

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CWP No.12109 of 2010  
Date of decision : 28.11.2015**

**Mohinder Singh**

**....Petitioner**

**Versus**

**State of Punjab & ors.**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. Pankaj Jain, Advocate  
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

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**G.S.Sandhawal, J. (Oral)**

The petitioner challenges the order dated 26.10.2009 (Annexure P-5) whereby on account of causing loss of Rs.26,428/-, a cut of 2% has been imposed on his pension and the above said amount was to be recovered from the gratuity of the petitioner. The reasoning given while passing the impugned order by respondent No.2 was that though the inquiry officer had exonerated the petitioner but on account of dissent note recorded, a show cause notice was issued. Since the trial court had also held the petitioner guilty for the accident and released him on probation, therefore, a cut of 2% was liable to be imposed plus recovery of the amount from the gratuity.

In the considered view of this Court, the said reasoning is without any basis and is liable to be set aside. The facts go on to show that the accident took place on 15.05.2003 and the petitioner was driving bus No.PB-12/C/9760 and the passengers including the conductor received injuries. On account of the accident, the petitioner was also accused in FIR No.74 dated 15.05.2003, in which he was convicted under Section 279 IPC and sentenced but released by the

Judicial Magistrate, Ist Class on 07.07.2009 on probation for a period of one year as envisaged under Section 4(1) of the Probation of the Offenders Act, 1958.

The petitioner had also been departmentally charge-sheeted on 30.07.2003 and in the inquiry report, the inquiry officer relied upon the statements of Smt. Rita Rani and Sh. Balbir Singh, who were passengers in the bus and one of them had been injured. The witnesses had stated that something had broken from the front side of the bus and the driver loss the control over the bus and the said bus hit the other bus. The inquiry officer noticed that bus started from Hoshiarpur at 11.00 am and accident took place near Mahilpur at around 12.00 noon and the bus had travelled only 22 km in one hour and recorded a conclusion that the bus was going at a normal speed. As the steering became free and the pin of kamani came out thereafter the accident had happened. In the dissent note (Annexure P-3) dated 25.08.2009 no reasons have been given by respondent No.2 as to why the inquiry officer's finding were not justified and whether there was some illegality in coming to the conclusion whereby the petitioner had been exonerated.

As noticed above, valid reasons have been given after taking into consideration the witnesses and the speed at which the bus had travelled before it met the accident apart from the mechanical report. The said fact was never taken into consideration while issuing the dissent note. Respondent No.2 has come to a different conclusion and held that the inquiry officer was not justified before issuing the show cause notice. The only reason, which was recorded in the dissent note, was that the Court held the petitioner guilty for the accident. Even in the order imposing 2% cut in pension, reasons have

not been given as to why the inquiry officer's finding were not to be relied upon. Rather the only ground is stated that the petitioner had not presented any such material. Rather a observation has flowed, which has wrongly noticed that the inquiry officer had held the petitioner guilty in one line and thereafter had also exonerated him in the other one. The order dated 26.10.2009 (Annexure P-5) reads thus:

*"2. The official was heard on 26.10.2009 on personal hearing. During personal hearing the official told that he is innocent. He had told truth during the inquiry and due to this the Enquiry Officer has exonerated him of the charges. He has also requested for filing the case.*

*The undersigned has read over and considered the case thoroughly. The Enquiry Officer has held the official guilty in his Enquiry. The official was sent copy of dissenting note/enquiry report and Show cause notice for explaining his side and the reply given by the official was also taken into consideration. The official has not presented any such facts or documents from which the facts in the dissenting note can be falsified. Hon'ble Court has held the official guilty for accident and got one year good conduct bond filled from him. Therefore, after considering the whole case 2% cut is imposed in the pension of Sh. Mahinder Singh Driver No.34/40 (Retired) Punjab Roadways, Shaheed Bhagat Singh Nagar and the recovery of the loss be made from the Gratuity of the official."*

Merely, because the conviction has been recorded would not be a valid ground for the department to impose a cut on the petitioner's pension for the purpose of recovery. It is to be further noticed that conviction was also converted into release on probation by the trial Court under Probation of Offenders Act, 1958 on 07.07.2009. The petitioner was issued show cause notice on

06.10.2009 thereafter the departmental proceedings by way of an inquiry had ended in his favour. The same could not have been produced before the trial court as the same were not in existence at the time of final judgment. Thus, respondent No.2 was not justified in relying upon the conviction only and had to apply his mind afresh to the material on the record.

In the absence of any valid reason for differing with the opinion regarding the finding recorded by the inquiry officer, this Court is of the opinion that the dissent note and subsequent punishment by directing recovery and imposing a cut in pension is not justified in present case and is without any valid reason.

Learned counsel for the State has submitted that there is an appeal provided to the appellate authority under the rules. Keeping in view the fact that the case pertains to a employee, who has already retired from the service and the matter is pending before this Court for the last 5 years, it would not be appropriate to relegate the petitioner to his alternative remedy at this point of time.

The writ petition is accordingly, allowed and orders dated 25.8.2009 (Annexure P-3) and 26.10.2009 (Annexure P-5) are hereby quashed.

**28.11.2015**  
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**(G.S. SANDHAWALIA)**  
**JUDGE**