

Om Parkash

...Petitioner

Vs.

State of Haryana & Others

...Respondents

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

Present: Mr. Amit Jhanji, Advocate
for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

RAJIV NARAIN RAINA, J. (Oral)

Challenge in this petition is to the impugned award dated February 24, 2010 passed by the Learned Presiding Officer, Industrial Tribunal cum Labour Court-II, Gurgaon declining the prayers of the workman by answering the reference in favour of the management. When the labour court has recorded a positive finding based on evidence establishing embezzlement of ticket fare attributed to the workman-conductor in the charge sheet and guilt standing proven, although for a sum of ₹ 125/-, then no exception can be had to the award upholding the order of dismissal from service of the Haryana Roadways.

Merely because the enquiry report was not exhibited on record is only technical and not a sound ground to intervene when the workman did not, nor could disown the enquiry file as one not pertaining to him and the charge against him. This minor technicality or discrepancy did not cause any prejudice to him.

If the department failed to lead any evidence other than the materials on record of the enquiry before the labour court and the defence of the Roadways was struck off by order, that disability also does not mean that enquiry file did not exist or can be wished away.

The Labour Court while examining the case of dismissal under the scanner of Section 11A of the Industrial Disputes Act, 1947 exercises virtually appellate powers over the work of the disciplinary authority in the matter of penalty and is capable of reaching a different conclusion on guilt or on the quantum of punishment proportionate to the gravity of the misconduct on the material on record and, therefore, becomes primary review authority to dispense justice according to its wisdom and judicious discretion. The labour court itself considered the enquiry proceedings and the report based on the following charge which was proved beyond doubt and on a preponderance of probabilities. The same reads:-

“You, Om Parkash, Conductor No. 284 were on duty on Vehicle No.112 on Gurgaon to Chandigarh route as conductor on 26.10.2000. Your vehicle was checked by S/Sh. Satpal, Gurmail Singh, Darshan Lal, Sub Inspector at Derabassi and it was found that five passengers in the vehicle were traveling without ticket from Ambala Cantt. To Chandigarh, out of which four passengers were traveling jointly and one passenger was traveling separately. You had taken fare of Rs.25/- per passenger from these five passengers i.e. total Rs. 125 but had not given tickets to them. As such, you embezzled Govt. money of Rs.125/-.

You Sh. Om Parkash, Conductor No.284, are hereby charge sheeted under rule 7 of the Haryana Civil Services (Punishment and Appeal), 1987 for embezzling Rs. 125/-”.

It is not for the High Court to substitute opinion only to reach a different destination when authority has been exercised by the labour court in a fair and proper manner in accordance with law. Any lesser punishment than the one chosen by the disciplinary authority and affirmed by the award would amount to putting a premium on grave misconduct involving moral turpitude. No ground is made out to interfere in the award as it suffers from no errors apparent on the face of record or any fundamental flaw of law or of fact. The writ petition is devoid of merit and is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

08.02.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>