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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 16 May 2024**
Judgment pronounced on: 29 May 2024

+ W.P.(C) 12800/2023

ABHISHEK MANOJ WARTHI

..... Petitioner

Through: Mr. Raj Singh Phogat, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan
Shankar, CGSC with Mr. Srish
Kumar Mishra, Mr. Alexander
Mathai Paikaday and Mr.
Krishanan, V., Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. Petitioner impugns order dated 14.09.2023, whereby, his request/deemed representation i.e. Writ Petition (C) No. 8830/2023 from Coast Guard Service was rejected.

2. Petitioner was appointed to the post of "Navik" on 12.02.2013 in Indian Coast Guard. On 02.07.2018, he was promoted to the rank of "Uttam Navik" and then to the post of "Pradhan Navik" on 01.11.2022.

3. On 24.12.2022, Petitioner applied for the post of Technical Assistant in Visvesvaraya National Institute of Technology, Nagpur.



On 30.12.2022, Petitioner made a request for issuance of No Objection Certificate. Petitioner's Commanding Officer recommended and forwarded the Outside Employment Application dated 24.12.2022 to the Officer-in-Charge of Bureau of Naviks for taking further necessary action at their end but the request for issuance of No Objection Certificate for taking up Outside Employment of the Petitioner was not accepted by the Bureau of Naviks.

4. In the meanwhile, Petitioner was offered Letter of Appointment dated 18.05.2023 for the post of Technical Assistant in Visvesvaraya National Institute of Technology, Nagpur, after successfully qualifying the written and skill test in the Scheduled Tribe Category.

5. Aggrieved by the rejection order, Petitioner filed WP (C) No. 8830/2023 before this Court challenging the order dated 31.01.2023. The said petition was disposed of by this Court vide judgment dated 11.08.2023 with following directions:-

“20. In view of the above, we dispose of this petition with a direction to the respondents to once again decide the case of the petitioner in light of the provisions of Section 9 of the Coast Guard Act, 1978 and Rules 27 and Rule 27A of the Indian Coast Guard (General Rules) 1986 and the judgment in R.P. Yadav (supra) and Amit Kumar Roy (supra).

21. Respondent shall also consider as to whether the Office Memorandum dated 23.12.2013 referred to by the petitioner is applicable to the case of the petitioner or not. In case applicable, the same shall also be taken into account.

22. Respondents should keep in mind the facts that petitioner has already secured an appointment and has to join on an early date and as such the decision be taken and communicated to the petitioner positively within four weeks.



6. Since the Respondents did not pass any appropriate order in the given stipulated time, Petitioner filed a Contempt Petition bearing Contempt Case (Cont.) No. 1341/2023. But, the said application was withdrawn upon being informed that Respondents have rejected his application for the grant of No Objection Certificate on 14.09.2023. However, he was given opportunity to assail the order of rejection.
7. The present petition has been filed assailing the order dated 14.09.2023 with the following prayer:-

- a) *The Petitioner is filing this Writ Petition under Article 226 Of the Constitution of India for the issuance of a writ of mandamus or Certiorari and or any other suitable writ, order or direction to the Respondents for quashing the Order No. NK/0221/ 12348-R of dated 14.09.2023 issued by the Respondent No. 2, being issued in violation of the Respondent's Policy Letter No. NK/0130/2017 dated 03.08.2017 read with DOPT OM 28011/1/2013-Estt (C) dated 23.12.2013 and being in violation of the Article 46 & Article 31 C of the Constitution of India and consequently to order for the release of the Petitioner on Technical Resignation for the Outside Employment with the Visvesvaraya National Institute of Technology, Nagpur; and*
- b) *Issue a writ, order or direction in the nature of Mandamus directing to the Respondents to release the Petitioner on Technical Resignation with all consequential benefits accruing to the Petitioner in a time bound manner.*

8. Learned counsel for the Petitioner has argued that the sole ground for the rejection of the resignation is acute shortage of work force in Indian Coast Guard, which however, cannot be countenanced



for the reason that the Competent Authority has accepted the resignation of about 30 personnels without any sufficient cause or reason as opposed to the case of the Petitioner who has a genuine cause and reason to resign consequent to his selection in the civil employment in a better position. It is submitted that the Petitioner has a fundamental right under Article 19 (1) (g) to choose his place of employment and such provision in its application to the Members of Indian Coast Guard is not any different from its application to any branch of the Government.

