

HIGH COURT OF DELHI**Bench: Justice V. Kameswar Rao and Justice Saurabh Banerjee****Date of Decision: 23 January 2024**

W.P.(C) 16521/2023

NAKHAT SINGH**..... Petitioner****Versus****UNION OF INDIA & ORS.****..... Respondents****Legislation and Rules:**

Air Force Order 33/2017 (AFO 33/2017)

Section 26 of the Air Force Act, 1950

Subject: Judicial review of the Armed Forces Tribunal's decision rejecting the petitioner's application for discharge from Indian Air Force (IAF) to join as Assistant Professor (Hindi) in Rajasthan Government.

Headnotes:

Service Law - Challenge to Armed Forces Tribunal Order – Petitioner, an Indian Air Force Corporal, challenges the Armed Forces Tribunal's decision dismissing his appeal for permission to join a civilian post – Petitioner's appeal for NOC and discharge to join as Assistant Professor in Rajasthan Government contested. [Para 1-3]

Online Application Rejection – Petitioner's failed attempts to apply online for civilian post due to non-acceptance by the software – Offline application attempt also rejected – Petitioner appeared for the selection process without formal permission from the authorities. [Para 3-8]

Armed Forces Tribunal Decision – AFT concludes petitioner failed to comply with necessary procedures for applying to civilian post – No substantial proof of online or offline application submissions – Petitioner's participation in selection process without permission deemed non-compliant with Air Force Order 33/2017. [Para 13]

Petitioner's Argument – Contention of procedural oversight and non-availability of offline application process – Challenge to the constitutional validity of AFO 33/2017, arguing it imposes unreasonable conditions on airmen seeking civilian employment. [Para 14]

Respondents' Counterargument – Emphasis on the importance of compliance with AFO 33/2017 guidelines – Argue petitioner failed to provide evidence of attempting to apply online or offline – Highlighting the significant investment in training airmen and operational impact of their premature discharge. [Para 15-23]

High Court's Analysis – High Court finds no evidence of petitioner's online or offline application submissions – Upholds AFT's finding of non-compliance with AFO 33/2017 by the petitioner – Dismisses the petition for lack of merit. [Para 29-35]

Decision – High Court affirms AFT's decision, rejecting petitioner's appeal for lack of procedural compliance – Petition for NOC and discharge to join civilian post dismissed. [Para 35]

Referred Cases:

- Subhash Chand v. Union of India & Ors. (W.P.(C) 634/2020)
- Sonu v. Union of India & Ors. (W.P.(C) 3311/2020)
- Krishna Kant Yadav v. Union of India & Ors. (W.P.(C) 8002/2020)
- SGT Saman Singh Sengar v. Union of India & Ors. (O.A. 2038/2018)
- Amit Kumar Roy v. Union of India & Ors. (Civil Appeal No.4605-4606/2019)
- Sgt. Pradeep Kumar Rai v. Union of India & Ors. (W.P.(C) 567/2019)
- CPL N.K. Jakhar v. UOI & Ors. (W.P. (C) 9088/2008)
- Corporal Praveen Kumar v. Union of India & Ors. (W.P.(C) 13420/2009)
- Wing Commander Shyam Naithani and Ors. v. Union of India & Ors. (W.P.(C) 6483/2021)

Representing Advocates:

Ms. Pallavi Awasthi with Ms. Shweta Shandilya for petitioner
Mr. Vijay Joshi and Mr. Mohit Joshi with Sgt. Vikash Mishra & Sgt. Chandra Prakash for respondents

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order dated December 06, 2023, passed by the Armed Forces Tribunal ('AFT', for short) in O.A. No.3068/2022, whereby, the AFT has dismissed the O.A. filed by the petitioner herein.
2. The petitioner has filed the present petition with the following prayers:-
“(i) To set aside the judgment dated 06.12.2023 passed by Ld. Armed Forces Tribunal in OA No. 3068/2022.
(ii) To direct the respondents to issue NOC and discharge to the Applicant from the post of Corporal to allow him to join the Gazatted Post of Assistant Professor (Hindi) in Rajasthan Government with immediate effect.
(iii) And/ or pass any other order/direction which may be deemed fit and proper in the interest of justice to the petitioner.”
3. The facts which can be noted from the record are that the petitioner herein got enrolled in Indian Air Force ('IAF', for short) on March 28, 2012, and is

