

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10378 of 2017

Date of Decision: 12.05.2017

Shailender Hooda

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Singh, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The petitioner is a Commercial Pilot. He had a Flight Instructor's Rating (A) licence renewed from time to time. He was appointed as an Assistant Pilot Instructor in Haryana Institute of Civil Aviation (HICA), Karnal. The licence was last renewed through May 06, 2016 ending May 05, 2017. Earlier, in March 2012 he was conferred the position of Flight Instructor Incharge/Pilot Instructor Incharge. In August 2014 he was selected and appointed as Chief Flying Instructor (CFI). In August 2015 he was approved as Chief Flying Instructor, Haryana Institute of Civil Aviation, Civil Aerodrome, Hisar.

2. Then begins the crunch and the fall. The Director General of Civil Aviation, New Delhi (DGCA) approved the petitioner up to October 13, 2020 to exercise the delegated functions of DGCA i.e. Designated Examiner, HICA and CFI under the provisions of Rules 41 B of the Aircraft Rules, 1937 ("1937 Rules"). The date of expiry of licence was November

11, 2015. From November 12, 2015 to December 25, 2015 he undertook flying operations under the presumption of renewal of his licence. In short, he flew aircraft without valid licence. On December 26, 2015 he realized that his application for renewal of FIR (A) licence 'could not be sent to respondent No.2'. He submitted his application and necessary documents for licence to DGCA on December 31, 2015 vide letter dated December 28, 2015.

3. On January 01, 2016 the petitioner was shortlisted for interview for the post of Director of Flying Training (DFT), DGCA, Ministry of Civil Aviation. The Union Public Service Commission informed the petitioner that his name has been recommended to the Secretary to Government of India, Ministry of Civil Aviation for appointment to the post. This was on February 04, 2016.

4. The Director General of Civil Aviation, New Delhi vide letter dated February 05, 2016 advised HICA to submit 'No Flying Certificate' in respect of the period during which his licence was not valid. Petitioner sought condoning of the delay in renewal of licence. DGCA advised HICA to provide details of instructional flight done during the period of expiry of licence and accordingly an explanation was sought. The petitioner clarified that he undertook 61:40 hours of Flying during the expired period. This was confirmed by HICA writing to DGCA.

5. This led to issuance of a show cause notice issued by DGCA on March 01, 2016 as to why action should not be taken against him. Despite the letter he accepted appointment as DFT DGCA on March 04, 2016. He informed HICA four days thereafter that he had received offer of

appointment to serve in New Delhi under the Central Government. He asked that his services may be relieved from HICA to enable him to join duty as DFT. On April 01, 2016 DGCA suspended the petitioner's ATPL-6423 licence for a period of one month from April 01, 2016 to April 30, 2016 for exercising the privileges of his FIR (A) licence without being valid from November 12, 2015 to December 25, 2015 and alas during the no-licence period while conducting instructional flying.

6. Thereafter, on May 06, 2016 DGCA renewed the licence of the petitioner. However, the issue of exercising privileges of flying during the black-out period without valid licence was a matter yet to be finalized. The first impugned order was passed on June 07, 2016 with DGCA withdrawing approval to act as CFI and Designated Examiner of DGCA. In passing this order, the DGCA exercised powers under Rule 19 (3) of the 1937 Rules which stood delegated to DGCA vide Ministry of Civil Aviation and Tourism notification dated October 04, 1994. It was further ordered that consequent upon the above position, the candidature of Capt. Shailender Hooda shall not be considered in future for discharging such delegated functions of DGCA. However, subject to validity of his Pilot licence and/or ratings, he may continue to work as a Pilot and/or Flight Instructor as per regulations of DGCA.

7. The petitioner appealed against the order under Rule 3 (B) of the 1937 Rules questioning the order of cancellation/suspension of ATPL and withdrawal of DGCA delegated functions.

8. Meanwhile, HICA passed order dated June 29, 2016 pursuant to the cancellation order dated June 07, 2016 withholding payment of salary

ordering it not to be disbursed from June 2016 till the decision of the competent authority.

