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

+ **W.P.(C) 2015/2018 & CM APPL. 8288/2018**

AVINASH BHARTI

..... Petitioner

Through: Mr S. Chakraborty, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Ms Anjana Gosain, Ms Prabiya

Thakur, Mr Shalim Nair, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.01.2019

VIBHU BAKHRU, J

1. The petitioner is an Aircraft Maintenance Engineer and the Central Government had granted him a licence – being AME Licence No. 6745 (A&C) – issued in terms of Rule 61 of the Aircraft Rules, 1937 (hereafter ‘the Rules’).

2. The petitioner has filed the present petition impugning the order dated 27.09.2016 passed by the Director of Airworthiness from the Office of the Director General of Civil Aviation (hereafter ‘DGCA’). In terms of the said order, the petitioner’s AME Licence was suspended for a period of five years and his acceptance to hold the post of Base Maintenance Manager was withdrawn. The petitioner’s appeal under Rule 3B of the Rules, to the Secretary, Civil Aviation, Government of India, against the order dated 27.09.2016, was rejected by an order dated 25.10.2017, which is also

impugned in the present petition.

3. The petitioner was posted with M/s Indamer, Helicopter Division Mumbai at the material time. It is stated that an anonymous report was received by the Director General of Civil Aviation with regard to certain irregularities in the certification of the maintenance work by the certifying staff of M/s Indamer, Helicopter Limited. Consequently, an inspection was carried out by the representatives of DGCA at the Helicopter Division of the M/s Indamer at Mumbai between 19.05.2016 and 20.05.2016 during which the maintenance records, stores records and other records were examined by the representatives of the DGCA.

4. The inspection revealed several irregularities and it was, *inter alia* found that the petitioner had issued certificates for pre-flight inspections which were not done by him. It was accordingly alleged that the petitioner had indulged in false certification on several occasions.

5. In terms of Sub-rule (15) of Rule 61 of the Aircraft Rules, 1937 (the Rules), the petitioner as well as two other personnel were issued a Memorandum dated 16.06.2016 in terms of which the petitioner was called upon to explain as to why action not be taken against him for “*wrongly carrying out and certifying the maintenance.*”

6. On 30.06.2016, the petitioner responded to the aforesaid Memorandum of allegations. It is pointed out that in response to most of these allegations, the petitioner conceded to deficiencies and expressed his regret.

7. Thereafter, on 08.07.2016, the Director of Airworthiness from the office of the DGCA once again issued a Memorandum and the petitioner was called upon to explain why action should not be taken against him by wrongfully certifying the maintenance work as specified in the statement appended to the said Memorandum.

8. The petitioner responded to the aforesaid notice by a letter dated 11.07.2016 providing his justification with regard to the allegations contained therein. The explanations provided by the petitioner were not found satisfactory and by the impugned order dated 27.09.2016, the Director of Airworthiness, while exercising the powers conferred under Rule 61 of the Rules suspended the AEM Licence issued to the petitioner for a period of five years. It was further directed that the petitioner be withdrawn from the post of Base Maintenance Manager for an indefinite period.

9. The petitioner preferred an appeal dated 23.11.2016 to the Secretary, Civil Aviation, Government of India under Rule 3B of the Rules against the said decision challenging the said punitive measure.

10. The petitioner's appeal was disposed of by the impugned order dated 25.10.2017. The petitioner's appeal was rejected; however, the Appellate Authority limited the withdrawal of acceptance of the petitioner for the post of a Base Maintenance Manager to a period to five years.

11. The learned counsel appearing for the petitioner has not advanced any contentions with regard to the allegations regarding the certification work carried out by him. He has limited his contentions only to the quantum of punishment imposed on the petitioner. His principal contention is that in

terms of the Guidelines issued in January, 2017, the offences alleged against the petitioner did not warrant suspension of the AME licence for a period of five years as the punishment specified for the alleged offence was suspension of licence for a period of six months.

12. He also drew the attention of this Court to an observation made by the Appellate Authority, where it has been observed that *“imposing the same kind of punishment in terms of the violation prescribed in the above referred manual [Guidelines for enforcement actions issued in January, 2017] may not be fair”*. He further submits that since specific guidelines had been issued in January, 2017 with regard to the punishment that could be imposed with respect to specified offences, the respondents were required to take the guidelines into account while imposing the punishment.

