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

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Reserved on: March 04, 2024

Decided on: July 02, 2024

+ **W.P.(C) 7952/2014**

SACHIN SOLANKI

..... Petitioner

Through: Mr. L.S. Solanki, Advocate

versus

UNION OF INDIA

..... Respondent

**Through: Mr. Vivek Goyal, CGSC with
Mr. Shivam Singh and Mr.
Gokul Sharma, Advocates for
UOI**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The petitioner filed the present writ petition under Article 226 of the Constitution of India for issuance of appropriate writ for quashing the order dated 23.06.2014 (hereinafter referred to as “**the impugned order**”) vide reference no 8/2/2012-L-II whereby the respondent/Director General of Civil Aviation (DGCA) rejected the



representations for seeking exemption for the issuance of the Commercial Pilot License (CPL) to the petitioner.

2. The factual background of the case is that the petitioner claimed to be the youngest commercial pilot and has obtained the required certification from the International Airline Training Academy (IATA), Tucson, Arizona, USA after completion of training. The petitioner cleared the Class-II medical examination for obtaining Commercial Pilot License (CPL) on 07.05.2006. The petitioner appeared before Air Force Central Medical Establishment (AFCME) and was certified fit for Class-I medical assessment on initial issue of CPL. The petitioner appeared for Class-I medical exam at Air Force Central Medical Establishment (AFCME) on 02.01.2007 and was declared temporarily unfit on account of abnormality in EEG and incomplete RBBB on ECG (R). The respondent recommended further medical tests including MRI Brain, 2-D Eco Cardiography, Doppler study and opinion of Neurophysician. The petitioner was again examined on 20.01.2007 by AFCME and was declared unfit on 20.01.2007 and opinion of a Neurophysician and fitness certificate was asked for. The petitioner submitted MRI report along with a



report dated 31.01.2007 prepared by Dr. Udaya S. Sharma, Neurologist wherein it was stated that “incidental EEG abnormality detected” with conclusion of “asymptotic EEG abnormality” and no fitness certificate was required as the petitioner was never sick. The petitioner was issued a certificate of fitness of Class-I medical assessment on 06.02.2007 which was opined by the respondent as not final. The certificate was issued subject to final assessment by the Director General Medical Services (HQ).

2.1 The petitioner at that time had already left for IATA, Arizona, USA for completion of Commercial Pilot License course. The respondent vide letter dated 16.08.2007 declared the petitioner permanently unfit for flying on basis of abnormal EEG in medical examination of the petitioner conducted on 06.02.2007 at AFCME with the note that the petitioner can appeal to Director Medical Services (CA) against the decision of unfitness within 90 days of receipt of the letter dated 16.08.2007 and the appeal should be supported by opinion of two senior specialists and all relevant investigation. The petitioner could not prefer the appeal as he was at IATA, USA at that time and accordingly, the father of the petitioner



in letter dated 23.08.2007 addressed to the Director Medical Services (Civil Aviation) stated that the petitioner was found fit on 06.02.2007 during medical examination for Class-I. The father of the petitioner vide letter dated 19.09.2007 addressed to Director General Civil Aviation stated that the petitioner reserved his right to file appeal as the petitioner at time of issuance of letter dated 16.08.2007 was under training at International Airline Training Academy (IATA) and further vide letter dated 08.04.2008 sought further time for filing appeal till June, 2008. The father of the petitioner vide letter dated 17.10.2008 informed the respondent/DGCA about return of the petitioner back to India after completion of Commercial Pilot Certification course at USA and permission was sought for filing of appeal.

