

\$~12 (2021)

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

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Date of decision: 04.08.2021

+ **W.P.(C) 7671/2021 & CM No.23957/2021**

SHAILENDER HOODA

.....Petitioner

Through : Mr. Abhijit Banerjee, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through : Mr. Rakesh Kumar, Adv. for R-1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

CM No.23957/2021

1. Allowed, subject to just exceptions.

W.P.(C) 7671/2021

2. This writ petition is directed against the order dated 11.01.2021 passed by the Central Administrative Tribunal (in short 'the Tribunal') in O.A.No.4196/2016.

2.1. The Tribunal, *via* the impugned order, has sustained the order dated 25.11.2016 passed by the Government of India, Ministry of Civil Aviation, Directorate General of Civil Aviation (DGCA), which, in effect, represents respondent nos. 1 and 2.

2.2. Respondent nos. 1 and 2, vide order dated 25.11.2016, have cancelled

the offer of appointment captured in communication dated 04.03.2016, made to the petitioner. In sum, respondent no.1 has withdrawn the offer of appointment, vide its order dated 25.11.2016.

2.3. It is required to be noticed that, the petitioner had applied for the post of Director of Flying Training, pursuant to the advertisement issued by respondent no.2/DGCA. The process of selection was entrusted to respondent no.3/UPSC. It is not in dispute that, the selection committee recommended the petitioner's name for appointment to the said post.

2.4. Since there was a delay in issuance of the appointment order, the petitioner had approached the Tribunal *via* O.A. No.2229/2016. This OA was disposed of by the Tribunal vide order dated 13.07.2016, directing the respondents to take a decision, within one month from the date of receipt of the order.

2.5. As a matter of fact, the record shows that, the petitioner had also initiated contempt proceedings in the matter [i.e. CP No. 440/2016 filed in OA No, 2229/2016], perhaps, on account of the fact that there had been a delay on the part of the respondents, in taking a decision *qua* the petitioner's appointment.

2.6. It is, at this juncture, that respondent no.2/DGCA issued an order dated 25.11.2016, to which we have made a reference above. The petitioner, as noted hereinabove, has assailed the said order, *via* the instant O.A., i.e., O.A.No.4196/2016.

2.7. The record shows that, the order dated 25.11.2016 was passed against the petitioner, principally, on the following ground:

“... Capt. Hooda lacks the eligibility for the post of Director, Flying Training due to deficiencies in the technical competency which

is construed by his act of suppression of material information and his approach being very lethargic, casual and insincere towards rules and procedures, which has also been upheld by the Appellate authority”.

2.8. The record establishes that, the petitioner was issued a show cause notice, on 01.03.2016, by respondent no.2/DGCA, as he had imparted instruction as a Flying Instructor for little over 60 hours, between 12.11.2015 to 25.11.2015, without a valid licence in place. The petitioner had replied to the aforementioned show cause notice vide communication dated 08.08.2016.

2.9. The fact that the petitioner had acted as a Flying Instructor for the aforementioned period, without a valid licence, was accepted by the petitioner in his reply to the aforesaid show cause notice.

3. According to respondent no.2/DGCA, there was a misrepresentation of facts by the petitioner, as regards material information, and therefore, the said respondent was not willing to continue with the offer of appointment made to him.

4. Mr. Abhijit Banerjee, who appears on behalf of the petitioner, says that, the eligibility criteria qua subject post did not require the petitioner to secure Chief Flight Instructor's and Designated Examiner's [in short "CFI and DR"] license. Thus, the offer of appointment made to the petitioner should not have been cancelled on the ground that the CFI and DR was withdrawn.

4.1 On being queried, Mr. Banerjee does concede that, for the advertised post, the petitioner is required to have a valid current FIR(A) licence. As noticed above, it is not in dispute that the petitioner did impart instructions as a Flying Instructor for over 60 hours, at a point in time when the FIR (A)

No. 508 issued to him, was pending renewal by the Haryana Institute of Civil Aviation, Hisar [in short “Institute”].

4.2 Furthermore, Mr. Banerjee says that the order dated 25.11.2016 would impact the petitioner throughout his life. According to him, the petitioner will not be in a position to apply for a similar post [i.e., Director of Flying Training], because of respondent no. 2’s/DGCA’s order dated 25.11.2016.

4.3. In the course of the arguments, we were informed that, the petitioner, as of today, is working as a Pilot with SpiceJet Airlines.

5. We are of the opinion that, insofar as the respondents are concerned, no fault can be found with their conduct.

5.1. Having regard to the fact that, the petitioner had acted in a manner which could have endangered the lives of those, if not others, to whom he had imparted flying instructions, during the period spanning between 12.11.2015 and 25.11.2015 - the respondents, were well within their rights to withdraw/cancel the offer of appointment, dated 04.03.2016.

5.2. To our minds, it was incumbent on the petitioner to disclose complete facts to the respondents, when he had applied for the subject post, including the fact that he had filed papers with the Institute for renewal of his FIR(A) license, assuming the averment made in the writ petition that he was unaware that the license had not been renewed, is true. Any which ways, one looks at the matter, pilots are required to be alert to such like situations. They are required to ensure that every time they fly a plane, or impart instructions, the licenses issued to them are valid.

6. Furthermore, a close perusal of the order dated 25.11.2016 would show that, the petitioner had preferred a statutory appeal against order dated

07.06.2016, passed by respondent no.2/DGCA, whereby it withdrew the petitioner's "delegated functions" to act as a CFI and DR.

6.1. The order dated 25.11.2016 also discloses that, the appellate authority, i.e., Secretary, Ministry of Civil Aviation, dismissed the said appeal, vide order dated 23.11.2016. Admittedly, the petitioner has not taken recourse to any legal remedy against the order passed by the appellate authority.

6.2. Therefore, for Mr. Banerjee to contend that the order dated 25.11.2016 would come in the way of his applying, for similar posts, in future, is completely untenable and a situation of his own making.

6.3. The petition filed before the Tribunal did not, even according to Mr. Banerjee, assail the order dated 23.11.2016, passed by the appellate authority i.e. Secretary, Ministry of Civil Aviation.

6.4. For the foregoing reasons, we are of the view that, no interference is called for qua the impugned order passed by the Tribunal.

7. The writ petition is, accordingly, dismissed. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 4, 2021

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