

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

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**CWP-24674-2012 (O&M)
Date of decision:25.01.2018**

Chander Pal

....Petitioner

Versus

State of Haryana and others

.... Respondents

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

Present: Mr. Rajbirinder S.Chahal, Advocate for the petitioner.

Mr. Rohit Arya, AAG, Haryana.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged award dated 14.01.2011 (Annexure P2) passed by respondent No.2. Petitioner while working was subjected to disciplinary proceedings which was ended in imposing penalty of termination with immediate effect vide order dated 10.05.1993 (Annexure P1). Matter was heard at length on 14.09.2017. Following order was passed:

“Matter heard at length.

Petitioner was subjected to disciplinary proceedings and it was concluded in imposing the penalty of terminating his services. Perusal of the order of termination dated 10.5.1993 (Annexure P-1), it is not a speaking order. General Manager, Haryana Roadways being the disciplinary authority under the Haryana Civil Services (Punishment and Appeals) Rules is required to pass a speaking order after considering the inquiry officer's report, reply to

the show cause notice and reply submitted by employee. Charge is relating to remaining absent from 8.5.1992 to 20.5.1992. Whereas the Labour Court in para-4 taken note of relating to theft of aluminum pieces from the workshop with reference to complaint lodged by the respondent with the Police Station City Rohtak on 24.5.1992.

The respondents have to satisfy this Court to the extent whether order of termination is a speaking order or not? Further whether Labour Court can consider extraneous material like theft of aluminum pieces and filing of complaint with the Police Station which is not part and parcel of the charge-memo or charge-sheet filed against the petitioner as is evident from the order of termination. Termination is based on the allegation of remaining absent from 8.5.1992 onwards. At this juncture, learned counsel for the respondents seeks time to get further instructions in the matter.

List this matter on 29.9.2017.”

Learned counsel for the respondents submitted that order of termination is a speaking order. Therefore, there is no infirmity and even if the extraneous material is taken into consideration i.e. beyond charge sheet that can be segregated and order should be read.

Heard learned counsel for the parties.

Order of termination reads as under:-

*“Order No. 869 EA/RK, Dated/Rohtak
10.05.1993*

*That by this office letter No. 3032/RK dated
01.07.1992 show cause notice under Section 7 was*

issued against Shri Chander Pal, Helper daily wager for receiving absent report and the following allegations were leveled.

“That he on dated 08.05.1992 is continuing absent from his duty.

The reply of the show cause was received wherein you refused to accept the allegation leveled against you. Thereafter, by this office letter No. 5205/RK dated 01.09.1992 Sh. S.P.O. Was appointed as Enquiry Officer. In the said enquiry you were found guilty and thereafter, by this office vide letter No. 9253/EA/RK dated 21.12.1992 notice for terminating the service was issued and reply of the notice was received by this office and thereafter, vide letter No. 1644/EA/RK dated 30.03.1993 your personal hearing was conducted on 10.03.1993.

I heard the employee but he failed to produce cogent evidence on record therefore, Sh. Chander Pal, Helper, Daily wager was order to be terminated with immediate effect.”

Reading of termination order it is crystal clear that it is not a speaking order. When the disciplinary authority is imposing major penalty of termination from service he should have passed a speaking order at least to the extent of considering petitioner's reply on the notice. Simply what has been stated is that petitioner remained absent from 08.05.1992 to which he had not submitted his reply, inquiry officer was appointed, inquiry officer found him guilty, notice was issued on 21.12.1992, reply was received, petitioner was heard and he failed to produce cogent evidence on record. There is no consideration of petitioner's reply to the notice. Therefore, order

of termination is not a speaking order. Labour court has also erred in not appreciating whether order of termination is speaking or not. Moreover, labour court has exceeded its jurisdiction in considering the allegations of theft of aluminum pieces from the workshop. Even though it was not part and parcel of the charge sheet, inquiry or order of termination. Thus, extraneous material has been taken into consideration by the labour court. Supreme Court in the case of *State of Mysore versus K. Manche Gowda* reported in 1964 SCR (4) 540 held that extraneous material which is not part as charge-sheet, cannot be taken into consideration for the purpose of imposing penalty. That apart absence period is from 08.05.1992 to 20.05.1992 for which imposition of penalty of termination would be too harsh. In view of these facts and circumstances, termination order dated 10.05.1993 as well as award of labour court dated 14.01.2011 (Annexure P2) are set aside. Petitioner is entitled to consequential benefits of reinstatement. If he is within the age of retirement he is entitle to arrears of pay from the date of termination till reinstatement. As on today if he is overage for reinstatement in that event concerned respondent is directed to calculate arrears of pay from the date of termination till retirement and disburse within 4 months from today.

CWP stands allowed.

25.01.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No