

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

**Civil Writ Petition No.14467 of 2016
Date of Decision:19.03.2019.**

Divisional Manager, Chandigarh Transport Undertaking-cum-Director
Transport, U.T.Chandigarh
....petitioner

Versus

Harmesh Singh and another
.....respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Tarun Walia, Advocate for
Mr.Pankaj Jain, Advocate
Senior Standing counsel for the petitioner

Mr.Amit Kaith, Advocate
for respondent No.1

RAJIV NARAIN RAINA, J. (ORAL):-

1. Challenge in this petition is to the award dated 03.11.2015 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T.Chandigarh (for short, 'the Tribunal'). The reference was allowed and answered in favour of the workers union, who had espoused the cause of conductor Harmesh Singh, assailing the order of punishment inflicting stoppage of five increments with cumulative effect by order dated 11.12.2009 bearing endorsement No.348/ECC/CTU-1/2010 dated 17.05.2010. The Tribunal set aside the order and directed the release of the increments stopped, as a consequence of the order and to re-fix the pay of the workman accordingly and to pay him arrears after re-fixation of pay and other consequential benefits as a result of setting aside the above orders and to comply with the award within three months from the date of publication

of the same in the Government Gazette. Conductor Harmesh Singh was accused of defrauding the Chandigarh Transport Undertaking of Rs.350/- while on duty in a bus.

2. The person, who complained against respondent No.1 was Harnek Singh, Sub Inspector in the Transport Department. In his cross examination, he deposed to the following effect:

“It is also correct that we prepared the ticket box after collecting the old box and case deposited by the conductor and they the way bill of the conductor was in ours possession. It is correct that as per No.written on the way bill, the box seemed to be correct. It is also correct if the box seemed to be wrong, we do not okayed the box as well as cash. It is correct that it is possible, the tickets in the bundle/copies can be issued lesser from the printing press or office by printing mistake after checking the tickets. It is correct that the said fraud of Rs.350/- was the missing seven tickets. The said fraud was seems in doubt not clear fraud. The aforesaid statement is true and correct.”

3. In the face of this deposition and cross examination no case of fraud can be made out. Suspicion alone would not take the place of proof. The lower appellate Court has reached this conclusion in the award. The inquiry conducted against Harmesh Singh has been held to be neither fair nor proper and the charges were proven on the basis of the suspicion alone. The lower appellate Court has recorded that the most important witnesses to prove the charges against the workman were Harnek Singh, Swaran Singh and Gurnam Singh and admittedly Swaran Singh and Gurnam Singh had not appeared as prosecution witnesses. Rather, they appeared as defence witnesses to establish the innocence of the workman. The sole prosecution witness Harnek Singh deposed as reproduced above.

The guilt has to be established beyond a shadow of reasonable doubt in case of allegations of fraud which are criminal in nature.

4. I have no reason to differ with the opinion of the Tribunal and find no warrant to interfere with the findings recorded in the award. The writ petition is dismissed and award dated 03.11.2015 passed by the Tribunal is maintained.

19.03.2019

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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No.

Whether reportable-

Yes/No