

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.3260 of 2013 (O&M)

Date of decision: 03.08.2017

Gurmeet Singh

..... Petitioner

Versus

Home Secretary-cum-Secretary Transport and others

..... Respondents

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

Present:- Mr. G.S. Bal, Sr. Advocate with
Mr. Tarun Jindal, Advocate
for the petitioner.

Ms. Sonia Sharma, Advocate
for respondents No.1 and 2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioner assailed the award of the Labour Court dated 10.01.2012, termination order dated 04.12.2001 and Appellate Authority order dated 30.09.2005 (Annexures P-10, P-6 and P-7) respectively.

The petitioner is stated to have joined service with the respondent in the year 1985 as a bus conductor. On 29.08.2000, the petitioner was on duty from Chandigarh to Abohar. His bus was subjected for inspection by the Inspectors and they found about 27 passengers without tickets who were travelling from Muktsar to Rupana and Muktsar to Abohar. Thus, petitioner has caused loss to the respondent-Corporation. The respondents have passed the termination order on 04.12.2001 after holding an enquiry. Thereafter, petitioner preferred an appeal before the Appellate Authority and he has raised in Industrial Disputes before the

Labour Court wherein he has suffered orders. Hence, the present petition.

Learned counsel for the petitioner submitted that State of Punjab has issued a circular relating to guidelines for checking of Punjab Roadways buses for submission of report etc. (Annexure P-11). The same is stated to have been adopted by the respondent-Chandigarh transport. It was further contended that evidence adduced in the enquiry by the witnesses have not been appreciated by the Enquiry Officer, Disciplinary Authority and Labour Court. It was also pointed out that Disciplinary Authority order is not a speaking order since show-cause-notice along with the Enquiry Officer's report and reply to the same has not been appreciated by the Disciplinary Authority. Consequently, Disciplinary Authority order is liable to be set aside. Further, Labour Court order is to be set aside.

Per contra, learned counsel for the respondent submitted that the petitioner has been provided ample opportunity before the Enquiry Officer, Disciplinary Authority and before the Labour Court. It was further contended that respondents have not adopted the guidelines for checking of Punjab Roadways buses (Annexure P-11) so as to consider the contention of learned counsel for the petitioner that there is a violation of instructions dated 07.02.1977, therefore, the petitioner has not made out a case.

Heard learned counsel for the parties.

Matter requires remand to the Disciplinary Authority for the reasons that Disciplinary Authority has issued a show-cause-notice along with the Enquiry Officer's report to the petitioner for which the petitioner has submitted his reply on 30.10.2001 vide Annexure P-5, in which he has specifically taken various contentions including the no statement of passenger was recorded nor any cash was checked and even no FIR was

lodged for misbehaviour. One of the witness-Karam Singh, Inspector has admitted that workman had not manhandled the checking staff. Further, the Enquiry Officer has not analysed the evidence in Para 5, specific contention has been raised by the petitioner. These issues are not considered by the Disciplinary Authority while passing the order of termination as is evident from the order of termination and extract from the order of termination reads as under:-

“Sh. Gurmit Singh, C-568 submitted his reply to the enquiry report. Thereafter, he was heard in person 7.11.2001 by the undersigned in connection with memo No.14692 dated 11.10.2001 already issued to him to which he submitted his representation. He was confronted with material facts on record and the charged levelled against him. He was also apprised about the findings of the inquiry report. He was given an opportunity to say something by way of his explanation. He was listened to carefully. But he could not state anything contrary to material facts on record by way of his explanation. As such the veracity of the material facts stand proved beyond any doubt.

Now keeping in view the findings of the Inquiry Officer facts and circumstances of the case, the undersigned is of the view that Sh. Gurmit Singh, C-568 is not a fit persons to be retained in service. The undersigned, therefore in exercise of powers conferrred under Punjab Civil Service (Punishment & Appeal) Rules, 1970 does hereby order that the services of Sh. Gurmit Singh, C-568 are terminated with immediate effect.”

In not considering the petitioner's reply to the show-cause-notice and Enquiry Officer's report by the Disciplinary Authority in the order of termination defeats the object of issuance of show-cause-notice and obtaining reply on the Enquiry Officer's report that the Disciplinary Authority has not applied his mind to consider each of the contentions

raised by the petitioner against show-cause-notice in his reply dated 30.10.2001.

In view of aforesaid facts and circumstances, the order of termination and consequential orders passed by the Appellate Authority and Labour Court order are set aside. Matter is remanded to the Disciplinary Authority from the stage of receipts of reply to the show-cause-notice on Enquiry Officer's report to proceed further to the extent of passing a final order in the disciplinary proceedings.

In view of the above order, petitioner is deemed to be under suspension in view of the decision of the Apex Court passed in MD ECIL Vs. Karunakar 1995. The petitioner is entitled for subsistence allowance from the date of termination order till passing of final order in domestic inquiry by the Disciplinary Authority.

The respondents are hereby directed to calculate subsistence allowance from the date of termination till date and disburse the same within four months from today. They are also directed to pass a final order in the disciplinary proceedings within a period of four months from today.

03.08.2017
Dinesh Bansal

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No