

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

**CWP NO. 6995 OF 2014 (O&M)
DATE OF DECISION : 21.05.2019**

Jagjit Singh

...Petitioner

versus

Pepsu Road Transport Corporation and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. S. Randhawa, Advocate,
for the petitioner.

Mr. Anil Sharma, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. Challenge herein is to the punishment order dated 01.06.2012 (Annexure P-5), whereby the petitioner was dismissed from service. Delinquency attributed to him is committing embezzlement for an amount of ₹2340/-. The said embezzlement is stated to be on account of sale of tickets by fiddling with the ticket machine of another conductor of respondent-PRTC.

2. Learned counsel for the petitioner contends that pursuant to the departmental proceedings, an enquiry report

(Annexure P-1) was furnished, wherein the petitioner was exonerated of the charge of embezzlement as also the charge of fiddling with the machine of another conductor. However, the punishing authority disagreed with enquiry report and sought certain clarifications from the Inquiry Officer, in respect of his findings.

3. Learned counsel for the petitioner further submits that under the garb of clarifying his report, the Inquiry Officer summoned witnesses behind the back of petitioner and recorded their statements, without giving an opportunity to the petitioner to cross-examine the said witnesses. Denial of affording an opportunity to cross-examine witnesses is itself a violation of the very basic principles of natural justice.

4. Learned counsel for the petitioner submits that vide subsequent enquiry report dated 01.06.2012, the petitioner was indicted on the statement of one Keshar Singh, driver who stated that his bus had not broken down and no passenger from the bus of petitioner boarded his bus. Based solely on his testimony, the Inquiry officer indicted the petitioner on the charge of embezzlement which led to passing of the impugned order dated 01.06.2012 (Annexure P-5), by the punishing authority, whereby he was dismissed from service.

5. Having heard learned counsels for the parties and after going through the pleadings, I am of the opinion that the punishment order dated 01.06.2012 (Annexure P-5) does not

stand judicial scrutiny and is not tenable.

6. I am in agreement with the argument of learned counsel for the petitioner that the petitioner was denied the opportunity to defend himself and also to confront the witness, whose testimony seems to have weighed heavily on the mind of the Inquiry Officer in indicting the petitioner. Even the punishing authority relied on the above said reasoning of the Inquiry officer and awarded punishment of dismissal, which was upheld by the Appellate Authority vide order dated 03.09.2013 (Annexure P-6).

7. Per contra, learned counsel for respondent-PRTC submits that no illegality has been committed by the Inquiry Officer as the record available before him was in itself sufficient to indict the petitioner even if the testimony of the witness is not taken into account.

8. Be that as it may, the fact that the petitioner was denied opportunity of cross-examining the witness Keshar Singh, has not been denied. Confronted with the situation, learned counsel for respondent-PRTC relies on a Division Bench judgment of this Court in case titled as "**Raj Kumar v. State of Haryana**" **2010 (1) SLR 104**. Relevant of the judgment, *ibid*, is reproduced herein below:-

"1. The appellant is aggrieved by the order of learned Single Judge, setting aside reversion order for non-compliance of the principles of natural justice and giving liberty to the respondents to proceed afresh in the matter, without the appellant being taken back on

the promoted post, till the matter is decided afresh and also making it clear that the appellant will be entitled to claim benefit accruing from the final order to be passed.

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3. *Learned Single Judge upheld the plea of the appellant that it was necessary to follow the principles of natural justice and accordingly set aside the order of reversion. However, by referring to the judgment of Hon'ble Supreme Court in **Managing Director ECIL, Hyderabad and others v. B. Karunakar and others (1993) 4 Supreme Court Cases 727**, the State was given liberty to proceed afresh in accordance with law, without taking the appellant back on promoted post but made it clear that the appellant would be entitled to benefit of the order which may finally be passed.*

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5. *It is not disputed that the course adopted by learned Single Judge is in accordance with judgment of Hon'ble Supreme Court in B. Karunakar (supra). No prejudice would be caused to the appellant if liberty to proceed afresh in accordance with law is given and right of the appellant to benefits accruing from final order is left undisturbed. In view of judgment in B. Karunakar (supra), the appellant could not be held to be entitled to be restored to the promoted post, merely on setting aside order of reversion for violation of principles of natural justice."*

9. Relying on the above judgment, learned counsel for the respondent-PRTC contends that no illegality has been

committed by the punishing authority to award the punishment of dismissal from service. While I am in agreement with the principles enunciated and relied upon by the Division Bench judgment, *ibid*, but in the facts of present case, the violation of principles of natural justice is not the only ground.

10. I have gone through the subsequent enquiry report dated 01.06.2012 and do not find the same to be judicially sustainable for the reasons already stated herein above. In any case, the nature of order which I propose to pass, in my opinion, is in tune with the Division Bench judgment *ibid*, read with the judgment rendered by Hon'ble the Supreme Court of India in *B. Karunakar (supra)*, as cited in its judgment by the Division Bench.

11. In the premise, the writ petition is disposed of with a direction to the respondents to proceed afresh in accordance with law, as no prejudice would be caused to them. Resultantly, the respondents are at liberty to pass fresh appropriate orders after conclusion of the enquiry by affording an opportunity to the petitioner to defend himself in accordance with law. In the circumstances, the impugned punishment order dated 01.06.2012 (Annexure P-5) as also the appellate order dated 03.09.2013 (Annexure P-6) are set-aside. In case a favourable order is passed by the respondents on conclusion of the enquiry report, he shall be reinstated within a period of one month thereafter.

12. Let fresh departmental proceedings be concluded within three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

MAY 21, 2019
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Whether speaking/reasoned : Yes/No

Whether reasoned : Yes/No