9. In support of his submissions, learned counsel has placed reliance on the following case law:-

- (i) CPL Sandeep Kumar vs. UOI & Ors. (2012) 193 DLT 144 (DB);
- (ii) CPL N.K. Jakhar Vs. UOI & Ors. WP (C) 9088/2008, decided on 21.10.2009;
- (iii) Subhash Chand Vs. UOI & Ors. WP (C) 634/2020, decided on 11.03.2020;
- (iv) Pradeep Kumar Vs. UOI & Anr. W.P. (Civil) 8760/2008, decided on 16.12.2008.

10. Per contra, the learned counsel for the Respondents has argued that Petitioner has proceeded on a misconceived assumption that though he is a member of Indian Coast Guard, he is entitled to leave employment at his will in view of the fundamental right guaranteed by Section 19 (1) (g). According to him, such submission ignores the specific provisions of Article 33 of the Constitution. It is also argued that the Petitioner has approached this Court on a misinterpretation of Office Memorandums and Circulars issued by Government of India.



Petitioner being enrolled as a Member of Indian Coast Guard, is subject to provisions of the Coast Guard Act, 1978. It is submitted that the personnel enrolled in Indian Coast Guard, play vital role in the national security and are of utmost importance in maintaining the strength and vigour of such forces and the acceptance of resignation for jobs outside the forces only on consideration of benefit to the personnel would tantamount to losses to the force in particular and to the Nation in general.

11. Section 4 of the Coast Guard Act stipulates that Coast Guard is an armed force of the Union. Article 33 of the Constitution provides as follows:-

"Article 33 of the Constitution provides as follows:

"33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.-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 organization 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."

12. Article 33 of the Constitution which empowers the Parliament by law to restrict or abrogate the provisions of Part-III in their application, *inter alia*, to the Members of the Armed Forces. Armed Forces as such have a separate status which is recognized by Article 33. The purpose



of these restrictions is to ensure the proper discharge of duties and the proper maintenance of discipline.

13. The Coast Guard Act, 1978 has been enacted by the Parliament to provide for the Constitution and Regulation of an armed force of the Union for ensuring the security of Maritime Zones of India with a view to the protection of Maritimes and other national interests in such zones and the matters connected thereto. The Coast Guard Act imposes restrictions on the Members of the Coast Guard with a view to ensure proper discharge of duties and the maintenance of discipline among them.

14. Indian Coast Guard has its own rules and regulations governing resignation, NOC and discharge etc. Under the Coast Guard Act, 1978, the aspect of resignation is dealt with in Section 9 of the said Act, which is reproduced below:-

“Resignation or withdrawal from post. – No member of the Coast Guard shall be at liberty –

- (a) to resign his appointment during the term of this engagement or*
- (b) to withdraw himself from all or any of the duties of his appointment, except with the previous permission in writing of the prescribed authority.”*

15. By virtue of the powers conferred under Section 123 of the Coast Guard Act, 1978, the Central Government has framed rules dealing with various aspects of the personnel enrolled with the Coast Guard. Rules 27 & 27-A of the Coast Guard (General) Rules, 1986 are of importance and are extracted below:-

Rules 27 and 27A of the Rules read as under:

*“27. Procedure for discharge/release or retirement on own request. -
(1) A member of the Coast Guard may, in exceptional cases, obtain*



his discharge, release or retirement from the service on extreme compassionate grounds, i.e. in cases where it is clear that undoubted material hardship will be caused to the member of the Coast Guard or his family members by his retention in the service.

(2) The Central Government or the Additional Director General may, having regard to the circumstances of any case, permit discharge, release or retirement of an officer from the service before attaining the age of retirement. The question of discharge, release or retirement shall be a matter within the discretion of the Central Government or Deputy Director General as the case may be.

(3) The Additional Director General in the Coast Guard Headquarters may discharge, release or retire a member of the Coast Guard other than an officer on compassionate grounds.

(4) Application for discharge, release or retirement on compassionate grounds shall be forwarded by the Commanding Officer through the Regional Commander, to Coast Guard Headquarters for further necessary action.

27A. Resignation – *(1) No person subject to the Act shall have a right to resign his appointment or withdraw himself from the duties of his appointment. But in this regard, he may submit an application through proper channel to the Deputy Director General or the Director General at Coast Guard Headquarters or to the Central Government, as the case may be. He shall not be relieved of his duties until the Central Government or the authority empowered by the Central Government has accepted his resignation.*

(2) A member of the Coast Guard before his application to resign being accepted by the prescribed authority may apply for withdrawal of his application. The Central Government or the authority empowered by Central Government may at its discretion, grant withdrawal of such application.”

16. The Coast Guard Policy Letter 018/2017 dated 03.08.2017 lays down the guidelines for the grant of NOC for a job outside the Coast Guard, which reads as under:-

“GUIDELINES FOR GRANT OF NOC FOR JOB OUTSIDE COAST GUARD

1. With immediate effect, the following guidelines are to be adopted for consideration of application for grant of NOC for job outside the Service.

