

P.K. Nagia and ors. Vs. Director General of Civil Aviation and ors.

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Court : Delhi

Decided On : Aug-30-1973

Reported in : (1975)ILLJ279Del

Judge : V.S. Deshpande, J.

Appellant : P.K. Nagia and ors.

Respondent : Director General of Civil Aviation and ors.

Judgement :

ORDER

V.S. Deshpande, J.

1. The petitioners are Aircraft Maintenance Engineers of the Indian Airlines while respondents Nos. 4 to 7 are supervisory officers over them. licenses are issued to the Aircraft Maintenance Engineers under the Aircraft Rules, 1937 made under the Aircraft Act, 1934 by the Directorate General of Civil Aviation functioning there under. licenses of existing holders are also extended under these Rules to cover the new aircrafts known as Boeing 737. Two requirements are necessary for obtaining such a license or for the extension thereof to cover Boeing 737. These two requirements are specified in Clauses (4) and (5) of Rule 61 which are reproduced below:

(4) An applicant shall possess experience appropriate to the category of the license or extension of the license required, as laid down in Section 'F' of Schedule HI. This experience shall include experience of having worked at least for three months on the type of aircraft, or engine or accessory for which he has applied for the grant or extension of his license during the period of twelve months preceding the date of his application. The applicant shall prove to the satisfaction of the Director-General that he has acquired the prescribed experience:

Provided that no such experience shall be necessary in the case of an applicant who proves to the satisfaction of the Director-General that within the twelve months preceding the date of his application he has satisfactorily completed an approved course of training notified in this behalf by the Director-General in the official Gazette. (5) An applicant for the grant or extension of an Aircraft Maintenance Engineer's license shall be required to undergo tests which may consist of-

(a) written examination;

(b) oral examination and;

(c) appropriate practical test;

Provided that the Central Government may, by a permit in writing, grant an extension to an Aircraft Maintenance Engineer's license subject to such conditions, if any, as it may specify in such permit:

Provided further that the Central Government may, subject to such conditions as it may deem fit, exempt any applicant from any of the tests referred to above, if the applicant holds a license granted by a competent authority of a foreign State to act in the capacity of an Aircraft Maintenance Engineer.

2. The Director General of Civil Aviation has extended the licenses of respondents 4 to 7 so as to enable them to work as Aircraft Maintenance Engineers in respect of the aircraft Boeing 737. The petitioners contend that this action is illegal on two grounds: Firstly, the respondents 4 to 7 do not possess the experience required under Clause (4) of Rule 61. Secondly, respondents 4 to 7 have not undergone the written examination which is compulsory under Clause (5) of Rule 61. They pray that the order granting such extension to them should be quashed.

3. Both the Director General of Civil Aviation and the Indian Airlines have resisted the writ petition. They have maintained that the respondents 4 to 7 had the necessary experience. They have denied that a written examination is compulsory under Clause (5) of Rule 61 and averred that oral examination held there under was sufficient in respect of respondents 4 to 7.

4. Let us examine the two contentions of the petitioners.

EXPERIENCE:

5. Section F of Schedule III gives the details of experience required. Briefly 'experience of practical maintenance and inspection during maintenance of air frame and of engines' is necessary in respect of extension in categories A and C, namely, the air frame and the engines. Shri P.K. Chatterjee for the petitioners contended that this experience must be a whole time experience. He referred to a circular of 16th June, 1961, issued by the Indian Airlines on the subject of Aircraft Maintenance Engineer's license Examination and pointed out that the causes why applications for licenses were rejected were summarised at page 3 thereof. Clause 11 was as follows:

Part time/instructional experience claimed disallowed.

6. The petitioners contended that the respondents 4 to 7 held supervisory posts. They could not, therefore, do the work of an Aircraft Maintenance Engineer for the whole of their working hours. Their experience for the requisite period of three months during the period of 12 months preceding the grant of the extension was not, therefore, a sufficient compliance with the requirements of Rule 61(4) and Section F of Schedule III of the Aircraft Rules. I am unable to agree. It cannot be contended with any show of reason that any Aircraft Maintenance Engineer would be working on the Maintenance of a particular aircraft (Boeing 737 in the present case) for all his working time every day for three months. The number of Boeing 737 aircrafts with the Indian Airlines is limited. These aircrafts fly and their maintenance is done by different Aircraft Maintenance Engineers at different places on different days according to the particular aircraft of this type happens to land at a particular place.

7. therefore, no Aircraft Maintenance Engineer can claim to be attending to the maintenance of these aircrafts the whole of his working time on everyday What the requirement really means is that an Aircraft Maintenance Engineer must himself do the work of checking and inspecting the aircraft whenever it is available for such check and inspection at the place where the said engineer is working. If an engineer does so for a period of three months within a period of twelve months preceding the grant or the extension of the license, then he has complied with this requirement. The Chief Engineer of the Indian Airlines has certified that respondents 4 to 7 had done such practical check and inspection of Boeing 737 air frame. and engines for more than the requisite period. The certificates issued by the Chief Engineer to each of the respondents 4 to 7 are on record. These certificates were issued in response to the applications made by respondents 4 to 7. Both in the applications as well as in the certificates the practical experience of checking and inspection of Boeing 737 has been affirmed by the respondents 4 to 7 and accepted by the Chief Engineer of the Indian Airlines. The sufficiency of this experience is basically a question of fact. It cannot be gone into in a writ petition. What the petitioners contend is that no person who holds a supervisory position can work as a whole time Aircraft Maintenance Engineer.