2.2 The petitioner preferred an appeal to the Director Medical Services (CA) in month of June, 2009 and along with appeal, submitted opinion of two Experts. It was also stated in appeal that the petitioner had undergone 2 EEG medical Tests at Holy Family Hospital, New Friends Colony, New Delhi and Apollo hospital and the petitioner was confirmed to be normal in reports. The respondent



vide Reference No AV/22025/10/DMS/MED dated 21.08.2009 intimated the petitioner that after due consideration, the appeal medical examination was not agreed to. The petitioner being aggrieved filed writ petition bearing no W.P. (C) 12262/2009 titled as **Sachin Solanki V Union of India** before this court to challenge the letter/Medical Assessment dated 16.08.2007 issued by Sh. J.K. Srivastava, Gp. Capt, Director Medical Services (Civil Aviation) and order dated 21.08.2009 passed by Sh. J.K. Srivastava, Gp. Capt, Director Medical Services (Civil Aviation) in appeal and the said writ petition was dismissed by the learned Single Judge of this Court vide order dated 17.02.2011. The petitioner being aggrieved by order dated 17.02.2011 preferred LPA bearing no. 289/2011 titled as **Sachin Solanki V Union of India** which was allowed by the Division Bench of this Court and the respondent/DGCA was directed to afford an opportunity of hearing after giving due notice to the petitioner and dispose of the appeal within 08 weeks.

2.3 The petitioner again underwent medical examination of Class-I at Air Force Central Medical Establishment (AFCME) and was issued a medical certificate on 25.04.2012 after completion of his



medical examination and was declared as **“has met prescribed Medical Standards”**.

2.4 The petitioner thereafter made representations on 09.07.2012, 29.11.2012, 04.12.2012 to the respondent/DGCA for seeking exemptions for the issuance of Commercial Pilot License (CPL) which were not responded by the respondent. The petitioner also sought personal appointment with the Director General of the Directorate of Civil Aviation (DGCA), New Delhi on 11.12.2012 and filed a chronological data of events on 17.12.2012 which was also not responded by the respondent. The petitioner again visited the Director of Licensing, DGCA and sought exemption/waiver of conditions for the issuance of Commercial Pilot License (CPL) as per Rule 160 of the Aircraft Rules, 1937.

2.5 The respondent through office of Director General of Civil Aviation vide communication bearing reference no 8/2/2012 L-II dated 28.05.2013 informed the petitioner that request of the petitioner for seeking exemption for the issuance of Commercial Pilot License (CPL) was examined and was not acceded to by the competent



authority. The relevant portion of the communication/order dated 28.05.2013 is produced as under:-

Reference may please be made to your letter dated 04.12.2012 on the above subject.

Your request for seeking exemptions for the issuance of Commercial Pilot License (CPL) has been examined and the same was not acceded to by Competent Authority. For issuance of CPL, IR requirements are laid down in Section J & O of Schedule-II of Aircraft Rules 1937. Copy of relevant regulation are enclosed herewith for reference.

2.6 The petitioner being aggrieved by Communication dated 28.05.2013 filed writ petition bearing no W.P.(C) 7053/2013 titled as **Sachin Solanki V Union of India** before this Court which was dismissed vide order dated 12.11.2013. The petitioner being aggrieved by the order dated 12.11.2013 filed an appeal before this Court bearing LPA no 985/2013 which was allowed vide order dated 21.02.2014 by the Division Bench of this Court whereby communication/order dated 28.05.2013 was ordered to be set aside. It was observed as under:-

On a plain reading of the above document, it is evident that no reasons whatsoever have been ascribed for not acceding to the request made by the appellant.

In view of the foregoing, we set aside the impugned order as also the order dated 28.05.2013 and direct the Director General of Civil Aviation to pass a reasoned order after



considering all the facts and circumstances of the case as also the circumstance that the requirement of an EEG has been done away with by virtue of a notice dated 02.11.2011. The Director General of Civil Aviation shall also take in consideration the fact that the time that was consumed between the taking of the written examination and the date on which the appellant was declared medically fit was apparently not on account of the appellant but because of the pendency of the matter before this court as also the consideration by the respondent. The reasoned order be passed within four weeks from today.

The appeal is allowed as above.

