

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

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Date of Decision: 12.11.2013

+ WP(C) No.7053 of 2013 &CM No.15293 of 2013
SACHIN SOLANKI

..... Petitioner

Through: Mr. Vinay Kumar Garg with Mr.
L.S. Solanki, Mr. Vivek Sharma and
Mr. Farad Ahmed, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Joginder Sukheja and Mr. M.P.
Singh and Mr. Yogesh Negi, Advs.
For UOI

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner before this Court appeared in Class-I Medical Test at Air Force Medical Centre, Subroto Park, New Delhi for issuance of license and was declared temporarily unfit. The limitations found during the medical examination of the petitioner was EEG abnormality and complete RBB Block EEG(R). He was advised next review with MRI brain, 2D Echocardiography, Doppler study and opinion of Neuro physician on EEG abnormality. The petitioner was again medically examined on 6.2.2007 and was found fit. On 6.2.2007, AFCME issued initial Class-I fit medical certificate to the petitioner. The respondent, however, replying upon the EEG report declared the petitioner permanently unfit for flying vide order dated 16.8.2007. The petitioner preferred an appeal against the above assessment.

The said appeal was dismissed. The petitioner then filed a writ petition before this Court which came to be dismissed by the learned Single Judge of this Court. The petitioner then approached the Division Bench by way of an LPA. Vide order dated 18.8.2011, the Division Bench of this Court remitted the matter to DGCA to dispose of the appeal preferred by the petitioner by ascribing cogent, germane and acceptable reasons. Vide medical assessment dated 25.4.2012 at AFCME, New Delhi, the petitioner was declared fit without any limitation.

2. The petitioner vide letter dated 9.7.2012 sent to the Director (Licensing), Directorate of Civil Aviation, sought the following exemptions from the conditions prescribed for flying for issuance of a commercial pilot license:

1. DGCA Pilot Knowledge Exams (Air Navigation, Air Regulations, Air Meteorology).
2. The conditions required for the validation of US CPL.
3. General within 6 months flying requirements incl. PIC Hrs. 15, Long X- countries, etc.
4. Instrument rating within 6 months flying requirements.
5. Multi endorsement on CPL within 6 months flying requirements.
6. Any other condition which is ancillary to the aforesaid conditions.

The said representation was followed by certain reminders. Vide a representation dated 5.3.2013, the petitioner again sought the following exemptions:

1. As PIC -15 Hrs,
2. PIC by Night – 5 Hrs. (With at least 10 take off & 10 landings).
3. General flying test by day with three solo take off and landings each.
4. General flying test night with three solo take off and landings each.
5. 250 NM cross country test by day with one full stop landing at other aerodrome.
6. 120 NM X-country test by night (returning to point of dep. without landing).

7. Signal reception test report (eight words per minute)
8. Instrument time on actual aircraft – 5 Hr.
9. IR test report with two approaches on aircraft, for which endorsement on license is requested.
10. For multi:-
 - General flying test by day with three solo take off and landings each.
 - General flying tests night with three solo take off and landings each.
 - IR test report with two approaches on aircraft for which multi-endorsement on license is requested (For multi – IR only).

The said representation was accompanied by an application for exemption in the prescribed format. Vide impugned communication dated 28.5.2013, the request of the petitioner seeking exemptions as enumerated above was rejected. Being aggrieved from such rejection, the petitioner is before this Court seeking the following reliefs:

- a) set aside order dated 28.5.2013 of the respondent refusing the petitioner exemption from operation of the Rule prescribing limitation for taking consideration of the qualifications of the petitioner for grant of commercial pilot licence; and
- b) direct the respondent to consider and grant exemption to the petitioner for the period w.e.f. order dated 16.8.2007 of the respondent till judgment dated 18.8.2011 of this Hon'ble Court in LPA No.289/2011 for the purposes of consideration of validity of the essential qualifications acquired by the petitioner for the grant of commercial pilot license; and
- c) award cost of the petition in favour of the petitioner.

3. Clause 5.1(e) of the Civil Aviation Requirement (CAR), prescribed by the Director General of Civil Aviation in exercise of the powers conferred upon him by Rule 38 of the Aircraft Rules reads as under:

“(e) CPL: Written examination in the subjects of Air Navigation, “Aviation Meteorology, Air Regulation, aircraft & engine/ instruments in general specific and performance (if applicable). Performance paper is applicable to heavy aeroplane having MTOW more than 5700 kg or Twin Engine Meteorology.”

