

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

RSA No.1637 of 1991

Date of Decision:01.06.2016

Nargej Singh

.....Appellant

Vs

State of Punjab and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. S.M. Sharma, Advocate
for the appellant.

Mr. P.S. Bajwa, DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. Plaintiff-Nargej Singh after feeling dissatisfied with the judgment and decree dated 05.04.1991 passed by the Additional District Judge, Gurdaspur has filed this appeal.

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for declaration to the effect that the order dated 06.01.1989 stopping five annual increments of the plaintiff with cumulative effect and also forfeiting the arrears of suspension period passed by defendant No.2 was illegal, null and void and was not in consonance with Punjab Civil Services (Punishment and Appeal) Rules 1970 and therefore, the said

order was assailed in the suit before the trial Court.

[3]. Plaintiff was serving as Conductor in Punjab Roadways Depot. Disciplinary proceedings were initiated against the plaintiff on the report of the Flying Squad. The allegations alleged against the plaintiff were that on 24.02.1988, he was on duty as Conductor on bus No.7049 running from Pathankot to Thein Dam (Ranjit Sagar Dam). The bus was checked by the Flying Squad at Matti Kot at 10.30 a.m. 58 passengers were found travelling in the bus. Out of the total, 14 passengers were found travelling from Jugial to Matti Kot and were without tickets. They got down from the bus. Plaintiff had charged Rs.1/- as fare of each of the passenger but did not issue any tickets to them. Besides these persons, 7 persons were travelling from Pathankot to Matti Kot. From these seven persons, the conductor had also charged Rs.2/- each as fare but did not issue any tickets to them. It was alleged that on being confronted, the plaintiff had admitted his guilt and handed over unpunched tickets of the corresponding amount of fare chargeable from these 21 passengers. An embezzlement of Rs.28/- was alleged against the plaintiff. Defendant No.2, General Manager placed him under suspension vide order dated 02.03.1988. His explanation dated 28.03.1988 was obtained in which he had denied the allegations made by the

Flying Squad. According to him, at the time of checking, he had issued tickets to 64-65 passengers. According to the waybill, there were 61 passengers who had to go upto Matti Kot and even beyond, therefore, it was wrong to say that only 58 passengers were travelling in the bus.

[4]. The suit was contested by the defendants.

[5]. On the pleadings of the parties, following issues were framed:-

“1. Whether the jurisdiction of the Civil Court to entertain and try this suit is barred? OPD

2. Whether the impugned order dated 06.01.1989 is illegal, void and against the principles of natural justice? OPP

3. Whether the notice served under Section 80 CPC before filing this suit is legal and valid? OPP

4. Relief.”

[6]. During the course of proceedings before the trial Court, issues No.1 and 3 were not pressed by the Government Pleader. Issue No.2 was contested and was decided in favour of the plaintiff. Trial Court decreed the suit vide judgment and decree dated 06.09.1990, thereby, granting declaration to the effect that the order dated 06.01.1989 was illegal, null and void. Defendants were directed to release the arrears of salary to the plaintiff. However, the judgment and decree of the trial Court

was reversed by the lower Appellate Court by judgment and decree dated 05.04.1991. That is how the present regular second appeal came to be filed by the plaintiff in this Court.

[7]. Apparently, Enquiry Officer had found that the charge against the plaintiff of embezzlement of Rs.28/- for not issuing tickets to the passengers to be proved. The Punishing Authority, however, disagreed with the findings recorded by the Enquiry Officer and issued the show cause notice to the plaintiff and after obtaining reply, heard him personally. Despite that Punishing Authority chose to inflict lesser punishment than the one proposed by the Enquiry Officer. On comparison of waybill of the plaintiff, the Punishing Authority found that there should have been 82 passengers in the bus at the time of checking, whereas, checking staff found only 58 passengers in the bus. There was no reason for the Punishing Authority to impose lesser punishment, when it did not agree with the findings recorded by the Enquiry Officer. Punishing Authority did not find that the plaintiff was guilty of any embezzlement of lesser amount than actually determined by the checking staff. Punishing Authority found that conclusion drawn by the Enquiry Officer was not correct and therefore, there was no scope of imposing penalty as suggested by the Enquiry Officer. In the aforesaid event, two options were available:- (1). Punishing

Authority for the reasons to be recorded in writing could have remitted the enquiry to the Enquiry Officer for fresh enquiry into the matter and report; (2) Punishing Authority in the event of disagreement with the findings recorded by the Enquiry Officer on any of the charge could have recorded its reason for disagreement and could have recorded its own findings on such charge, if the evidence was sufficient for that purpose. Both the courses were not adhered to. Neither the case was remitted back to the Enquiry Officer, nor the Punishing Authority had given its own findings after showing disagreement with the findings recorded by the Enquiry Officer. The Punishing Authority could have done so by issuing show cause notice to the delinquent and on receipt of reply from him.

