

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

CWP No.20888 of 2014 (O&M)

Date of Decision:5.2.2019

Mohinder Singh

... Petitioner

Versus

Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jaspal Singh Maanipur, Advocate for the petitioner

Mr.Amit Kumar, Advocate for respondents no.2 to 4

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties and have perused the papers placed in paper-book.

2. This petition has been filed assailing the award dated 7.1.2014 passed by the Tribunal declining the reference in a dispute raised by the petitioner/workman against his termination.

3. The case of the petitioner/workman is that he was recruited by the Canteen Manager in the respondents' department on 10.3.1981 and continued working till 31.1.1994. His services were allegedly terminated on 1.2.1994 by an oral order. He raised an industrial dispute by serving demand notice on the respondent on 23.8.1999 which dispute was referred to the Tribunal for adjudication.

4. Both the parties led their respective evidence before the Tribunal.

Cumulative effect of the evidence led by the parties before the Tribunal is established beyond doubt that there is no employee-employer relationship

between the petitioner/workman and the Northern Railways at Jagadhari Workshop, Yamunanagar.

5. The demand notice was served after over five years of the alleged cause of action. Delay of nearly six years in a case of termination of a claimant workman can tend to be fatal to the determination of the dispute referred to the Tribunal when the service is not documented and rests on oral testimony.

6. The affidavit filed by the Railways pursuant to the interim order dated 9.10.2017 reveals that duty record is maintained for three years and nominal roll record for five years, as the case may be, depending on the nature of documentation. The petitioner claims to be Night Chowkidar in a Railway Canteen at Jagadhri, but the Railways assert that there is no post of Night Chowkidar in the Railways and the railway properties are guarded by the Railway Protection Force.

7. Even the correspondence exchanged between the Northern Railway, Jagadhri Workshop and the Railway Protection Force, Ambala Cantt., pursuant to the interim directions of this court, reveals that they also do not have record available from the years 1981 to 1994 as the same has been destroyed as per order of the Divisional Officer and as per instructions contained in the Railway Protection Force Regulations, 1966.

8. In these circumstances, I would be loathe to interfere in the findings of the Tribunal which are returned against the workman and in favour of the Management. I find hardly any occasion in this case on the facts to interfere in this petition to disturb the findings recorded by the Tribunal which have been arrived at after appreciating the evidence on

record and weighing it in a balance of probabilities informing against the workman.

9. The two interim orders passed by this Court on which Mr.Maanipur heavily relies, stand answered by the plea taken in the affidavit of the Railways confirming that the record has been destroyed in terms of the weeding out instructions contained in the provisions of the Railway Protection Force Regulations, 1966. This is also not a fit case to draw an adverse inference and base a decision thereon.

10. For the foregoing reasons, I find no merit in this petition for interference which is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

5.2.2019
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No