Bank of India on 24 September 2011.

3. A Civil Appeal was filed by the Union of India in this Court to assail the interim order of the AFT. On 12 March 2012 this Court directed the Air Force authorities to dispose of the application submitted by the appellant on 30 May 2011 for an NOC and discharge. The application was rejected on 26 March 2012. The order of rejection, in so far as is material, is extracted below:

“(a) You had applied for the civil post directly without obtaining prior permission of your Commanding Officer that too before completion of mandatory period of seven years of service in the IAF in violation of AFO 14/2008.

(b) Both the above acts amount to indiscipline.

(c) The pay scale of the civil post applied by you is Rs 14,500-25,700 which is not equivalent to Group -“A” as per Air HQ/S 40726/PA(RC) dated 22 May 2009 read with AFO 14/2008. As per referred letter dated 22 May 2009 the post is equivalent to Group -“C” Govt Post for which an airman belonging to a trade not having critical manning is eligible to apply only on completion of 15 years of service. On completion of 18 years of service, one can apply for any post, irrespective of critical manning in respective trade, provided he had rendered unwillingness/denied extension of service.

(d) You belonged to Air Frame Fitter trade which is having critical manning.

(e) At the time of applying for the said post, your trade was having critical manning, also you had not completed 15 or 18 years of service which is mandatory for applying for Group -“C” Govt posts and equivalent posts in PSUs.”

On 9 April 2012, when his OA came up before the AFT the Air Force authorities had already passed an order rejecting his application. Hence on 11 April 2012 the OA was dismissed as having become infructuous, though with the observation that the “interim order dated 18 August 2011 will have its force”. The appellant's review application was dismissed on 25 May 2012. On 2 June 2012, the appellant filed writ proceedings before the High Court of Punjab and Haryana. He was protected by an interim order dated 15 June 2012, against being treated as a deserter. On 22 June 2012 Air Headquarters cancelled the provisional NOC dated 2 September 2011 and the provisional discharge issued in compliance with the order of the AFT dated 11 April 2012 noting that an order of reinstatement in the service of the IAF was issued on 18 June 2012, to take effect from 16 July 2012. The appellant was called upon to join duties at his last unit, Three Base Repair Depot, failing which it was stated that he would be liable to disciplinary action.

4. Since the appellant had not received a clean discharge certificate, his services were

terminated by Bank of India on 30 April 2014. Challenging his termination, the appellant moved writ proceedings in which by an order dated 17 September 2014, the termination was stayed. In view of the decision of this Court in *Union of India v Major General Shri Kant Sharma*, the High Court held that it had no jurisdiction to entertain the writ petition filed by the appellant under Article 226 and while leaving it open to him to pursue an alternate remedy before the AFT.

5. The appellant now seeks to challenge the decision of the AFT rendered on 11 April 2012 together with its order dated 25 May 2012 declining to review its decision. The AFT came to the conclusion that the OA had been rendered infructuous since in the meantime, in pursuance of the orders of this Court a speaking order had been passed by the Air Force authorities on 26 March 2012 rejecting the application for an NOC. In the review order, the AFT declined permission to the appellant to amend the OA.

6. Mr Gopal Sankaranarayanan, learned senior counsel appearing on behalf of the appellant submitted that:

(i) The appellant has a fundamental right under Article 19(1)(g) to choose his place of employment. The provisions of Article 19(1)(g) in their application to the members of the Air Force are not any different from their application to any other branch of government;

(ii) There was sufficient compliance by the appellant with the provisions contained in paragraph 17 of AFO 14/2008;

(iii) On the purported non-parity of pay scales:

(a) The Air Force Order dated 23 July 2015 indicates that pay scales for Assistant Managers in Scale I of public sector banks have been revised to meet with the equivalence criteria vis-a-vis Group A government posts and that approval has been accorded to the procedure for the discharge of Airmen selected for nationalised banks;

(b) The appointment order dated 15 April 2013 issued to the appellant indicates a basic pay of Rs 14,500 - 25,700;

(c) Pay scales of banks are revised every four to five years as against central pay scales which are revised once in ten years; and

