

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

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**CWP-11507-2012 (O&M)
Date of decision:13.07.2017**

Kuldeep Singh

....Petitioner

Versus

The Presiding Officer, Labour Court, Ambala and others

.... Respondents

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

Present: Mr.P.K.Sachdev, Advocate for the petitioner.

Mr. J.S.Bedi, AAG, Haryana.

P.B. BAJANTHRI, J. (ORAL)

In the present writ petition, petitioner has assailed award dated 11.01.2010 (Annexure P-14) pursuant to reference No.65 of 2007 read with order of termination dated 26.05.2004. The petitioner is stated to have joined service as Conductor in the year 1989. On 10.05.2003, he remained absent from duty till 13.08.2003, the date on which charge sheet was issued for remaining absent from duty. Petitioner was subjected to disciplinary proceedings and it was ended in imposing penalty of termination. Termination order was subject matter of Industrial Dispute. Labour court passed order in favour of the respondents. Thus, the present petition.

2. Learned counsel for the petitioner submitted that there is no proper inquiry as is evident from Annexure P3 what has drawn is only statements have been recorded. There is no cross examination and also no

material has been placed on record in support of the charge of unauthorized absence. It was further submitted that petitioner has joined service in the year 1989 and imposing the penalty of dismissal from service would be disproportionate to the charge of unauthorized absence for few days. It was further contended that disciplinary authority-General Manager, Haryana Roadways, Ambala while passing the order of punishment has relied on extraneous materials like past punishments which are not part and parcel of the charge memo issued on 13.08.2003. In other words, extraneous materials have been taken into consideration for the purpose of imposing major penalty of termination from service which is impermissible as held by the Supreme Court in the case titled as ***State of Mysore versus K. Manche Gowda*** reported in 1964 SCR (4) 540. It was also submitted that disciplinary authority-General Manager, Haryana Roadways, Ambala is biased against the petitioner since he has taken extraneous material while imposing the penalty. Hence, the award passed by the Labour Court is contrary to the factual aspects relating to non-adhering to the various steps by the disciplinary authority like issuance of show cause notice during the absence period and further extraneous material has been taken into consideration by the disciplinary authority which were not appreciated by the Labour Court. Hence award passed by the Labour Court is unreasoned one and it is liable to be set aside.

3. Per contra, learned counsel for the respondents submitted that petitioner remained absent from 10.05.2003 to 13.08.2003 the date on which charge memo has been issued. It is more than 3 months absence.

Further petitioner has failed to submit his reply to the charge-memo. Thus, there is no infirmity or lacuna in the award passed by the Labour Court. It was also submitted that petitioner had been given ample opportunity in the disciplinary proceedings during the inquiry held by the Inquiry Officer. Therefore, no interference is called for in respect of award passed by the Labour Court.

4. Heard learned counsel for the parties.

5. Perusal of the charge-memo dated 13.08.2003 it is evident that during the period from 10.05.2003 to 13.08.2003 disciplinary authority has not issued notice to the petitioner asking him to report back to duty. Further Inquiry Officer has recorded statement of the petitioner and witnesses. There is no cross examination as is evident from Annexure P3. Further perusal of Annexure P1 the order of penalty passed by the disciplinary authority dated 26.05.2004, it is evident that the disciplinary authority- General Manager, Haryana Roadways, Ambala has taken extraneous material into consideration for the purpose of imposing major penalty which reads as under:-

“As per service record, the official was awarded the following punishments after following the prescribed procedure:-

1. In 34 cases, 44 annual increments were stopped without commulative effect.
2. In 5 cases, 11 annual increments were stopped with commulative effect.
3. In 52 cases, recovery/fine of Rs.20,390/- was imposed.
4. In one case, services were terminated.

5. In two cases, warning was administered.

6. In 6 cases, services were censured.

From the above detail, it is clear that the official does not deserve any sympathy.”

Perusal of the charge memo dated 13.08.2003 the above issue which has been cited in the disciplinary authority's order are not part and parcel of the charge-memo. Therefore, disciplinary authority has taken into consideration extraneous material which is contrary to Supreme Court decision cited (supra). In other words, he was biased against the petitioner in imposing the major penalty. It is to be noted that petitioner has joined service in the year 1989. For remaining absent from 10.05.2003 to 13.08.2003 imposing major penalty of dismissal from service would be too harsh. Having regard to these factual aspects, it is necessary to remand the matter to the disciplinary authority to pass fresh order with reference to the fact that petitioner has rendered service from 1989. Accordingly, award passed by the Labour Court dated 11.01.2010 (Annexure P-14) and order of termination dated 26.05.2004 (Annexure P-1) are set aside. Intervening period be treated as under suspension in view of Supreme Court decision viz; ***Managing Director, ECIL versus B. Karunakar*** (1994 SCC Supl.(2)391) and petitioner is entitle to subsistence allowance till final order is passed in the disciplinary proceedings. The same shall be calculated and disbursed within 3 months. The disciplinary authority is hereby directed to pass afresh order

of imposing penalty other than dismissal/removal from service in accordance with law.

7. CWP stands disposed of.

13.07.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No