

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

(203)

RSA No. 1836 of 2002 (O&M)
Date of Decision:- 06.10.2016.

Teja Singh

.....Appellant(s)

Versus

State of Punjab and Others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Surinder Garg, Advocate
for the appellant.

Mr. Neeraj Yadav, AAG, Punjab.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, the appellant has questioned the validity of Trial Court order dated 06.08.1998 and Appellate Court order dated 11.12.2001.

2. The appellant was working as a Conductor. On 17.07.1991, he was on duty in the bus No. 6776, which was moving from Muktsar to Jaita at Khidkiawala at 17.40 hours. Bohad Singh and Jagdish Raj, who were Inspectors in the respondent-corporation, inspected the bus and found that there were 9 passengers without tickets, who completed their journey from Bhullar to Khidkiawala. Fare for the aforesaid distance @ Rs. 1.50 paise per passenger. Thus, the appellant misused

the corporation money to the tune of Rs. 13.50 paise. Arising out of these facts and circumstances, the appellant was charge-sheeted for embezzlement of Rs. 13.50 paise. Inquiry was concluded in imposing the penalty of dismissal from service on 31.03.1993. The appellant after exhausting the remedy of appeal before the Appellate Authority, preferred a suit before the Trial Court questioning the validity of dismissal order. The Trial Court framed the following issues: -

“1. Whether order dated 31.03.1993 passed by defendant No. 2 and order dated 18.11.1993 passed by defendant No. 3 are illegal, null and void against the principles of natural justice? OPP.

2. Whether plaintiff is entitled to the declaration prayed for? OPP.

3. Relief.”

3. The Trial Court dismissed the suit filed by the appellant. Thereafter, he preferred an appeal before the Appellate Court. The Appellate Court affirmed the order of the Trial Court on 11.12.2001. Hence, the present appeal has been preferred by the appellant.

4. Learned counsel for the appellant submitted that other than Inspectors, no other independent witnesses have been examined in the inquiry. It was further submitted that the Inquiring Officer has not complied Sub-rule (23) of Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rule, 1970 as is evident from the Inquiring Officer's report. It was further contended that the Disciplinary Authority as well as Appellate Authority have failed to appreciate that there is no corroborative evidence in support of the charge. The Inquiring Officer,

Disciplinary Authority and Appellate Authority have not considered evidence on record. It was the duty of the Inquiring Officer to analyze the evidence adduced before him except recording the statement made by the witnesses, it was held that charge has been proved stating that perused the statements of the witnesses. Therefore, there is no compliance to Sub-rule (23) of Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Therefore, the Trial Court and Appellate Court have erred in dismissing the suit and appeal.

5. Per contra, learned counsel for the respondent vehemently contended that sufficient evidence has come on record. The same has been take note by the Inquiring Officer, while submitting his report. The first two pages contain statements recorded by the Inquiring Officer in respect of evidence adduced by the Inspectors, who have inspected the bus and found that the appellant had not issued tickets to 9 passengers, thereby he has embezzled Rs. 13.50 paise. The Inquiring Officer, Disciplinary Authority and Appellate Authority have followed the rules while submitting the report and passing the order of penalty and while upholding the order of the Disciplinary Authority by the Appellate Authority.

6. Heard learned counsel for both the parties.

7. Perusal of the Inquiring Officer's report, it is evident that Sub-rule (23) of Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 has not been complied by the Inquiring Officer. Further, it is evident from the Appellate Authority's order that Appellate Authority

has not considered appeal under Rule 19 of the Punishment and Appeal Rules, 1970 extract of Rule 19 as under: -

- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 4 and having regard to the circumstances of the case, the order of suspension is justified or not confirm or revoke the order accordingly.*
- (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider: -*
 - (a) Whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;*
 - (b) Whether the findings of the punishing authority are warranted by the evidence on the record; and*
 - (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders –*
 - (i) confirming, enhancing, reducing or setting aside the penalty; or*
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any*

other authority with such direction as it may deem fit in the circumstances of the case :

Provided that –

- (i) the Commission shall be consulted in all cases where such consultation is necessary;*
- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall subject to the provisions of Rule 13, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 8 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;*
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has already been held in the case, the appellate authority shall make such orders as it may deem fit; and*
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of Rule 10 of making a representation against such enhanced penalty.*

8. The Appellate Authority has failed to consider appeal with reference to the above statutory provision since it is evident from the Appellate Authority's order dated 18.11.1993, which reads under under: -

Sh. Teja Singh Ex. C.No. 49 of Punjab Roadways, Muktsar depot has preferred the present appeal against order No. 439/ST/CM dated 31.03.1993 passed by the General Manager, Punjab Roadways, Muktsar vide which his services were terminated mainly on the ground that he had committed a fraud of Rs. 13.50/-.

Comments of the G.M.P.R. Muktsar were obtained which are on the file.

I have heard the appellant in detail and have also gone through the relevant record carefully. In this case the appellant was duly chargesheeted and a regular enquiry was held. The enquiry officer has found the appellant guilty, on the basis of the findings of the enquiry officer, the impugned order was passed by the General Manager. I entirely agree with the enquiry officer. The enquiry has been conducted in accordance with the rules and full opportunity was afforded to the appellant to defend the case. The charge is proved on the basis of oral as well as documentary evidence. The prosecution witnesses are reliable and competent. There is no flaw in the order appealed against. This order was just and proper. Keeping in view the circumstances of the case. The appellant has not been able to show me any such circumstances or reason as to justify any interference with the order appealed at this stage. The appeal preferred by the appellant, therefore, fails and is hereby dismissed.

Orders to be communicated.

9. Therefore Trial Court and Appellate Court have committed error in not considering the Inquiry Officer's report, Disciplinary Authority's order read with Appellate Authority's order since the

Appellate Authority's order dated 18.11.1993 read with aforesaid provisions. At this distance of time, it is not appropriate to remand the matter to the Appellate Court. That apart the appellant has already crossed 58 years. Therefore, question of reinstatement is also impracticable. Hence, the Trial Court order and the Appellate Court order are set aside. Matter is remanded to the Competent Authority to modify the penalty from dismissal to that of any other penalty like withholding of portion of retiral benefits from prospective date. The Competent Authority is directed to pass such order within a period of six months from today and to release difference of monetary benefits at the earliest in order to give quietus to the matter. It is made clear that appellant is not entitled to interest on monetary benefits.

Accordingly, Appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

October 6, 2016

sahil soni

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No