(d) Consequently the pay scales in the banking industry are well in excess of those offered in the IAF;

(iv) As regards the issue of the 'criticality of trade':

(a) The appellant was appointed to a post equivalent to a Group A post and was entitled to a waiver of the condition;

(b)The order passed by the Air Force authorities on 22 July 2013 did not mention criticality of trade as the reason for denying permission;

(c)In Corporal Gaurav Badhwar v Union of India , the Delhi High Court has held:

“..assessment of criticality in a trade would ordinarily be within the domain of the employer, but where it is pleaded that due to dying nature of the work due to modernization in the equipment of the employer, some category of employees are being rendered without work and are being adjusted in other activities, and for which we highlight the evasive denial by the respondents to the pleas of Cpl Gaurav Badhwar in para 16 of the writ petition that 25% to 30% Instrument Fitters are being made to work in the Bar, Canteen and other establishments where they perform duties wholly unrelated to their skills of Instrument Fitters, it would be a case requiring it to be held that the employer has failed to make good the defence of there being criticality in the trade.”

(iv) As on February 2019, over five years have elapsed since the appellant commenced employment with the bank. The career advancement policy necessitates a liberal approach. The omission of the appellant to apply through proper channels was only a procedural irregularity and not an illegality. The appellant applied for discharge on 17 April 2013, which was followed by a fresh application on 13 July 2013. The failure to seek prior permission, it has been urged is an irregularity and does not cause prejudice to the IAF. The equitable intervention of this Court has been sought for the grant of a ‘clean’ NOC and discharge certificate which would enable him to continue to serve the bank in which he is employed.

7. On the other hand, Mr R Balasubramanian, learned senior counsel appearing on behalf of the Union of India and the Air Force authorities submitted that:

(i)The appellant has proceeded on a misconceived assumption that though he is a member of the Air Force, he is entitled to leave employment at his will in view of the fundamental right guaranteed by Article 19(1)(g). The submission ignores the specific provisions of Article 33 of the Constitution;

(ii) There is a fallacy in the submission that a person enrolled in the armed forces of the Union (in this case the IAF) is entitled to leave service at will. A person who is enrolled is governed by the discipline of the force. Sections 13,14 and 15 of the Air Force Act 1950 would make it abundantly clearly that there is a statutory obligation to serve during the period of engagement, a breach of which would invite disciplinary action;

(iii) These statutory provisions are complemented by the Air Force Rules, more particularly, Rules 7 and 9 which have been framed under the provisions of Section 189 of the Act;

(iv) Air Force Order 14/2008 which held the field at the material time regulated the terms on which persons enrolled in the IAF may apply for civilian employment;
(v) In interpreting the provisions of law, it would be necessary for this Court to have regard to :

- The need to maintain manning levels;
- The requirement of operational preparedness;
- Training costs incurred in incorporating technological advancements;
- Interests of the IAF; and
- Importance of training of a particular trade or category. In this backdrop, it was urged that there is no general or vested right to leave service during the period of engagement and any application has to be considered on a case to case basis. Mr Balasubramanian submitted that the appellant who was enrolled in the IAF breached his statutory obligation and left service without prior permission, rendering him liable for disciplinary action.

8. The rival submissions will be considered.

9. Article 33 of the Constitution provides as follows:

“33. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or (b) the members of the Forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or (d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.”

The Air Force Act 1950 has been enacted by Parliament legislating under Articles 245(1) and 246(1) of the Constitution. The specific legislative entry in the VIIth Schedule is Entry 2 of the Union list which reads thus:

“Naval, military and Air Forces; any other armed forces of the Union.”

The Air Force Act 1950 imposes restrictions on the fundamental rights of the members of the IAF with a view to ensure ‘proper discharge of duties and the maintenance of discipline among them’. Section 13 stipulates the procedure which is to be followed before the enrolling officer, where any person desires to be enrolled. Section 13 provides as follows:

“13. Procedure before enrolling officer.—Upon the appearance before the

prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him, in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.”

Section 14 provides for the mode of enrolment:

“14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.”

Section 15 deals with the validity of enrolment:

“15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any unit shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.”