2.7 The petitioner again made representation dated 04.04.2014 along with documents to the Director (Licensing) Directorate of Civil Aviation for seeking exemption for the issuance of Commercial Pilot License (CPL). The respondent through D.C. Sharma, Director (Training & Licensing) for Director General of Civil Aviation rejected the representation dated 04.04.2014 submitted by the petitioner vide impugned order dated 23.06.2014. The relevant portion of impugned order dated 23.06.2014 is reproduced verbatim as under:-

As per Section A Schedule II of Aircraft Rules 1937 the date of application, shall be the date of receipt of application in the office of the Director-General on the date of application applicant has to meet the all the requirements of the relevant section of the Sch II of Aircraft Rules 1937. The applicant never submitted the



documents for issuance of license. However the request of applicant to consider the date 26.03.2009 for conversion of his foreign license to Indian License has further reviewed in light of the Court Order and it has been concluded that as the applicant was not medically fit on 26.03.2009 as per existing rule requirements on that day therefore his request cannot be considered and also on date 25.04.2012 when he was declared medically fit he was not meeting the other requirements of Section J Schedule II of Aircraft Rule 1937 for issue of CPL.

In view of the above since the applicant was not meeting the requirement of issue of CPL on the above mention dates and as per Aircraft Rules 1937 DGCA is not empowered to grant exemptions as requested by the applicant, the case of Sh. Sachin Solanki cannot be considered for issue of CPL.

2.8 The petitioner challenged the impugned order dated 23.06.2014 on grounds that the respondent has failed to abide by the order passed in LPA no 985/2013 as per Section A of Schedule-II of Aircraft Rules 1937, the date of application shall be the date of receipt of application in the Office of the Directorate General. The petitioner never submitted the documents for issuance of License and as such the question of meeting the requirement on an earlier date does not arise. The respondent has considered 26.03.2009 as date for issuance of license while as per order passed in LPA bearing no 289/201, the petitioner was declared medically fit on 25.04.2012 as the petitioner



was not meeting with the requirement of Section J of Schedule-II of Aircraft Rules, 1937 and the respondent had to consider the actual date of fitness i.e.25.04.2012 and from that date, the period should be reckoned but the same was not taken into consideration while passing the impugned order. The petitioner had gone immense training for more than 1 year and 10 months in the United States of America (USA) and has passed the practical and theoretical exams. The petitioner has crossed all stages of Commercial Pilot License i.e. Student Pilot License (SPL), Private Pilot License (PPL) and the Commercial Pilot License which is the last and ultimate stage to become a trained commercial pilot. The petitioner further successfully completed the Class-I medical fitness and became entitled to the conversion of his commercial pilot license. The petitioner has already undertaken to undergo recency test for flying which is the only requisite for getting/converting the US commercial pilot license to Indian Pilot License. The respondent should have exercised discretion under Rule 160 of Aircraft Rules, 1937 which does not confer unbridled power upon the respondent to exempt or not at its will. The provision under para 3.2 is in conflict with Rule



160 of Aircraft Rules, 1937. The petitioner does not lack any qualifications required for grant of a Commercial Pilot License. The petitioner has qualified the essentials for grant of a Commercial Pilot License which are Written Examinations and Flying Training Examinations. The petitioner was denied consideration only on the ground of his being late in applying for issue of Commercial Pilot License on the basis of these essential qualifications. The petitioner has filed the present writ petition with the prayer which is produced verbatim as under:-

- a) issue an appropriate writ, order or direction under Article 226 of the Constitution of India for quashing the impugned order dated 23.06.2014 vide reference No.8/2/2012-L-II whereby the respondent rejected the representations for seeking exemptions for the issuance of Commercial Pilot License (CPL) to the petitioner;**
- b) further direct the respondent to allow the exemptions as prayed in various representations of the petitioner;**
- c) Quash para 3.2 of Civil Aviation Requirements (CAR) dated 6.3.2007 Series B Part-2 as ultra vires to Rule 160 of Air Craft Rules 1937.**
- d) Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.**

3. The respondent filed a counter affidavit to the amended petition wherein stated that the application of the petitioner for seeking



exemption was rejected on sufficient grounds keeping in view the safety of the aircraft operations. The petitioner was not medically fit on 14.06.2009 as per applicable Regulation. The petitioner never submitted his documents for issuance of CPL/IR and as such qualification/requirements for the issuance of CPL/IR could not be ascertained. The petitioner was informed at every stage vide office letters no. 8/2/2012- L-II dated 01.11.12, 07.12.12 and 28.05.2013 respectively.

