

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

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**CWP No. 22378 of 2012(O&M)
Date of decision:22.10.2016**

Braham Pal

.... Petitioner

Versus

The Presiding Officer and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Davinder Lubana, Advocate for the petitioner.

Mr. Vishal Gupta, Advocate for respondents No. 2 and 3.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has assailed the order of the Industrial Tribunal-cum-Labour Court, UT, Chandigarh dated 13.12.2010.

2. The petitioner joined service of the 2nd respondent-Industrial and Tourism Development Corporation on 25.06.1991. He was discharging the duties of the post of Room Attendant in the Hotel Shivalik View which is a part and parcel of 2nd respondent office. On 19.05.2001, two ladies guest who checked in room No. 406. During the night on 19.05.2001 they were disturbed by the petitioner. Consequently, written complaint was submitted to the hotel Shivalik View. Based on the complaint, the 2nd respondent proceeded to initiate disciplinary proceedings against the

petitioner on the allegations that the petitioner is stated to have harassed the lady guests on 19.05.2001 at about 10 pm by pressing the room door bell frequently. The Inquiring Officer held that the charges levelled against the petitioner was proved in the disciplinary proceedings. Consequently, his services have been dismissed. The petitioner raised a dispute. It was referred to the Industrial Tribunal-cum-Labour Court, UT, Chandigarh. The Industrial Tribunal-cum-Labour Court on 13.12.2010 declined to interfere with the reference and it was answered against the petitioner. The petitioner has questioned the order dated 13.12.2010 of the Industrial Tribunal-cum-Labour Court, UT, Chandigarh. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the allegations. Main contention of the petitioner is that the complainants have not been summoned and examined in the inquiry. Consequently, the entire inquiry proceedings and findings of the Inquiring Officer is liable to be set aside. Though, such plea was raised before the Labour Court. The same was discarded. Therefore, in the absence of examination of complainant in the disciplinary proceedings the charge levelled against the petitioner cannot be held to be proved.

3. Per contra, learned counsel for the respondents vehemently, contended that admittedly author of the complaint has not been examined. However, circumstantial evidence it is evident that the charges levelled against the petitioner has been proved by means of taking evidence of the other witnesses or superiors to the petitioner and who are discharging the duties of their post on the relevant date and time. Merely, non-examination of complainant in the case of harassment of women, the same cannot be held that the charges were not proved.

4. Heard learned counsel for the parties.
5. During the enquiry, the petitioner was asked number of questions. Particularly question No.10 reads as under:-

Q10. It is fact that lady guest came out of room immediately after opening the door and started shouting and pointing towards you, calling you as culprit for ringing the door bell and by then you had hidden himself in room No. 412?

Ans. Yes, it is correct."

6. The petitioner has admitted that he was very much present and he was hidden in room No. 412. If the petitioner has not committed any misconduct with the guests of the Hotel, question of hiding himself in Room No. 412 would not have arisen. Therefore, having regard to the conduct of the petitioner, it is evident that he has harassed the guests of the respondent Hotel. Regarding examination and non-examination of the complainant is concerned, the complainants are ladies and who are not residents of the Chandigarh and they are not in a position to adduce evidence in support of their complaint. Since the complainants are ladies their presence and taking evidence for the purpose of proving the charge levelled against the petitioner may be relevant and crucial. At the same time, it would be embarrassing for them. However, having regard to the circumstantial evidence adduced by the other witnesses as well as admission made by the petitioner that he was hidden in room No. 412 at the relevant point of time which was admitted by him in the enquiry. Thus, sufficient evidence has come on record to prove the charges levelled against the petitioner.

Therefore, there is no infirmity in the enquiry as well as penalty order. Thus

no interference is called in respect of decision of the Industrial Tribunal-cum-Labour Court, Chandigarh dated 13.12.2010.

7. CWP stands dismissed.

22.10.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No