Before enrolment, the enrolling officer has to make the person who desires to be enrolled cognizant of the conditions of service. Section 14 mandates that before signing on the enrolment, the individual has to consent to the conditions of his service. A person who has for a period of three months been in receipt of pay as a person enrolled under the Act and has been borne on the rolls of any unit is deemed to have been duly enrolled. On being attested under Section 16, the individual subscribes to an oath or affirmation to bear allegiance to the Constitution, to serve in the Air Force and to obey all commands of an officer set over him, even to the peril of his life. Tenure in the Air Force is subject to the pleasure of the President. A person subject to the Air Force Act 1950 may be retired, released or discharged from service “by such authority and in such manner as may be prescribed”.

10. Section 189 empowers the Central government to make rules for the purpose of carrying into effect the provisions of the Act. Rule 7 provides thus:

“7 Enrolling officers and form of enrolment.—

(1) The following officers shall be enrolment officers for the purposes of sections 13 and 14, namely:—

(a) all recruiting officers;

(b) all assistant recruiting officers;

(c) the Officer Commanding a unit of the Air Force.

(2) The Form of enrolment set forth in the First Schedule is prescribed for the purposes of sections 13 and 14.”

Rule 9 is in the following terms:

“9 Oath or affirmation to be taken on attestation.—

(1) The oath or affirmation to be taken on attestation shall be in one of the following form or in such other forms to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested or otherwise binding on his conscience. Form of Oath I do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will as in duty bound honestly and faithfully serve in the Air Force of the Union of India, and go wherever ordered by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life. Form of Affirmation I do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will as in duty bound, honestly and faithfully serve in the Air Force of the Union of India and go wherever ordered by air, land or sea, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(2)The oath or affirmation prescribed in this rule shall, whenever practicable be administered by the commanding officer of the person to be attested or in the presence of such commanding officer by a person empowered by him to administer it in the manner described in section 17. If it is not so administered, it may be administered by a magistrate, a recruiting officer or an assistant recruiting officer.”

Rule 13 stipulates that:

“13 Release.—A person subject to the Act may be released from the Air Force in accordance with these rules, or in accordance with any orders or instructions made in that behalf by or under the authority of the Central Government.”

11. The statutory form of enrolment as a combatant is in Form AI of the First Schedule. Part II of Form AI incorporates an obligation to serve in the Air Force for a specified period. As we have already noted, on his enrolment in 2004, the engagement of the appellant was for a stipulated period of twenty years. Rule 14 provides for the authorities who are empowered to authorise a discharge. There is a table which deals with persons enrolled under the Act who have, as the case may be, been attested or are not attested. Rule 15 is reproduced below:

“15 Authorities empowered to authorise discharge .—(1) Each of the authorities specified in column 3 of the Table below shall be the authority competent in respect of persons subject to the Act specified in column 1 thereof for the causes specified in column 2 and in the manner specified in column 4, to discharge such persons from the service.

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authority superior to it.

Class	Cause of discharge	Competent authority to authorize discharge	Special Instructions
Persons enrolled under the Act who have attested.	(a) At his own request on transfer to the pension establishment	Commanding Officer	To be carried out in accordance with the conditions of enrolment

(b) On fulfilling the conditions of his enrolment Commanding Officer To be carried out in accordance with the conditions of enrolment

(c) Having been found medically unfit for further service. Commanding Officer To be carried out only on the recommendations of an Invaliding Board

(d) On transfer to the pension establishment or on discharge with gratuity otherwise than at his own request or under item (c).