3.1 The respondent in reply to grounds of appeal stated that the respondent has complied with the order dated 21.02.2014 passed in LPA no 985/2013 by issuing the impugned order dated 23.06.2014. The petitioner has never submitted documents for issuance of license and accordingly question of suitability for his candidature doesn't arise. The respondent considered actual date of fitness i.e. 25.04.2012 while passing the impugned order dated 23.06.2014 but the applicant was not meeting the requirements as mentioned in Section J, Schedule II of Aircraft Rules, 1937 for issue of CPL. The petitioner had undergone training in USA for CPL but he was not meeting the requirements for issue of Indian CPL as stipulated in Aircraft Rules,



1937. The respondent issued the impugned order dated 23.06.2014 by considering all the facts submitted by the petitioner through representation/writ petition. The petitioner was required to fulfil other requirements to get Indian CPL as per Aircraft Rules, 1937 besides recency (preceding 06 months flying experience) requirement. The petitioner vide order dated 28.05.2013 was advised to comply with the requirements as stipulated in Aircraft Rules, 1937. The respondent issued a speaking order dated 23.06.2014. The petitioner was re-examined for medical fitness and was found fit but it does not indicate that the petitioner was medically fit as on 06.02.2007 as per the applicable regulations in vogue. The respondent/DGCA is not empowered to grant exemptions under Rule 160 of Aircraft Rules, 1937. The request of the petitioner for issuance of CPL was not considered keeping in view of basic requirement of currency of flying experience and knowledge for the safety of Operations. The petitioner was declared permanently unfit on 16.08.2007 based upon applicable regulations. The petitioner was declared medically fit on 25.04.2012 but he was not meeting with other requirements of Section J, Schedule II of Aircraft Rules, 1937. The petitioner might be



fulfilling requirements of Written Examinations and Flying Training experience on a back date but the petitioner never submitted requisite documents. It was prayed that the petition be dismissed.

4. The petitioner filed a rejoinder to counter affidavit filed in response to amended petition wherein reiterated facts stated in the petition/amended petition and stated that the respondent should have disclosed in order dated 28.05.2013 about its incompetency to grant exemption. Rule 160 of Aircraft Rules, 1937 empowers the respondent to grant exemptions. The petitioner was medically fit on 16.06.2009 by virtue of medical certificate Class-I issued to him on 06.02.2007 by AFCME. The petitioner met with all qualifications and requirements at the relevant time and since he was not declared medically fit by the respondent, as a result he was not able to process for the purpose of getting CPL License.

4.1 The petitioner in rejoinder to reply to the grounds stated that the petitioner filed documents with the request of exemptions in his letter dated 04.04.2014 and with his application under Rule 160 of Aircraft Rules, 1937. The respondent being an authority to deal with the licenses and the training of the pilot is duly empowered to grant



licenses and to grant the exemptions as per the Aircraft Rules, 1937. The petitioner was deemed to be qualified on 25.04.2012 and as such there was no reason not to grant exemption to the petitioner. The respondent intentionally did not comply with the order dated 21.02.2013 in LPA no 985/2013 passed by this Court. The respondent/DGCA is empowered to grant exemptions under Rule 160 of Aircraft Rules, 1937. The petitioner was fit vide Class-1 medical fitness certificate dated 06.02.2007 and was again found medically fit for Class-I fitness on 25.04.2012 and was having all requirements for getting the license. It was prayed that the petitioner be granted relief as prayed for.

5. Sh. L. S. Solanki, the counsel for the petitioner advanced oral arguments and also filed written submissions. It was argued that the petitioner had gone to USA for flying training after successful medical examination of Class-I vide medical certificate dated 06.02.2007 issued by Air Force Central Medical Establishment (AFCME). The respondent sent a letter dated 16.08.2007 declaring the petitioner medically permanently unfit on the basis of abnormal EEG. The petitioner after returning from flying training, appealed