(a) The post being applied for is in a State Government or the Central Government and is in a higher pay level, or



EP has officially acquired requisite academic qualification whilst in service and is desirous of applying for Group 'A' Gazetted post through UPSC, or

Applicant is an EF and intending to enhance his job profile and social status,

or

EP is superannuating or seeking VR after completion of 25 Years.

(b) EP has completed four years of service in the Coast Guard.

(c) EP is not under probation or pending confirmation in the service.

(d) EP has not been issued NOC In the calendar year.

(e) EP has not availed more than five NOCs during entire service.

(f) EP has no disciplinary proceedings pending against him.

(g) EP has no charge-sheet filed against him in a Court of Law for criminal prosecution.

(h) EP is not undergoing any punishment at the time of application.

2. However, EP undergoing any basic / professional training may be permitted to resign on own request after reimbursement of mandatory training charges.

3. Regardless, NOC will be Issued only after due consideration of service exigencies like cadre position, promotional prospects of the EP for the next five years and impending induction of new assets.

4. Disseminated for compliance.”

17. The relevant provisions of the Coast Guard Act, the Rules framed by the Central Government thereunder and the policy lay down the complete scheme regards the grant of NOC/Discharge and Resignation of the Coast Guard personnel. The scheme clearly reveals that no personnel who is appointed to the Coast Guard shall be at liberty to resign from his employment during the period he is engaged with the Coast Guard. The grant of request for acceptance of resignation or NOC for undertaking job outside the Coast Guard is purely at the discretion of the Central Government, Deputy Director General or Director General of the Coast Guard, as the case may be. There is no absolute right on the personnel of the Coast Guard to resign from his appointment before the age of retirement prescribed for such



job. The Policy Letter clearly provides that the NOC shall be issued only after the due consideration of service exigencies.

18. In the case of *Union of India & Ors. Vs. R.P. Yadav (2000) 5 Supreme Court Cases 325*, dealing with a question as to whether an Artificer Apprentice of the Indian Navy is entitled to demand his release from the force as of right, the Apex Court in Paras 24 & 25 held as under:-

“24. An incidental question that arises is whether the claim made by the respondents to be released from the force as of right is in keeping with the requirements of strict discipline of the naval service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon the security of the nation. It has to be borne in mind that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in the Regulations like Regulations 217 and 218 that persons who in the opinion of the prescribed authority, are not found permanently fit for any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high-degree expertise and skill for which substantial amounts are spent from the exchequer. 25. Therefore, it is in the fitness of things that the strength of the Naval Force to be maintained is to be determined after careful planning and study. In a situation of emergency the country may ill-afford losing trained sailors from the force. In such a situation if the sailors who have completed the period of initial engagement and have



been granted re-engagement demand release from the force and the authorities have no discretion in the matter, then the efficiency and combat preparedness of the Naval Force may be adversely affected. Such a situation has to be avoided. The approach of the High Court that a sailor who has completed 15 years of service and thereby earned the right of pension can claim release as a matter of right and the authority concerned is bound to accept his request, does not commend itself to us. In our considered view, the High Court has erred in its approach to the case and the error has vitiated the judgment.”

18. The Supreme Court in the case of ***Amit Kumar Roy Vs. Union of India & Ors. (2019) 7 Supreme Court Cases 369***, while considering the similar case of an Airman serving in Indian Air Force, who was selected against a civilian post in a bank, negated the contention of the Airman, of having the fundamental right under Article 19 (1) (g) to choose his place of employment, holding that though a citizen has a right to choose his employment but once has exercised the said choice, is bound by the rules of his service. It was held that the 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, as otherwise, the same would seriously impinge upon manning levels and operational preparedness of the Armed Forces. The Court further held that the interests of the service are of paramount importance and the balance needs to be drawn between the interest of the service with situations involving requests by persons enrolled to take civilian employment.

19. In the case of ***Union of India Vs. WG. CDR. Subrata Das (2020) 12 Supreme Court Cases 784***, the Apex Court held that as members of an Armed Force, those who are subject to the provisions of the Armed Force Act are governed by the rigour and discipline of the



Force. Indeed, that is the rationale which underlies Article 33 of the Constitution which empowers Parliament by law to restrict or abrogate the provisions of Part III in their application inter alia to the members of Armed Forces. The Court held that the purpose of these restrictions is to ensure the proper discharge of duties and the proper maintenance of discipline.

