



2024:DHC:10025-DB



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

Date of decision: 24.12.2024

+ W.P.(C) 17909/2024

LAC ARVIND KUMAR (SER NO. 962396-H)Petitioner
Through: Ms. Garima Parsad, Sr. Adv.
with Mr. Pradeep Shukla, Mr.
Arvind and Ms. Mukta Arora,
Advs.

versus

UNION OF INDIA AND ORSRespondents
Through: Mr. Kameshwar Nath Mishra,
SPC with Ms. Vidya Mishra
and Mr. Ashish, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 76224/2024

1. Allowed, subject to all just exceptions.

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2. This petition has been filed by the petitioner, challenging the Order dated 19.12.2024 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi ("Tribunal") in Original Application ("OA") No. 5269/2024 titled ***LAC Arvind Kumar v. Union of India & Ors.***, by which the learned Tribunal has refused to grant an interim order of continuation of service of the petitioner.



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3. The petitioner had filed the above OA before the learned Tribunal, challenging the Air Force Instruction 1/2019 and the Policy letter dated 13.06.2023. The petitioner has further challenged the Order dated 06.06.2024, by which the petitioner was asked to show cause as to why he should not be discharged from service under the Rule 15(2)(e) of the Air Force Rules, 1969, as having been found inefficient and unwilling to accept re-mustering.

4. Though the petitioner has replied to the Show Cause Notice (“SCN”), the final decision is yet to be taken by the respondents.

5. Apprehending that the petitioner would be discharged from service, the petitioner approached the learned Tribunal, also praying for an interim relief restraining the respondents from discharging the petitioner from service. However, the said prayer has been rejected by the learned Tribunal by the Impugned Order.

6. The learned Senior Counsel for the petitioner submits that the learned Tribunal has failed to appreciate that, in terms of Air Force Instructions No. 12/S/48, which were in force when the petitioner joined the service with the respondents, the period of engagement mentioned in Clause 12(a) was for a period of 20 years. It was further provided that those who failed to attain the rank of Corporal within 15 years would be discharged. She submits that, therefore, a minimum of 15 years of service was protected under the said Policy, which was applicable to the petitioner,

7. In the course of service of the petitioner, however, the respondents issued a fresh Policy in the form of Air Force Instruction No. 1 dated 02.09.2019, Clause 11 whereof provided that all



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candidates joining the respondents shall be enrolled for 20 years of regular service. In Clause 15(b) thereof, however, it empowered the respondents to discharge an Airman at any time on the ground of finding him inefficient in rank or trade (failure to clear MOD-II / Corporal Promotion Examination (“CPE”) in three permissible chances and unwilling to remuster).

8. She submits that the said Policy was implemented by an Order dated 13.06.2023, wherein it was further provided that Airmen, who have failed to clear the MOD-II and hence become ineligible for CPE and have 11 years or lesser of service as on 31.12.2022, shall be given an option to remuster, and in case, they express their unwillingness to remuster, then they shall be discharged under Rule 15(2)(e) of the Air Force Rules.

9. She submits that the same policy, however, discriminates in favour of those Airmen who have completed more than 11 years of service as on 31.12.2022, in as much as these Airmen are not to be discharged.

10. She further submits that certain Airman, who, in fact, prayed for being discharged from service, were refused permission on the ground that the administrative procedure laid down for the discharge has not been followed in their case. The same is the position as far as the petitioner is concerned in as much as the administrative procedure as laid down in the Policy letter dated 26.12.2014 has not been followed, however, the petitioner is sought to be discharged from service.

11. She submits that, therefore, the petitioner had made out a *prima facie* case for the grant of an interim order of protection in his favour.



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12. She submits that considering that the petitioner has a family to sustain, the balance of convenience was also in favour of the petitioner.

13. The learned Senior Counsel for the petitioner submits that, although the petitioner could not clear the MOD-II examination required for attaining the rank of Corporal, however, did clear his own trade examinations and has been granted promotion. The respondents have therefore, wrongly contended that he is inefficient.

14. On the other hand, the learned counsel for the respondents, who appears on advance notice, submits that the jurisdiction of this Court to interfere with an interim order of refusal to pass the same by the learned Tribunal, is restricted. He further submits that the learned Tribunal has duly considered the submissions of the petitioner and thereafter, found that the petitioner has not been able to make out a case of irreparable loss being suffered. The learned Tribunal has observed that in case the petitioner succeeds in the OA, he shall be reinstated in service with full benefits and seniority. He submits that, therefore, a balance has been struck by the learned Tribunal and warrants no interference by this Court.

15. We have considered the submissions made by the learned counsels for the parties.

16. Rule 15(2)(e) read with Clause (e) of the Table appended thereto, states that persons enrolled under the Act who have attested, having been found inefficient in his rank or trade, and being unwilling to accept reduction or remustering, may be discharged from the service. The Policy letters governed the manner in which this power is



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to be exercised by the respondents.

17. In the present case, the petitioner has admittedly failed to clear the MOD-II examination in spite of three chances granted to the petitioner. Furthermore, the petitioner has also refused to accept remustering.

18. At this stage, we must note that, though in his reply to the SCN, the petitioner has contended that he is ready to be remustered, the learned Senior Counsel for the petitioner before us has urged that such remustering is also against the Policy as the petitioner would lose his seniority, pay and allowances.

19. In our opinion, the claim of the petitioner that the petitioner is to be governed only by the Policy issued under Air Force Instruction 12/S/48 and not by the 2019 Policy, can be considered by the learned Tribunal only on obtaining a response from the respondents. For the present, an Airman, who is sought to be discharged from service on the ground of inefficiency cannot be forced upon the respondents by way of an interim order. By way of an interim order, final relief in the OA could not have been granted by the learned Tribunal and, hence, has been rightly rejected by the learned Tribunal.

20. The learned Tribunal has also clarified that in case the petitioner succeeds in the OA, not only will he be reinstated in service, but also be entitled to salary and other allowances, seniority and other consequential benefits on his reinstatement. The learned Tribunal has, therefore, also balanced the equity.

21. In any case, as noted herein above, the respondents are yet to take a final decision on the SCN. We have no reason to doubt that the



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respondents shall keep in mind the case of the petitioner, including the submissions that have been made and recorded hereinabove by us, while taking its final decision.

22. We, therefore, find no infirmity in the Impugned Order passed by the learned Tribunal and no reason to interfere with the same. Accordingly, the present petition is hereby dismissed.

23. We make it clear that any and all observations made by us herein above are only *prima facie* in nature and shall in no manner prejudice the case of the petitioner before the learned Tribunal or the consideration of the SCN by the respondents.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 24, 2024/ss/sk

Click here to check corrigendum, if any