

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21393 of 2012

Date of Decision: 15.09.2015

Kirpal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. V.K. Sandhir, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

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

RAJIV NARAIN RAINA, J.

The petitioner, Kirpal Singh was a driver of a Bus which met with an unfortunate accident resulting in the death of a passenger and damage of the vehicle. Claims were lodged before the MACT, Jammu by the family of the victim and compensation was granted to them. However, the Tribunal did not return a finding of rash and negligent driving on the part of Kirpal Singh. The accident also led to registration of an FIR for rash and negligent driving and Kirpal Singh was prosecuted under sections 279, 337 and 340-A IPC in the Court of the Munsiff/JMIC, Hiranagar in the State of Jammu & Kashmir. In the trial, Kirpal Singh was acquitted of the charges framed against him as the prosecution failed to bring any incriminating evidence against him. His personal surety bonds were discharged. Kirpal Singh was found innocent by the trial Court on

September 25, 2000. That was the end of the trial.

It may be noted that the accident occurred while Kirpal Singh was driving bus No.PB-12-B-9405 journeying from Jammu to Pathankot when an offending truck collided with the bus resulting in the death of Mohd. Uasuf. In the Motor Accident Claims Tribunal, a finding of rash and negligent against Kirpal Singh was not returned on the evidence. The cumulative effect of the acquittal in the criminal trial and finding of no fault by the Tribunal was that Kirpal Singh had secured his freedom from both criminal and civil liability.

However, the employer Punjab Roadways charge-sheeted Kirpal Singh for causing the accident due to his negligent and careless driving as a result of which Punjab Roadways had to pay compensation along with 12% interest to the claimants thereby Government had suffered a financial loss of Rs.2,66,452/- as a result of the accident. Kirpal Singh was charge-sheeted on May 29, 2003. He was called upon to submit a reply to the General Manager, Punjab Roadways, Ludhiana failing which it would be deemed that he has nothing to say in his defence. The reply was not found satisfactory and an Inquiry Officer was appointed. The Inquiry Officer records in his report that as per inquiry conducted from the people involved in the accident there was no fault of the bus driver. In the investigation conducted by the Jammu police it was the truck driver who was found guilty because his truck lost control and hit the bus driven by Kirpal Singh. However, the Inquiry Officer invoked the law of torts and fastened responsibility on Kirpal Singh for having caused financial loss to the employer. The Inquiry Officer in his report dated March 24, 2006 has

noted that as per Government letter No.EA-2/7670-86 dated July 17, 2001 (Ex.D-4) recovery is not to be made from drivers in the situations indicated in the policy. However, the Inquiry Officer was keeled over by the fact that MACT, Jammu have fastened liability between the truck driver and the bus driver to be joint and several in the operative part of the award and had apportioned negligence on 50:50 basis for which the Department had to pay Rs.2,66,452/- and the remaining half was to be paid by the owner/truck driver/Insurance Company. In this manner, the charges levelled against Kirpal Singh for rash and negligent driving were proven in view of the operative directions of the MACT, Jammu even though Kirpal Singh was not found guilty of the offences he was charged with.

This was the recovery part of the inquiry proceedings initiated against Kirpal Singh but that was not end of his woes. Thereafter, Kirpal Singh was issued a show cause notice on November 23, 2007 under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 ("1970 Rules") to show cause as to why Rule 5 be not invoked and his three annual grade increments with cumulative effect be not stopped as a result of conclusion in the inquiry report. He was asked to make a reply to the Director State Transport Punjab.

Kirpal Singh replied to the show cause notice stating that he was not responsible for the accident since the FIR against the truck driver was still in trial from which he was discharged. His reply was considered by the Director State Transport Punjab who by order dated January 09, 2008 has imposed the major punishment of withholding of three annual grade increments with cumulative effect on the basis of the show cause notice.

The penalty has been inflicted on the premise that the charge has been proven at the inquiry.

It is the contention of Mr. Sandhir that major punishment cannot be imposed without regular inquiry after issuing a charge sheet with specific charges imputed for a person in the dock to answer. Even in cases where show cause notices are issued for minor penalty the procedure of regular inquiry has to be adopted in view of the Full Bench decision of this Court rendered in **Dr. K.G. Tiwari vs. State of Haryana**, 2002 (4) SLR 329.

In the present case, Kirpal Singh was not put to a charge other than that of recovery of money. There was no charge-sheet against Kirpal Singh that he had committed misconduct for which he deserved major punishment as that allegation or imputation is not contained in the so-called charge-sheet Annexure P-2 dated May 29, 2003. A reading of the charge-sheet itself reveals that it is a misnomer to call it a charge-sheet as known in disciplinary proceedings in domestic inquiries. It is at best only a show cause notice for recovery while recovery of money for causing financial loss to the employer is classified as the minor punishment for which no regular inquiry is required under the 1970 Rules. Therefore, Mr. Sandhir submits that Director State Transport Punjab in imposing major punishment has not only inverted the law but has subverted it in imposing major punishment in the absence of a specific charge-sheet served. Had there been a regular inquiry and had Kirpal Singh had been informed of the charge which might lead to infliction of major punishment then he would have taken his defences and appropriate steps to prove his innocence at the

inquiry. He lost that opportunity which was very valuable to him and, therefore, the bus driver has been grievously wronged by the impugned order which cannot be sustained in the eyes of law.

The infirmity in imposition of penalty by the disciplinary authority subsists in the appeal preferred against the order imposing major penalty by the Director, State Transport Punjab. The Appellate Authority has dittoed the work of the punishing authority without applying its mind to the real issue involved which is that major penalty cannot be imposed in the course of show cause notice in a recovery proceeding and even if it is labelled as a charge-sheet it would not make it a charge-sheet as known in service law.

Mr. Inqulab Nagpal, AAG, Punjab appearing for the State faced with this situation in law is not in a position to defend either the punishment order inflicted by the Director State Transport Punjab or the appellate order dated September 19, 2011 passed by the Special Secretary to Government of Punjab, Transport Department.

At the level of Special Secretary to Government of Punjab, Transport Department, this Court expects officers of that level to understand at least the fundamental principles of law attaching to departmental proceedings in a principled manner which exudes fairness-in-action and not the lack of probity.

For the foregoing reasons, the impugned orders cannot be sustained in the eye of law. They are without jurisdiction. The writ petition is allowed. The impugned orders are quashed by issuing a writ of certiorari.

A mandamus is issued to the State to restore to Kirpal Singh his status as on

the date prior to the issuance of the “charge-sheet” dated May 29, 2003 so far as infliction of major punishment is concerned. The recovery part will be governed by the law and no opinion is expressed as that is not subject matter of the present writ petition.

(RAJIV NARAIN RAINA)
JUDGE

15.09.2015
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