against the said order 16.08.2007 which was rejected by the respondent. The petitioner was subjected to another Class-I medical examination at Air Force Central Medical Establishment (AFCME) in pursuance of order dated 18.08.2011 passed by this court in LPA no 289/2011 which was filed after dismissal of writ petition bearing W.P.(C) no 12262/2009 vide order dated 17.02.2011 and the petitioner passed the Class-I medical test vide certificate dated 25.02.2012. It was further argued that the respondent did not comply with the order passed by this court and rejected the representation preferred by the petitioner. The respondent filed LPA no 985/2013 consequent to dismissal of Writ Petition bearing W.P.(C) no 7053/2013 and LPA no. 985/2011 was allowed vide order dated 21.02.2014. The counsel for the petitioner further argued that the respondent did not comply with the orders dated 18.08.2011 and 21.02.2014 passed by this court. The petitioner in pursuance of order dated 21.02.2014 submitted representation dated 04.04.2014 to the respondent for seeking exemption under Rule 160 of Aircraft Rules, 1937 which was rejected vide impugned order dated 23.06.2014. The EEG test was done away with or discontinued vide public notice no.



AV/22025/1/JDMS/Med. dated 02.11.2011. The petitioner had applied for exemption vide various representations dated 09.07.2012, 29.11.2012, 04.12.2012, 11.12.2012, 12.12.2012, 17.12.2012 and 05.03.2013 but the respondent/DGCA did not comply with order dated 21.02.2014 and rejected the representation vide the impugned order. The respondent despite impugned order stated that the respondent is not competent to allow the exemption under Rule 160 of Aircraft Rules, 1937. The respondent/DGCA is competent to decide the exemption as per the abovementioned Rule. The petitioner had undergone number of medical tests in India and USA. The counsel for the petitioner argued that action of the respondent in not allowing the exemptions under Rule 160 of Aircraft Rules, 1937 is arbitrary, biased and illegal and against the directions given by this Court particularly vide order dated 21.02.2014.

5.1 The counsel for the petitioner also filed additional written submissions wherein raised three arguments that the respondent/DGCA was not competent to decide the exemption under Rule 160 as per the rule 3.1 and 3.2 of Civil Aviation Requirements (CAR) dated 06.03.2007 as the respondent is required to forward the



application for the approval of the Central Government along with its recommendations after technical evaluation of the application by the concerned Directorate; the petitioner was not medically unfit on the day of passing the impugned order dated 23.06.2014 and the respondent has not complied with the order dated 21.02.2014 passed by this court in LPA bearing no 985/2013. It was argued that the petition be allowed as prayed for.

6. The counsel for the respondent advanced oral arguments and also submitted written submissions. It is argued that the petitioner vide letter dated 04.12.2012 requested for exemption of certain conditions as reproduced herein above for issuance of Commercial Pilot License (CPL). The respondent did not accede to the request of the petitioner for exemption which was conveyed to the petitioner vide letter dated 28.05.2013 and vide said letter, the petitioner was advised to meet the requirements as stipulated in Aircraft Rules, 1937. The petitioner though had undergone training in USA for CPL but the petitioner was not meeting the requirements for issue of Indian CPL as stipulated in Aircraft Rules, 1937. The petitioner was not medically fit on 16.06.2009 as per applicable Rules as the petitioner on the said date



never submitted documents for issuance of CPL, IR and hence, it could not be predicted whether the petitioner was meeting requisite qualifications/requirements. The respondent is not empowered to grant exemptions as requested by the petitioner which was communicated to petitioner vide order dated 23.06.2014 after complying with the order dated 21.02.2014 passed in LPA no. 985/2013. It was further argued that it was mentioned in order dated 23.06.2014 that the date of application cannot be considered as 26.03.2009 as at that time the petitioner was not meeting the requirements (medically unfit) as per the existing Rules and Regulations. The respondent has considered Class-I fitness medical assessment dated 25.04.2012 issued by the respondent while passing the order dated 23.06.2014 but the petitioner on that day did not meet the other requirements of Section J, Schedule II of Aircraft Rules, 1937 for issue of CPL. The respondent complied with the order dated 18.08.2011 passed by this court and the petitioner was re-examined for medical fitness and was found fit but it doesn't indicate that the petitioner was medically fit as on 06.02.2007. The petitioner never submitted documents pertaining to the requirement of Written



Examinations and Flying Training Examinations. It was also argued that currency of flying experience and knowledge are basic requirements for the safety of Operations at time of issuance of Pilot License. The petitioner vide order dated 28.05.2013 was advised to meet the requirements as stipulated in Aircraft Rules, 1937. The respondent/DGCA is not empowered to grant exemption under Rule 160. It was argued that the petition be dismissed being devoid of merits.