(e) Having been found inefficient in his rank or trade and being unwilling to accept reduction or remustering Air Officer I/c Administration An Airman reported as inefficient will, as far as vacancies allow be permitted to remuster and / or accept reduction in any rank and trade for which he is reported as suitable. If no such vacancy exists or if he declines to accept such remustering or reduction he will be discharged under this item

(f) At his own request before fulfilling the conditions of his enrolment Director of Personnel (Airmen)

(g) His services no longer required :-

(i) Due to reduction in establishment or to reorganization Director of Personnel (Airmen)

(ii) Unsuitable for retention in the Air Force Air Officer I/c Administration

(h) All other classes of discharge Do Persons enrolled under the Act who have not been attested (i) At his own request before fulfilling the conditions of the enrolment (i) Air or other officer i/c of Command The competent authority mentioned in the preceding column will exercise this power only when he is satisfied as to the bona fides of the application and that the total strength of the Air Force will not thereby be unduly reduced

(ii) Director or Personnel (Airmen) in case of units directly under Air Head-quarters

(j) Unlikely to make in efficient Airman Commanding Officer Applicable to airmen under going training for airmen

(k) All other classes of discharge Commanding Officer

12. Now it is in this background that it would be necessary to advert to the provisions of AFO 14/2008. Clause 1, in so far as is material, provides thus:

“Airmen/NCs(E), who have completed seven years of service from the date of enrolment, are permitted to apply for civil posts under Central/State Government and public Sector Undertaking including Para-Military Forces. Non-Govt. Organization (NGOs) Trusts, even if funded by the Govt. shall not be covered in the permission category of civil posts. The categories of posts, corresponding length of service and eligibility are to be determined as given below:

Category Length of Service Permissible Categories of Civil posts

(a) I 7 Yrs (A) Group ‘A’ or equivalent posts (maximum of the pay scale not less than Rs 13,500, as revised from time to time.

Clause 1 stipulates a requirement of the completion of seven years service to apply for civilian employment. It also defines the permissible categories of civilian posts for which armed forces personnel may apply.

Clause 2 stipulates that:

“All applications for above categories of posts will be directly forwarded to the prospective employers by the units after verifying the eligibility including criticality of manpower.

Application of Airman belonging to critical trades shall be rejected at unit level. However, the condition of criticality will not be applicable to the applicants of category 1A and III above, in whose case the applications will be forwarded despite criticality in their trades. The criticality of trades will be updated by Air HQ twice a year, in June and December and would be intimated to the Stns./Unit through their respective Command HQs. Unit directly under Air HQ would be intimated the criticality of the trades by Air HQ. Airman who are on deputation to ARC are also eligible to apply for civil posts as per Para 1 above and their applications to be processed through PHS C/O AFCAO, where unit copy of service documents of ARC deputationists are held. Forwarding of applications shall not be construed as acceptance to grant NOC, which shall be issued as per the procedure laid down in subsequent paras of this AFO.”

Under clause 2, the units will verify the criticality of manpower before forwarding

the applications.

Clause 5 lays down guidelines which must be followed where online applications have been invited by government departments or, as the case may be, by public sector undertakings. Here again, the individual has to seek permission from the station/unit commanders before applying on-line. Clause 5 is in the following terms:

“Forwarding of On-line Applications. Several prospective employers in Govt Departments/PSUs invite applications for civil employment through their web sites on the internet. Station/Unit Commanders are to ensure that the applicant meets the eligibility conditions enumerated in preceding Paras 1-3. The following guidelines are to be followed for ‘online’ registration of applications for civil posts:-

(a) Individual to seek permission from his respective Station/Unit Commanders to apply for any civil post ‘on-line’ alongwith duly filled application and advertisement downloaded from the website.

(b) An undertaking is to be furnished by the individual, stating that information furnished by him to the Stn/Unit authorities will be submitted to the employer ‘on-line’ and no classified information will be communicated.

(c) Before granting permission, the unit administration is to examine the contents of the application keeping security consideration in mind.”

Under clause 6, NOCs (other than those under Category III) will be issued by Air HQs on a case to case basis subject to the exigencies of service and the overall cadre requirement in a particular rank or trade. Clause 6 is as follows:

“No Objection Certificate (NOC) for applicants under Cat III will be issued two ears before completion of their engagement by their respective AOC/Stn Cdr/CO as per the format placed at Appendix ‘E’ while all other NOCs will be issued by Air HQs (Dte of PA) on case to case basis, subject to the exigencies of service and with the overriding condition being the overall cadre requirement in a particular rank/trade as per format given at Appendix ‘C’.”

