

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

CWP No.7809 of 2013

Date of Decision:04.11.2016

Subeg Singh

... Petitioner

Vs.

Presiding Officer and others

... Respondents

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

Present : Mr. R.S. Chauhan, Advocate for the petitioner.

Mr. Harsh Aggarwal, Advocate for respondents No.2 to 5.

P.B. BAJANTHRI J.

The petitioner has questioned the validity of the award dated 10.01.2013 (Annexure P-13); order of termination dated 29.08.2001 (Annexure P-4) and the order dated 8.8.2002 by which the petitioner's appeal was rejected. The petitioner has further sought for direction to treat him on par with the similarly situated persons whose services were terminated on identical charges and who have been ordered to be reinstated while awarding the minor penalty.

The petitioner joined the service of the respondent-Pepsu Road Transport Corporation as a conductor in the month of April 1978. He was charge-sheeted on 18.9.2000 on the allegations that he had embezzled a sum of Rs.40/- on 14.8.2000 and Rs.14/- on 8.8.2000 total embezzlement amounting to Rs.54/-. The petitioner submitted his reply to the charge memo wherein he has clearly admitted the charges levelled against him and he also expressed that no inquiry can be initiated. He may be awarded with minor punishment. Despite such admission, the respondent-corporation proceeded to hold an inquiry. Even before the Inquiry Officer, the petitioner has admitted the charges levelled against him and requested for closing

inquiry by imposing minor penalty. Thereafter the disciplinary authority on 29.8.2001 with reference to the admission of the charges by the petitioner proceeded to impose the penalty of removal from service. The petitioner feeling aggrieved by the penalty of removal from service preferred an appeal before the Appellate Authority. The Appellate Authority rejected the petitioner's appeal for modification of penalty from removal from service to that of any other minor penalty. Thus, the petitioner approached the Industrial Tribunal. The Industrial Tribunal on 10.1.2013, framed the following issues:

- “1. Whether services of workman stand validly terminated by the respondents? If not so, to what relief is he entitled? (OPR).*
- 2. Whether claim is not maintainable? OPR*
- 3. Whether claim is barred by time? OPR*
- 4. Relief.”*

The Industrial Tribunal uphold the order of removal from service. Hence, the present writ petition has been filed.

Learned counsel for the petitioner submitted that in identical set of circumstances, in the cases of Major Singh, Budh Singh and Wakil Singh, the Appellate Authority has taken a lenient view while modifying the penalty of removal from service to that of minor penalty. Even in the above cases, the persons, who were working as conductors, have embezzled amount of Rs.117/-, 978/- and 432/- respectively. Whereas the petitioner has embezzled an amount of Rs.40/- and Rs.14/- on two occasions in the same month. Such a lenient view has not been taken by the respondents. Thus, there is a discrimination in imposing the penalty. Such discrimination contention has not been appreciated by the Industrial Tribunal. Therefore, the Industrial Tribunal has committed an error in not considering the ground

of discrimination while imposing the penalty by the respondents. It was further contended by the learned counsel for the petitioner that the petitioner fairly admitted while giving his explanation to the charge memo so also before the Inquiry Officer. Therefore, the respondents should have taken a lenient view by imposing the minor penalty when the respondents have taken such action in identical circumstances. Thus, it is a clear case of discrimination.

Per contra, learned counsel for the respondents-corporation submitted that the petitioner's case cannot be compared with the cited cases for the reasons that the petitioner himself has admitted the guilt of embezzlement of Rs.40/- and Rs.14/- on two occasion in the same month and he is not a trustworthy employee so as to retain him in service. Therefore, there is no lacuna in taking decision. It was further submitted that even though large number of complaints were received against the petitioner. The same is not part and parcel of the charge memo and it was not considered while removing the petitioner from service and what is taken note of is his admission in respect of two incidence or embezzlement of corporation money on 8.8.2000 and 14.8.2000 which were admitted by the petitioner. Therefore, the case of the petitioner cannot be compared with the cited cases in which the respondent-corporation have modified the penalty of removal from service to that of minor penalty.

Heard learned counsel for the parties.

Short question for consideration in the present petition is whether the respondents have committed discrimination in imposing penalty of removal/dismissal from service for the reasons that while imposing identical penalty in case of above cited persons, the Appellate Authority has

modified the same to that of minor penalty and such benefit has not been extended to the petitioner.

The petitioner embezzled the corporation amount of Rs.14/- on 8.8.2000 and Rs.40/- on 14.8.2000 on two occasions in the month of August. Therefore, the same cannot be compared with the other cases like Major Singh, Budh Singh etc. In all those cases, learned counsel for the respondent-corporation submitted that it is an isolated cases whereas insofar as the case of the petitioner is concerned, on two occasions in the very same month, the petitioner has embezzled the corporation amount. Thus, the petitioner is not trust worthy employee. Therefore, the question of discrimination is not forthcoming. That apart the question of discrimination in imposing the penalty would arise only in a joint inquiry where the role of each of the employee is identical and if the employer discriminated among the employees in imposing the penalty, in such circumstances, the question of discrimination would arise. It is not a case of joint inquiry so as to verify each employees role for the alleged charge. Thus, principle of discrimination among the employee is not made out so as to interfere with the award of the Labour Court dated 10.01.2013 (Annexure P-13); order of termination dated 29.08.2001 (Annexure P-4) and the order dated 8.8.2002.

Accordingly, the present petition stands dismissed.

04.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No