Clause 6.6 of CAR, to the extent it is relevant, reads as under:

“6.6. Validity of written papers

The Technical and other examinations for the issue of a license, rating or type rating under Schedule II of Aircraft Rules, 1937 shall be completed within a period of two and a half year immediately preceding the date of application for the issue of the license or rating, except for issue of Commercial Pilot’s License (CPL) and Airline Transport Pilot License (ATPL), and for issue of CPL and APTL, such period shall be five years.

It would thus be seen that the written examination in the subjects of Air Navigation, Aviation Meteorology, Air Regulation, aircraft & engine/ instruments as prescribed in Clause 5.1(e) has to be passed within five years preceding the issue of commercial pilot license. Since the petitioner passed the aforesaid examination in the year 2007, he , under the rules, needs to appear again in the aforesaid examination before Commercial Pilot License can be issued, unless he is exempted from the requirement of appearing in the said examination. The purpose of requiring passing of the aforesaid

examination in Air Navigation, “Aviation Meteorology, Air Regulation, aircraft & engine/ instruments, etc within five (5) years preceding issue of commercial pilot license is to ensure that the knowledge of the examinee does not become outdated by the time he is issued the commercial pilot license. With the advancement of science and technology, curriculum of such examinations also gets updated periodically. Moreover, with the passage of time, it is quite possible that the examinee may not be able to remember whatever he has studied in the aforesaid subjects, more than five (5) years before issue of the license. Therefore, the aforesaid requirement, in my view, cannot be dispensed with.

4. The learned counsel for the petitioner submits that the petitioner holds a US Commercial License and the conditions required for validation of such license are the conditions which are prescribed for issue of such license by DGCA in India. Therefore, exempting the petitioner from fulfilling the conditions required for validity of US License would amount to granting him exemption from all such condition which he does not fulfil for issuance of a commercial pilot license by DGCA. Such exemption, in my view, cannot be granted to the petitioner.

5. Regarding exemption at serial number 3, the learned counsel for the petitioner states that the petitioner is ready to undergo this requirement and, therefore, is no more seeking exemption with respect to this requirement.

6. The requirement of instrument rating has been prescribed in Section (o) of Schedule-II of Aircraft Rules, 1937, and, therefore, is a statutory requirement. In the absence of adequate knowledge of the instruments, a commercial pilot, while flying an aircraft, may not be in a position to handle such instruments efficiently, particularly in case of an emergency and, therefore, such requirement, in my view, should not be dispensed with.

7. Rule 160 of the Aircraft Rules empowers the Central Government, *inter alia*, exempt any aircraft or class of aircraft or any person or class of persons from the operation of these rules, either wholly or partially. The learned counsel for the petitioner submits that the aforesaid power of the Central Government has been delegated to the Director General of Civil Aviation, though no such document is on record. Even if that be so, no valid ground for exercise of extraordinary power conferred upon the Central Government under Rule 160 of Aircraft Rules, 1937 has been made out by the petitioner.

8. The main grievance of the petitioner is that since he was wrongly declared unfit, he could not avail the benefit of getting the commercial pilot license for almost six (6) years. His counsel submits that had the petitioner been initially declared fit, he would have been able to get commercial pilot license without seeking any exemption since he, at that time, fulfilled all the requisite conditions for grant of commercial pilot license. In my view, if the petitioner is aggrieved on account of his having wrongly been declared medically unfit, in the year 2007, he can avail such remedy as is open to him in law in this regard, but as far as the statutory requirements are concerned, he must necessarily fulfil them since any exemption from fulfilling those requirement is likely to endanger the lives and safety of those who travel in the aircrafts which may be flown by the petitioner. In fact, in the absence of recent knowledge, in terms of requirement of the rules, the petitioner may not be in a position to efficiently handle the aircrafts given to him for flying. The safety of the aircraft and the passengers being paramount, no relaxation in such requirements would be in public interest.

The writ petition is hereby dismissed. No orders as to costs.

NOVEMBER 12, 2013/*rd*

V.K. JAIN, J.