currently holding the post of Corporal. According to the petitioner, as on date, he has 11 years 7 months of unblemished service in IAF. It was the case of the petitioner before AFT that an advertisement was issued by Rajasthan Public Service Commission on November 02, 2020, inviting applications for recruitment to the post of Assistant Professor (Hindi). Being interested in applying for the said post, the petitioner filled the online application seeking permission of the respondents to apply to the said post in accordance with Air Force Order 33/2017 ('AFO 33/2017', for short) through AFRO website on November 25, 2020. As the skill grade of the petitioner was grade 'C', the website failed to accept the online application of the petitioner. In fact, the petitioner received an annotation indicating that he is not permitted to apply for the civil post due to his current skill grade as 'C'.

4. It was also the case of the petitioner that when AFRO website did not accept the application, he approached the respondents by way of filing an offline application on November 27, 2020, whereby, permission was sought by the petitioner to apply for the said post. The said application was not accepted by the Technical Control Room, HU, AF C/o-AF Station, Yelahanka, Bangalore and he was informed by the officials that there is no procedure of seeking offline permission and as such, the petitioner was left with no other option of seeking permission as required under AFO 33/2017.
5. It is stated that as the last date for filling the application, as per the advertisement, was coming to an end, the petitioner with a view to capitalize on the opportunity applied without seeking permission from the authorities concerned/respondents herein.
6. It is further stated that the Rajasthan Public Service Commission concluded the written examination on September 22, 2021 and September 23, 2021. The petitioner appeared in the examination on both the dates. The result of the examination was declared on April 13, 2022, wherein, the petitioner was declared qualified. Thereafter, the petitioner got a call letter for participating in the interview and in furtherance of that call letter, he appeared in the interview. The petitioner having participated in the interview, successfully cleared the interview, as per the result declared on October 01, 2022. Moreover, the petitioner had also received the offer for appointment. After the result was declared and he was selected in the selection process, he approached the respondents with a general application dated October 03, 2022 and made a request for grant of discharge along with NOC to join the gazetted post. The said application of the petitioner was rejected by the Air Officer on October 14, 2022, with the remark 'not recommended'.

7. It was his case before AFT, that though the provisions of AFO 33/2017 provide that an airman could only participate in the selection process after seeking permission from the respondents and for which an online application needs to be submitted, however, in the case of the petitioner, as effort for submitting an online application on November 25, 2020, and offline on November 27, 2020 failed, having left with no other remedy, he appeared in the examination and cleared the same. Reliance was placed on the judgment of this Court in **W.P.(C) 634/2020** titled as **Subhash Chand v. Union of India & Ors.**, decided on **March 11, 2020**, to contend that the requirement of having Skill Grade 'A' under Clause 6 of AFO, to be eligible for seeking civil appointment has been held *ultra vires* in the aforesaid judgment and moreover, an SLP filed challenging the same, has also been dismissed by the Supreme Court. It was his case that this Court, in the aforesaid judgment, had also directed the respondents herein, not to insist upon the requirement of having Skill Grade 'A', as a pre-requisite for participating in the appointment process of a Civil Post. It was further his case, that the respondents having not accepted the online application on the ground of the petitioner not being a Skill Grade 'A' employee, is unsustainable in law. Reliance was also placed on the orders passed by this Court on August 05, 2020 in **W.P.(C) 3311/2020** titled as **Sonu v. Union of India & Ors.**, order dated January 12, 2021 passed in **W.P.(C) 8002/2020** in **Krishna Kant Yadav v. Union of India & Ors.** and the order passed by AFT on July 27, 2021 in **O.A. 2038/2018** in **SGT Saman Singh Sengar v. Union of India & Ors.**, to submit that once this Court has held that for seeking Civil Employment, Skill Grade 'A' cannot be insisted upon, and also, when AFO mandated the submission of an online application and the same was not accepted in view of the non-availability of Skill Grade 'A' certificate, the act of the respondents in denying the benefit to the petitioner to appear in the examination and the selection process, is unsustainable in law.
8. It was his case that the petitioner is prevented from appearing in the selection process conducted by the Rajasthan Selection Board because he could not apply online and his efforts to apply online got failed because the software was not upgraded by the respondents. Moreover, as the offline application submitted by the petitioner was not accepted by the respondents, the petitioner had no other option but to appear in the selection process without seeking prior permission of the respondents. Therefore, it was his case before AFT that the petitioner having now succeeded in the examination cannot be denied discharge from service and NOC, from the respondents.