7. The respondent alleged that the Central Government as per Rule 160 of Aircraft Rules, 1937 is empowered to exempt any aircraft or person from operation of Rules either wholly or partially and Directorate General of Civil Aviation is not competent to grant such exemption. Rule 160 of Aircraft Rules, 1937 deals with general power of the Central Government to exempt any aircraft or person from operation of Rules either wholly or partially. It reads as under:-

GENERAL POWER TO EXEMPT

160- The Central Government may, by general or special order in writing exempt any aircraft or class of aircraft or any person or class of persons from the operation of these rules, either wholly or partially, subject to such conditions, if any, as may be specified in such order.



7.1 The Appeal preferred by the petitioner to the Director Medical Services (CA) in month of June, 2009 to impugn the letter dated 16.08.2007 whereby the petitioner was declared permanently unfit for flying on the basis of abnormal EEG in medical examination of the petitioner conducted on 06.02.2007 at AFCME was decided by J. K. Shrivastava, Gp. Capt., Directorate of Medical Services (CA) for Director General Civil Aviation vide Reference no AV/22025/10/DMS/MED dated 21.08.2009 intimating the petitioner that after due consideration, the appeal medical examination was not agreed to. The respondent further through office of the Director General of Civil Aviation vide communication bearing reference no 8/2/2012 L-II dated 28.05.2013 did not accede to the request of the petitioner for exemption for the issuance of Commercial Pilot License (CPL). The respondent through D. C. Sharma, Director (Training & Licensing) for Director General of Civil Aviation vide impugned order dated 23.06.2014 again rejected the representation dated 04.04.2014 submitted by the petitioner. The above referred communications only reflect that respondent through Director of Civil Aviation only dealt with various representations preferred by



the petition for seeking exemption from Commercial Pilot License. Rule 160 of Aircraft Rules, 1937 only deals with general power to exempt any aircraft or person from operation of Rules either wholly or partially. It clearly reflects that the DGCA as per mandate of Rule 160 is not authorized or competent to grant exemption to the petitioner from grant of Commercial Pilot License. There is nothing on record to comprehend that the Central Government has ever authorized the DGCA to grant exemption to any person including from issuance of Commercial Pilot License (CPL). It may be true that during entire communication with the respondent, the petitioner was not informed about competence of the Central Government to grant exemption from issuance of Commercial Pilot License but it does not dilute rigor of Rule 160 of Aircraft Rules, 1937. The application or any other communication submitted by the petitioner for grant of exemption from Commercial Pilot License was never forwarded or submitted to Central Government for consideration of exemption from Commercial Pilot License. The DGCA may be part of the Central Government but in absence of either express or implied authority to grant exemption from issuance of Commercial Pilot



License, it cannot be equated with the Central Government for purpose of Rule 160. There is force in argument advanced by the counsel for the respondent that the Central Government is only competent to grant exemption from Commercial Pilot License.

8. It is apparent that the petitioner was granted Commercial Pilot Certification from the International Airline Training Academy (IATA), Tucson, Arizona, USA. The petitioner on 07.05.2006 cleared Class-II medical examination for obtaining Commercial Pilot License (CPL) but on 02.01.2007, he was declared temporarily unfit on account of abnormality in EEG and incomplete RBBB on ECG (R) in Class-I medical exam. The petitioner was again declared unfit on 20.01.2007. The petitioner was issued a certificate of fitness of Class-I medical assessment on 06.02.2007 subject to final assessment by the Director General Medical Services (HQ). The petitioner vide communication/letter dated 16.08.2007 was declared permanently unfit for flying on basis of abnormal EEG in medical examination conducted on 06.02.2007. The petitioner preferred an appeal to the Director Medical Services (CA) in month of June, 2009 but the appeal medical examination was not agreed to which was



