

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1359 of 1991 (O&M)
Date of Decision: 17.03.2017**

Harpal Singh

... Appellant

Versus

State of Punjab

... Respondent

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

Present: Mr. Puneet Jindal, Sr. Advocate,
with Ms. Shreya Vasishta, Advocate,
for the appellant.

Mr. Anil Sharma, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.(Oral)

The charge against the conductor in appeal was of embezzlement of ₹16.60 paisa from fare for allowing a passenger to carry five wooden doors on the carrier of the bus. The accusation was he took extra bus fare from the passenger and issued fewer tickets to him. He pocketed the difference. En route the bus was stopped by the checking party and he was searched. An inquiry was instituted by issuing a charge-sheet to him. Statement of prosecution and defence witnesses were recorded. The appellant produced the passenger who had carried the five doors as a defence witness who testified that the appellant did not commit any misconduct. The enquiry officer agreed with the conductor that this was not a case of embezzlement and absolved him of the charge levelled. However, the disciplinary authority did not agree with the findings of the enquiry officer and entered a dissent note which reads as follows:-

“I have gone through the report of the Enquiry Officer and have considered the same and I am not in consinace with the same. According to the receipt only two tickets were to be issued according to the luggage which was kept in the bus but since ticket could also be issued according to the number of the luggage, three tickets were to be issued. Further the conductor during the course of cross-examination at the time of checking could not perused the official witnesses to state that he had not taken money for three tickets, but had taken money for two tickets only. It is, however, correct that the conductor had produced one defence witness and had tried to establish that two tickets were required to be issued and not three as per weight. So, even if it is admitted that the conductor had not charged money for three tickets still on account of his carelessness he had caused loss to the Govt. so, he is considered to be guilty and, therefore conductor should be issued notice as to why his two increments with cumulative effect be not stopped that he should also be supplied with copy of the report of the Enquiry Officer.”

The dissent note was accompanied by the inquiry report and the appellant asked to submit his reply as to why he should not yet be held guilty of major misconduct. His reply was not found satisfactory and the disciplinary authority proceeded to impose the penalty of withholding of two increments with cumulative effect. It is not borne out from the records whether an appeal was filed against the punishment order.

Against the punishment order, the suit was filed which was decreed in favour of the appellant. However, in the appeal carried by the Roadways the judgment and decree of the trial Court was reversed and the suit was dismissed.

Against the judgment and decree of the lower appellate court, this appeal has been filed.

It is the submission of Mr. Puneet Jindal that the dissent note materially altered the charge from embezzlement to carelessness which is apparent from reading the reproduced above. The question whether two or three tickets were to be issued for carrying five wooden doors as luggage on buses is not a subject matter governed by rules or guidelines.

The disciplinary authority changed track and watered down the charge of embezzlement and substituted it by another charge, namely, carelessness. A charge which was not imputed against the appellant in the charge-sheet. Embezzlement and carelessness are not synonymous words. Their connotations are widely different. Embezzlement is a positive act of theft of Government money but carelessness is negative action. A type of remissness or deficiency in carrying out duties and responsibilities of the post.

If embezzlement of money was not proved then the charge ought to have been dropped by the disciplinary authority by accepting the enquiry report. In these circumstances major punishment was not called for and some lesser punishment would have been just and meet, if not complete full exoneration. In the dissent note no thought was paid to the findings recorded by the enquiry officer in favour of the appellant and no reason is forthcoming as to why they should not hold good when arrived at after appreciating the evidence on record. I do not find any perversity in the work of the enquiry officer in his report. The disciplinary authority acted in loose and arbitrary manner and relied on his ipse dixit.

I would, therefore, agree with Mr. Jindal that this is a case fit for interference in the judgment and decree of the lower Appellate Court and

that it does not deserve to stand ground.

Mr. Anil Sharma appearing for the department submits that in case this Court is taking the view that lesser punishment should be awarded then the matter should be remitted to the disciplinary authority for fresh consideration and choice of lesser punishment. I may have agreed with Mr. Sharma but for the passage of three decades and three years from the date of punishment. It seems to me that adopting such course may be wholly inequitable to prolong the agony of the appellant by putting the clock back. The far safer thing to do regarding relief would be for this Court to choose the quantum of punishment to put an end to the matter and avoid further litigation to serve the ends of justice.

I have heard learned counsel on quantum of punishment by assuming this to be a case of carelessness, although not the charge, but only with a view to draw the curtains on the case. I think it would be appropriate to convert the major punishment of withholding of two increments with cumulative effect to one increment without permanent effect to be operated from the date of the original order i.e. January 18, 1983.

Accordingly, the petition is allowed in part. The suit is partly decreed. The pay and pension of the appellant shall be re-fixed and paid by the respondents after re-determining the last pay certificate by restoration of two increments with consequential benefits. Salary for the period of suspension and arrears of subsistence allowance, as the case may be, will be paid to the appellant and the total amount determined will be deposited in the pension account of the appellant or his family members, as the case may be, after confirming they are the genuine heirs and LRs of the appellant. The

exercise be completed within four months from the date of receipt of copy of this order, either from the Court or from the appellant, whichever is earlier.

As a result of the above discussion, the judgment and decree of the lower appellate court stands modified by substituted penalty of stoppage of one increment without permanent effect.

(RAJIV NARAIN RAINA)
JUDGE

17.03.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*