

Nakhat Singh Vs. Union of India and Ors.

Civil Appeal No. 9050 of 2026 · Supreme Court of India · 2026-07-29 · Ujjal Bhuyan · Atul S. Chandurkar · F2J-C-1159

Full judgment text

Nakhat Singh Vs. Union of India and Ors.

[Civil Appeal No. 9050 of 2026]

Atul S. Chandurkar, J

1. The appellant, an Airman holding the post of Corporal, on completion of minimum service of seven years desired to serve on a civil post. For this purpose, he was required to seek permission of the competent Air Force Authority as provided under Air Force Order No.33/20171. As per the said AFO, such permission was required to be sought prior to making an application for appointment on a civil post. The AFO also provided for various modalities to be complied with while seeking such permission. Pursuant to an advertisement issued in November 2020 by the Rajasthan Public Service Commission, the appellant applied for the post of Assistant Professor in the subject of Hindi.

Written examination for the said post was held on 22/23.09.2021. The results of the said examination were declared on 13.04.2022 and the appellant on being successful was called for interview on 27.09.2022. On 01.10.2022, the appellant was informed of his selection by the Rajasthan Public Service Commission. Thereafter, on 03.10.2022, the appellant made an application to the competent authority seeking grant of 'No Objection Certificate'² and discharge to enable him to join on the post of Assistant Professor. The Air Officer Commanding on 14.10.2022, however, did not recommend the appellant's application.

2. The appellant being aggrieved filed an Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 before the Armed Forces Tribunal, New Delhi³. He sought quashing of the remarks endorsed on his request letter by the concerned Authority not recommending his candidature. Reply was filed by the respondents stating therein that as the appellant failed to comply with the requirements prescribed under the AFO, his candidature was not recommended. The AFT by its order dated 06.12.2023 held that though the appellant had secured Skill Grade 'C' while the requirement under Clause 6 of the AFO was possessing Skill Grade 'A', the same could not be a ground to deny the appellant a 'NOC'.

This was in view of the judgment of the Delhi High Court in Subhash Chand Vs. Union of India and others⁴ whereby the requirement of possession of Skill Grade 'A' had been held to be ultra vires. The AFT, however, found that the appellant failed to seek prior permission of the competent authority while applying for the concerned civil post. There was no material on record to indicate online submission of any application nor were the requirements of Clause 11 of the AFO satisfied. In view of Clauses 9, 11 and 12 of the AFO, the AFT held that the appellant was rightly denied the grant of NOC by the Air Officer Commanding. The Original Application was, accordingly, dismissed.

3. The appellant, being aggrieved, approached the Delhi High Court⁵ and raised a challenge to the order of the AFT. After due consideration, the Division Bench of the High Court held that the appellant had failed to obtain any prior permission as required by Clause 9 of the AFO. There was no evidence on record to indicate submission of a proper online application or even an offline application. It, therefore, affirmed the findings recorded by the AFT and dismissed the writ petition. Being aggrieved, the appellant has come up in appeal.

4. Mr. Arvind Nayar, learned Senior Advocate for the appellant while reiterating the submissions canvassed before the AFT as well as the High Court submitted that the appellant having been selected for appointment on the post of Assistant Professor, he ought not to be deprived of such opportunity for not complying with mere procedural requirements. Referring to various clauses of the AFO, it was submitted that the same merely indicated the manner in which an Airman was required to seek prior permission of the competent authority while seeking appointment on a civil post. The same did not govern the substantive rights of the appellant. Only on the ground that the appellant had not sought prior permission of the competent authority, he could not be deprived of the opportunity to serve on a

civil post.

The requirements prescribed by the AFO being procedural in nature were, thus, directory. The same could, therefore, be waived in the interests of justice. Reference was made to the judgments of the High Court in CPL N.K. Jakhar Vs. Union of India and others⁶ and Sonu Vs. Union of India and others⁷. It was, thus, submitted that the AFT and the High Court having failed to meaningfully consider the case of the appellant, great prejudice had been caused to him. It was, thus, urged that the impugned endorsement dated 14.10.2022 not recommending the appellant's candidature be set aside and the appellant be discharged from the Indian Air Force⁸ to enable him to serve on the civil post on which he was selected.

