



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 4190/2019

Reserved on: 06.02.2026
Pronounced on : 13.02.2026
Uploaded on : 13.02.2026

Whether the operative part or full
judgment is pronounced: Full

Himmat Kumar Raina

....Petitioners

Through:- Mr. Sunil Sethi, Sr. Advocate with
Mr. Vaibhav Gupta, Advocate.

V/s

Union of India & Ors

.....Respondents

Through:- Mr. Vishal Sharma, DSGI with
Mr. Sumant Sudan, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
(JUDGMENT)

01. The petitioner, through the medium of the present petition, has challenged order dated 01.11.2019 issued by respondent No. 2 whereby his request seeking his discharge from Air Force has been rejected. The petitioner has also sought a direction upon respondents No. 1 to 7 to release him from Air Force service by issuing necessary discharge certificate so as to enable him to continue in Junior Scale of the Jammu and Kashmir Administrative Service. A further direction, restraining respondents No. 1 to 7 from taking



disciplinary action against the petitioner for joining gazetted service of Junior Scale KAS, has also been sought by the petitioner.

02. The facts emanating from pleadings of the parties are that the petitioner was enrolled in the Indian Air Force on 27.06.2006 and his regular engagement with Indian Air Force is due to expire on 26.06.2026. It appears that the petitioner had joined the Indian Air Force after acquiring the qualification of intermediate as a Medical Assistant. It further appears that during the course of his employment, the petitioner completed his graduation in the year 2010. In the year 2016, the petitioner, in response to notification dated 18.06.2016 issued by J&K Public Service Commission, filled up his form for competing in the J&K Combined Competitive Examination, 2016.

03. It further appears that vide his application dated 20.06.2016, the petitioner had sought permission from the competent authority of the Air Force for submission of his application to participate in the J&K Combined Competitive Examination, 2016. However, the permission was not granted by the competent authority as the post for which the petitioner had applied does not fall under Group-A. It appears that despite this, the petitioner proceeded to sit in the examination and qualified the same. A select list was issued by the J&K Public Service Commission vide notification No.



PSC/Exam/47-1/2019 dated 07.08.2019 wherein name of the petitioner was figuring.

04. Upon his selection as a Junior Scale KAS Officer, the petitioner submitted an application dated 27.08.2019 seeking his discharge from Air Force on the ground of his selection to the civil post of J&K Administrative Service. It seems that the said application was returned to the petitioner without forwarding the same to the Commanding Officer because he had been selected to a Group 'B' and not Group 'A' post. In the meantime, the petitioner came to be appointed as an Officer in the Junior Scale of J&K Administrative Service vide Government order No. 1015-GAD of 2019 dated 13-09-2019 and he was asked to join the service within twenty one days of the issuance of the said order.

05. After issuance of the appointment order in favour of the petitioner, he again made application dated 16.09.2019 before respondent No. 7 for his discharge from Air Force on the ground of his appointment to the civil post in J&K Administrative Service. Respondent No. 7 is stated to have recommended the discharge of the petitioner and his release from service. The said respondent also recommended waiver of non-compliance to AFO 4/2012 and AFO 33/2017.

06. The petitioner, however, did not receive the discharge order and in the meanwhile his request for extension in joining the fresh service was refused by respondent No. 9. The petitioner, therefore, proceeded to join the service on



01.10.2019 and it appears that he continues to serve as an Officer of J&K Administrative Service. On 01.11.2019, impugned order came to be issued by respondent No. 2 whereby the petitioner was informed that his request for discharge has not been approved and that the same has been rejected by the competent authority.

07. The petitioner has challenged the impugned action of the respondents No. 1 to 7 on the grounds that AFO No. 16/2008 dated 19.09.2008 has not been taken into consideration by the respondents while issuing the impugned order. According to the petitioner, the said order provides for discharge from service on compassionate grounds or for any other valid personal reasons. It has been further contended that the petitioner had already completed seven years of regular service with the Indian Air Force, therefore, he was fully eligible to be granted permission to leave the service. It has also been contended that even though the grade pay of Junior Scale KAS Officer is only Rs. 4800/- yet the similar posts carry grade pay of Rs. 5400/- in some other states like Gujarat, Rajasthan and Madhya Pradesh. Therefore, the post on which the petitioner was appointed cannot be termed as Group-B post. The petitioner has also relied upon judgments/orders passed by the Delhi High Court in a few cases whereby the petitioners therein in somewhat similar circumstances have been permitted to be discharged from service.



