

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

L.P.A. No. 22 of 2015 (O&M)

Date of decision : April 07, 2015

Pepsu Road Transport Corporation, Naba

... Appellant

vs.

Gursharanjit Kaur and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Anupam Singla, Advocate
for the appellant.
Mr. B.S. Sudan, Advocate
for the respondents.

Surinder Gupta, J

CM-50-LPA-2015

There is delay of 52 days in filing this appeal.

Learned counsel for appellant submits that the delay occurred as the legal advisor of the appellant, under some wrong impression, was of the view that the appeal could be filed within a period of ninety days. When the case was assigned to the learned counsel for the appellant, who has now filed the appeal, it was informed that period of limitation for filing appeal was 30 days. Due to this reason delay has occurred in filing the appeal. The delay that has occurred is not intentional or deliberate.

In view of the submissions made by learned counsel for the appellant, the delay in filing the appeal is condoned.

CM is allowed.

CM-49-LPA-2015

There is delay of 32 days' in re-filing the appeal.

For the reasons mentioned in the application, delay in re-filing the appeal is condoned.

CM is allowed.

LPA-22-2015 (O&M)

Jagjit Singh, who was working as Junior Assistant with appellant was served with a charge sheet (Annexure P/3). The said charge sheet reads as under :-

“You, Sh. Jagjit Singh, Junior Assistant, were working as Assistant Cashier in Cash Branch P.R.T.C. Chandigarh. On 12.6.95, Sh. Gurpal Malhotra, Senior Assistant, had given you Bill No.675 dated 2.1.1995 of Rs.5458.65 Ps. For making its payment to Sh.Ranjit Singh, Conductor No.F-83. But you, in league and connivance with Sh.Gurpal Malhotra, Senior Assistant and Sh.Surinder Singh, Assistant Treasurer, entered an amount of Rs.3438/- on page No.08 of payment register against voucher No.26 for making its payment to Sh.Ranjit Singh, Conductor No.F-83, which was entered against voucher No.25, Bill No.426 dated 8.6.95 and made a payment of Rs.3438/- to the Conductor. After making the payment, you changed the said amount to 5458.65 Ps. And entered the said expenditure on 12.6.95 at Page No.43 of cash Book. Sh.Ranjit Singh, Conductor No.F-83 got suspected that his payment is exceeding, on which he asked Raj Kumar Conductor, in order to enquire about his bill as to why he has been paid less amount. When on 19.6.95, Sh.Raj Kumar, Conductor, checked the bill from Assistant Controller (Finance & Accounts), Chandigarh, the said bill was found amounting to Rs.5458.65 Ps. When the Assistant Controller (Finance and Accounts) checked the payment register, there was cutting made and amount of Rs.3438/- was changed to Rs.5458.65Ps. Hence, you paid Rs.2000/- to the said Conductor in the presence of Assistant Controller (Finance & Accounts), Chandigarh Depot. Thereafter, you deleted the said entry made in the payment register with the help of Sh.Surinder Singh, Assistant Treasurer and entered the same at Page No.81 against Bill No.23/TA/Direction dated 13.6.95 against Voucher No.43 and again obtained signatures of conductor, which he put on

19.6.95. Thus, you have destroyed the official record and attempted to commit fraud/deceit with the said Conductor to the tune of Rs.2020.65 Ps. which is grave misconduct on your part.”

An enquiry was conducted and the Enquiry Officer, vide his report dated 3.1.1997, Annexure P/9, held the charges against Jagjit Singh to be proved. The Managing Director, of the appellant-P.R.T.C., vide order dated 21.5.1998, passed a punishment order of termination of services of Jagjit Singh. Appeal against the order of the Managing Director was dismissed by the Chairman, P.R.T.C., vide order dated 18.8.1999.

Jagjit Singh, then served a demand notice, Annexure P/11, raising an industrial dispute, which was referred to the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh. The order of reference was as follows :-

“Whether the services of Sh.Jagjit Singh Ex. Junior Assistant, PRTC, Chandigarh were terminated illegally by his employer. The Managing Director, Pepsu Road Transport Corporation, Patiala, if so, to what effect and to what relief he is entitled to, if any?”

Jagjit Singh died and his case was pursued before the Labour Court by his legal heirs. The above reference was decided against the workman vide award dated 9.9.2010.

The legal heirs of Jagjit Singh being dissatisfied with the Award of the Labour Court filed C.W.P. No. 7659 of 2011, seeking quashing of the Award. A learned Single Judge of this Court allowed the writ petition filed by the legal heirs of Jagjit Singh. The observations in para no.9 and 10 of the order passed by the learned Single Judge are as follows :-

“9. A perusal of the above two charges would go on to show that both these officials were, thus, chargesheeted for the same misconduct and the charge was of connivance with each other, they had also destroyed the official record. Though the charge talks about connivance with Surinder Singh, Assistant Treasurer but he was charged and connivance is obviously with Jagjit Singh and therefore, both the said employees were

charged of the same misconduct. The punishment order which has been imposed upon Surinder Singh on 28.05.1998, in pursuance of the said chargesheet, is reproduced above in para 2. A perusal of the same would go on to show that Surinder Singh was also responsible for making less payment to Sh. Ranjit Singh. However, a finding was recorded that in view of the statement of Ranjit Singh, who had specifically averred that Surinder Singh, Assistant Cashier had not cheated him but Jagjit Singh, Junior Assistant was responsible for the same, the Managing Director held that he had not connived with Jagjit Singh.

