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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 9th March, 2021

+ **W.P.(C) 915/2021**

VEERAVALLI RAJU SOLOMON Petitioner
Through: Mr. V. Shashank Kumar and
Mr. Mahesh Mamindla, Advocates.
(M: 9910800508)

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Rajesh Gogna, CGSC for R-1 to 3

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The Petitioner, is a pilot who successfully completed his flight training in Florida, USA, and obtained a Commercial Pilot License issued by the Federal Aviation Administration, U.S. Department of Transportation (*hereinafter 'FAA'*). The Petitioner intended to obtain his Indian Commercial Pilot Licence (*hereinafter 'ICPL'*) on the strength of the flying experience he had obtained in the USA.
3. The procedure to apply and obtain the ICPL is governed by the Aircraft Act, 1934 and the Aircraft Rules, 1937 (*hereinafter 'the Rules, 1937'*), framed thereunder. One of the requirements under the Act and Rules is also referred to as 'recency requirement'. As per this requirement, the flying experience only six months prior to the date of the making the application for an ICPL, would be taken into consideration towards fulfilment of the pre-requisites of the application. This requirement is stipulated in Section J(1)(e) of Schedule II of the Rules, 1937 and reads as under:

“1. Requirements for issue of Licence — An applicant for a Commercial Pilot’s Licence shall satisfy the following requirements:—

.....

(e) Experience— He shall produce evidence of having satisfactorily completed as a pilot of an aeroplane within a period of five years immediately preceding the date of application for licence not less than two hundred hours of flight time, which shall include—

(i) not less than one hundred hours of flight time as Pilot-in-Command of which not less than fifteen hours shall have been completed within a period of six months immediately preceding the date of application for licence;

(ii) not less than twenty hours of cross-country flight time as Pilot-in-Command including a cross-country flight of not less than three hundred nautical miles in the course of which full stop landings at two different aerodromes shall be made;

(iii) not less than ten hours of instrument time of which not more than five hours may be on an approved simulator; and

(iv) not less than five hours of flight time by night including a minimum of ten take-offs and ten landings as Pilot-in-Command as (sole manipulator of controls) carried out within six months immediately preceding the date of application for licence.

Provided that in case of an applicant who is in possession of a Commercial Pilot’s Licence (Helicopters/Airline Transport Pilot’s Licence (Helicopters) and who has satisfactorily completed not less than 1000 hours of flight time as Pilot-in-Command of a helicopter, the above experience requirement of two hundred hours as pilot of an aeroplane shall be reduced to one hundred hours, which shall include –

(i) Not less than seventy five hours of flight time as pilot-in-command including a minimum of twenty five hours of cross country flight time and ten hours of

instrument time of which not less than five hours may be on approved simulator;
(ii) Not less than five hours of flight time by night including ten takeoffs and landing patterns; and
(iii) Not less than ten hours of flight time on aeroplane within a period of six months immediately preceding the date of application for issue of licence”

As per the above provision, a pilot seeking an ICPL requires:

- i) Experience of flying for at least 200 hours within a period of five years preceding the date of application;
- ii) Of the said 200 hours, at least 100 hours of flight time has to be as a pilot-in-command;
- iii) Of the said 100 hours, at least 15 hours of flying experience ought to be within a period of six months prior to the date of application;
- iv) Of the 200 hours, at least 20 hours of cross-country flight time as pilot-in-command as specified in (ii) of the provision;
- v) At least 10 hours of instrument time, out of which, the time on an approved simulator cannot be more than 5 hours; and
- vi) At least 5 hours of flight time by night with a minimum of 10 take offs and 10 landings as pilot-in-command in the 6 months period preceding the date of application;
- vii) In case of commercial pilots who already hold a license and who have completed not less than 1000 hours of flight time as pilot-in-command (helicopter), the experience requirement of 200 hours could be reduced to 100 hours subject to proviso above.