9. The petitioner had also relied on Clauses 6, 9, 11 and 12 of AFO, to contend, when system of submitting an online application prescribed by the respondents itself did not accept the online application, the petitioner could not have been denied the benefit of participating in the selection process. Similarly, the petitioner having been selected subsequently, he cannot be denied discharge or NOC by the respondents.
10. It was also his case that the respondents having not upgraded the website and the software, now, cannot deny the benefit to the petitioner. The respondents were required to amend AFO 33/2017, issued on December 08, 2017, to bring it in line with the law laid down by this Court in the case of **Subhash Chand (supra)**. More so, the petitioner having not been permitted to apply offline, he has been deprived of his valuable right for career progression and to seek civil employment, by the respondents.
11. On the other hand, the case of the respondents, before AFT was, that the petitioner had neither submitted online application nor any offline application, on November 25, 2020 and November 27, 2020, respectively, as no such applications were received by the respondents either in their online systems or in physical mode and it is a fact, that the petitioner had participated in the selection process without seeking permission as contemplated under AFO 33/2017 and had only sought the permission of the respondents for discharge, after participating in the examination conducted on September 22 and 23, 2020, and in the interview, which was conducted on September 27, 2022, and only applied for the first time to the respondents on October 03, 2022, i.e., after the declaration of the result on October 01, 2022 and specially when he was selected for the appointment to the civil post.
12. Broadly it was their case that the petitioner has fabricated a false narrative of submitting an online application on November 25, 2020 and offline on November 27, 2020. In fact, no application, either offline or online, has been filed by the petitioner.
13. After hearing both the parties, AFT was of the following opinion:-
 - i. Even though the petitioner did not fulfill the skill Grade 'A', eligibility criteria, as required under Clause 6 of AFO, the requirement of skill-A has already been held *ultra vires* and illegal by this Court in the case of **Subhash Chand (supra)** and as such, the petitioner was eligible to participate in the process of selection conducted by Rajasthan Public Service Commission; ii. The petitioner should have applied through the online mode before participating in the selection process and even if online application was not accepted, then under Clause 11, an Airman desirous for applying to the Civil Post, is required

- to submit documents as mentioned in Clause 11 of AFO; iii. As far as the submission of online application is concerned, there is no proof of its submission and its non-acceptance. Even if it is assumed that petitioner had tried to submit the application online and it was not accepted by the software, the petitioner is qualified enough to make a representation or file a complaint, to the competent authority about failure in submitting the online application. The petitioner only after being appointed for the first time submitted an application on October 3, 2022 seeking grant of discharge from service along with NOC to join the civil post. Interestingly, in the said application, the petitioner did not mention anything about seeking offline permission, on November 27, 2020; iv. Perusal of the application dated November 27, 2020 would reveal that the petitioner had in his own handwriting indicated that he may be permitted to apply for the post of Assistant Professor. However, there is no acknowledgment of this letter by any authority and also there is no receipt or remark of the Section Commander;
- v. Even if it is assumed that the petitioner has tried to submit the application online (which is not established) as per the requirement of law, the petitioner has made false averment with regard to submission of offline application on November 27, 2020; vi. Even if it is assumed that the petitioner could not apply online, he should have taken action in conformity with Clause 11, by submitting the documents as contemplated in the paragraph 11(a) to 11(e) of the said Clause;
- vii. There is no proof that the petitioner had taken any action as required in paragraph 11. Even the undertakings as prescribed in Appendices (c) and (d) were neither submitted by the petitioner, nor counter-signed by the officers indicated in Appendices (c); nor the certificate of undertaking in Appendices (d) was submitted by the petitioner. viii. Only after the selection of the petitioner, he undertook the process of seeking permission to discharge from the service of IAF;
- ix. As per Clause 12 of AFO, the NOC for applying for the civil post is required to be submitted by an individual after receiving the call letter for appearing in the interview or for verification of documents or after the result of the written test is declared. In the present case, after receiving the call letter for appearing in the interview, the petitioner has neither filed any application nor after declaration of the result of the written test, the petitioner made any application for grant of NOC. It is an admitted position that the petitioner has not indicated as to whether he had even requested for grant of NOC in conformity with Clause 12;
- x. The order passed by AFT in **OA 216/2023**, titled as **Sgt. Muralidhar Pakal v. Union of India & Ors.**, decided on April 19, 2023 shall squarely apply to the facts of this case;