5. Per contra, Ms. Archana Pathak Dave, learned Additional Solicitor General of India supported the impugned judgment. According to her, the procedure prescribed by the AFO not having been complied with by the appellant, he was rightly denied relief by the AFT as well as by the High Court. The object behind framing the AFO was to streamline the manner in which an Airman should seek prior permission while seeking appointment on a civil post. There was no restriction whatsoever placed on undertaking such an attempt, subject to complying with requirements of the AFO. It was submitted that seeking such permission followed by grant of NOC were privileges as clarified in Clause 20 of the AFO and, therefore, the same could not be claimed as a matter of right. Subject to complying with the requirements prescribed, an Airman could seek discharge from the IAF.

The AFT having recorded a finding that the appellant had not sought prior permission before seeking appointment on a civil post, which finding of fact had been affirmed by the High Court, there was no scope whatsoever for interfering with the discretion that was rightly exercised. In absence of any material whatsoever being produced by the appellant to indicate that he had even attempted to seek prior online permission of the competent authority, the refusal to grant NOC could not be faulted. In absence of any legal right whatsoever and in view of the findings of fact as recorded, there was no merit in the appeal. It was, thus, prayed that the appeal be dismissed.

6. Having heard the learned counsel for the parties and having perused the entire material on record, we are satisfied that the appellant having failed to act in accordance with the AFO, the refusal to grant him NOC and consequent discharge from the IAF in view of his appointment on a civil post does not call for any interference.

7. AFO No.33/2017 has been issued by the Chief of the Air Staff. It states that enrolment of Airmen in the IAF is for an initial term of regular engagement for twenty years while some enrolments serve till the superannuation age of fifty-seven years. Discharge of Airmen pre-maturely from the IAF prior to completion of their regular engagement was found to affect the manning level in respective trades of the IAF and, thus, had an adverse impact on its operational preparedness. Thus, with a view to achieve its organisational aim and so as to balance the personal aspirations of air warriors from the IAF for better career prospects in civil life, AFO No.33/2017 was framed.

It prescribes the eligibility criteria to enable Airmen to apply for a civil post after obtaining prior permission from the competent authority. Minimum service of seven years by an Airman is prescribed along with possessing Skill Grade 'A'. Be it noted that prescription of minimum Skill Grade 'A' has been held to be ultra vires by the High Court in Subhash Chand (supra). Thus, Airmen with Skill Grade 'B' and 'C' are also considered eligible subject to minimum service of seven years. Clause 9 prescribes the manner in which online registration is required to be made while Clauses 11 and 12 prescribe submission of requisite documents to enable consideration of grant of such permission.

Clause 19 specifically states that grant of permission to apply for a civil post should not be construed as grant of 'NOC' which was to be subsequently issued by the competent authority. A request for NOC was liable to be rejected in case the individual had not obtained prior permission of his superior before applying for a civil post. Clause 20 clarifies that permission to apply for a civil post and a subsequent grant of NOC are privileges and they cannot be claimed as a matter of right. It may be stated that none of the clauses of AFO No.33/2017 are under challenge at the instance of the appellant.

8. Undisputedly, the appellant possesses Skill Grade 'C'. The first application stated to be made by the appellant was on 25.11.2020. It is his case that since the said online application could not be accepted by the concerned website, he made an offline application on 27.11.2020. The AFT has recorded a finding in paragraphs 18 to 20 of its order that the appellant could not submit any proof of submission of his online application dated 25.11.2020 as well as the offline application dated 27.11.2020. It

further found that no grievance with regard to his inability to submit the online application was made by the appellant.

As regards the offline application dated 27.11.2020 is concerned, the appellant could not produce any acknowledgement of the same having been submitted and accepted by the concerned authority. Moreover, the appellant's request letter dated 03.10.2022 does not refer to his offline application stated to be made on 27.11.2020. For all these reasons, the AFT held that the appellant was unable to show that he had indeed sought prior permission to apply for a civil post. The relevant material was then examined by the High Court, which proceeded to accept the same in paragraphs 30 to 34 of its judgment.