communicated to the petitioner vide Reference no AV/22025/10/DMS/MED dated 21.08.2009. The petitioner filed a writ petition bearing W.P.(C) no 12262/2009 titled as **Sachin Solanki V Union of India** to challenge the letter/Medical Assessment dated 16.08.2007 and order dated 21.08.2009 but the writ petition was dismissed vide order dated 17.02.2011. The petitioner preferred LPA bearing no. 289/2011 titled as **Sachin Solanki V Union of India** and vide order dated 18.08.2011, the respondent/DGCA was directed to afford an opportunity of hearing after giving due notice to the petitioner. The requirement of an EEG was done away by notice dated 02.11.2011. The petitioner again underwent medical examination of Class-I and a medical certificate on 25.04.2012 was issued wherein the petitioner was declared as **“has met prescribed Medical Standards”**. The petitioner thereafter made various representations including representation dated 05.03.2013 to the respondent/DGCA for seeking exemptions from issuance of Commercial Pilot License (CPL). The respondent vide communication dated 28.05.2013 did not accede to the request of the petitioner for seeking exemption for the issuance of Commercial Pilot



License (CPL). The petitioner filed writ petition bearing W.P.(C) no 7053/2013 titled as **Sachin Solanki V Union of India** to impugn the communication dated 28.05.2013 which was dismissed vide order dated 12.11.2013 and thereafter petitioner filed LPA no 985/2013 which was allowed vide order dated 21.02.2014 by the Division Bench of this Court whereby communication/order dated 28.05.2013 was ordered to be set aside with various directions including the Director General of Civil Aviation (DGCA) to pass a reasoned order after considering all the facts and circumstances of the case including requirement of an EEG done away by notice dated 02.11.2011. The petitioner again made representation dated 04.04.2014 to the Director (Licensing), Directorate of Civil Aviation for seeking exemption for the issuance of Commercial Pilot License (CPL) which was rejected vide impugned order dated 23.06.2014. The respondent considered the actual date of fitness i.e. 25.04.2012 while passing the order dated 23.06.2014.

8.1 It is worth mentioning here that the petitioner in representation dated 05.03.2013 claimed to have almost all requirements except following requirements:-



1. As PIC-15Hrs,
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 tests 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 - 5Hr,
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)

8.2 Schedule II of Aircraft Rules, 1937 deals with aircraft personnel.

Section J of the Schedule II deals with Commercial Pilots License (Aeroplanes). Clause 1 of Section J deals with the necessary requirements such as age, educational qualification, medical fitness, knowledge, experience, skill besides other requirements for issuance of commercial pilot License which are required to be satisfied before



issuance of commercial pilot License. Clause 1 of Section J reads as under:-

Section J

Commercial Pilot's License (Aeroplanes)

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

(a) Age— He shall be not less than Eighteen years of age on the date of application:

(b) Educational Qualification— He shall have passed Class Ten plus Two or an equivalent examination with Physics and Mathematics, from a recognized Board/University.

(c) Medical Fitness— He shall produce on a prescribed proforma a certificate of physical fitness from an approved Medical Board after undergoing a medical examination during which he shall have established his medical fitness on the basis of compliance with the requirements as notified by the Director-General under Rule 39B.

(d) Knowledge— He shall pass a written examination in Air Regulations, Air Navigation Meteorology and aircraft and Engines and Signals (practical) examination for interpretation of aural and visual signals, as per the syllabus prescribed by the Director-General :

Provided that the holder of a current Commercial Pilot's License (Helicopters) shall be required to pass an examination in Aircraft and Engines only.

(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 License 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 License;

(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 precedings the date of application for License.

Provided that in case of an applicant who is in possession of a Commercial Pilot's License (Helicopters/Airline Transport Pilot's License (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 License.



(f) Flying Training— He shall have completed the flying training in accordance with the syllabus prescribed by the Director-General.