(Emphasis supplied)

Clause 7 provides:

“Application for NOC is to be submitted by the individual after receiving call letter for the interview/verification of documents or after the result of written test where selection is based on success in written test only. However, in all cases NOC is to be obtained by the individual invariably before submitting application for discharge on being selected for the civil post.”

Finally, clause 13 stipulates that:

“Permission to apply for civil post is a privilege and hence issuance of NOC can not be claimed as a matter of right. No provisional or conditional NOC is to be issued by the Stations/Units.”

13. AFO 14/2008 held the field at the material time and governs the facts of the present case. Under the terms of the AFO, a requirement of completing seven years of service from the date of enrolment has been mandated for permission to be granted to apply for a civil post under the Central or state governments or public sector undertakings, including paramilitary forces. AFO 14/2008 stipulates that a Category I individual with a length of service of seven years may apply for civilian employment in a Group A or equivalent post carrying the stipulated pay scale as revised from time to time. Applications have to be forwarded to the prospective employer by the units, after verification of eligibility including the criticality of manpower. Where the Airman belongs to a critical trade, the application shall be rejected at the unit level. Where online applications have been invited the station or, as the case may be, unit commanders are required to ensure fulfilment of the conditions of eligibility specified in paragraph 1 to 3. Permission is required from the station/unit commanders to submit an on-line application for a civil post. NOCs (other than those in Category III) are to be issued by Air HQs on a case to case basis having regard to the exigencies of service.

14. In the present case, the appellant 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.

15. We are unable to accept the submission of Mr Sankaranarayanan that the appellant had an unqualified right under Article 19(1)(g) of the Constitution to leave the service of the Air Force. The provisions of the Air Force Act, those contained in the rules and the terms of engagement of the appellant belie such an assertion. AFO 14/2008 emphasises aspects such as the criticality of the trade and the exigencies of service. They need to be verified and assessed before permission is granted. A person who has been enrolled as a member of the Air Force does not have an unqualified right to depart from service at his or her will during the term of engagement. Such a construction, as urged on behalf of the appellant, will seriously impinge upon manning levels and operational preparedness of the armed forces. With the rapid advancement of technology, particularly in its application to military operations, there has been a reconfiguration of the human and technological requirements of a fighting force. The interests of the service are of paramount importance. A balance has been sought to be drawn between the interests of the service with situations involving requests by persons enrolled to take civilian employment. This balance is reflected in the provisions contained in the Air Force orders, in this case AFO 14/2008. A person enrolled cannot assert a general right to act in breach or defiance of those orders.

16. In the present case, we are now left with the alternative submission invoking the equitable jurisdiction of this Court under Article 142 of the Constitution. The appellant

moved the AFT after submitting the application 30 May 2011. He had an interim order of the AFT dated 18 August 2011 in his favour for provisional discharge and for an NOC. This was implemented on 20 September 2011, following which the appellant was struck off the strength of the IAF with effect from 21 September 2011 and joined the Bank of India on 24 September 2011. This order of the AFT was not disturbed in the civil appeal filed by the Union of India, but this Court by an order dated 12 March 2012, directed the Air Force authorities to dispose of the application submitted by the appellant on 30 May 2011. After the application was rejected, an interim order enured to the benefit of the appellant. In this backdrop nearly eight years have elapsed since the appellant left service. No purpose will be served in directing the reinduction of the appellant into the IAF save and except to subject him to disciplinary action. Having regard to the facts and circumstances which we have noted above, we are of the view that the ends of justice would be met by directing that a final NOC and discharge be issued to the appellant no later than within a period of three months of the receipt of a copy of this order. At the same time, we are of the view that this should not be an unconditional direction. We accordingly issue an order in the above terms, subject to the appellant depositing with the Union of India a sum quantified at Rs 3 lakhs within two months of the receipt of a copy of this judgment. A final NOC and discharge certificate shall be issued only after the above amount is deposited and within one month thereafter. The civil appeals are disposed of in the above terms. There shall be no order as to costs.

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17. No other point has been separately urged in this appeal. Hence, the civil appeal shall stand disposed of in similar terms. There shall be no order as to costs.