

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3360 OF 2011

Jeetendra Krishna Varma .. Petitioner
aged 46 years, adult, Indian inhabitant
presently residing at Pune
having address at : 102, Daisy
Apartment, Survey No. 85, Lalit Estate,
Inside Eminent Building Lane Barner
Pune – 411 045

V/S.

Director General of Civil Aviation .. Respondent
Govt. of India, Civil Aviation
Department, Opp: Safdarjung Airport,
New Delhi – 110 003

Mr. Mohan Bir Singh, a/w Rahul Jalan, i/b MBS & Co., for Petitioner.

Mr. Vinit Jain, a/w Mr. Ashutosh Mishra, a/w Mr. Gaurav Mhatre, for
Respondent - DGCA.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

RESERVED ON : 29th APRIL 2026

PRONOUNCED ON : 8th JUNE 2026

JUDGMENT: (PER SHREERAM V. SHIRSAT, J.)

1. Taking exception to the order dated 12th March 2011, passed by Respondent, i.e., the Director General of Civil Aviation, the Petitioner has approached this Court invoking Article 226 of the Constitution of India, seeking appropriate writ, order or direction for quashing and setting aside the said order dated 12th March 2011 by which the license of the petitioner

came to be suspended by the Respondent, invoking clause (d) of Sub-Rule (3) of Rule (19) of Aircraft Rules, 1937 read with Ministry of Tourism and Civil Aviation Notification No. SO 727 (E) of October 1994.

2. Facts germane to the present petition are enumerated as under.

3. The petitioner had obtained a Commercial Pilot License (CPL) after undergoing training at the Airline Asian Academy in Orlando, Florida, USA. After completing his initial flying training in the USA, the petitioner returned to India and applied for the endorsement of his CPL to the Respondent. After necessary checks and verifications, the petitioner was issued a Commercial Pilot License No. 1869 on 13th December 1988, which was renewed periodically by the Respondent. It is the case of the Petitioner that initially, the petitioner was employed with Air India as a trainee pilot and after completing successful training with Air India and obtaining an endorsement on his CPL for Airbus 310 Aircraft from the respondent, the petitioner was appointed as a co-pilot in the year 1991 and was confirmed with effect from 1st November 1992. It is further the case that during his employment with Air India, the petitioner was operating flights on regular basis and he underwent checks on regular basis with diverse check pilots/instructors licensed by the respondent to do so. It is further the case that for a period of 22 years, the petitioner was assessed and found to be a competent flyer by each one of the check pilots/instructors who conducted said checks on the

petitioner and also by hundreds of pilots with whom the petitioner flew during the period of 22 years. It is further the case that considering his experience, the petitioner became eligible to be considered for the issuance of an Airline Transport Pilot License (ATPL) on having obtained his experience of flying with Air India for almost about 7000 hours. It is further the case that the Petitioner appeared for the test of ATPL in USA as well as in India and was issued an ATPL Certificate dated 01/09/2010 by the FAA (USA). It is the case that the petitioner after successfully completing the tests and having gained requisite experience, he applied for an ATPL to the Respondent and accordingly forwarded the application and requisite documents to the respondent, who after verification of the documents issued an ATPL bearing No. 4355. It is further the case that the petitioner had also undergone the license renewal checks on 16th May 2010 and 31st August 2010 with the DGCA approved examiner who had issued the certificate certifying the petitioner to be fit for renewal of his license.

4. It is further the case that on or about 7th March 2011, a complaint was filed by Crime Branch at New Delhi alleging that one Captain by name Captain Parmindar Kaur Gulati had obtained the ATPL license on the basis of forged documents and upon scrutiny, it was revealed that the result card of the examination submitted by Captain Parmindar Gulati was forged and therefore, a case came to be registered. On the basis of the said complaint, the Petitioner was arrested on 12th March 2011 and was released on bail on

19th March 2011. After the registration of the FIR, the petitioner received the impugned order dated 12th March 2011, which is under challenge.