20. The decisions of the Coordinate Benches of this Court relied upon by the Petitioner are of no help, inasmuch as, the decisions in those cases were not rendered on the basis of service exigencies. The learned counsel for the Petitioner, relying upon the case of *Major Rahul Shukla vs. UOI & Ors. 1995 (34) DRJ (DB)*, has further submitted that even on the basis of exigency, the resignation could not have been rejected but should have been kept in abeyance. View taken in the case of Major Rahul Shukla (supra) was based upon specific provisions in the Regulations for Army Volume-I which provided that if the Central Government is satisfied that the Officer's continuance in service for a specified period is necessary to meet contingencies of service and alternative employment cannot be made, they may order holding the retirement/resignation order in abeyance. However, there is no corresponding provision in the Coast Guard Act or Rules made therein. Hence, the decision rendered by this Court in the case of Major Rahul Shukla (supra) is also not applicable to the facts and circumstances of the present case.

21. It is in this background, in our view, the Petitioner, being member of the Coast Guard has no absolute right to resign or for



seeking outside job and acceptance of his resignation is not a matter of right.

22. As per guidelines laid down in the Policy Letter dated 03.08.2017, the NOC is to be issued only after due consideration of service exigencies. Obviously, such service exigencies may include the cadre position and the requirement of trained personnel. The personnel serving in Coast Guard undertakes various roles and responsibilities and undergo various trainings to suit the requirement of the service. If the trained personnels are permitted to leave the service, the security of the Nation may get compromised and even the morale of the other personnels engaged in the service of the Nation may get adversely affected.

23. While turning down the request for acceptance of resignation, the Competent Authority vide order dated 14.09.2023 was of the view that it can ill afford to part with its trained work force whenever it desires. The impugned order states that Coast Guard inducts personnel with specific qualification and then imparts specialized training to them in various Naval Institutions/bases and ships of the Indian Navy. Humongous effort both in terms of expenses and hard work are invested into the training of the personnel to calibrate them to meet the unforeseen requirements of the service. If such men who are so rigorously trained seek to resign the service at their own will and on frivolous grounds, then the interest of the service and more so the security of the nation will be put to peril. Such actions not only lead to critical gap in the security setup but are also detrimental to the morale of other serving personnel. The impugned order also underlined the fact



that service is presently facing an acute shortage of trained workforce and the Petitioner has undergone various courses for career enhancement and has also recently been trained as Air Gunner which is an important specialization which facilitates armament support to the air assets. The impugned order takes note that the service is presently expanding and will inevitably lead to commissioning of new ships and establishments and other related assets, requiring trained workforce for manning these platforms round the clock for effective discharge of duties. Permitting trained personnel to resign especially of the seniority of the Petitioner who has served for more than ten years and has acquired special skills and experience would severely hamper the growth prospects of the service and would hobble its capabilities towards fulfillment of its charter of duties laid down in Section 14 of the Coast Guard Act, 1978.

24. It is evident that Competent Authority has duly considered the exigencies of service specially acute shortage of work force and likely loss of trained manpower. The decision of the Competent Authority is based on the exigencies of services as per Coast Guard Policy and therefore does not call for any interference from the Court.

25. Petitioner has shown list of Coast Guard personnel whose resignations have admittedly been accepted by the Authorities. However, the learned counsel for the Respondents submitted that such resignations were accepted on compassionate ground. Rule 27 of the Coast Guard (General) Rules, 1986, permits the grant of discharge/release or retirement of a member of Coast Guard on extremely compassionate grounds based on material hardship to the



Member of the Coast Guard or his family members by his retention in the service.

26. Even though, the challenge to the impugned order on merits is not sustainable, we find that in the Writ Petition, the Petitioner has pleaded that his mother is suffering from ovarian tumor for which she has recently undergone operation and is still under treatment at Nagpur and the son of the Petitioner has also undergone operation for the undescended left testis in the groin region and there is no one to look after them except his wife. He has made request for the consideration of his case on humanitarian grounds.

27. Rule 27 of the Coast Guard (General) Rules, 1986, provide for grant of discharge, release or retirement on extremely compassionate grounds. Hence, while holding that the Writ Petition is devoid of any merits, we deem it apposite to direct the Respondents to reconsider the case of the Petitioner sympathetically for the acceptance of his resignation on compassionate ground. The Petitioner shall be at liberty to make representation mentioning such circumstances along with documents if any within a period of two weeks from the date of the judgment and Respondents shall dispose of such representation by passing a speaking order within a period of two weeks thereafter.

27. Petition is accordingly disposed of.

RAVINDER DUDEJA, J.

V. KAMESWAR RAO, J.

May 29, 2024/RM