

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1909 of 1988 (O&M)

Date of decision : 24.1.2017

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Tarsem Lal

.....Appellant

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice Harminder Singh Madaan

Present: Mr. Vivek Sharma, Advocate
for the appellant

Mr. Deepak Garg, Assistant Advocate General,
Punjab

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Harminder Singh Madaan, J.

This appeal has been filed against judgment and decree dated 7.9.1987 passed by the Court of Additional District Judge, Hoshiarpur, vide which he had dismissed the appeal preferred by the plaintiff-appellant against the judgment and decree passed by the Senior Sub Judge, Hoshiarpur dated 13.5.1987, dismissing the suit.

The plaintiff, who is appellant before this Court prays that the

appeal be accepted and the impugned judgment and decree be set aside and suit filed by him be decreed.

Briefly stated, the facts of the case are that the appellant – plaintiff Tarsem Lal had been working as a conductor in Punjab Roadways, Hoshiarpur. He was on duty on bus No. 3450 on Nangal-Amritsar route on 16.12.1979. The bus was checked by a flying squad at Old Bus Stand, Una and out of 54 passengers travelling in the said bus, 6 were found to be travelling without tickets, though as alleged by them the plaintiff – conductor had collected the fare from such passengers. Further more on 31.1.1980, while plaintiff-appellant was on duty as conductor on bus No. 1149 on Hoshiarpur-Faridkot route, and when it was checked by flying squad at Kapurthala, the checking revealed that 35 passengers were travelling in the said bus, but 7 were not having tickets, though plaintiff-conductor had allegedly received fare from them. As such it was inferred that the plaintiff-appellant had committed fraud of Rs.7.95 Paise with the Government. He was served with a charge sheet by the General Manager, Punjab Roadways, Hoshiarpur vide order dated 1.4.1980. Plaintiff filed reply to the said charge sheet, which was not found to be satisfactory.

As such a departmental enquiry was initiated against the plaintiff, which culminated in a report finding that charges stood established. On the basis of said report, the Punishing Authority passed order of dismissal from service. The plaintiff preferred appeal against that order, but was unsuccessful there, as such he knocked at the door of Civil Court, by filing a suit challenging the impugned order of his dismissal from service and order passed by the Appellate Authority dismissing the appeal.

In the suit he took up various pleas to wit that General Manager did not apply his mind to the reply to the charge sheet submitted by the plaintiff and mechanically appointed the Enquiry Officer; that no personal hearing was given before appointing of Enquiry Officer and after submission of the reply to the charge sheet; that plaintiff was not given an opportunity to arrange services of any co-worker as defence helper, which caused him prejudice as he is not highly qualified, though Enquiry Officer himself was Law Graduate and was Legal Advisor in the Department specially recruited for the purpose; that the request made by the plaintiff in that regard did not invoke any response from the General Manager; that no passenger was examined during the course of enquiry and cash was not

counted. Further more way bill was not tallied with unsold tickets; that the Enquiry Officer for extraneous factors gave report against the plaintiff; that charge sheet was served in 1980 whereas enquiry was ordered on 11.5.1983, after inordinate delay causing prejudice to the plaintiff; the plaintiff was not given an opportunity to produce his defence evidence; that the report by the Enquiry Officer is based upon wrong appraisal and evaluation of evidence and is not supported by any valid reasoning. The impugned orders passed by the General Manager and Appellate Authority are also wrong without considering the submissions of the plaintiff and are result of non-application of mind. For such like reasons, the plaintiff sought setting aside of those orders and decreeing of his suit.

The suit was resisted by the defendants. In the written statement submitted by them, it was averred that charge sheet was properly issued to the plaintiff on the basis of material available; the reply to the charge sheet was considered and thereafter, enquiry was ordered, which was conducted properly as per rules giving adequate opportunities to the plaintiff to produce his defence; that Rules of natural justice and service rules were observed and report was submitted, which is well reasoned one, based upon

legal evidence. The impugned order was passed by the General Manager in accordance with law and appeal was dismissed by the Appellate Authority vide legal order. The defendants prayed for dismissal of the suit.

