

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2096 of 1989

Date of Decision:- 29.08.2016.

Paramjit Singh

.....Appellant

Versus

Punjab State

.....Respondent

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

Present: Mr. Munish Behl, Advocate for the appellant.

Mr. Neeraj Yadav, AAG, Punjab.

P.B. BAJANTHRI, J. (Oral)

1.) The appellant has questioned the validity of Trial Court order dated 3.2.1987 and Appellate Court order dated 19.5.1989 in the present appeal.

2.) The appellant is stated to have been appointed as a Conductor on 17.8.1979. On 20.10.1984, there were allegations against the appellant that he has not issued tickets to certain passengers after collecting fare. Thus, the Punjab Roadways money has been misappropriated. On these allegations, departmental inquiry was held in which the appellant was found to be guilty and he has been punished by imposing the penalty of termination from service on 30.4.1985. Feeling aggrieved by the order of termination, he has filed suit for declaration before the Trial Court. On 3.2.1987, the Trial Court upheld the order of termination. Still aggrieved by the order of Trial Court, the appellant preferred an appeal before the

Appellate Court. The Appellate Court confirmed the order of Trial Court on 19.5.1989. Hence, the present Regular Second Appeal.

3.) Learned counsel for the appellant submitted that in the inquiry, passengers who were travelling without tickets have not been punished by imposing fine or their statement has not been taken into consideration to make the allegation that appellant had not issued tickets to such of those passengers who were stated to be travelling ticketless. It was further contended that only the Chief Inspector and Inspector of the squad have been examined. Based on their evidence, the charge relating to misappropriation of ₹ 19.95/- has been proved in the inquiry. In the absence of corroborative evidence like examination of passengers and other witnesses, the charges have not been proved. The Chief Inspector and Inspector were interested witnesses. It was further contended that assuming that appellant has misappropriated a sum of ₹ 19.95/- on 21.10.1984, the penalty is too harsh and disproportionate to the conduct. In support of this contention, learned counsel for the appellant relies on a decision of the Apex Court reported in **2006 (3) SCC 450 (U.P. State Road Transport Corporation and others Vs. Mahesh Kumar Mishra and others** wherein the Apex Court appreciated the modification of penalty by the High Court to the extent of reinstatement and back wages limited to 25%. Therefore, the Trial Court as well as Appellate Court erred in upholding the order of termination.

4.) Per contra, learned State counsel vehemently contended that rules and procedures have been followed in the disciplinary proceedings, therefore, there is no infirmity whatsoever. Insofar as examination of passengers is concerned, it is not necessary in view of the Division Bench

decision of this Court reported in **1997 (4) SCT 437 (Surat Singh Vs. The Presiding Officer, Labour Court, Rohtak)**. He also relies on Supreme Court decision reported in **2006 (8) SCC 108 (U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal)** relating to not issuing tickets to passengers and pocketing the money thereby causing loss to the Punjab Roadways is a serious misconduct. Therefore, question of disproportionate punishment as contended by the learned counsel for the appellant is untenable.

5.) Heard learned counsel for the parties.

6.) Perusal of the records, it is evident that charge has been proved with reference to the evidence adduced by the Chief Inspector Pritam Singh and Inspector Karnail Singh. No independent evidence has been taken like passengers. It is true that all the passengers need not to be examined where a Conductor has failed to issue tickets. At the same time, Punjab Roadways should have at least examined one or two passengers in order to corroborate the evidence of Chief Inspector and Inspector who were stated to be interested witnesses. Further there is no material to demonstrate that Chief Inspector or Inspector have penalized the ticketless passengers by imposing fine. It was further noticed from the records that the Inquiry Officer prepared a questionnaire and answers have been taken note of. In a disciplinary inquiry having regard to the materials and allegations, the Presenting Officer has to present the case, examine and cross-examine the witnesses. The Inquiry Officer should act like an Umpire who is neutral person in the disciplinary proceeding. On the other hand, he has prepared questionnaires for conducting inquiry proceedings. Therefore, the proceedings drawn by the Inquiry Officer is not in order and not in

accordance with law. In a departmental inquiry, the Presenting Officer has to present the case, examine and cross-examine and not the Inquiry Officer. Hon'ble the Supreme Court in **Moni Shankar Vs. Union of India** reported in **2008 (3) SCC 484** has held as under:-

“20. The Enquiry Officer had put the following questions to the appellant:-

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the Enquiry?"

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.

30. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual; the Enquiry Officer acted as a Prosecutor and not as an independent quasi judicial authority ; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.”

Thus, Inquiry Officer's report itself is not in accordance with law. Hence, the termination order is liable to be set aside.

7.) Insofar as non-examination of passengers is concerned, no

doubt this Court has held that statement is not recorded or cash is not

counted may not be material. The Court has to consider and see if there is summoned evidence on which the authority could held the employee guilty. Having regard to the fact that the Inquiry Officer has prepared the questionnaire and there is no corroborate evidence to support the evidence adduced by the Chief Inspector and Inspector. Enquiry proceedings are vitiated. Even assuming that passengers' statement has not been recorded still other lacunae are on record.

8.) In view of the facts and circumstances, the order of termination dated 30.4.1985, Trial Court order dated 03.02.1987 and Appellate Court order dated 19.5.1989 are set aside. The respondents are directed to reinstate the appellant without back wages with continuity of service.

9.) Appeal stands allowed.

(P.B. BAJANTHRI)
JUDGE

August 29, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.