5. Per Contra, the learned counsel for the Respondent supported the said order and submitted that the order passed by the Respondent DGCA was neither arbitrary nor illegal and that it was passed on merits, based on the documents available on record. He further submitted that the Petitioner had applied with Respondent for the ATPL Exam in January Session 2010, where he remained absent and subsequently, he appeared in June 2010 Session, wherein he was declared failed. He further submitted that despite this, the petitioner submitted the forged mark-sheet bearing Roll No. 19250025 of April 2010 Regular Session for ATPL Navigation Composite Paper. He further submitted that the records indicated that the petitioner applied to appear in ATPL Examination on 48 occasions from 2004 onwards to 2010 and out of this, he was declared failed in 18 attempts and remained absent in the remaining attempts. He further submitted that out of the minimum three papers required to obtain an ATPL, he managed to pass only one paper, mainly the Aviation Paper in 2009. He further submitted that on 3rd September 2010, the petitioner submitted an application to the Respondent No. 1 for issuance of ATPL and in that application, the petitioner had mentioned his Roll No. 19250025 and had indicated that he had passed the ATPL Air Navigation Composite Paper in April 2010 Regular Session. However, as per the official record, the petitioner had not applied for or

appeared in 2010 session ATPL Examination. In the light of the above, he therefore submitted that it was quite evident that the petitioner was fully aware of the factual position and despite that he furnished incorrect information with the intention of obtaining an ATPL, which is in contravention of Rule 39A (e) of the Aircraft Rules. He further submitted that he had also given a declaration in the application dated 03/09/2010 that he had not suppressed or given any wrong information for obtaining the license and that he is liable for appropriate action, if any information given by him was found to be wrong, even at a later date. The learned counsel for the Respondent further submitted that his application was duly processed and ATPL No. 4355 was issued to the petitioner on 17th September 2010. He further submitted that as it was revealed that the ATPL license had been obtained on the basis of forged ATPL result, considering the mala fide intent of the petitioner and in the interest of public safety to prevent any potential misuse of the license, his license bearing No. 4355 was suspended vide order dated 12th March 2011 invoking clause (d) of Sub-Rule (3) of Rule 19 of the Aircraft Rules, 1937. The Ld. Counsel for the Respondent therefore submitted that no interference is called for.

6. The Petitioner filed his Affidavit in Rejoinder and denied the contentions which were raised by Respondent in the reply. In the affidavit in rejoinder, rebutting the contentions raised by the respondent, it was submitted that the impugned order does not identify the document which is

alleged to be a forged document and even the period of suspension has not been mentioned, whereas the suspension under the rules can be only for a specified period. In the rejoinder, it was submitted that the respondent had introduced some new grounds which did not find place in the impugned order such as lack of integrity on the part of the petitioner, consideration of public interest and registration of the FIR. He further submitted that the contention of the Respondent that the Petitioner had appeared for ATPL Examination on 48 occasions between 2004 and 2010 and failed on 18 occasions and remained absent on 30 occasions is absolutely incorrect. He submitted that petitioner was not even eligible to apply for nor did he apply for ATPL prior to 2009 and therefore, the question of his having appeared or failed at such an examination did not arise. The affidavit in rejoinder further disputed the contention of the respondent that the mark-sheet is of a person who passed with Roll No. 19250025 and that the petitioner had produced the marksheet. He has further submitted that a perusal of the mark-sheet at page 86 would reveal that it not only mentions his roll number, but also his name is clearly mentioned with his address. He further submitted that registration of an FIR cannot be a ground *ipso facto* for cancellation of the license and it is only a conviction, which can be a ground for cancellation of license. He further submitted that the FIR was filed by the Respondent on or about 5th/6th April 2011, wherein the petitioner was not even named as an accused in the said FIR. It is further submitted that the action taken by the

respondent is squarely governed by the Enforcement Policy and Procedure Manual, wherein it is required that a show-cause notice is to be issued which has not been done in the present case.

7. Apart from the above, the essential grievance of the petitioner is that as required under the rules, neither a show-cause notice was issued nor any opportunity was given to the petitioner to give his say in respect of the allegations which were made against him. The petitioner, therefore, contended that the said order was illegal as it was in complete violation and breach of the principles of natural justice. The petitioner, therefore beseeched, that the impugned order deserves to be set aside.