We, thus, find that the appellant has not been able to produce any material whatsoever to enable this Court to take a different view of the matter. In absence of any documentary material placed on record, the factual findings recorded by the AFT and affirmed by the High Court that there was no material to hold that the appellant had in fact submitted his online application on 25.11.2020 or his offline application on 27.11.2020, do not call for any interference. It is, thus, clear that the appellant failed to obtain prior permission before applying for the civil post.

9. Coming to the contention that the requirements prescribed under the AFO being procedural in nature, its compliance could be waived so as not to defeat the substantive rights of the appellant, it may be stated that the said contention does not deserve acceptance. A perusal of AFO No.33/2017 in its entirety indicates that there is an object behind its issuance inasmuch as premature discharge of an Airman from the IAF prior to completion of his regular engagement was found to have an adverse impact on the operational preparedness of the Force. With a view to balance the personal aspirations of Airmen for better career prospects and also to regulate the manner in which an air warrior from the IAF could be discharged, AFO No.33/2017 was framed. As noted above, the said AFO is not under challenge.

The same does not prevent an Airman from seeking betterment of his career prospects. It merely prescribes the manner in which such exercise is required to be undertaken. It contemplates seeking permission at two stages. The first stage is before applying for a civil post and the second stage is after receiving a call letter for appearing in the interview or after result of the written test is declared, where selection is based on success in the written test only. Under Clause 7 of the AFO, permission to apply for a civil post is a pre-requisite for grant of NOC by the competent authority. It has been clarified in the AFO itself that grant of permission to apply for a civil post as well as subsequent grant of NOC are privileges and the same cannot be claimed as a matter of right.

10. In our view, on a complete reading of AFO No.33/2017, it cannot be said that the requirements prescribed are merely procedural in nature and, thus, their compliance is not mandatory. The object behind stipulating these requirements has necessary nexus with the object of regulating premature discharge of air warriors from the IAF. It must be borne in mind that Airmen are members of the IAF, a disciplined force. The prescription of seeking prior permission before making an attempt to apply for a civil post and the subsequent grant of NOC by the competent authority after such selection cannot be stated to be simple procedural requirements that could be dispensed with at the will of the concerned Airman.

The consequence of failure to obtain prior permission before applying for a civil post has been provided in Clause 19 of AFO No.33/2017 inasmuch as it prescribes for rejection of a request for issuance of NOC if no prior permission has been sought. It is well settled that if the consequence of failure to comply with a prescribed pre-requisite is stipulated in the relevant provision or clause requiring such compliance, fulfilment of such pre-requisite shall be treated as mandatory. By skipping the first requirement of seeking prior permission to apply for a civil post, an Airman cannot present a situation of *fait accompli* and seek grant of NOC by contending that he having been selected to a civil post, the requirement of seeking prior permission be completely waived.

11. On the issue, whether a member of the Air Force has an unqualified right to depart from service at his will, we may refer to the decision of this Court in *Amit Kumar Roy Vs. Union of India and others*⁹. Herein, an Airman in the IAF responded to an advertisement issued by the Bank of India that intended to fill in various posts of Probationary Officers. The said Airman had not completed the mandatory period of service of seven years nor had he obtained prior permission of his unit authorities as required by Air Force Order No.14/2008. Considering these aspects, this Court held as under:

"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."

In this view of the matter, the decisions relied upon by the learned Senior Advocate for the appellant are clearly distinguishable on facts and do not assist the appellant.

12. For the aforesaid reasons, we do not find any case made out for us to take a different view from the one taken by the AFT and upheld by the High Court. Consequently, the Civil Appeal is dismissed leaving the parties to bear their own costs.

.....J. [Ujjal Bhuyan]

.....J. [Atul S. Chandurkar]

New Delhi,

July 29, 2026.

1 For Short, 'AFO'

2 For short, 'NOC'

3 For Short, 'the AFT'

4 W.P.(C) No.634 of 2020 decided on 11.03.2020

5 For short, 'the High Court'

6 W.P.(C) No.9088 of 2008 decided on 21.10.2009

7 W.P.(C) No.3311 of 2020 decided on 05.08.2020

8 For short, 'the IAF'

9 2019 INSC 720

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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