xi. Even it is assumed that efforts of the petitioner to apply online under Clause 9 got failed, the requirement under Clauses 11 and 12 has also not been complied with. Thus, in absence of requirement of complying with the AFO, no relief can be granted to the petitioner. [Ref: **Amit Kumar Roy v. Union of India & Ors., Civil Appeal No.4605-4606/2019**, decided on July 3, 2019 and **Sgt. Pradeep Kumar Rai v. Union of India & Ors., W.P.(C) 567/2019**, decided on January 21, 2019].

14. Suffice to state, though Ms. Pallavi Awasthi, has made the similar submissions as were made before AFT, which have already been reproduced above, the submissions made exclusively before us, are as under:-

- i. AFT has committed an error by not considering the fact that AFO 33/2017 is procedural and once there is no procedure of offline application under Clause 9, the respondents, not accepting the offline application under Clauses 11 and 12 is contrary and impermissible as per their own Rules;
- ii. AFT has failed to consider the fact that AFO 33/3017 does not provide any alternative medium of offline/general application and the general applications are accepted by the respondents as being contrary to the AFO;
- iii. AFT has not considered the fact that the orderly room does not accept any application without recommendation of Commanding Officer and in the present case the application of the petitioner was not accepted because the respondents themselves have stated that offline application is not allowed as per AFO;
- iv. AFT has not taken into consideration that this Court in the **CPL N.K. Jakhar v. UOI & Ors., W.P. (C) 9088/2008**, decided on October 21, 2009, has held that not applying through proper channel relates to a procedure of the law and not the substance of the law and unless otherwise mandatory by the language of the procedural law which leaves no scope to interpret a rule governing a procedure as mandatory;
- v. The offline application of the petitioner was not accepted for the reason there was no procedure of seeking offline permission;
- vi. The respondents refused to accept the offline application submitted by the petitioner on November 27, 2020 by stating there exists no procedure for taking offline application and as such the petitioner was under an impression that he has been impliedly permitted to appear in the examination;
- vii. The respondents are at fault for not amending their AFO for seeking the permission through offline/general application as an alternate medium in case online application is not being accepted by the respondents' website;

- viii. Any action/ application which is not as per policy/provision of AFO leads to issuance of show cause and charge sheet and other coercive action could also be taken against the airmen to make them ineligible for applying further for any other civil post, as the AFO dealing with NOC has a clause, if any disciplinary action is pending or contemplated, the NOC can be denied, hence Airmen has no choice rather than applying without permission;
- ix. The respondents while denying NOC to one similar candidate, have admitted that the general application for NOC is contrary to the provisions of AFO 33/2017 and the same has been observed by AFT while allowing **OA No.616/2022** titled as Sgt Vishwajeet Kumar v. UOI & Ors.;
- x. The AFO 33/2017 is unconstitutional in nature as it is violating fundamental rights guaranteed under the constitution. As with the introduction of AFO 33/2017, the respondents have imposed additional conditions including skill level 'A' through AFO 33/2017 on the eligibility criteria for applying to a civil post, which has made it difficult for airmen to seek discharge from service. The same is arbitrary and unreasonable on the ground that it puts airmen in a state of absolute dilapidation in his career prospects. In all previous AFO's the only condition to seek discharge from service was to serve for a minimum period, however, in the impugned AFO 33/2017, an additional condition like the minimum skill grade 'A' along with minimum 7 years of service is also required;
- xi. The AFO 33/2017 on one hand, allows airmen to seek better career opportunities, however, on the other hand, it has imposed additional and unjust conditions by laying down the eligibility criteria on applying for a civil post. The said act of the respondents is contrary to the very objective of the prevailing policy as the whole and sole purpose of issuing AFOs is that if an airman like the petitioner herein on fulfilling the eligibility criteria of the prevailing AFO wants to seek discharge from service, then in such case, they should selflessly grant the discharge;
- xii. IAF and this Court have adopted a broad and liberal approach on this issue and not only NOC has been issued in many cases, but discharge has also been permitted. [Ref. **Corporal NK Jhakar v. Union of India & Ors., W.P.(C) 9088/2008**, decided on October 21, 2009, and **Corporal Praveen Kumar v. Union of India & Ors., W.P.(C) 13420/2009**, decided on November 30, 2009].
15. Whereas, it is the case of Mr. Vijay Joshi, learned counsel appearing for the respondents that in the past, many airmen had proceeded on discharge before completion of initial engagement, i.e., 20 years, creating

