

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

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**CWP-21034-2013 (O&M)
Date of decision:18.07.2017**

Manjit Singh

....Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

.... Respondents

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

Present: Mr.Gurjinder Singh, Advocate for the petitioner.

Mr. Somesh Gupta, Advocate for respondent No.4.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has assailed the award passed by the Labour Court dated 07.11.2012. Petitioner was working with the respondent since 17.07.1970. On 25.05.1996, he remained absent due to unavoidable circumstances. He reported back to duty on 14.06.1996. In the meanwhile, he has sent a telegram on 06.06.1996 stating that he would be rejoining duty on 10.06.1996. After his returning to duty on 14.06.1996, it is alleged that he raised a quarrel with one Sh. Santokh Singh who is co-employee to the petitioner. In the scuffle it seems that Santokh Singh has suffered fracture on little finger of the left hand. Further petitioner is stated to have not attended repair of tractor. In this regard, complaints have been received. Arising out of these alleged allegations respondent-Managing Director initiated disciplinary proceedings by framing following charges:-

- i) Unauthorizedly left w.e.f. 25.05.1996
- ii) Assaulted Santokh Singh due to which he suffered fracture on little finger of left hand.
- iii) Remained absent from duty on 25.05.1996 without sanction of leave
- iv) On 19.04.1996 petitioner came to office under intoxication while threatening Chowkidar and further he damaged bells in the store.
- v) Not attended repair of tractors.

2. Petitioner was subjected to disciplinary proceedings for the above alleged charges and it was held that charges levelled against the petitioner were got proved. Consequently, disciplinary authority imposed penalty of dismissal on 01.12.1997. Aggrieved by the order of dismissal petitioner is stated to have preferred an appeal and same was dismissed on 13.05.1998. Thereafter, demand notice was issued. Reference was made to Industrial Tribunal-cum-Labour Court. On 07.11.2012 award was passed in favour of the respondents. Thus, present petition.

3. Learned counsel for the petitioner submitted that charges are very vague. All the 5 charges do not contain dates and events. It was further submitted that Sh. Santokh Singh was not cited as a witness in the list of witnesses. The same has been taken note of by the Labour Court. It was further contended that remaining absent on 25.05.1996 was beyond his control as he was required to attend certain domestic issue in the family at Delhi. It was also submitted that on 06.06.1996 respondents have been

informed regarding absence of the petitioner and also informed the respondents that he would be reporting for duty on 10.06.1996. On 10.06.1996 petitioner could not attend due to domestic problem and he has reported for duty on 14.06.1996. Insofar as repair of tractors are concerned, no document has been produced on what date tractors have been brought for repair and further there is no evidence adduced. The Labour court proceeded to consider the fact that petitioner has abused the seniors. The same has been taken into consideration in the absence of it being one of the charge. Sh. Santokh Singh's evidence cannot be taken into consideration for the reasons that he has not been cited as one of the witnesses in the disciplinary proceedings. Thus, his deposition is extraneous material to the disciplinary proceedings. Merely, petitioner has cross-examined Sh. Santokh Singh in the disciplinary proceeding does not waive off the procedure like citing a witness. In other words, other than cited witnesses evidence cannot be taken into consideration in the disciplinary proceedings. Therefore, disciplinary proceedings and further consequential proceedings including the Labour court award dated 07.11.2012 are liable to be set aside for want of not adhering to proper procedure for holding a disciplinary inquiry.

4. Per contra, learned counsel for the respondents submitted that even though charge-memo is not specific, evidence of witnesses has been taken into consideration. The same has been taken into consideration by the Labour Court. It was further argued that even though Santokh Singh was not cited as one of the witnesses to the disciplinary proceedings with the

consent of the Presenting officer and the petitioner Santokh Singh has been examined and his evidence has been taken into consideration for the purpose of holding the charge that petitioner has assaulted Santokh Singh. Further it was submitted that mere compromise or withdrawal of the criminal complaint alleged against the petitioner by Santokh Singh, there is no bar for initiation of disciplinary proceedings. In fact in the compromise Santokh Singh has specifically stated that such compromise deed between the petitioner and Santokh Singh would not come in the way of disciplinary proceedings. The Labour court has appreciated the inquiry proceedings. Therefore, there is no infirmity in the award passed by the Labour Court in favour of the respondents.

5. Heard learned counsel for the parties.

6. Perusal of the charge sheet dated 11.10.1997 it is evident that charges are not very specific, which do not contain the dates and events except the date on which petitioner is alleged to have assaulted Santokh Singh on 14.06.1996 at 9.15 am. For remaining absent petitioner sent telegram and the fact that the petitioner's father met with accident and he was compelled to go to Delhi on 25.06.1996. In fact petitioner had sent a telegram on 06.06.1996 stating that he would be returning for duty on 10.06.1996. Further for domestic reasons petitioner could not report back to duty on 10.06.1996 and he was reported only on 19.06.1996. Perusal of the records, it is evident that Santokh Singh is not one of the witness in the list of witnesses produced along with charge-memo. Therefore, examination or deposition or evidence adduced by him would be extraneous material to the

entire disciplinary proceedings. The same cannot be taken into consideration. Insofar as remaining absent from 25.05.1996 to 14.06.1996 petitioner cannot be punished by imposing major penalty of dismissal from service for the reasons that petitioner is in service from 17.07.1990. Absence was beyond the control of the petitioner as his father met with accident at Delhi and he had sent telegram on 06.06.1996. Even perusal of the appellate authority's order dated 13.05.1998, there is no consideration of petitioner's appeal at all merely referring to charge, appellate authority has passed an order. Supreme Court in the case of **Union of India versus Gian Chand Chattar** [2009(12) SCC 78] has held that charges must be very specific containing dates and events. In the absence of specific charges levelled against employee same are liable to be set aside. In the case of **State of Mysore versus K.Manche Gowda** [1964(4) SCR 540] Supreme Court has held that in a disciplinary proceedings, extraneous material cannot be taken into consideration for the purpose of imposing penalty. In the present case, Santokh Singh who is not cited as witness and his evidence has been taken into consideration. Merely Presenting Officer summons XYZ persons who are not cited as witnesses, same cannot be taken into consideration unless and until XYZ names are reflected in the list of witnesses.

7. Having regard to these lacunas, order of disciplinary authority dated 01.12.1997 appellate authority's order dated 13.05.1998 and Award dated 07.11.2012 are set aside. Petitioner is entitled for service benefits during the period from 01.12.1997 till the date of attaining age of

superannuation and retired from service. Monetary benefits shall be calculated in accordance with law and disburse to the petitioner by the respondents within a period of 3 months from today.

18.07.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

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