[8]. The findings of the Enquiry Officer appeared to be uncorroborated. During enquiry, department proposed to examine five witnesses in support of imputations of mis-conduct and mis-behaviour against the plaintiff. Ramesh Chander, Station Supervisor, Inspectors Lakhwinder Singh, Ram Lubhaya, Balwant Singh and Ajit Singh were the witnesses, but during the enquiry proceedings only Chief Inspector, Ajit Singh and Lakhwinder Singh, Inspector were produced. The other witnesses could not be produced and the Presenting Officer gave up these witnesses as unnecessary and evidence was

closed. Ajit Singh, Chief Inspector in his statement stated that other members of the checking staff had checked the bus from inside, checking was not done by him. Lakhwinder Singh, Inspector also stated that the passengers who were without tickets were checked by Ram Lubhaya and Balwant Singh Inspectors. In this way, both the witnesses examined by the department were not involved in actual checking of the passengers, who were allegedly found without tickets. The Inspectors namely Ram Lubhaya and Balwant Singh who had actually checked the passengers were not examined as witnesses. The Enquiry Officer gave the report solely by relying upon the testimonies of Chief Inspector Ajit Singh and Inspector Lakhwinder Singh who had in fact not checked the passengers of the bus at all.

[9]. The Lower Appellate Court solely on the basis that the Enquiry Officer had followed the procedure laid down in Punjab Civil Services (Punishment and Appeal) Rules, 1970 therefore it could not be faulted with and there was no violation of any rule by the Enquiry Officer. On that premise, learned Appellate Court held that the trial Court was not justified in decreeing the suit.

[10]. Evidently, the enquiry report submitted by the Enquiry Officer was based on no incriminating evidence against the plaintiff. The Competent Authority lawfully disagreed with the

findings recorded by the Enquiry Officer. As per waybill, plaintiff had sold 19 tickets for Rs.2.5 paise each and 37 tickets for Rs.1.35 paise each. These 37 passengers could not alight the bus before reaching Matti Kot. Five tickets had been sold by the Adda Incharge and in this way the passengers travelling with tickets were 61 passengers. If, 21 passengers travelling without tickets were added to the total tally, then the total passengers would be 82 passengers in the bus and not 58 passengers as found by the inspecting staff. The General Manager in considered opinion of this Court had rightly disagreed with the findings recorded by the Enquiry Officer.

[11]. Even, after disagreement shown by the Competent Authority, the Competent Authority proceeded to punish the delinquent without following proper procedure. In the event of disagreeing with the enquiry report, the Competent Authority could have formed its opinion on the basis of evidence and could have punished the delinquent, but without doing so the Punishing Authority without any basis presumed the enquiry to be correct so as to take lenient view, thereby, stopping five annual increments with cumulative effect. The evidence which was brought on record before the Enquiry Officer was suggestive of the fact that Chief Inspector Ajit Singh was not involved in checking of passengers at all. Inspector Lakhwinder

Singh also deposed that he had not checked the tickets and in fact Inspector Ram Lubhaya and Inspector Balwant Singh had checked the tickets of the passengers. Both these Inspectors namely Ram Lubhaya and Balwant Singh were not examined in the enquiry proceedings. The lower Appellate Court has drawn conjectures by observing that according to Inspectors, 58 passengers were travelling in the bus at the time of checking. It may be possible that some of the passengers would have alighted from the bus before reaching bus-stand of Matti Kot and before the Inspector had checked the bus. The passengers were free to leave the bus before arriving at the Adda, therefore, the presumption was drawn that there were 82 passengers in the bus, but in fact some of the passengers had left the bus before reaching bus-stand of Matti Kot. All these things were conjectures and were not required to be given any importance. The Enquiry Officer had not given a fact finding report, rather, the report was tainted and discrepant in material particulars.

[12]. Once the Chief Inspector, Ajit Singh and Inspector Lakhwinder Singh had not checked the passengers in the bus, then, how their testimonies were relied upon by the Enquiry Officer to arrive at a conclusion that there were some passengers travelling without tickets and the plaintiff had committed embezzlement. The inspectors who had checked the

bus were not examined during enquiry. The enquiry was vitiated and in the event of showing disagreement with the enquiry report, the Punishing Authority either could have remitted the case to Enquiry Officer for fresh enquiry or the Punishing Authority could have recorded its own findings, thereby, issuing show cause notice to the delinquent and after receiving his reply could have proceeded to record its own finding of guilt.

[13]. Even though no substantial question of law has been formulated but in the light of aforesaid facts as emerged on record it has to be decided:-

“1. whether on the basis of tainted enquiry, the Punishing Authority could have resorted to punish the plaintiff under the garb of lenient view?

2. Whether the enquiry was vitiated on account of non-incriminating evidence against the plaintiff?”

[14]. On consideration of entire facts on record and in the light of evidence produced in the form of enquiry report, both the aforesaid questions are to be answered affirmatively in favour of the plaintiff. There was no incriminating material before the Enquiry Officer to cull out something from uncorroborated evidence. On the basis of no evidence, the Enquiry Officer could not have possibly imputed allegations of embezzlement against the plaintiff. The Punishing Authority on the other hand was

legally obligated to reject the enquiry report in toto or could have remitted the case to the Enquiry Officer with a direction to conclude enquiry afresh. In alternative, the Punishing Authority could have disagreed with the enquiry report and after issuing show cause notice and after providing reasonable opportunity of hearing to the delinquent could have replaced the findings of the Enquiry Officer with its own findings. Such things were not done by the Punishing Authority.

[15]. There was no material available with the Punishing Authority to punish the plaintiff by way of taking alleged lenient view of the enquiry report which was tainted and was based on no evidence, therefore, in view of aforesaid, both the questions are decided accordingly in favour of the plaintiff.

[16]. Consequently, I am of the view that the impugned judgment and decree passed by the lower Appellate Court has to be reversed. Accordingly, this appeal is allowed, decreeing the suit of the plaintiff with costs throughout.

01.06.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**