4. The grievance of the Petitioner is that his complete flight experience is not being considered for the purpose of issuance of his ICPL due to various

delays that occurred in view of the outbreak of the COVID-19 pandemic and the circumstances surrounding the same. The case of the Petitioner is that he fully satisfies the flying experience in the number of flying hours, but the Respondents are treating a substantial portion of his experience as having lapsed due to the fact that the said experience is beyond the 6 months' range, prior to the date of application.

5. The brief chronology of events leading to the rejection of the Petitioner's ICPL application is that the Petitioner completed his flight training in Florida, USA on 30th December, 2019. The Petitioner then wished to obtain an ICPL, for which, in his understanding, he required to obtain the following certificates and undergo the following steps, in this order:

- i) Obtain the Radio Telephone Operator (Restricted) Certificate (*hereinafter 'RTR Certificate'*);
- ii) Obtain the Flight Radio Telephone Operator's Licence (*hereinafter 'FRTOL'*);
- iii) Undergo requisite Skill Tests;
- iv) Make an application for an ICPL

6. He accordingly took the RTR examination which was conducted by Respondent No. 3 - Ministry of Communication, Department of Telecommunication (*hereinafter 'the Ministry of Communication'*). The said examination was conducted on 2nd March, 2020 and it is the case of the Petitioner that the results of this examination are usually declared within one week. However, due to the outbreak of the pandemic in the end of March, 2020, the results were declared only on 6th July, 2020 i.e., after a 3-month gap.

7. In the meantime, Respondent No. 2 – Directorate General of Civil Aviation (*hereinafter 'DGCA'*) also issued an order on 11th May, 2020, taking cognizance of the pandemic and provided that if the date of expiry of the flying experience with respect to the recency requirements falls between 23rd March, 2020 to 20th June, 2020, the flying experience with respect to the recency requirement will be extended by another 90 days. This was a policy decision taken by the DGCA. The relevant portion of the order of the DGCA dated 11th May, 2020 is as under:

"3. Keeping the above in view, the Competent Authority has in relaxation of the relevant provisions of rules 39C, 41, 42 and Sections A, E, F, G, H, I, J, K, M, N, O, P, Q, R, Y & Z of Schedule II of the Aircraft Rules 1937, approved the extension of the validity of licenses, ratings and other tests/examinations, as given below, by 90 days, provided the date of expiry falls between 23.03.2020 and 20.06.2020 (both dates inclusive):

(a)....

(b) For issuance of licenses or rating or Conversion of foreign licenses

(i) DGCA knowledge papers

(ii) Medical Assessments

(iii) Skill Tests/IR Test

(iv) Flying Experience requirements during preceding six months"

8. The RTR results of the Petitioner were declared on 6th July, 2020 and three days later i.e., on 9th July, 2020, the Petitioner applied to the Ministry of Communication for obtaining the RTR Licence. The issuance of the RTR Licence took more than a month and he received the licence only on 20th August, 2020.

9. In the month thereafter i.e., between 19th August, 2020 and 16th September, 2020 the Petitioner is stated to have suffered a personal tragedy

owing to the demise of his grandfather and consequently, had to take care of his family. He finally applied for the FRTOL on 17th September, 2020.

10. The FRTOL was issued to the Petitioner on 24th September, 2020. He thereafter, underwent the checks and conversion flights in Aligarh, Uttar Pradesh to complete the conversion test for meeting the conversion requirement and finally submitted his application for conversion of his Foreign License to an ICPL on 30th September, 2020. Since there was no reply to his application, he filed an RTI application dated 23rd November, 2020 enquiring about the reason for the delay in declaration of the results of the RTR examination. He was then informed that the delay in the RTR result was due to Covid-19. However, finally vide E-mail dated 24th December, 2020, the Petitioner's application for an ICPL was rejected on the ground that the Petitioner did not meet the flying experience requirement in the six months immediately preceding the date of making the application. Thereafter, he moved several representations which did not elicit any response leading to the filing of the present writ petition.