8. We have heard the Ld. Counsel for the petitioner and the Ld. Counsel for the respondent at length.

9. Before advertng to the rival submissions, it will be pertinent to consider the relevant provision, which is required to be followed by the licensing authority before taking any action with respect to disqualifying any person from holding or obtaining a license. The first essential provision is Rule 39 A of the Aircraft Rules, which reads as under:

39A. Disqualification from holding or obtaining a license: -

(1) Where the licensing authority is satisfied, after giving him an opportunity of being heard, that any person -

(a) is habitually intemperate in the use of alcohol, or is an addict of narcotics, drugs and the like, or

(b) is using, has used or is about to use an aircraft in the commission of a cognizable offence or in contravention of these rules, or

(c) has, by his previous conduct as member of the crew of an aircraft, shown that he is irresponsible [in the discharge of his duties connected with his employment] or is likely to endanger the safety of the aircraft or any person or thing carried therein, or of other aircraft or persons or things on the ground, or

(d) is a habitual criminal or has been convicted by a Court in India for an offence involving moral turpitude or an offence which amounts to heinous crime, or

(e) has obtained the license, rating, aircraft type rating or extension of aircraft type rating, or renewal of any of them by suppression of material information or on the basis of wrong information, or

(f) has authorisedly varied or tempered with the particulars entered in a license or rating.

The licensing authority may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period from holding or obtaining a license.

(2) The Central Government may debar a person permanently or temporarily from holding [any license or rating mentioned in] rule 38 if in its opinion it is necessary to do so in the public interest.

(3) Upon the issue of any order under sub-rule (1) or sub-rule (2), the person affected, if he is the holder of a license, shall forthwith surrender his license to the licensing authority, if the license has not already been surrendered. The licensing authority shall keep the license until expiry of the period for which the person has been disqualified or debarred, or if he has been debarred permanently, for a period of 5 years.

10. A bare perusal of *Rule 39-A* of Aircraft Rules clearly envisages that before a person is disqualified from holding or obtaining a license, an opportunity of being heard has to be given to that person and, thereafter,

licensing authority has to pass a reasoned order. The licensing authority has to arrive at a subjective satisfaction on the basis of material which is placed before it and, thereafter, the authority has to give reasons why it feels that license should be suspended or cancelled. Adopting such a procedure will be in consonance with principles of natural justice. In the present case, there is complete infraction of the said rule. The licensing authority has neither issued show-cause notice to the petitioner nor has given him any personal hearing. The Licensing Authority has conspicuously failed to refer to any forged documents or give any reason as to why it has arrived at the said subjective satisfaction of suspending the license of the petitioner. Even the period which is required to be specified for debarring or disqualifying a person from holding or obtaining a license has also not been specified in the said impugned order.

11. During the course of arguments, based on the affidavit in reply, it was submitted by the Ld. Counsel for the Respondent that said order has been passed by the Director General of Civil Aviation under sub-clause (b) of sub-rule (3) of Rule 19 of the said Rules and under said sub-clause, DGCA is authorized to pass an order without holding any inquiry if it feels that suspension is necessary in the public interest. He submitted that the Respondent DGCA was, therefore, justified in not issuing any show-cause notice or holding any inquiry or giving personal hearing to

the Petitioner.

12. To test this submission, it will be advantageous to reproduce Rule 19 of the Aircraft Rule:

“19. Cancellation, suspension or endorsement of licenses, certificates, [authorisation and approval].-

(1) Where any person is convicted of a contravention of or failure to comply with, these rules in respect of any aircraft, the Central Government may cancel or suspend any certificate of registration granted under these rules relating to that aircraft.(Emphasis supplied)

(2) The Central Government may cancel or suspend any certificate granted under these rules relating to air worthiness of an aircraft or a Type Certificate of an aircraft component, or item of equipment, if the Central Government is satisfied that a reasonable doubt exists as to the-

(a) safety of the aircraft or the type of aircraft; or

(b) airworthiness of the aircraft component or item of equipment in respect of which a Type Certificate exists, and may vary any condition attached to any such certificate if the Central Government is satisfied that reasonable doubt exists as to whether such conditions afford a sufficient margin of safety.