08. The respondents have contested the writ petition by contending that any person inducted in the Indian Air Force is subjected to training in phases/modules spanning 2 to 3 years before they are deployed independently on operational duties. It has been submitted that Indian Air Force invests heavily on its work force in moulding the Airmen to meet the operational needs of IAF and the security requirements of the nation. It is in this background that Airmen are permitted only in exceptional cases to apply and seek premature discharge from service at their own request. Respondents No. 1 to 7 have relied upon AFO No. 04/2012 which provides eligibility conditions for seeking permission to apply for civil posts. These eligibility conditions include seven years of regular service and that the Airman should be applying for Group-A or equivalent posts. As per para 11 of AFO No. 4/2012, the request for NOC is liable to be rejected where individual has not obtained prior permission while applying for the post.

09. According to the respondents, the petitioner was not fulfilling the criteria inasmuch as he had not applied for Group-A or equivalent post as the post for which he had applied falls in Group B. Thus, permission could not have been granted to him for applying for the said post. It has been further contended that once permission was refused to the petitioner, NOC and discharge from service could not have been accorded in his favour in terms of the rules and guidelines in vogue.



10. I have heard learned counsel for the parties and perused record of the case.

11. So far as the factual aspects of the matter are concerned, the same are not in dispute. The petitioner had participated in the selection process for selection to the J&K Administrative Services and at the time of applying for the same, he had sought permission from the relevant authorities of the Air Force. However, the said permission was rejected on the ground that the post for which he had applied did not fall in Group-A.

12. As already stated, paragraph 6 of AFO No. 4 of 2012 which governs such cases, provides that an Airman of the Indian Air Force is eligible to apply for civil post if he has completed seven years of regular service and the post for which he applies falls in Group A in Central/State Governments and equivalent posts. The petitioner had completed seven years of regular service when he applied for J&K Administrative Services. However, the post for which he had applied was carrying grade pay of Rs. 4800/- with maximum pay of Rs. 34,800/-.

13. Respondent No. 9 has filed its report in compliance to order dated 29.11.2022 passed by this Court, whereby the said respondent was directed to demonstrate the classification of the posts of J&K Administrative Services. In the said reply, the said respondent has clearly stated that the post for which the petitioner had applied falls in Group B when it is equated



with the pay scales applicable to employees of the Government of India. Thus, the contention of the petitioner that the post for which the petitioner had applied falls in Group-A as similar posts in some other states fall in the said group is without any basis. Thus, the petitioner did not fulfill the eligibility criteria for being permitted to apply for the post of Junior Scale Administrative Officer in Government of J&K. The competent authority was, therefore, right in rejecting the application of the petitioner.

14. It appears that when the appointment order was issued in favour of the petitioner, he again applied for discharge from service and on his application, a recommendation was made by respondent No. 7 that the petitioner may be granted release from service. In the said recommendation, respondent No. 7 had noted that AFO No. 33 of 2017 has redefined the criteria to apply for release of Airman and allowed employment in civil for Group A as well as Group B posts. It is recorded in the recommendation that the said order supersedes AFO No. 4 of 2012. However, the recommending officer has also noted that in AFO No. 33 of 2017, it is mentioned that Airman should have skill grade A for release after seven years of service but the petitioner does not meet the said criteria. On this ground, the petitioner is not eligible. Thus, even under AFO No. 33 of 2017, the petitioner does not fulfill the eligibility criteria for being permitted to



apply for the post for which he has been appointed or for being allowed to be discharged from service.

15. So far as the contention of the petitioner that the Competent Authority has ignored AFO No. 16/2008 is concerned, it is to be noted that the said order cannot be made applicable to the case of the petitioner. AFO No. 16/2008 does not apply to cases relating to selection to civil posts. Para (6) of the aforesaid order is very clear about it. Thus, the contention of the petitioner in this regard is without any merit.

16. In the face of aforesaid situation, the impugned action of the respondents when analyzed strictly in the light of the rules holding the field cannot be faulted. The Supreme Court in the case of **Amit Kumar Roy Vs. Union of India and Ors**, 2019 (7) SCC 369 has, while discussing a similar issue, held that a person serving in the Indian Air Force does not have an unqualified right under Article 19(1)(g) of the Constitution to leave the service. While holding so, the Supreme Court made the following observations:

“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 emphasizes 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.”

17. After rendering the aforesaid observations, the Supreme Court exercised its equitable jurisdiction under Article 142 of the Constitution and issued a direction to the Air Force authorities that a final NOC and discharge be issued in favour of the appellant therein so as to do complete justice in the said matter.