11. In the present writ, vide order dated 22nd January, 2021, notice was issued in the matter and the DGCA was asked to consider as to whether the Petitioner would meet the recency requirements if his application was taken to be filed in March-April, 2020 i.e., when he applied for the RTR certificate. In response, the DGCA has filed a detailed counter affidavit and cited the various provisions of the Aircraft Act, 1934 read with the Rules, 1937 and the requirements, thereunder.

12. The sum and substance of the affidavit of the DGCA is that there was a misunderstanding by the Petitioner in waiting for the RTR certificate to be issued. In fact, according to the DGCA, the Petitioner ought to have applied

for the ICPL immediately upon the result being declared on 6th July, 2020 and not waited for the RTR certificate to be issued. The delay, according to the DGCA, also took place because the Petitioner need not have waited for the FRTOL but could have obtained a FRTOL (Restricted) and undergone the test checks in Aligarh, which he later on did. Thus, according to the DGCA even if the Petitioner had filed an application sometime in July and August, 2020, his flying experience could have been considered. However, the delay till 30th September, 2020 would in fact, mean that the flying experience acquired by the Petitioner had passed the six-month period for which no credit can be given for fulfilling the recency requirement. Finally, it is submitted by Id. counsel appearing for DGCA that the requirements under the Rules, 1937 are quite strict and accordingly, the Petitioner's case also does not qualify for the 90 days relaxation as per the notification dated 11th May, 2020 of the DGCA, as the flying experience of the Petitioner did not expire between the period of 23rd March, 2020 and 20th June, 2020.

13. Some portions of the counter affidavit of the DGCA are set out below:

“10. That due to unprecedented COVID-19 pandemic situation and as per the guidelines issued by the International Civil Aviation Organisation (ICAO), the DGCA vide order no.18014/1/2020-DTL dated 11 May 2020 had granted extension to the validity of the various flying experience requirements by 90 days subject to the date of expiry falling between 23.03.2020 and 20.06.2020 (both dates inclusive). As per this order, the extension was only up to 19 Sep 2020 for that validity which lapsed on 20.06.2020. This means that the flying experience acquired between 24.09.2019 to 21.12.2019 only can get extension under this Order and the last flying hours acquired on 21.12.2019 may get extension up to 20.09.2020.”

Though, the flying hours acquired by the petitioner between the periods 24.09.2019 to 21.12.2019 are more than 50 hours, however since as per the Order of extension his flying hours acquired on 24.09.2019 will expire on 23.06.2020 and the flying hours acquired on 21.12.2019 stand expired on 20.09.2020 thus all the flying hours acquired during this period stand lapsed before the date of application i.e. on 30.09.2020. Thus, none of the flying hours acquired during the period of 24.09.2019 to 21.12.2019 by the petitioner can be counted against the recency requirement in last six months immediately preceding the date of application. Accordingly, the flying hours which could be considered on 30.09.2020 towards recency requirements were 07:18 hours, which were acquired by the petitioner between 27 .09.2020 to 29.09.2020 and these hours will also start lapsing wef 26.03.2021 onwards and all these hours will lapse on 29.03.2020. The copy of the DGCA Order dated 11 May 2020 is attached as Annexure -3 @Page no. 52-55.”

14. Even as per the application of the Petitioner, the Petitioner has more than 200 hours of flying experience in the last two years. Admittedly, on the date when the Petitioner appeared for the RTR examination i.e., 2nd March, 2020 all his flying hours would have been counted for the experience which was required in terms of the Aircraft Act, 1934 and the Rules, 1937 thereunder. The outbreak of the pandemic happened after the Petitioner appeared in the examination which was on 2nd March, 2020. It is not in dispute that usually the RTR examination results are declared quickly. However, due to the outbreak of the pandemic, the results were delayed till 6th July, 2020 and thereafter, the Petitioner waited for the certificate to be issued which he ideally need not have awaited. As per the Respondent, if the Petitioner had immediately upon declaration of results, obtained his FRTOL (Restricted) to undergo the required Skill Test and filed

his application by 31st July, 2020, his entire flying experience would have been counted. The steps which the Petitioner undertook was as per his own understanding, owing to the fact that the Petitioner was not aware that he need not submit the RTR Certificate, and only the RTR examination result would have sufficed. In so far as the FRTOL (Restricted) is concerned, the Petitioner waited for the issuance of the FRTOL licence prior to applying for the Skill Test, which again, in the Respondent's opinion, he need not have waited for. This understanding may have emanated from a reading of Section J(1)(g) of the Rules, 1937 reads as under:

"1. Requirements for issue of Licence — An applicant for a Commercial Pilot's Licence shall satisfy the following requirements:

....

