

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

RSA No.865 of 1990

Date of Decision: 17.4.2017

Prem Kumar

... Appellant

Versus

Punjab State

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Upasna Dhawan, Advocate for the appellant

Mr. Anil Sharma, Addl. A.G., Punjab for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. This is a second appeal against a judgment of reversal. I have heard learned counsel for the parties and gone through the paper-book with their assistance.

2. The learned trial court came to the conclusion that this is a case of no evidence produced against the plaintiff during the enquiry proving that he collected fare and had not issued tickets to 8 passengers. The learned first appellate court for good reasons thought otherwise and concluded that this is not a case of no evidence. There was adequate and sufficient evidence before the Enquiry Officer to reach the conclusion regarding embezzlement committed by the plaintiff, a Conductor, on the day the bus was surprise-checked while plying on the route. The checking staff was headed by the Traffic Manager who found that eight passengers who alighted at Subhanpur Bus Stop were charged the fare amounting to ₹ 18.40 paise, but did not possess tickets at the time of checking. When the bus was stopped, there was

tendered his evidence before the Enquiry Officer in support of the case of the prosecution. The enquiry officer and the first appellate court found this testimony credible. The version of the plaintiff that the checking staff was under the influence of liquor and they had tried to snatch his cash box and way bill or that it was got restored to him by the intervention of the Police Officers was disbelieved. The sole defence witness who claimed to be one of the two Security Guards accompanying the bus for their safety was also disbelieved by the Enquiry Officer on the reasoning that the Inspectors in their joint complaint dated 27th March, 1985 mentioned specifically that the two Security Guards who were provided for the safety of the passengers during the days of Terrorism in Punjab were under the influence of liquor and supported the conductor. This was also disbelieved and rightly so. The plaintiff knew what was case he was to meet and the charge against him was unambiguous and he was given sufficient time and opportunity to defend himself and therefore it cannot be said that reasonable opportunities to defend his case had not been provided to him during the course of regular enquiry proceedings which had been initiated upon a clear charge-sheet served on him.

3. So far as non-production of the passengers is concerned, that matter is concluded against the plaintiff in the much referred judgment on the issue of hearsay evidence handed down by the Supreme Court in State of Haryana and another vs. Rattan Singh, AIR 1977 SC 1512 where Krishna Iyer, J. in telling words observed that law cannot insist that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded. The Supreme Court concluded that the simple point really was, is there “some evidence” or was there no

proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. The Supreme Court further remarked that sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. The key words are “some evidence”. It was, therefore, not necessary for passengers to be produced to establish guilt in this branch of the law to bring home the charge.

4. Mr. Anil Sharma, learned law officer for the State places reliance on the Full Bench decision of this Court in State of Haryana and others vs. Shri Ram Chander, AIR 1976 Punjab 381. The case was decided by the Full Bench on 2nd August, 1976 while *Rattan Singh's* case was pronounced on 22nd March, 1977, and therefore, there is a greater significance attached to the Full Bench as a precursor to the law stated thereafter by the Supreme Court in *Rattan Singh* case. The Full Bench observed that there is no bar against the reception of hearsay evidence by domestic tribunals, but the extent to which such evidence may be received and used must depend on the facts and circumstances of the case and the principles of natural justice. This was also a case of misconduct alleged against a Conductor of the Haryana Roadways of embezzling ticket fare.

5. The point in short is; whether the plaintiff had a fair deal or a raw one at the hands of the Enquiry Officer and the disciplinary authority. To that extent this case cannot go and the only thing to be seen is whether the principles of natural justice were complied with. In the present case, the rules of natural justice had been substantially complied with and the plaintiff was given sufficient opportunity to defend his case and prove his innocence but the weight of probative evidence far outweighed evidence of innocence on the preponderance of probabilities leaning heavily against the plaintiff. I

his well reasoned judgment reversing the findings of the trial court. I would have dismissed this appeal filed by the plaintiff, but for the fact that when this appeal came up for preliminary hearing on first date, the following order was passed on 2nd May, 1990:-

“Admitted.

Since the appellant was given appointment in pursuance of the judgment and decree of the trial court which has been reversed by the lower appellate court, the provisions of Section 144 of the Code of Civil Procedure would come into play, and therefore, no case for staying the judgment and decree of the appellate court has been made out. The stay is, therefore, declined. The appeal may be heard at a very early date.”

6. Without going into the question of Section 144 of the CPC, the fact remains grinning that the admission order is a virtual stay of the order of the first appellate court, and therefore, it is an inverted *ad interim* stay holding that no case for staying the judgment and decree of the first appellate court had been made out.

7. As a result of the interim order, the plaintiff continued in service and I am told by Ms.Upasna Dhawan, learned counsel that the plaintiff that he has since retired from service on 31st December, 2011 during the pendency of this appeal. This makes the task of relief somewhat complex. The simplest way as suggested by Mr. Anil Sharma, learned counsel, and I would agree, is that a plausible method may be adopted by leaving the matter to the disciplinary authority to re-consider the quantum of punishment and impose any other lesser punishment other than dismissal/removal from service in order to serve the ends of justice, given that the plaintiff served from May, 1990 till he retired from service on reaching the age of superannuation in 2011. That is long enough a period slipping by to

disincline me from disturbing the stasis at this stage and distance of time, when many events and incidents of service may have transpired meanwhile, which may be difficult to undo with the plaintiff in retirement.

8. Accordingly, this appeal is disposed of with a direction to the disciplinary authority to re-consider the case of the plaintiff and consider award of lesser punishment than dismissal and the decree passed by the first appellate court shall stand modified to the extent that the final order to be passed by the disciplinary authority will allow and that would become the decree. No costs.

17.4.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No