

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

Date of decision: 19.04.2017

RSA No.2281 of 1991

Ram Sarup

...Appellant

Vs.

State of Haryana through Collector, Sirsa etc.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Goel, Advocate, for the appellant.

Mr. R.T.Redhu, DAG, Haryana.

RAJIV NARAIN RAINA, J.

The charge against the appellant, who was a Conductor in the Haryana Roadways, was of embezzlement of ticket money. When the Bus was raided by checking party he was detected to have realized ₹8/- from the passengers travelling in the bus and had issued to them un-punched tickets. Disciplinary proceedings were initiated against him. The enquiry went against the plaintiff. He was supplied the report by way of second show cause notice. The disciplinary authority agreed with the conclusions reached by the enquiry officer that two un-punched tickets were issued to two passengers intentionally by the appellant, as he wanted to re-issue the same. He had, thus, defrauded the state exchequer of an amount of ₹8/-. Punishment of stopping of one increment with cumulative effect was inflicted on the plaintiff-appellant. He went to court. In the suit trial, the appellant raised a dispute that the punishment was major and regular enquiry was necessary without which the order could not hold. The Court dealt with the evidence available on record which revealed that a regular and full-

fledged enquiry was conducted before imposing major penalty on the plaintiff. He was associated with the enquiry and was offered opportunity of defense and personal hearing during the enquiry and even the impugned order was passed after hearing him. There was no procedural error in the enquiry and the principles of natural justice were complied with. There was sufficient material to bring home the charge.

An argument was raised by the appellant that the enquiry officer had acted as a prosecutor and this was not legally permissible. The appellant could not take advantage of this plea when the lower Appellate Court noticed that the cross-examination of the appellant stands reproduced in the report, which shows that some questions were asked by Ram Sarup, Inspector conducting the case on behalf of the Department and that some questions were asked by the enquiry officer himself to remove ambiguity and clear the confusion. This is permissible for the enquiry officer to remove doubts. The learned Additional District Judge, Sirsa in his judgment dated 05.08.1991 correctly observed that the role of an enquiry officer is not that of a passive spectator. So if two or three questions were put to the appellant, then it cannot be said that the enquiry officer was acting as a prosecutor.

I fail to see what prejudice has been caused to the appellant by two or three questions put to him in the factual setting of a surprise check of the bus by the Central Flying Squad and the conductor caught red handed. The judgment of the trial Court was affirmed and the first appeal dismissed as calling for no interference with the punishment.

The civil court does not sit as a court of appeal over the findings arrived at in the enquiry, in a case of departmental enquiry. Nothing new has been raised in this appeal amounting even remotely to a substantial question of service law or even a question of law to be determined in second

appeal. The judgment in appeal does not suffer from any apparent error. The punishment is not excessive or disproportionate to the charge proven. There is no merit in this appeal and the same is dismissed.

19.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>