9. Feeling aggrieved, the petitioner approached the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.100/2229/2016 which was disposed of vide order dated July 13, 2016 directing the respondents therein to take a decision on a representation of the petitioner dated June 14, 2016. He followed up the OA with contempt petition No.440 of 2016 during the pendency of which the second impugned order was passed on September 20, 2016 putting on hold the appointment of the petitioner as DFT pending appeal before respondent No.1 against the order dated June 07, 2016. The contempt petition was disposed of on October 28, 2016 and the Secretary, Ministry of Civil Aviation, Government of India, New Delhi passed the impugned order dismissing the appeal of the petitioner vide order dated November 23, 2016. DGCA passed order dated November 25, 2016 dismissing the representation dated June 14, 2016 upholding the cancellation of appointment to the post of DFT by withdrawing the offer of appointment dated March 04, 2016.

10. Again aggrieved, the petitioner approached the Principal Bench of the Tribunal in OA No.4196 of 2016 challenging the order dated November 25, 2016 which case is pending.

11. On February 06, 2017 the petitioner tendered his resignation which he claims to have been a decision taken under pressure. He was given liberty by HICA to join any other organization for employment. On March 28, 2017 he applied for withdrawal of his resignation addressed to the Principal Secretary, Civil Aviation, Haryana expressing his willingness to

continue with HICA if his request is accepted. In this framework of inaction and action while facing the impugned orders, the petitioners approached this Court by way of the present petition. The following prayers have been made at the foot of the petition:-

“(i) Issuance of appropriate writ, order, directions, especially writ in the nature of Certiorari quashing the orders dated 01.04.2016 (Annexure P-16) and 07.06.2016 (Annexure P-17) passed by respondent No.2 i.e. Director General of Civil Aviation, whereby the approval given by the respondent No.2 vide order dated 14.10.2015 to petitioner upto 13.10.2020 to exercise the delegated functions of DGCA i.e. Designated Examiner of HICA and CFI under Provision of Rule 41 (b) on behalf of DGCA has been withdrawn and order dated 23.11.2016 (Annexure P-23) passed by respondent No.1 i.e. Secretary, Ministry of Civil Aviation, whereby the appeal dated 13.06.2016 has been dismissed being illegal, arbitrary, unconstitutional and against the law.

(ii) Writ of mandamus directing the respondents to restore the order dated 25.08.2015 (Annexure P-4) and 14.10.2015 (Annexure P-5), whereby the petitioner was appointed as Chief Flight Instructor and Designated Examiner with validity upto 13.10.2020 to exercise the delegated functions of DGCA i.e. Designated Examiner of HICA and CFI under provisions of Rule 41 (b) on behalf of DGCA and further directing the respondent No.3 and 4 to release all consequential benefits and relief w.e.f. June, 2016 and the operation of the impugned orders dated 01.04.2016 (Annexure P-16) 07.06.2016 (Annexure P-17) and 23.11.2016 (Annexure P-23) be stayed during the pendency of the present writ petition Writ of mandamus directing the respondents to restore the order dated 25.08.2015 (Annexure P-4) and 14.10.2015 (Annexure P-5), whereby the petitioner was appointed as Chief Flight Instructor and Designated Examiner with validity upto 13.10.2020 to exercise the delegated functions of DGCA i.e. Designated

Examiner of HICA and CFI under provisions of Rule 41 (b) on behalf of DGCA with all consequential benefits and relief w.e.f. June, 2016 and the operation of the impugned orders dated 01.04.2016 (Annexure P-16) 07.06.2016 (Annexure P-17) and 23.11.2016 (Annexure P-23) be stayed during the pendency of the present writ petition.

(i) For issuance of appropriate writ, order or directions etc. directing the respondents to grant all the consequential benefits to the petitioner viz. salary and other perks being given to the regular one.”

12. Learned counsel for the petitioner would argue that the appointment letter dated August 11, 2009 issued by HICA offering appointment to the petitioner as Assistant Pilot Instructor contains stipulations in Clause (vi) that HICA will bear all the expenses relating to the renewal of Medical and all Aircrew licences during the service period with the Institute.

13. I have considered the contention. It is one thing to bear expenses of the licence and another to apply in time for renewal which is not a duty cast on HICA to be chastised in case of failure. Flying an Aircraft without licence is a very serious business and the aftermath of which has to be left to be operated by rules by the competent authorities in New Delhi. If the actions of the authorities are within the confines of law then it is not open for this Court to interfere in writ jurisdiction on the basis of sympathy or compassion without demonstration of any legal right or corresponding duty on the respondents. If they have acted within the law then I would refuse to entertain this petition and would dismiss it as no legal issues are involved in this case when the petitioner's actions hinge on his carelessness and the risk he took in flying an Aircraft without a valid licence

for the period in question. The impugned orders are neither illegal nor arbitrary.

14. Accordingly, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

12.05.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*