10. This Court is of the opinion that merely because the complainant had some grouse against the deceased-employee would not make only him liable for more punishment than the other employees also. The Enquiry Officer has, in his report, clearly pointed out that if it was in the notice of Surinder Singh that Rs.2000/- has been paid less, he should have brought it to the notice of the higher authorities and therefore the distinction which is sought to be made by the Corporation is without any justification. It is settled principle of law that once officials who have been chargesheeted for the same fraud, cannot be treated on a different footing since it would amount to violation of Article 14 of the Constitution of India....”

Allowing the writ petition by elaborate reasons, the learned Single Judge concluded in para no.14 as follows :-

“14. this Court is of the opinion that two identically situated employees could not be granted different punishments, as notice above, from the factual matrix reproduced above. In view of the fact that the employee has now since expired and therefore, only his legal heirs would be entitled to the retiral benefits which are payable under the rules and at this stage, to send the matter back to the disciplinary authorities to impose similar punishment, would not be justified and in order to shorten the litigation, the dismissal order dated 21.05.1998

and the award dated 09.09.2010 are quashed. The respondent-Corporation is directed to impose the same punishment of placing the deceased employee at the initial grade of pay scale of his post and calculate the monetary benefits which the said employee was liable to be paid and to which the legal heirs are now entitled to. Thereafter, the amount, on account of the modification of the order of punishment be paid to them, within a period of 3 months from the receipt of a certified copy of this order. In case the said amount is not paid within the prescribed period, the same shall carry interest @ 9% per annum.”

We have heard learned counsel for parties and perused the paper book with their assistance.

The learned counsel for the appellant has sought to distinguish the case of Surinder Singh, Assistant Cashier, who was charge sheeted for the same misconduct. It is contended that the gravity of misconduct of Jagjit Singh was more severe as entry in the cash book was made by him. Surinder Singh was aware of the misconduct of Jagjit Singh and committed a lapse in not reporting the same for which he was suitably punished by placing him at the initial grade of his pay scale. However, Jagjit Singh, had committed embezzlement and he was awarded punishment of termination from service, which according to the learned counsel for the appellant was/is commensurate with the gravity of his misconduct. The charge sheet issued to Jagjit Singh as well as Surinder Singh relate to making of less payment to Ranjit Singh conductor and making interpolation of entries. Thereafter on disclosure of facts, they destroyed the record. The specific charge was that the above misconduct was committed by Jagjit Singh as well as Surinder Singh in connivance with each other. It was during enquiry proceedings that the complainant exonerated Surinder Singh by stating that in fact he was not cheated by Surinder Singh and it was only Jagjit Singh who was responsible for making cuttings etc. in the payment register.

The enquiry officer returned a specific finding that the fact of less payment of ₹2,000/- was in the knowledge of Surinder Singh, Assistant Cashier, and despite this fact he booked the full expenditure in the account books. The Managing Director while imposing the penalty of placing

Surinder Singh in his initial pay scale observed in his order dated 28.5.1998 as follows :-

“Considering all the facts of the case, I am of the view that Shri Surinder Singh, Asstt. Cashier entered/booked the expenditure of Rs.5458/- even though he was aware that the payment of Rs.3458/- was actually made to Shri Ranjit Singh conductor F-83 of Chandigarh depot. Therefore, he is also responsible for making less payment of Rs.2000/- to Shri Ranjit Singh conductor No.F-83. In view of this, he deserves for strict punishment in the instant case. However, the statement of main witness in this case clearly indicates that Shri Surinder Singh, Asstt. Cashier has not committed any fraud with him and he was not connived with other delinquent Shri Jagjit Singh, Jr. Assistant, Shri Surinder Singh, Asstt. Cashier, however, is guilty of financial impropriety which may have directly resulted in fraud.”

While examining the lapse on the part of Jagjit Singh for the similar misconduct, the Managing Director in his order dated 21.5.1998 has observed as follows :-

“I have heard the statement made by Sh.Jagjit Singh very carefully and have also gone through the entire record of the present case in minute detail. The charges which have been leveled against Shri Jagjit Singh are of a very serious nature and all the charges have been proved by the Enquiry Officer. During the course of his personal hearing, Shri Jagjit Singh has not been able to refute any of the charges nor has he been able to bring out any short comings in the procedure followed by the Enquiry Officer. He has only tried to shift the burden of responsibility on the cashier. However, a close examination of the enquiry proceedings clearly to the lapses on the part of Shri Jagjit Singh and ultimately the money was also recovered from him. Shri Jagjit Singh could not rebut these charges before the Enquiriy Officer and he has not been able to rebut them before the undersigned during his personal hearing.

Considering all these facts, I find there is no reason to disagree with the findings of the Enquiry Officer wherein Shri Jagjit Singh has been found guilty of all the charges brought against him in the charge-sheet. Further in view of the gravity of the charges, I am also of the confirmed opinion that the punishment proposed in the show cause notice is quite justified. The official has shown himself to be unworthy of the trust placed upon him by the corporation. Accordingly, I order the termination of the services of Shri Jagjit Singh. He will not be paid anything over and above the substance allowance already paid to him.”

It is apparent that both the officials have been charge sheeted for the misconduct of financial impropriety and were found guilty. The learned Single Judge has rightly observed that under the said circumstances they could not be treated on a different footing while awarding punishment as it would amount to violation of Article 14 of Constitution of India.

In view of our above discussion, we find no factual or legal infirmity in the order under appeal.

The appeal being devoid of any merits is accordingly dismissed.

(S.S. Saron)
Judge

(Surinder Gupta)
Judge

April 07, 2015

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