deficiency of manpower at various levels, which has created vacuum in various critical trade (technical and non-technical).

16. It is his submission that each airman is trained for specific roles and his continuance in the service is essential in the interest of IAF. Moreover, airmen are inducted in IAF with basic educational qualification criteria of 10+2/Intermediate or equivalent. After induction, they are subjected to training in phases / module spanning to three years, before they are deployed independently on operational duties. The training consists of 24 weeks basic military training followed by 64 weeks of specific trade training. Subsequent to training, they are posted to field units to undergo on job training and gain requisite skills. So, IAF invests heavily on its work force in shaping the airmen to meet the operational needs of IAF in specific and the security requirement of the nation in general.

17. It is his submission that airmen are enrolled in IAF for an initial term of Regular Engagement, ('RE', for short) of 20 years. They have to voluntarily submit an undertaking to serve for the RE period of 20 years in terms of AFI 12/S/48 as amended and superseded by AFI 01/2019. Moreover, in the enrollment form filled at the time of enrollment, an individual is required to give express consent to serve IAF until discharge in accordance with the conditions of service. The statutory form of enrollment for a combatant member is in form AI of the first schedule. In part II of the said form, it is provided that an individual is required to serve for a period not less than 20 years and as such there is an obligation to serve for a specific period. So, it is his submission that discharge of airmen from IAF prior to completion of the RE period affects the manning level in the respective trade of IAF and also have an adverse impact on the operational preparedness of the Air Force on the whole.

18. He submits that though, applying for a civil job is a privilege, however, this privilege is subjected to relevant policies. On the aspect of issue of NOC for civil post, it is his submission that the policy viz. AFO 33/2017, was in vogue, at the time when the petitioner had applied for the civil post.

19. It is his case that an individual has to follow the following guidelines in order to apply for online registration for any civil post:-

- i. He has to seek prior permission from his respective AOC/StnCdr/CO to apply for civil post through online registration;
- ii. He has to fill and submit a blank application form along with downloaded advertisement from the website, while obtaining permission for online

registration, and in case an application cannot be downloaded, contents of the application form have to be submitted while seeking permission;

- iii. He has to give an undertaking in his application to the effect that he shall not communicate any classified information to an employer while registering online;
- iv. Before grant of permission, the unit administration examines the contents of the application keeping in mind the security considerations and in no case ex-post facto sanction for online registration can be accorded. 20. He submits that airmen / NCs (E) willing to apply for civil post have to submit the following documents to AOC/StnCdr/CO through Orderly Room:-
 - i. Application seeking permission to apply for civil post;
 - ii. Undertaking as per appendices C and D to AFO;
 - iii. Undertaking as per paragraph 9C;
 - iv. Advertisement in original or self attested photocopy having date / period of publication. Advertisement downloaded from website should be in English / Hindi and to be self attested;
 - v. Advertisement in other language also to be submitted in original or self attested with a translated copy in English or Hindi.

21. He submits that an application for grant of NOC is to be submitted by an individual through proper channel, i.e., after receiving call letter for appearing in the interview / verification of documents or after the result of written test (where selection is based on written test only).

