

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

CWP-19520-2014

Decided on: 01.03.2018

Ishwar Singh

.... Petitioner

Versus

The Presiding Officer and others

...Respondents

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

Present: Mr. Vikram Jeet Singh, Advocate
for the petitioner.

Mr. Rohit Arya, AAG, Haryana.

P.B. BAJANTHRI, J (ORAL)

In the instant petition, petitioner has challenged the order of Disciplinary Authority, Appellate Authority and Labour Court award dated 15.03.2011, 29.02.2012 and 01.10.2013 (Annexures P-7 to P-9) respectively.

2. Petitioner was working as a Diesel Pump Clerk in the year 2009 in Kaithal bus stand. He was subjected to disciplinary proceedings on the allegations that he has tampered the entries in the register maintained for the purpose of issuing of diesel to the extent of 125 litres to 225 litres in respect of vehicle No. HR-64-0190. Petitioner has admitted that entries were made by him on the instruction of conductor. Thus, there is a loss caused to the respondent-corporation to the extent of 100 litres of diesel. In the disciplinary proceedings, the charges levelled against the petitioner were proved. Consequently, Disciplinary Authority imposed the penalty of dismissal from service.

3. Feeling aggrieved by the order of dismissal, he preferred an appeal in which he has suffered an order. Consequently, he raised a dispute before the Industrial Tribunal award passed by the Labour Court which is against him. Hence, the present petition.

4. The learned counsel for the petitioner submitted that by common enquiry, petitioner and driver were subjected to disciplinary proceeding whereas, driver has been taken back to duty and petitioner has been imposed with the major penalty of dismissal from service. Therefore, on the ground of discrimination and having regard to the length of service rendered by the petitioner, imposition of penalty of dismissal from service would be too harsh, but same has not been appreciated by the disciplinary, appellate authority and Labour Court so as to modify the penalty.

5. Having regard to the fact that petitioner has admitted relating to entry made by him in the register as a Diesel Pump Clerk, therefore, there is no infirmity in the order of disciplinary authority and consequential orders.

6. This Court cannot re-appreciate the evidence as held by the Supreme Court in the case of **Central Industrial Security Force and others vs. Abrar Ali (2017) 4 SCC 507**. Extracts of para 14 and 15 is as under:-

“14. In State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, this Court held as follows: (SCC p. 587, para 7)

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such

findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patir.)".

15. In Union of India v. P. Gunasekaran⁸, this Court held as follows: (SCC pp. 616-17, paras 12-13)

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of

natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence; a

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

8 Further question of discrimination between petitioner and the driver cannot be gone into for the reasons that alleged allegations relating to tamper of register relating to maintenance of diesel filled by the petitioner. Therefore, each individual role in the alleged change is required to be taken note of. Hence, there is no discrimination in impugned penalty. No legal issue is urged in the petition. Hence, no interference is called for in the penalty and consequential order.

9. Accordingly, the petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

01.03.2018

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No