

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 440 of 1991
Date of Decision: 03.2.2016.

State of Punjab and anotherAppellants

Versus

Tarsem Singh (deceased) through LRsRespondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Neeraj Yadav, AAG, Punjab.

Mr. A.P.S.Rehan, Advocate
for the respondents.

SABINA, J.

Tarsem Singh-respondent (since deceased) had filed suit for declaration challenging the order dated 8.5.1986 whereby his six increments were ordered to be stopped with cumulative effect.

Case of the respondent (since deceased), in brief, was that he was working as a Conductor with the defendants since the year 1970. The impugned order dated 8.5.1986 had been passed in violation of principles of natural justice.

Defendants, in their written statement, averred that the impugned order had been passed in accordance with law after holding departmental enquiry against the respondent (since deceased).

On the pleadings of the parties, following issues were framed by the Trial Court:-

*“1. Whether the impugned order dated 8.5.1986 is
illegal, null and void? OPP*

2. *Whether the civil Court has no jurisdiction to try the present suit ? OPD*
3. *Whether valid notice u/s 80 CPC was served upon the defendants by the plaintiff before the filing of the suit ? OPP*
4. *Relief.”*

Suit filed by the respondent (since deceased) was dismissed by the Trial Court vide judgment/decreed dated 12.5.1988. Aggrieved against the said judgment and decree, respondent (since deceased) preferred an appeal and the same was allowed by the First Appellate Court vide judgment/decreed dated 13.10.1990. Hence, the present appeal by appellant-State.

Learned State counsel has submitted that the Appellate Court has allowed the appeal on erroneous considerations. Two members of the checking party, who were examined during enquiry proceedings, had duly established the charge levelled against the respondent (since deceased).

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that the judgment and decree passed by the Appellate Court were liable to be upheld.

The substantial question of law that arises in this case is that whether the rules of natural justice had been violated during departmental proceedings and the Civil Court had the power to review the punishment order.

In the present case, admittedly, respondent (since deceased) was working as a Conductor with the defendants. On 16.2.1985, respondent (since deceased) was on duty on bus No. 7439 enroute Pathankkot to Dera Beas. When the bus was

checked by the checking staff i.e. Lachhman Dass, Dilawar Singh and Harmeet Singh Inspectors at about 14.45 hours near Sarthiali bridge, three passengers were found travelling in the bus without tickets, although, respondent (since deceased) had received the requisite fare from them. Charge sheet was issued to the respondent (since deceased) on 26.3.1985. Respondent (since deceased) submitted his reply to the charge sheet. Reply submitted by the respondent was not considered satisfactory and Enquiry Officer was appointed. During enquiry proceedings, department examined its witnesses. So far as witnesses Harmeet Singh Inspector and Lachhman Dass, Inspector are concerned, they were duly cross-examined by the respondent. So far as Inspector Dilawar Singh is concerned, his statement was recorded on 2.7.1985 and his cross-examination was deferred at the request of the respondent (since deceased) but thereafter the said witness was not produced for the purposes of cross-examination. The Enquiry Officer submitted his report dated 22.10.1985 holding that the charge levelled against the respondent (since deceased) stood proved. Thereafter, show cause notice dated 29.1.1986 was issued to the respondent (since deceased). Respondent (since deceased) submitted his reply to the show cause notice and was afforded personal hearing on 6.5.1986. Thereafter, the punishing authority passed the order dated 8.5.1986 whereby six increments of the respondent (since deceased) were ordered to be withheld with cumulative effect.

The scope of judicial review regarding interference with punishment order is very limited. The jurisdiction of this Court is only to see the method/manner of awarding punishment. The

Court is only concerned with the procedure adopted by the Punishing Authority. If the procedure adopted by the Punishing Authority is according to rules and natural justice, then no interference with the punishment order is called for. This Court cannot go into the merits of the case. In case, the finding of the Inquiry Officer is based on some evidence, then the Court cannot re-appreciate the evidence or weigh the same like the Appellate Authority. So long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained. Some defect in the inquiry has to be pointed out before this Court can interfere with the punishment order. Further more, if defect is pointed out then the delinquent employee has to show as to what prejudice has been caused to him on account of the said defect. The Court exercising jurisdiction of judicial review is not to interfere with the finding of the fact arrived at in a departmental inquiry excepting in a case of *mala fide* or perversity.

Thus, in the present case, the punishment order was passed after following due procedure of law. Although, Inspector Dilawar Singh was not produced for the purposes of cross-examination but so far as Inspectors Harmeet Singh and Lachhman Dass are concerned, they were duly cross-examined by the respondent. Merely because Inspector Dilawar Singh had not been produced for cross-examination, would not be fatal to the enquiry proceedings as the charge levelled against the respondent (since deceased) was duly proved by Inspectors Lachhman Dass and Harmeet Singh. It is not a case that the finding of the enquiry officer was passed on no evidence. Rather the finding of the Enquiry Officer that the charge levelled against the respondent

stood proved, was passed on the statements of Inspector Lachhman Dass and Inspector Harmeet Singh. Hence, in the present case, it could not be said that rules of natural justice had been violated.

Since in the present case, the rules of natural justice had not been violated, the Civil Court had no jurisdiction to review the punishment order. The substantial question of law arises in this case stands answered accordingly.

Accordingly, this appeal is allowed. Impugned judgment and decree passed by the Appellate Court dated 13.10.1990 are set aside. Consequently, the judgment and decree passed by the Trial Court dated 12.5.1988 are upheld.

**(SABINA)
JUDGE**

February 03, 2016
Gurpreet