18. Similar orders have been passed by Delhi High in several cases, details whereof are given thereunder:

- i. Deepak Rajak Vs. Union of India and Ors [WP(C) No. 7526/2012 decided on 04.12.2012]
- ii. Charan Singh Bhanvariya Vs. UOI and Ors [WP(C) No. 3257/2010 decided on 28.07.2010]
- iii. CPL. MD. SA Ansari Vs. UOI and Ors [WP(C) No. 5073/2013 decided on 09.10.2014]
- iv. CPL. Manoranjan Kumar Vs. UOI & ors [WP(C) No. 494/2017]
- v. CPL N.K. Jakhar Vs. UOI & ors [WP(C) No. 9088/2008 decided on 21.10.2009].



19. In all the aforesaid cases, the Courts have shown indulgence on basis of peculiar circumstances of those cases. The question arises as to whether in the facts and circumstances of the present case, a similar approach needs to be adopted by this court.

20. In the above context, if we have a look at the pleadings of the parties, it appears that the petitioner belongs to a far flung village of district Doda, that was militancy infested at the time when he was undergoing schooling. It has been pleaded by the petitioner that both his parents were uneducated hailing from an economically weaker background as such he has undergone studies after facing acute hardships and difficulties. It is because of these adverse conditions that the petitioner could not continue the studies in a college in a regular mode and instead he had to join employment with Indian Air Force so as to feed himself and his family. The tenacity and courage of the petitioner can be gauged from the fact that even while he was performing his job with Indian Air Force, he continued to work hard and completed his graduation. Not only this, due to his brilliance, the petitioner without any formal coaching and without any regular studies, obtained the requisite merit in the Combined Competitive Examination and made it to J&K Administrative Service. This attitude of the petitioner and his urge to attain higher goals and excellence in his career is required to be appreciated and encouraged.



21. As per the recommendations made by respondent No. 7 in respect of the petitioner, even while performing his duties with Air Force, the petitioner had shown great dedication. It is recorded in the said recommendation that the petitioner had no disciplinary violations in his service meaning thereby that while performing the job as an Airman, he has not given scope for any complaints.

22. In the face of aforesaid conduct of the petitioner and having regard to the fact that he has potential to attain great heights in his career, denying him permission to continue his service as an Officer of the J&K Administrative Service would work very harshly against him and in fact would discourage and dishearten him immensely, that would lead to wastage of a great talent. Apart from this, it to be noted that the petitioner has left Air Force in the year 2019 and since then about seven years have elapsed, therefore, no purpose will be served in directing his re-induction in the Indian Air Force as the same would expose him to disciplinary action and would also end his excellent career in J&K Administrative Service.

23. However, the petitioner cannot be allowed to go scot free as he has clearly been guilty of breach of conditions of his service in Air Force. Therefore, appropriate conditions need to be attached for permitting the petitioner to seek discharge and continue his service as an officer of the J&K Administrative Service.

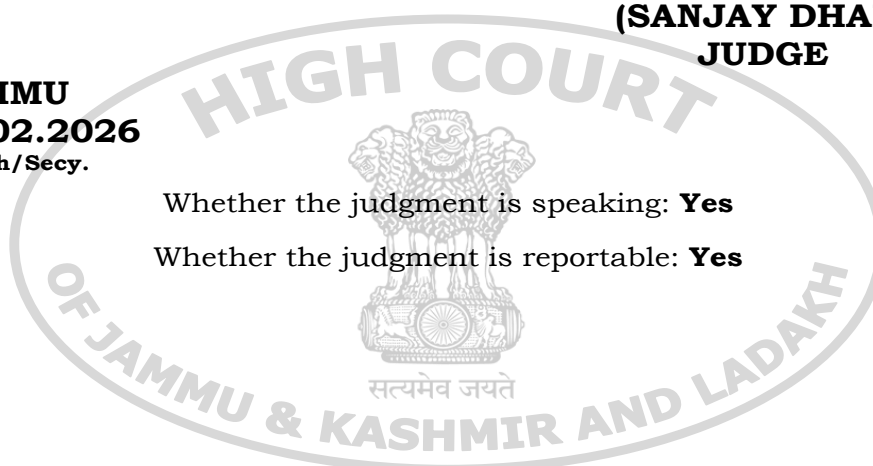


24. For the foregoing discussion, the writ petition is **disposed of** with a direction to the respondents to issue NOC and discharge certificate in favour of the petitioner subject to deposition of Rs. 3,00,000/- (Rupees Three Lacs) with the Air Force authorities within two months of receipt of copy of this judgment. In case, any amount is due to the petitioner from the Air Force, the aforesaid amount shall be set off against the dues.

25. **Disposed of** accordingly.

JAMMU
13.02.2026
Naresh/Secy.

(SANJAY DHAR)
JUDGE



Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**