

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

Civil Writ Petition No.2225 of 2011

Date of decision: 3.12.2015

Gurmukh Singh

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.S.S.Bains, Advocate,
for the petitioner.

Mr.Balwinder Singh, Advocate,
for respondent No.3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The inquiry conducted against the workman, a conductor with the Pepsu Road Transport Corporation went in his favour with the finding returned that the workman was not caught red handed embezzling ticket money and the checking report was made against him on a complaint by the checking party after 3 months of the incident which was held to an afterthought. There was no direct evidence against the workman of embezzlement. It may be noted that the charge of embezzlement was not proved. But the punishing authority recorded a disagreement note and the reasons for doing so are flimsy which when read points to one inevitable

conclusion that the General Manager, PRTC, Chandigarh misdirected himself accusing the petitioner of temporary embezzlement of Corporation money which was not the charge imputed in the charge-sheet. A person charged with embezzlement of employer's money has been accused of temporary embezzlement which was not the charge. This means that the disciplinary authority accepted that money was deposited. Since the charge laid belatedly after expiry of three months from the date of incident is not proved on file, therefore, the disagreement note on the accusation of selling fake tickets after getting codes printed and thereby causing financial loss to the Corporation is not proven. The memo of charges is at Annexure P-7 where the specific charge was of embezzlement of ₹ 2000/- on August 19, 1993. Sale of fake tickets of the denomination of ₹ 20/- from August 19, 1993 to September 12, 1993 is not proved on the file. The major punishment inflicted on the petitioner of withholding of five increments with cumulative effect and denial of payment of pay and allowance for the suspension period is not based on evidence establishing guilt even on a preponderance of probabilities. There was no discernible to reject the inquiry report in the dissent note recorded.

2. The Presiding Officer, Labour Court, U.T., Chandigarh answered the reference against the Union that espoused the cause of the workman is not found sustainable in law. The Labour Court has failed to examine the evidence and has limited its consideration on the face value of the disagreement note and has been swayed by it without there being any cogent reasons to decline the reference. It may be noted that the petitioner had in the first instance approached the civil court against the punishment

order which order was set aside with liberty to the management to pass a

fresh speaking and reasoned order. That is how the disagreement note came to be issued which has led to the infliction of severe punishment. Moreover, the Labour Court has failed to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 and this is a latent defect in the proceeding. The rights under Section 11-A of the Act are valuable rights and the effect of non-consideration of the case from that viewpoint is fatal to the award in view of the law laid down by the Division Benches in **Geeta Ram v. Presiding Officer, Labour Court, Bathinda**; 1998 (4) SLR 581 : 1998 (2) RSJ 526 and **Swaran Singh v. Punjab State Electricity Board, Patiala**; 2000 (2) SCT 558 : 2000 (2) SLR 263. The disciplinary authority has only repeated the punishment order after it was set aside by the Civil Judge, Junior Division, Patiala vide judgment and decree dated August 11, 1999 wherein the impugned order dated December 14, 1994 was set aside with liberty as aforementioned.

3. The only justification assigned to support the disagreement is that the prosecution witnesses gave different versions which show the *mala fides* of the petitioner. The Labour Court misled itself in holding that the reasons given in the disagreement note do not suffer from any legal or procedural defect. There can be no doubt that the disciplinary authority in this case appeared to have made up its mind with pre-determination in punishing the workman and the disagreement note has been passed mechanically and on irrelevant consideration and so also the punishment order and to that extent, it is non-speaking inasmuch as the relevant considerations have not been taken into consideration and irrelevant considerations have crept into the decision which adversely affects the

petitioner and fastens him with excessive punishment which was not justified.

4. For these reasons, the award cannot be sustained and is set aside. As a result, the petition is allowed and the punishment order is quashed with all consequential flowing therefrom.

(RAJIV NARAIN RAINA)
JUDGE

December 3, 2015

Paritosh Kumar