8. This contention is based on a misconception. It assumes that respondents 4 to 7 were bound to their offices to do administrative work during the working hours and they could not leave their offices to go to the aircraft to do the job of checking and inspecting the aircraft. There is absolutely no proof of the inability of the respondents 4 to 7 to do the practical check and inspection. On the contrary, the respondents 4 to 7 have averred and the Indian Airlines has accepted that the respondents 4 to 7 checked and inspected the aircraft and thereby worked on Aircraft Maintenance Engineering for more than the requisite period. It cannot be laid down as an axiom that no administrative or supervisory officer can do the work of an Aircraft Maintenance Engineer. On the contrary, it appears to be the policy of the Indian Airlines that the senior officers who were once Aircraft Maintenance Engineers and who are promoted to hold supervisory positions should not lose touch with Aircraft Maintenance Engineering.

9. These officers are, therefore, required to maintain these aircrafts and they do so. It is a matter between the Indian Airlines and these supervisory officers whether they should do so even though they would not be able to do the administrative work during the time they are attending to the check and inspection of the aircraft. If both of them are agreed that the respondents 4 to 7 can and did the aircraft maintenance inspection and check even while they were holding the administrative posts no fault can be found with them. Just as an owner-driver of a car may drive the car from time to time to keep in touch with driving even though he may have got a whole time driver who may also be driving the car, similarly the respondents 4 to 7 can also work as Aircraft Maintenance Engineers even though the petitioners are also Aircraft Maintenance Engineers. I, therefore, find that the petitioners have failed to prove that respondents 4 to 7 did not have the experience required by Rule 61(4).

WRITTEN EXAMINATION:

10. The opening part of Clause (5) of Rule 61 contains both the words "shall" and "may." This would show that the distinction between them was apparent to the framer of Clause (5). From this distinction it would appear that while the undergoing of the tests was compulsory, the contents of the tests could be optional. The words to be

construed are 'tests which may consist of-(a) written examination ; (b) oral examination ; (c) appropriate practical test.' A literal interpretation may be suggested that all the three kinds of tests are compulsory. But Shri Chatterjee does not maintain this position. For, as pointed out by the respondents, the petitioners themselves have not undergone written examination but only the oral examination. Further light on the meaning of Clause(5) is thrown by paras. 4 and 5 of S. F of the Schedule III which are reproduced below:

4. Where, subsequent to a written examination an oral examination required by the Director General applicants may be required to answer further questions in respect of the subject detailed to para. 3 above, and in all cases they shall be required to demonstrate in this examination:

Practical knowledge of inspection and the use of measuring instruments and the interpretation of drawings. 5. Where a test of workmanship is required by the Director General, applicants may be expected to demonstrate their ability in the use of hand tools by the fabrication of samples from engineering drawings. Such samples may include the making of small aircraft parts and/or approved repairs to aircraft parts.

11. Paragraph 4 proceeds on the assumption that an oral examination may not be necessary after a written examination and, therefore, specifically gives power to the Director General to hold an oral examination even though a written examination has already been held. This shows that under Clause (5) of Rule 6, oral examination was not compulsory. Similarly, para. 5 shows that practical test was not compulsory. Rule 61(5) places the written, the oral and the practical examinations on the same footing. If oral and practical examinations were not compulsory. then there is no reason why Rule 61(5) should be so construed as to make the written examination compulsory. There are two ways of construing Rule 61(5). Either all the three examinations are compulsory or none of them is compulsory. The former interpretation is ruled out by paras. 4 and 5 of Section F of Schedule III. It is also inconsistent with the use of the word 'may' Rule 61(5). Lastly, the examinations are intended for testing of experts and experienced engineers. It would appear, therefore, that discretion can be exercised as to the contents of the tests according to the previous experience and standing of the persons concerned. This is why it was not thought necessary that either the respondents 4 to 7 or the petitioners should be subjected to a written examination. Shri Chatterjee contended that written examination would appear to be compulsory because of the syllabus set out paragraph 3 of Section F of Schedule III. But the syllabus describes only the subjects of the tests. It is applicable not only to the written examination but also to the oral and the practical examinations as would appear from paragraphs 4 and 5 of Section F of Schedule III. No particular inference can, therefore, be drawn from the syllabus in favor of the written examination being compulsory.

12. There is another important consideration to guide the Court in this matter. The interpretation of Rule 61(5) and Section F of Schedule III. is done by the expert authorities. They have interpreted them in a particular way. This interpretation has been acted upon not only by the respondents but also by the petitioners. It is well settled law that a reasonable view of technical provisions taken by the experts concerned with them would not be disturbed by the Courts. For, the Courts have no particular expertise in this matter. They would, therefore, be guided by a reasonable view taken by the experts. There is nothing unreasonable in the view which is acted

upon not only by the respondents but also by the petitioners. It would be impossible, therefore, for this Court to take any doctrinaire view of Rule 61(5) and insist that the respondents 4 to 7 as well as the petitioners must be subjected to a written examination. It is true that the safety of an aircraft and of the passengers is of the highest importance. But this must be borne in mind not only by the Courts but also by the authorities concerned. If the authorities with their expertise are satisfied that the respondents 4 to 7 no less than the petitioners have complied with Rule 61(5), it would be unreasonable for the Court to take a different view.

13. As both the contentions advanced by the petitioners fail, the writ petition is dismissed but, in the circumstances, without any order as to costs.

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