Plaintiff filed replication controverting allegations in the written statement while reiterating the averments in the plaint.

On the pleadings of the parties following issues were struck by the trial Court :-

1. Whether the orders dated 27.9.1984 and 15.4.1985 passed by the Divisional Manager and General Manager, respectively, are illegal, null and void? OPP.
2. Relief.

Parties were given adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, learned trial Court decided issue No.1 against the plaintiff and in favour of the defendants. Consequently, the suit of the plaintiff was dismissed with costs.

The plaintiff preferred an appeal against the judgment passed by the trial Court but was unsuccessful before the first Appellate Court. Feeling aggrieved, he has brought the instant appeal.

I have heard Mr.Vivek Sharma, learned counsel for the appellant and Mr. Deepak Garg, Assistant Advocate General, Punjab, for the respondents besides going through the record of the case and I am of the view that there is no merit in the appeal.

Plaintiff, a public servant, governed by Punjab Civil Services (Punishment and Appeal) Rules, 1970, had been admittedly charge sheeted on the allegations of misappropriation of government money i.e. collecting fare from passengers without issuing tickets to them on two occasions, which forms misconduct. He was accordingly charge sheeted, to which he filed reply. Since the reply was not found to be satisfactory, a departmental enquiry was instituted against him. The plaintiff had admittedly participated in the departmental enquiry, which culminated in a report going against him. Though the plaintiff has tried to find faults with the enquiry raking up various pleas. But to my mind, such pleas are not having even an iota of merit. One of his grouse has been that he was not allowed opportunity to avail of services of a co-worker as defence helper, but then this contention does not appear to be convincing. He is not shown to have agitated this matter before the Enquiry Officer or before the Appellate Authority. To

similar effect is his contention as regards non-supply of document. The trial Court has dealt with such contentions in para No. 8 of the judgment in a proper manner, finding that these pleas have been taken as an after thought and are product of a fertile brain. The trial Court has discussed the legal position also observing that no prejudice can be said to have been caused to the plaintiff under the circumstances.

Similarly the other pleas of the plaintiff that no passenger was associated or examined during the checking or enquiry and way bill was not tallied with the unsold tickets, has been discussed and discarded, giving proper reasoning that a passenger who is in hurry to reach his destination is least interested in checking or enquiry and when statements of the checking staff are recorded during enquiry, there is no necessity of examination of any passenger. The checking staff need not be told as to how to carry out the checking to detect misappropriation of money having been committed by a conductor. Similarly it could not be shown that any mandatory provision of law was violated or rules of natural justice were not observed, while holding the enquiry. It could not be shown, as to how enquiry having been conducted after three years of service of charge sheet has caused any

prejudice to the plaintiff.

The plea that plaintiff was not offered proper opportunity to produce defence evidence is not borne out from the record, rather it comes out that he was given adequate opportunity to defend himself and present his view point. The report submitted by the Enquiry Officer cannot be faulted on any account. Moreover, the concern of Civil Court is to see that rules of natural justice were observed and provisions of service law were observed during a domestic enquiry. A minor slip here or there, cannot be magnified out of the context, so as to make a mountain out of a mole hill. The Court is not to re-appraise the evidence and come to its own conclusions with respect to the merits of the case. Further more, it is for the punishing authority to decide as to what punishment is to be inflicted upon the delinquent employee. The impugned orders are not shown to be suffering from any illegality or infirmity. The plaintiff having been caught twice indulging in misappropriation of public funds by collecting fare money from certain passengers without issuing tickets to them, does not deserve any leniency. Such type of employee does not deserve to remain in service. It cannot be said that the punishment imposed is not commensurate with the extent of

misconduct.

I do not find any reason to set aside the impugned orders passed by the Punishing Authority dismissing the plaintiff from service and dismissal of appeal by the Appellate Authority. The judgment passed by the trial Court is well reasoned and based upon proper appreciation of evidence and correct interpretation of law. To similar effect are judgment and decree of the first Appellate Court. Those are upheld and appeal is dismissed accordingly.

(**Harminder Singh Madaan**)
Judge

24.01.2017
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / Nob