

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-896 of 2019

DATE ORDER WITH SIGNATURE OF JUDGE

Present:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

Muhammad Jawad Mirza.....Petitioner

Versus

Director General, Pakistan Civil

Aviation Authority & another.....Respondents

Date of hearing: 08.04.2019.

Mr. Shafaat Nabi Khan Sherwani, Advocate for Petitioner.

Non present for Civil Aviation Authority.

Mr. Hussain Bohra, Assistant Attorney General.

Muhammad Ali Mazhar, J: This Constitution Petition has been brought to challenge the show cause notice dated 02.01.2019 issued by the Additional Director Licensing on behalf of Licensing Authority, Civil Aviation Authority, Karachi to the petitioner due to alleged malpractice regarding ATPL examination. The Authority has suspended Airline Transport Pilot License (ATPL # 1690) of the petitioner and also called upon him to surrender his Original Airline Transport Pilot License (ATPL) in the office of Pakistan Civil Aviation Authority at the earliest.

2. The learned counsel for the petitioner argued that in the show cause notice the petitioner was called upon to explain as to why disciplinary action should not be

initiated against him which may ensue the cancellation/withdrawal of his Airline Transport Pilot License but in the same show cause notice the Airline Transport Pilot License was also suspended. The learned counsel further averred that the license of the petitioner was suspended in violation of Rule 342 of the Civil Aviation Rules, 1994. Despite submitting the reply no personal hearing has been afforded to the petitioner nor the show cause notice was withdrawn. It was further contended that the petitioner is employed in Emirates Airline as First Officer/Pilot in Dubai and his Airline Transport Pilot License is valid up to 30.04.2019. The show cause notice was replied on 08.01.2019 but the respondents are dragging the matter without deciding its fate which is likely to create an adverse impact on the petitioner's current job.

3. The record reflects that to represent the respondents initially Mr. Abraiz Ali Khan Advocate caused his appearance. On 15.03.2019, we raised a query to the learned counsel that show cause notice was issued on 02.01.2019 and despite lapse of considerable period what further action has been taken on which the learned counsel informed us that some investigation/inquiry is underway but he was not sure about the current status. In order to assist on this aspect, he sought some time to seek proper instructions to communicate this court. On 03.04.2019, instead of earlier counsel, Dr. Shahnawaz, Advocate filed vakalatnama for the respondents and superseded Mr. Abraiz Ali Khan, Advocate. He was again reminded the query to give proper answer on the next date but when the matter was taken up on 08.04.2019 the counsel for the respondents was called absent without any intimation. However, in order to safeguard CAA interest, Mr. Hussain Bohra, learned Assistant

Attorney General pointed out the reply of Civil Aviation Authority and requested that the reply may be considered his arguments. In the reply the respondents have taken the plea that before approaching this court the petitioner should have availed the remedy provided under Rule 342 (4) of Civil Aviation Rules, 1994. In the same breath it is further stated that an independent forum of appeal was also provided under Rule 343 of Civil Aviation Rules, 1994 and in case any person is found aggrieved by the order passed by the Director General or the authority, he may also appeal to the Federal Government and the Federal Government has power to modify or annul the order or may issue directions to the Director General or the Authority as the case may be under Rule 375 of the Civil Aviation Rules, 1994. It was further submitted that subject to final outcome of any inquiry, the respondents reserve their rights in respect of the acts and omissions of the petitioner including but not limited to their rights under the criminal law. On factual plain some allegations were also leveled against the petitioner for cheating and usage of illegal means in his ATPL examinations. It was further contended that before appearing in the test the candidate has to apply for a scheduled test appointment date through a computer based application connected to the Civil Aviation Authority computer network on which the date is provided to the candidate and the software also automatically generates an electronic MCQ test from the bank of questions stored in it. The respondents found some anomalies with regard to the petitioner as for exam scheduled on 20.02.2017, the attendance sheet was not signed by the petitioner and he did not sign the sequence sheet. It was further contended that the petitioner in his written response to the show cause has admitted his guilt by apologizing for the anomalies found in ATPL examinations.

4. Heard the arguments. In the show cause notice while suspending Airline Transport Pilot License, the petitioner was called upon to tender his reply to Personnel Licensing Branch, Head Quarter Civil Aviation Authority within seven days of the receipt of show cause notice failing which an exparte disciplinary action could be initiated for cancellation/withdrawal of his license. The response was submitted by the petitioner on 08.01.2019 in which the petitioner stated that he is out of Pakistan and shall come back after one month and upon arrival he will submit the original Airline Transport Pilot License to the Personnel Licensing Office, Pakistan Civil Aviation Authority. He asserted that he has not exercised the privileges of Airline Transport Pilot License in Pakistan and also apologized for anomalies found in the ATPL examinations. He also requested some penalty may be imposed or he may be allowed to appear in ATPL examinations.

5. After submitting this reply no notice or opportunity was provided to the petitioner for personal hearing. Rather in the comments filed by the respondents in preliminary legal objection, it is stated that subject to final outcome of any inquiry the respondents reserve their rights to initiate further actions in accordance with various laws mentioned in the comments against the petitioner which shows that before taking any action against the petitioner, either some inquiry is under process or the Civil Aviation Authority wants to initiate or conduct the inquiry against the petitioner.