22. He further submits the petitioner was eligible to seek prior permission as per the AFO 33/2017. The petitioner should have applied online before participating in the selection process and even if he was unable to process the online application, para 11 of AFO 33/2017 stipulates that airman desirous to apply for a civil post is required to submit requisite document / annexures along with the application.

23. Mr. Joshi has also questioned the authenticity of the online / offline applications submitted by the petitioner seeking permission to apply to the civil post. He submits that no substantial proof has been produced by the petitioner to prove that he has submitted an online application. Moreover, the petitioner has even failed to prove the same fact before the AFT. Further, the authenticity of offline application, which the petitioner has alleged to have submitted at 112 Helicopter Unit, has been checked with the said Unit vide letter No.AFRO/2271/3/LGL dated December 22, 2023. Even, the present unit, i.e., 3 BRD and the previous unit, i.e., 112 HU, have also declined

receiving any such offline application. Hence, the claim of the petitioner that he has applied online as well as offline is false, fabricated and misleading and as such, the petitioner never intended to intimate the Unit authority that he was applying for the civil post and thus, he has acted in complete violation of Clauses 9, 11 and 12 of the AFO 33/2017.

24. Mr. Joshi has also relied upon the judgment of the Supreme Court in the case of **Amit Kumar Roy (supra)**, to contend that in this case the Supreme Court has specifically laid down the requirement of airmen complying with the provisions of AFO.

25. He submits that in case the offline application was not accepted by the Unit authority, the petitioner had the statutory remedy for 'Redressal of Grievances' ('RoG', for short) under Section 26 of the Air Force Act, 1950, against the decision of the Competent Authority. The petitioner never approached the higher authority by filing a statutory complaint about non-processing of his offline application and, contrary, to the AFO33/2017, the petitioner went to appear in various stages of the examination.

26. It is his submission, that the petitioner has fabricated a false narrative of submitting an online/offline application in order to take advantage of the law laid down by this Court in the cases of **W.P.(C) 634/2020**, **W.P.(C) 3311/2020** and **W.P.(C) 8002/2020**, when in fact, no such application was ever submitted either in offline or online mode, by the petitioner. Moreover, the application attached by the petitioner in this petition is incomplete and does not include the requisite documents, as mentioned in para 11 of AFO33/2017.

27. He further submits that the facts of the present case cannot be equated with the facts of the cases on which reliance has been placed by Ms. Awasthi. Specifically, the judgment in the case of **Subhash Chand (supra)**, will also not come to the aid of the petitioner, as in that case, the petitioner therein had approached the Unit authority concerned therein, three times for permission. However, in the present case, the petitioner has willingly overlooked all the provisions of AFO 33/2017 and appeared in all the stages of examination at his own accord and as such parity cannot be drawn between the present case and the cases relied upon by Ms. Awasthi.

28. Mr. Joshi has also relied upon the judgment of this Court in the case of **Wing Commander Shyam Naithani and Ors. v. Union of India & Ors., W.P.(C) 6483/2021**, March 15, 2022, to submit that a Writ Court can only interfere with the order passed by AFT only for correcting errors of jurisdiction or errors on the face of record, if the AFT acts illegally. In other words, the writ jurisdiction of High Courts cannot be exercised in the cloak of an appeal in disguise. It is his submission that in the instant case, AFT has taken into

consideration all the facts and circumstances of the matter and there is no error on the ground of jurisdiction. Moreover, none of the principles of Natural Justice have been violated. Therefore, it his submission that the present matter should be dismissed for non-compliance of Clauses 9, 11 and 12 of the AFO 33/2017, alone.

29. Having heard the learned counsel for the parties, the issue which arises for consideration is, whether AFT has rightly rejected the OA filed by the petitioner on the ground that the petitioner herein had not submitted the online application on November 25, 2020 and the offline application on November 27, 2020.

