

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

CWP No. 20325 of 2016 (O&M)

Date of decision: 22.03.2017

Davinder Singh deceased through LRs

... Petitioner

versus

Presiding Officer and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashok Goel, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the termination order dated 28.09.2004 (Annexure-P5) passed by respondent No.4 and order dated 15.03.2005 (Annexure-P6) passed by respondent No.3 dismissing the appeal and quashing the order dated 28.09.2004 and order dated 15.01.2006 (Annexure-P11) passed by respondent No.1, rejecting the reference.

Briefly stated, an industrial dispute was referred to the Industrial Tribunal, Jalandhar under Section 2-A and 10(1)(c) of the Industrial Disputes Act 1947 for adjudication. 'Whether the termination of services of Davinder Singh (deceased) by the management is illegal

and improper and if yes to which benefit and to what extent workman is entitled to ?

The petitioner was working as a Conductor with the Pepsu Road Transport Corporation (in short 'PRTC') Patiala. It comes out that he was charge sheeted vide order dated 15.07.2003 for embezzlement of ₹ 35/- on 12.04.2003 and ₹ 78/- on 17.04.2003 and have committed indiscipline. The regular enquiry was held. Enquiry report (Annexure-P4) was submitted and thereafter, the order of termination dated 28.09.2004 (Annexure-P5) was passed.

Before the Industrial Tribunal, the plea was taken that the punfunctory order was passed with malafide mindset to remove him from service due to allegiance to the union affiliated to AITCU of which he was an active member. The punishment order passed is disproportionate without caring for the services rendered by him before passing the impugned order and Section 11-A Industrial Disputes Act, 1947 was violated vide Annexure P8. Industrial Tribunal vide award dated 15.01.2016 (Annexure-P11) came to the conclusion that fair and proper enquiry was conducted and the workman was given reasonable opportunity to defend himself during the enquiry and consequently the reference was answered against him.

I have heard learned counsel for the petitioner and perused the record carefully.

Learned counsel for the petitioner has argued that in this

case the mandatory provisions were violated. It is also stated that as per Provision of Section 22 of the PRTC Rules (Conditions of Appointment and Service regulation), 1981 the impugned order is against the principles of natural justice. After the conclusion of evidence of the Management, the statement of the employee was to be recorded and thereafter the statement was required to be recorded that whether he want to produce defence evidence or not. Learned counsel has argued that in this case no such statement was recorded, therefore, the provision have been violated. The copies of interim order produced on file shows that after the evidence of the Department was concluded, the employee got recorded his statement and he was cross-examined by the Presiding officer. The workman stated that he does not want to produce any document. Consequently, the enquiry proceedings were concluded. Neither, during the proceedings before the Department or in reply to the show-cause notice, it was stated that the said interim order is incorrect nor such plea was taken before the Industrial Tribunal. Therefore, the interim order has to be believed that though formal statement of the employee was not recorded but he has stated by him before the Presiding Officer that he does not want to produce any evidence or document. Therefore, there is substantial compliance of Section 22 of the PRTC Rules.

Learned counsel for the petitioner has further argued that Form P1 was not completely filled in and some of the columns at no. 5

to 9 were left blank. He has also referred to the cross-examination of the ticket checker/Inspector who has stated that there is no need to fill in the said form. The provisional form shows that specific reference has been made giving details of the embezzlement and the fact that ticket was not issued to the 8 passengers. The petitioner himself supplied the tickets and signed on the back of the same. It is not his case that signatures were taken forcibly. Therefore, the non-mentioning of the name of the passenger is immaterial. The name of the conductor is already there. Learned counsel has also relied upon the judgment of the Apex Court in **Mohd. Yunus Khan Vs. State of U.P and others, 2010 (4) SCT 600** to state that enquiry proceedings are quasi-judicial in nature and, therefore, fair and reasonable enquiry is to be conducted. The enquiry report must contain reasons for reaching conclusion that charges against the delinquent stood proved. The second authority relied upon by the counsel is **Anil Kumar Vs. Presiding Officer and others, 1985 (3) SCC 378** wherein a similar view was expressed. I am of the view that in this case, the Industrial Tribunal has gone through the entire evidence and came to the conclusion that a just and fair enquiry was held and reasonable opportunity of hearing was given to the petitioner. Enquiry officer says that petitioner was given opportunity to cross-examine the witnesses of the Department. Thereafter, the statement was also recorded and he never claimed before the Industrial Tribunal that he wanted to produce the defence

and he was not allowed to do so.

Therefore, I agree with the findings of the Tribunal that a just and fair opportunity was given to the petitioner in the enquiry. I am of the view that there is no infirmity in the award dated 15.01.2016 (Annexure-P11). The present writ petition is dismissed with the above observations.

(KULDIP SINGH)
JUDGE

22.03.2017

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Whether speaking/non-speaking	:	Yes
Whether reportable	:	No