6. In exercise of powers conferred by Sections 4, 5, 7 and 8 of the Civil Aviation Ordinance, 1960, Section 26 of Pakistan Civil Aviation Authority Ordinance, 1982,

Section 10 of the Aircraft (Removal of Danger to Safety) Ordinance, 1965 and Section 4 of the Telegraph Act, 1885, the Federal Government was pleased to frame Civil Aviation Rules, 1994. These rules are made applicable to flight operations within Pakistan by aircrafts other than military aircrafts and, except where otherwise prescribed, to flight operations by aircrafts registered, acquired or operating under these rules, wherever they may be. Part-XIX of these rules germane to withholding, suspension and cancellation of licences and certificates. Rule 342 pertains to suspension or cancellation of personnel licences in which the Director General has been empowered to vary or suspend and with the approval of the Federal Government may cancel a licence issued under Part-V of these Rules where he is satisfied that one or more of the conditions are applicable which are jot down in these Rules resulting an action manifested. Under sub-rule (2), it is explicitly provided that where the Director General suspends a licence in pursuance of sub-rule (1), he shall forthwith investigate the matter and suspension shall cease upon the completion of the investigation or at the expiration of thirty days. In case the investigation is not completed within this period, the Director General may extend the period of suspension with the prior approval of the Federal Government. Since the suspension of the licence has immeasurably weightier and cumbersome impact on the licensee, therefore, under sub-rule (4) a right has been bestowed to the licence-holder whose licence has been suspended or varied to file an appeal to the Director General against such suspension or variation which may be filed within fourteen days of the receipt of notice of suspension or variation and any such appeal is ought to be heard by the Director General within fourteen days.

7. In the reply submitted by the petitioner, he himself made some admissions and entreated the CAA to take some lenient view. Even he has made known his aspiration to bear the penalty and appear again in the ATPL examinations but at the same time it is an admitted fact that no appeal was filed by the petitioner against the suspension to the Director General within the specified period and the counsel for the petitioner stated at bar that no decision has been taken so far against the petitioner. The basic allegation in the show cause notice that during course of subject scrutiny/verification of Personnel Licensing Examination record, certain anomalies regarding petitioner's ATPL qualifications have been observed which consequently rendered his ATPL validity questionable. Despite submitting the reply even with some admissions no right of personal hearing was provided to the petitioner nor has any final action been communicated. Rather in the reply an impression has been envisioned that on final outcome of inquiry some more action will be taken against the petitioner in different laws including the criminal breach of trust, cheating, forgery and action under the Prevention of Electronic Crimes Act, 2016 etc.

8. On 15.03.2019, the learned counsel for the Civil Aviation Authority conveyed a translucent statement that some investigation/inquiry is underway but he was not sure whether inquiry proceedings were culminated or not. So far as the niceties of Rule 342 are concerned, we are in full agreement with the contention raised in the reply of the Civil Aviation Authority that against the suspension the petitioner could have filed appeal to the Director General but he could not do so apparently for the reasons that he is not in Pakistan but absence in Pakistan does not justify not to avail the right of appeal

provided as statutory remedy. Even this petition has been filed through attorney which shows that the petitioner throughout the period was remained out of Pakistan.

9. At the same time the letters of law command unequivocally that the suspension, investigation and inquiry if any shall continue within certain timeline and after suspension of the licence there must be some cutoff date in which the inquiry or investigation must be completed and final order should be communicated to the petitioner or licence-holder. No investigation or inquiry can be allowed to continue for an unlimited or never-ending period of time. If any investigation or inquiry is under process or the Civil Aviation Authority wants to conduct some inquiry that should be completed expeditiously so that the petitioner may be communicated the destiny and providence of inquiry for further necessary action in accordance with the law. Neither anything is placed on the record that Director General has extended the period of suspension with the prior approval of the Federal Government nor anything has been brought on record that the inquiry or investigation has been completed. If the CAA management is of the view that the petitioner in his reply has admitted guilt, even in that scenario, some final order should be passed after providing a right of personal hearing. On the contrary, CAA reply gives us such impression that despite submitting reply, they want to initiate and complete investigation and inquiry otherwise, they could have passed the final order in the case in hand much earlier before expiration of thirty days' time. Due process is prerequisite that needs to be respected at all stratum. In our Constitution, right to fair trial is a fundamental right. This constitutional reassurance envisaged and envisioned both procedural standards that courts must uphold in order to protect peoples' personal

liberty and a range of liberty interests that statutes and regulations must not infringe. The right to a fair hearing and or trial necessitates that no one should be penalized by the decision upsetting and afflicting his right or legitimate expectations. The right to a fair trial means that general public and commonalities can be sure that process will be fair and certain which is the finest method of detaching and disengaging a guilty from an innocent thereby protecting against injustice.

10. An analytical attribute of the case cannot be lost sight that according to sub-rule (2) of Rule 342, suspension is ceased upon the completion of the investigation or at the expiration of thirty days including the date on which the suspension took effect whichever is earlier. In the case of petitioner, the suspension was effected from 02.01.2019 but nothing brought on record to show whether any inquiry or investigation has been completed or any final order was passed in the case of petitioner based on his own reply or suspension period was extended through any lawfull order, therefore for all intent and purposes the suspension of license had come to an end under the tenets and edicts of Civil Aviation Rules 1994 after elapsing statutory period.

11. As a result of above discussion, this petition is disposed of with the directions to the Civil Aviation Authority to decide the fate of show cause notice within a period of one month and complete the investigation if any and pass the final order in the case of the petitioner after providing ample opportunity of hearing to him. The renewal of ATPL license shall be subject to the final order of CAA on the show cause notice. Pending application is also disposed of.

**Karachi:-
Dated.13.5.2019**

**Judge
Judge**