13. Ms Gosain, the learned counsel appearing for the respondents countered the aforesaid submissions. She submitted that since the guidelines in question had been issued after the offences alleged stated to have been committed by the petitioner and after the proceedings had been initiated against the petitioner, the said guidelines were not required to be followed. She has also referred to the relevant procedure which expressly provided that licence of Maintenance Engineer could be suspected or cancelled. She has also referred to the provisions relating to “Deterrent Action” as contained in Chapter 12 of the “DGCA Enforcement Policy and Procedures Manual”, which required imposition of a deterrent action where an evidence indicates that an individual has contravened statutory provisions. She submits that the said deterrent actions include administrative action of suspension and cancellation of licences. In certain extreme cases, where in

the opinion of the Director, it is apposite to seek punishment by a court of law, the deterrent action would also include seeking judicial action. She submits that keeping the aforesaid provisions in view, the concerned authorities had decided to take the deterrent action for suspension of the petitioner's licence and withdrawal from the post of Maintenance Engineer Manager.

14. I have heard the learned counsel for the parties. The controversy involved in the present petition is limited to whether the punishment imposed on the petitioner is proportionate and commensurate with his misconduct/offence.

15. Undisputedly, the concerned officers of the respondents have the discretion to decide the quantum of punishment to be imposed on the petitioner. No interference with such discretion would be warranted unless, the court finds the same to be unreasonable, arbitrary or such that it shocks the conscience of the court. However, the decisions of administrative authorities can also be examined on the anvil of proportionality, which is yet another facet of unreasonableness.

16. The Courts in several decisions have held that any quantum of punishment imposed on a person must commensurate with the gravity of the misconduct for which he is found guilty.

17. The question whether any punishment is disproportionate is also required to be examined on the touch stone of the standards as set by the concerned organizations. In ***Kulja Industries Ltd. v. Chief General Manager, BSNL: AIR 2014 SC 9***, the Supreme Court had examined the

question of proportionality in the context of blacklisting and had indicated several guidelines that were required to be followed. It was also suggested that various organisations must set guidelines to lend objectivity to the decision of the punitive measure to be taken.

18. In the present case, paragraph 12.6 of the “DGCA Enforcement Policy and Procedures Manual” also specifically provides for the guidelines for selection of an appropriate deterrent action. The said paragraph is set out below:

“12.6 Selection of Appropriate Deterrent Action

The type of deterrent action depends on the specific offence. The minimum enforcement action is sufficient to achieve compliance as stringent sanctions for a first offence are more likely to cause resentment than encourage future compliance. However, where the offence is repetitive in nature or has seriously jeopardized aviation safety, administrative action may not be sufficient. In these cases, judicial action may be more appropriate.”

19. It is relevant to note that it is expressly stipulated in the aforesaid paragraph that the minimum enforcement action which is sufficient to achieve compliance should be imposed in cases of the first offence. It is also specified that the deterrent action would depend on the specific offence.

20. The Guidelines issued in January, 2017 now further set out the objective criteria for awarding the quantum of punishment. Having set out an objective measure for selection of the appropriate deterrent action, there is no reason why the same ought not have been followed in the case of the petitioner. Merely because the proceedings had commenced against the

petitioner prior to issue of the said Guidelines, is no reason to exclude the objective criteria which has been now specified, presumably after the necessary deliberation.

21. In view of the above, the impugned orders to the extent of quantum of punishment are set aside. The matter is remanded to the Director of Airworthiness, DGCA for a fresh examination as to the deterrent action required to be taken in case of the petitioner keeping in view the aforesaid Guidelines issued in January, 2017. The Director of Airworthiness, DGCA shall pass a fresh order within a period of eight weeks from today. In the meantime, the AME Licence of the petitioner shall remain suspended.

22. It is clarified that this Court has not expressed any opinion as to merits of the petitioner's contention that in terms of the Guidelines, 2017, the petitioner licence was liable to be suspended for a period of six months. The question as to the quantum of punishment to be imposed in terms of the said Guidelines would be determined by the Director of Airworthiness, DGCA.

23. The petition is disposed of in the above terms. The pending application stands disposed of.

VIBHU BAKHRU, J

JANUARY 08, 2019

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