

\$~34 & 81

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 2nd December, 2022

+ **W.P.(C) 2268/2022 and CM APPL. 6523/2022, 15469/2022**

INDIAN PILOTS GUILD & ANR. Petitioners

Through: Ms. Neetika Bajaj, Advocate.
(M:9999646269)

versus

DIRECTOR GENERAL OF CIVIL AVIATION
& ANR. Respondents

Through: Ms. Anjana Gosain, Ms. Poonam, Ms. Ritika Khanagwal, Ms. Shalini Nair, Mr. Abhishek, and Ms. Dipika Sharma, Advocates. (M:9810100674) with Group Captain Mr. Y.S. Dahiya, Director (Medical Services), Mr. S.P. Singh, Assistant Director (Air Safety), Dr. Anand Pandey, Deputy Director (R&I).

81 **AND**

+ **W.P.(C) 16433/2022 and CM APPL. 51627/2022**

AIR TRAFFIC CONTROLLERS GUILD SHASHANK SINGH
(INDIA) THROUGH ITS GENERAL SECRETARY
& ANR. Petitioners

Through: Mr. Sanjoy Ghosh, Sr. Advocate with Mr. Sashank Singh, Mr. Prashant Mishra, Ms. Yogyta Jhunjhunwala & Ms. Anushka, Advocates (M-9654413791)

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Anjana Gosain, Ms. Poonam, Ms. Ritika Khanagwal, Ms. Shalini Nair, Mr. Abhishek, and Ms. Dipika Sharma, Advocates with Group Captain Mr. Y.S. Dahiya, Director (Medical Services), Mr. S.P. Singh,

Assistant Director (Air Safety), Dr.
Anand Pandey, Deputy Director
(R&I).

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 15469/2022(for delay) in W.P.(C) 2268/2022

2. This is an application for condonation of 18 days delay in filing the counter affidavit. The delay is condoned. Application is disposed of.

CM APPL. 6523/2022(for interim stay) in W.P.(C) 2268/2022

CM APPL. 51627/2022(for stay) in W.P.(C) 16433/2022

3. These are two petitions seeking quashing of the '*Civil Aviation Requirement Section 5 – Air Safety, Series F Part V, Issue I dated 27th September, 2021 (hereinafter 'CAR')*', issued by the Ministry of Civil Aviation. The said requirements relate to the procedure for examination of aviation personnel, including pilots, cabin crews and ATCs, for detection of consumption of Psychoactive Substances. These requirements are stated to be issued on 31st January, 2022. The purpose of these requirements, called Civil Aviation Requirements ("CAR"), is to detect any behavioural, cognitive and physiological changes due to use of such substances by aviation personnel.

4. There are various apprehensions expressed by pilots and Air Traffic Controllers (ATCs). To assuage these apprehensions, pursuant to directions issued by Justice Jyoti Singh, Group Captain Y.P. Dahiya, Director- Medical Services, Directorate of Medical Services, DGCA, is present in Court along

with other responsible officials. Broadly, the concerns raised today are in three categories:

- i. There is no provision to consider the consumption of lifestyle medicines such as hypertension medicines or anti-diabetic medicines, etc.
 - ii. Sufficient number of qualified MROs i.e., Medical Review Officers, are not available in India. As a sufficient number of MROs are not available in India, the working of the rules is itself ambiguous.
 - iii. There are no guidelines for appellate remedies or other remedies, if action is taken under CAR against aviation personnel.
 - iv. Lack of uniform testing mechanisms across different laboratories.
5. Submissions have been made by Mr. Sanjay Ghosh, Sr. Adv., Ms. Neetika Bajaj Advocate on behalf of the Petitioners and Ms. Anjana Gosain, duly assisted by Dr. Dahiya and the team from DGCA for the Respondents. After hearing submissions, the clarifications on all the four issues, are recorded as under:

I. Consumption of lifestyle medicines

It has been clarified that as per Clause 5 of CAR, testing would be only for the following Psychoactive Substances:

- a) *Amphetamine and Amphetamine type stimulants*
- b) *Opiates and metabolites*
- c) *Cannabis (Marijuana) as THC*
- d) *Cocaine*

e) Barbiturates

f) Benzodiazepine

According to the DGCA, the above substances do not generally include hypertension medicines or anti-diabetic medications. Thus, there is no need to give any specific exception, as the positive testing is only for the above six substances.

II. Sufficient number of qualified MROs

The MROs that are currently available are very few in number. However, over time it is expected that the Respondent would identify doctors who would undergo online courses and get the requisite qualifications, to increase the number of MROs available in India.

III. Guidelines/remedies if any personnel is found non-negative or positive upon testing.

The apprehension on this issue is that immediately upon any staff member being found to be non-negative or positive, the said staff is put off duty.

On behalf of the Respondents, it is clarified that the random 10% of personnel who are tested have to first undergo a Screening Test. If in the said test, the personnel tests positive, then a Confirmatory Test is administered. Only if the person is tested positive in the confirmatory test, as per Clause 7 and 8.2 the MRO concerned would suggest legitimate therapeutic treatment or some other innocuous source. Thus, it is not an immediate action that the person is put off duty. Thereafter, the MRO would consider counselling or reference of the concerned personnel to a deaddiction centre or rehabilitation centre, depending upon the nature of the levels of psychoactive substances disclosed in the testing. Dr. Dahiya

submits that the MRO would be free to even give counselling to the person concerned, depending upon the test results.

iv. Applicability of uniform testing limits

On this issue, Ms. Gosain, Id. Counsel for the Respondent has submitted that in the counter affidavit, the reference values for confirmatory tests are those prescribed and followed by Federal Aviation Authority (FAA) of the USA. She further submits that these confirmatory test values shall be circulated to all laboratories to ensure that uniform standards are followed.

6. The clarifications given today are taken on record. It is submitted by Id. Counsel for the Respondent that the CAR is applied currently in terms of the clarifications given today and recorded above.

7. After perusing CAR as also after hearing parties and their counsels, it is clear that the testing of personnel for psychoactive substances is essential, considering the nature of services being rendered. Some of the apprehensions expressed have been duly assuaged by Dr. Dahiya and his team who are present in Court. Ms. Gosain also submits that the CAR has already been implemented and whenever there is any ambiguity, proper steps would be taken, keeping in mind the purpose of CAR.

8. It is accordingly directed that there is no impediment in implementation of the CAR, keeping in mind the clarifications recorded above. If, however, either party faces obstacles or hindrances during the implementation of CAR, they are free to approach this Court. Applications seeking interim relief i.e., *CM APPLs. 6253/2022* and *51627/2022* are disposed off in the above terms.

W.P.(C) 2268/2022 & W.P.(C) 16433/2022

9. Counter affidavit be filed within four weeks. Rejoinder, thereto, be filed within four weeks.
10. List before the Registrar on 20th February, 2023.
11. List on 18th May, 2023.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 2, 2022

dj/am