30. Before we deal with the rival submissions of the learned counsel for the parties, it is necessary to state here that as per the instructions in vogue earlier, an applicant mandatorily needs to possess a Skill 'A' Grade eligibility criteria for seeking permission for applying to a civil post outside Air Force. Though, in the case of the petitioner he had Skill 'C' Grade, however, in view of the judgment in the case of **Subhash Chand (supra)**, the provision which stipulated only a person with Skill 'A' Grade could seek permission to apply to a civil post has been held to be *ultra vires*. So, the issue needs to be proceeded on the premise that even a personnel working in the Air Force having Skill 'C' Grade like the petitioner could also apply for grant of permission to take up the civil post. Having said that, it needs to be adjudicated as to whether the petitioner had actually submitted his online or offline application seeking permission to apply for the civil post concerned herein.

31. We have already reproduced the findings of AFT in that regard in paragraph 13 above. There is a finding of fact by AFT in paragraph 13 (iii) above to the effect that the petitioner has not placed any proof of submission of online application and its non-acceptance by the respondents. Even before us, Ms. Awasthi was not able to place any evidence to show that the petitioner had in fact made an attempt to submit the online application. Even the plea of the petitioner that the same could not be submitted because the respondents have not updated their software in view of the judgment in the case of **Subhash Chand (supra)**, wherein, the prescription of Skill 'C' Grade was held to be *ultra vires*, does not appeal us. The best proof to show that the online application was not accepted / submitted was to place on record the screenshot of the computer window, specifically, the website of the respondents showing that the petitioner had in fact tried to submit the online

application, which, admittedly has not been filed by the petitioner. Also, there was no complaint made qua that to the respondents.

32. Insofar as the plea that even on November 27, 2020, an attempt was made to submit the offline application, the finding of AFT is noted in paragraph 13 (iv), with which we agree. Suffice to state, that in the absence of any acknowledgement qua such an offline application alleged to have been submitted by the petitioner would not satisfy the requirement of submission of offline application. So, it follows that neither an online application nor an offline application was submitted by the petitioner seeking permission of the respondents to take up the civil post. Insofar as, the plea of Ms. Awasthi that the officers/respondents had refused to give an acknowledgement is concerned, the same cannot be accepted, as the petitioner has not named the officer who was present at the spot, specifically, at the time of submission of the offline application and no such allegations are alleged anywhere.

33. The plea of Ms. Awasthi, that AFO 33/2017, being a procedural order, and as such directory in nature, is a misconceived plea, more particularly, in the facts of this case, specially, when this Court has come to a conclusion that the petitioner has neither submitted the online application nor an offline application. The fact that the petitioner has challenged the legality of the AFO 33/2017, shows the contradiction in the stand of the petitioner, inasmuch as, when his stand is of making an effort to submit the online application, as per AFO 33/2017. Thus, the petitioner cannot challenge the *vires* of the same AFO, under which he has sought to submit the online application.

34. That apart, we find that without taking the permission of the respondents as required under Clause 9 of the AFO 33/2017, the petitioner sat in the written examination on September 22 and 23, 2021, and also appeared in the interview on September 27, 2022. Though, a submission has been made by Ms. Awasthi that the petitioner also approached the respondents for seeking permission to appear in the interview, surprisingly, no document in that regard has been filed by the petitioner. Moreover, when the result was declared much before on April 13, 2022, it is not understood, at least, it defies logic that the petitioner had sought the permission of the respondents to appear in the interview only on the date of the interview, i.e., September 27, 2022. There is no explanation as to what prevented him to not apply much before September 27, 2022. The bald averments in the petition are that the petitioner had approached the respondents to seek the permission. However, as noted above, no name of the officer to whom he

had approached has been depicted in this petition. Even, the request for discharge/NOC was made on October 3, 2022 i.e., two days after the petitioner was declared successful in the selection process. A perusal of the communication dated October 3, 2022, seeking discharge would reveal that the same does not refer to the fact that the petitioner had even made an attempt to file an offline application on November 27, 2020. That apart, we find that, no NOC, was sought by the petitioner, for appearing in the interview, as contemplated under Clause 12 of the AFO. Therefore, the AFT is right in concluding that the petitioner herein had participated in the selection process without following the requirements of AFO 33/2017.

35. In view of our above discussion, we do not find any infirmity in the impugned order passed by the AFT. The petition being without any merit, the same is dismissed.

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