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

(h) Skill— He shall have demonstrated his competency to perform the procedures and manoeuvres prescribed in the syllabus to the satisfaction of an examiner, on the type of aeroplane to which the application for License relates, within a period of six months immediately preceding the date of application. The Director General may, however, allow Skill Test or part thereof to be carried out on aircraft/ approved Zero Flight Time Training simulator level 'D' for the type of aircraft. The competency shall be demonstrated as in —

(i) general flying test by day;

(ii) general flying test by night;

(iii) a cross-country flight test by day consisting of a flight of not less than two hundred fifty nautical miles in the course of which at least one full stop landing at an aerodrome other than the aerodrome of departure shall be made; and

(iv) a cross-country flying test by night consisting of a flight of not less than one hundred twenty nautical miles returning to the place of departure without landing elsewhere.

8.3 It is also apparent that the petitioner was declared medically fit on 25.04.2012 but at that time the petitioner was not fulfilling other requirements as mentioned in Section J, Schedule II of Aircraft Rules, 1937 for issue of Commercial Pilot License. It is true that the



petitioner had undergone training in USA for CPL but it doesn't mean that the petitioner was meeting necessary requirements for issuance of Indian Commercial Pilot License as stipulated in Aircraft Rules, 1937. The petitioner was required to fulfil other requirements to get Indian CPL as per Aircraft Rules, 1937. The petitioner might be fulfilling requirements of written examinations and flying training experience on a back date but the petitioner never submitted requisite documents to the respondent. The respondent in order dated 23.06.2014 which is appearing to be speaking order, has considered relevant facts pertaining to issuance of Commercial Pilot License to the petitioner.

8.4 Sh. L. S. Solanki, the counsel for the petitioner argued that the petitioner had undergone successful medical examination of Class-I vide medical certificate dated 06.02.2007 but vide letter dated 16.08.2007 was declared medically permanently unfit on the basis of abnormal EEG. The petitioner appealed against the said order 16.08.2007 which was rejected by the respondent. It was further argued that the petitioner passed the Class-I medical test vide certificate dated 25.04.2012 and the respondent did not comply with



the orders dated 18.08.2011 and 21.02.2014 passed by this court. The action of the respondent in not allowing the exemptions under Rule 160 of Aircraft Rules, 1937 is arbitrary, biased and illegal and against the directions given by this Court particularly vide order dated 21.02.2014. The perusal of record particularly of the impugned order dated 23.06.2014 reflects that the respondent has considered various representations submitted by the petitioner for seeking exemption from Commercial Pilot License (CPL). The issuance of Commercial Pilot License and exemption from requirement of Commercial Pilot License are purely administrative functions and the courts under power of judicial review cannot decide whether the petitioner is entitled from exemption from issuance of Commercial Pilot License. It is for the appropriate authority to take suitable decision in this regard and after considering relevant factors that whether the applicant is fulfilling all necessary requirements for issuance of Commercial Pilot License or exemption there from as claimed by the petitioner. The decision of the respondent cannot be said to be arbitrary and illegal as the respondent passed the impugned order dated 23.06.2014 after considering all relevant facts and directions



given by this court in two different LPAs filed by the petitioner. Section J of the Schedule II of Aircraft Rules, 1937 dealing with Commercial Pilots License (Aeroplanes) is comprehensive and cannot be diluted. Any person seeking issuance of commercial pilot License must fulfil all qualifications as prescribed under the Aircraft Rules, 1937. There is no force in arguments advanced by the counsel for the petitioner. There is merit in arguments advanced by the counsel for the respondent that though the petitioner had undergone training in USA for Commercial Pilot License but was not meeting the requirements for issue of Indian CPL as stipulated in Aircraft Rules, 1937. It is worth mentioning here that that petitioner in representation dated 05.03.2013 admitted that he was not having certain requirements as detailed hereinabove.

8.5 There is also no merit in relief claimed by the petitioner that para 3.2 of Civil Aviation Requirements (CAR) dated 06.03.2007 Series B Part-II is *ultra vires* to Rule 160 of the Aircraft Rules, 1937.

9. The respondent has passed the impugned order dated 23.06.2014 on the basis of relevant facts and after considering the background of various representations filed by the petitioner. The impugned order



dated 23.06.2014 is justified and cannot be set aside. There is no merit in present petition, hence dismissed along with pending application, if any.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JULY 02, 2024

j/ak