(3) If the Central Government is satisfied that there is sufficient ground for doing so or, in the case of suspension during investigation that suspension is necessary in the public interest, it may, for reasons to be recorded in writing-

(a) suspend any certificate, rating or license, [authorisation and approval] or any or all of the privileges of any certificate, rating or license, [authorisation and approval], for any specified period;

(b) suspend any certificate, rating or license, [authorisation and approval] during the investigation of any matter;

(c) cancel any certificate, rating or license [authorisation and approval]; or

(d) endorse any adverse remarks on any certificate, rating or license, [authorisation and approval].

(3A) Where any person contravenes or fails to comply with the rules relating to the operation of Microlight Aircraft, the Central Government may cancel the certificate, rating or license, authorisation and approval granted, issued, authorised or approved as the case may be, under these rules.

(4) The Central Government may cancel or vary any particulars entered by it or under its authority in any license or certificate, [authorisation and approval] granted or in any journey log book issued under these rules.

(5) The Central Government may require the holder of any license, certificate, [authorisation and approval] or other document granted or issued under these rules, or any person having possession or custody of such license, certificate, [authorisation and approval] or document, to surrender the same to it for cancellation, suspension, endorsement or variation and any person failing to comply with any such requirement within a reasonable time shall be deemed to have acted in contravention of these rules.”

13. The reliance placed by the learned counsel for the Respondent on Rule 19, to buttress the submission that DGCA is authorized to pass an order without holding any inquiry if it feels that suspension is necessary in the public interest, is totally misplaced in the present context. The opening paragraph of the said section is very clear and unambiguous wherein it applies to the person who is convicted of a contravention or failure to comply with the rules in respect of any aircraft and which empowers the central government to cancel or suspend any certificate of registration granted under these rules relating to aircraft. In the present case, the petitioner is not a convicted person and therefore the contention of the respondent that it had suspended the license in the public interest does not stand to reason. Secondly the said rule pertains

to certificate of airworthiness of an aircraft which is not the issue in the present case.

14. The Ld. Counsel for the Petitioner invited our attention and also laid emphasis on Clause 12.7 of Enforcement Policy and Procedures Manual and submitted that suspension is the most severe action DGCA can impose and even this clause contemplates issuing of show cause notice and calling for the explanation before taking any action. For quick reference the said clause is reproduced herein;

“12.7 Suspension Procedure - The suspension of aviation document for contravention of a provision of the Aircraft Act/Rules is the most severe administrative sanction the DGCA can impose. Suspension action is taken where continued use of the document would create a hazard to aviation safety and judicial action is either not available or inappropriate. Where an aviation document has been suspended, the person to whom it was issued shall return it to the DGCA and shall not exercise the privileges attached to that document until it is restored by the DGCA. Suspensions for contravention are punitive in nature and are in effect for a specified time period.

The following procedure may be followed for suspension of an aviation document:-

- (i) The concerned officer who has power of suspension, shall determine the appropriate duration of suspension on the basis of the recommendation of the investigator.
- (ii) In order to meet the ends of natural justice, a Notice of Suspension (show cause notice) to the alleged offender shall be required to be issued, whether or not it is legally binding and obligatory. The charge is required to be mentioned in the Notice and appropriate time should be given to submit his explanation. The standard format for show cause notice is given in Appendix. The Notice shall contain a clear description of the offence and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the

contravention. A copy of investigation report may be enclosed along with the notice.

(iii) With Notice, competent officer shall enclose an information sheet describing informal meeting procedure and offering alleged offender an opportunity to discuss sanction.(iv) The concerned competent officer shall serve the Notice on the alleged offender personally or send it by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.

(iv) Where the alleged offender requests a review by the DGCA and applies for a stay of suspension pending its decision, the concerned officer shall not oppose the application unless it appears that a threat to aviation safety would result. In such a case, the concerned officer or his designate shall present the case to the DGCA.

(v) Where the alleged offender does not ask for a review by the DGCA within thirty days and then fails to deliver the suspended document, after giving due consideration for delay in the mail, charges shall be laid against the alleged offender. Prior to laying charges, the document holder should be contacted to confirm the situation.

(vi) Suspended period may be endorsed on the aviation document.”