(g) Other Requirements— He shall be in possession of a current Flight Radio Telephone Operator's Licence for operation of radio telephone apparatus on board an aircraft issued by the Director-General."

15. This Court has seen the dates and the manner in which the Petitioner has proceeded in undertaking the various steps towards filing an application for an ICPL. Initially, delay occurred in the period from March till July due to the pandemic. Thereafter, between July to September the Petitioner had taken all the necessary steps required to file the application on 30th September, 2020. After perusing the counter affidavit it is clear that the Petitioner in the opinion of this Court would have satisfied the 'recency' requirement in any of the following circumstances:

- i. If the period between March and July, which is the period consumed in the declaration of RTR results, is deleted from the calculation of the recency requirements;

- ii. If the Petitioner is given the benefit of 90 days which the Respondent in any event considered as a reasonable relaxation period in view of the outbreak of the Covid-19 pandemic, as per the 11th May 2020 notification;
- iii. If the Petitioner had made the application on 19th September 2020 and not on 30th September 2020.

A perusal of the various columns which have been filled in the application for conversion of his Foreign License to an ICPL shows that he has more than 100 hours as a Pilot-in-Command. He also has the necessary instrument time and all other requirements as per the Rules, 1937. Further, Rule 41 of the Rules, 1937 vests considerable discretion in the DGCA, in case of pilots who are qualified from a Contracting state i.e., a State which is a party to the Convention on International Civil Aviation, 1944, from all or any of the flying tests or technical examinations required for issue of a license if his flying experience and competency meets the requirements of the Rules, 1937. The relevant portion of Rule 41 of the Rules, 1937 is as under:

“41. Proof of competency- Applicants for licences and ratings shall produce proof of having acquired the flying experience and having passed satisfactorily the test and examinations specified in Schedule II in respect of the licence or rating concerned :

....

Provided further that a person to whom a licence of a particular class has been issued by the competent authority in a Contracting State may be exempted by the Director-General from all or any of the flying tests or technical examinations required for issue of a licence if his flying experience and competency are not less than the flying experience and competency laid down in Schedule II in respect of the corresponding licence under these rules. If he is the holder of a

current licence, he may be further exempted from medical examination for the period for which his licence is current :”

16. In any event, the entire reason for the delay in the Petitioner’s application for an ICPL is rooted in the pandemic which led to delay in the declaration of results of the RTR examination. The Petitioner, in the opinion of this Court, is a genuine candidate who has an FAA recognised commercial pilot licence issued in the USA and the flying experience required under the Rules, 1937. If the flying experience is counted, without applying the six-month rule, it is not even disputed that the Petitioner has the requisite experience. Thus, the Petitioner is entitled to relief in the present petition.

17. Accordingly, the Petitioner’s application for an ICPL shall be re-considered by the Respondents, in these facts, as satisfying the ‘recency’ requirement and shall be processed in accordance with law. The decision on the Petitioner’s application shall now be taken and communicated to the Petitioner within a period of two weeks from today. Considering the fact that the remaining flying experience which the Petitioner undertook at Aligarh, Uttar Pradesh, between 26th September, 2020 and 29th September 2020 is due to expire between 26th March, 2021 and 29th March, 2021, a decision shall be taken by the Respondents on or before 22nd March, 2021.

18. The petition is allowed in the above terms.

PRATHIBA M. SINGH, J

MARCH 9, 2021
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(corrected and released on 13th March, 2021)