15. Although Clause 12.7 is in the nature of guideline and does not have statutory force, the said guidelines have been prepared by the Department in order to assist its officers and the said guidelines have been laid down for the purpose of explaining the reason why Rules have been framed and therefore, these guidelines are supplementary and in addition to the Rules which have been framed and they are explanatory in nature. Therefore, the said guidelines have to be followed by the concerned Department. The said guidelines also lay down the procedure to be followed for suspension. The said Clause 12.7 lays down the

procedure that a show-cause notice has to be issued before the inquiry is to be held and the charge is required to be mentioned in the Notice and appropriate time is required to be given to submit his explanation. Further the requirement of the notice is that it shall contain a clear description of the offence and sufficient details of the contravention so that the alleged offender can identify the incident or incidents constituting the contravention. It also contemplates that a copy of investigation report may be enclosed along with the notice. The Respondent has completely failed to adhere to the guidelines which are mentioned in Clause 12.7 before passing the impugned order.

16. The Ld. Counsel for the Petitioner has rightly placed reliance on the judgment of this Court in the case of ***Saurabh P Lokhande vs. Union of India and Anr [2014 (1) Mh.L.J. 257]*** which squarely applies to the facts of the present case and there is no reason to take a different view. The Ld. Counsel for the Respondent did not point out any other authority contrary to the one which the Petitioner sought to rely.

17. The Petitioner has also relied upon the judgments in the cases of ***Maneka Gandhi vs. Union of India [1978 SCR (2) 621]***, ***A. K. Kraipak vs. Union of India [AIR 1970 Supreme Court 150]***, ***Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati & Ors [(2015) 8 SCC 519]***, ***State of U. P vs. Sudhir kumar Singh [AIR 2020 Supreme***

Court 5215] to contend that the principles of natural justice have to be followed. There can be no doubt about the said proposition of law. What is also laid down in the judgments, which have been referred above, is that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken and that every violation of a facet of natural justice may not lead to the conclusion that the order passed is null and void and that the validity of the order has to be decided on the test of prejudice. We find that in the present case, the petitioner was not afforded an opportunity to explain his version before taking the drastic step of suspension of license. We feel that definitely prejudice has been caused to the petitioner as he could not point out his side of the story and therefore, we deem it fit to set aside the order and remit the matter back to the respondent to give an opportunity to the petitioner, which will be in consonance with principles of natural justice.

18. It will also be pertinent to mention here that Respondent has not produced the so-called forged mark-sheet, which was allegedly submitted by the Petitioner. Further it is also an admitted position that though the criminal complaint was filed against the Petitioner and others in the year 2011, so far although charge-sheet has been filed, no charge has been

framed even after 15 years. Apart from that, the Petitioner has categorically come out with the case that whilst the entire application form is typed, the entry at column 9(e) showing that he passed the ATPL composite in the session in April 2010 with roll number 19250025 and result declared on 03/06/2010, is not in his handwriting and that he does not know whose handwriting it is. In the light of the said contention of the Petitioner, it was incumbent on the Respondents to have produced the said original documents and/or obtained the handwriting expert's report. The burden was on the Respondent to establish by producing the material before this Court that the said two pages were in the Petitioner's handwriting, which the Respondent has failed to do.

19. It will also be pertinent to mention that the petitioner had also filed a petition challenging his termination of service before this Court and this Court vide order dated 25th February 2019, had set aside the order of termination. The said order was challenged before the Hon'ble Supreme Court, however, Hon'ble Supreme Court declined to interfere with the impugned judgment and the Special Leave Petition came to be dismissed.

20. From the above conspectus and taking into consideration the clear infraction of Rule 39A and Rule 19 of the Aircraft Rules, non-adherence to Clause 12.7 of Enforcement Policy and Procedures Manual, we find that the impugned order is clearly illegal and unsustainable as the same has been

passed in the teeth of the above provisions of law. The impugned order dated 12/3/2011, therefore, deserves to be quashed and set aside.

21. The petition is allowed. The impugned order dated 12.3.2011 passed by the Respondent DGCA is quashed and set aside and the ALTP license which was issued to the petitioner is restored.

22. The Respondent is at liberty to initiate inquiry by following the procedure laid down under Rule 39A of the said Rules and give an opportunity of hearing to the petitioner and thereafter pass a reasoned order. The said inquiry is to be completed expeditiously within a period of two months. All contentions of the parties are kept open.

23. Accordingly, the petition is disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)