

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

CWP-333-2023 (O&M)
Date of decision :24.08.2023

YADVINDER SINGH

...Petitioner

Versus

PRESIDING OFFICER-CUM-INDUSTRIAL TRIBUNAL
AND LABOUR COURT, UNION TERRITORY,
SECTOR-18, CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amit Kaith, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Yadvinder Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the Award dated 30.11.2021 (Annexure P-8); published on 19.01.2022 whereby, the reference of industrial dispute raised by the petitioner was answered against him.

2. Briefly, it is the case of the petitioner that he joined as a Conductor with the Chandigarh Transport Undertaking i.e. respondents No.2 and 3, herein (here-in-after called as 'respondent-Management') on 03.05.2004. Petitioner was charge-sheeted vide Charge Sheet dated 13.07.2004 on two counts. The first charge was that on 18.05.2004, when his bus was checked, it was found that he had taken an amount of Rs.40/- from five passengers (@ Rs.10/- per passenger), who were travelling from Bus Stand, Sector 43, Chandigarh to Bus Stand, Sector-17, Chandigarh but he had not issued the tickets to them. The second allegation was that on

31.05.2004, when his bus was checked, three passengers were found without tickets (who had paid @ Rs.5/- per passenger) and were travelling from Bus Stand, Sector-17, Chandigarh to Bus Stand, Sector-43, Chandigarh.

3. The petitioner replied to the afore-said charge sheet. However, since the reply was not found satisfactory, an Inquiry Officer was appointed, who conducted the inquiry and after considering the material placed before him, he submitted his inquiry report and thereafter, the Punishing Authority, passed an order of punishment on 31.08.2006; whereby, one increment of the petitioner was stopped with cumulative effect.

4. The afore-said order dated 31.08.2006 was challenged by the petitioner by filing an appeal before the Appellate Authority; however, the same was dismissed vide order dated 15.12.2014/09.01.2015.

5. The petitioner, thereafter, raised an industrial dispute, which was referred for adjudication to the learned Industrial Tribunal-cum-Labour Court, Chandigarh (in short 'the Tribunal'). The learned Tribunal, after considering the material/evidence available on the record, has dismissed the claim of the petitioner vide impugned Award dated 30.11.2021 (Annexure P-8).

6. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

7. Learned counsel for the petitioner contends that the Inquiry Officer has not conducted the inquiry in a proper manner, inasmuch as that the statements of the passengers (from whom the petitioner is alleged to have taken money but not issued tickets), were recorded nor the cash of the petitioner was checked. It is, therefore, contended that the inquiry against the petitioner was vitiated. It is stated that even the passengers themselves have

not been examined as witnesses and the finding of guilt has been arrived at by the Inquiry Officer purely on the basis of hearsay. It is also contended that the punishment awarded to the petitioner was not proportionate to the charge against him.

8. I have considered the afore-said submissions of learned counsel for the petitioner; however, I do not find any merit in the same.

9. As regards the plea of non recording of statements of the passengers, it is observed that the Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Corporation versus B.S. Hullikatti, 2001(2) SCC 574***, has held that examination of passengers of vehicle from whom the said sum was collected was not essential.

10. Still further, in another judgment rendered by the Hon'ble Supreme Court in the case of ***State of Haryana and another vs Rattan Singh, AIR 1977 (SC) 1512***, it has been observed that mere non-examination of passenger would not make it a case of no evidence. It was held that once the Inspector who had checked the bus, was examined, it can be said that it is a case of some evidence and not a case of no evidence.

11. As regards the other contention that the inquiry proceedings were vitiated as the finding of guilt was arrived at purely on the basis of hearsay, it is observed that the Full Bench of this Court in the case of ***State of Haryana and another versus Sh. Ram Chander, 1976(2) SLR 690***, has held that there is no bar against the reception of hearsay evidence by domestic tribunals. It has been held that the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves were not examined as witnesses. It was observed that a finding of guilt arrived at by him would not be based on pure

hearsay and it would be based on the evidence of the checker that he found passengers travelling without tickets and the statements made by the passengers to the checker at the time of checking. The following observations made in the above-referred judgment would be relevant :-

"Where a bus is checked and it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding of guilt arrived at by him would not be based on pure hearsay. It would be based on (1) the evidence of the checker that he found passengers travelling without tickets, and (2) the statements made by the passengers to the checker at the time of checking. The second item of evidence alone would be hearsay but it would be hearsay of high probative value because of the circumstances that statements were made in the presence of the conductor and on the spot. In such a case, it cannot be said that the enquiry officer's findings are based on pure hearsay or hearsay of unreliable nature."

12. In **Rattan Singh's** case (*supra*), it has also been held that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny.

13. In the instant case, it is not disputed that the Inspectors who carried out the checking of the bus, were duly examined before the Inquiry Officer and their statement was considered and the inquiry report was

submitted; whereupon, the punishing authority had imposed the punishment of stoppage of one increment with cumulative effect upon the petitioner.

14. As regards the punishment awarded to the petitioner is concerned, it would be gainful to refer to the judgement rendered by Hon'ble Supreme Court in ***B.C. Chaturvedi v. Union of India &Ors., 1996(1) SCT 617 (SC)*** , wherein the Hon'ble Apex Court laid down as under :-

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

15. In the instant case the Disciplinary Authority, on the basis of the material brought in enquiry, rightly recorded a finding proving charge(s) levelled against the petitioner and awarded the punishment of stoppage of one increment with cumulative effect. In the facts and circumstances of the present case, in my considered view, the punishment of stoppage of one increment with cumulative effect, as awarded to the petitioner, is not shockingly disproportionate. Therefore, I do not find any illegality or

perversity in the impugned Award passed by the Tribunal below, so as to warrant interference by this Court. Resultantly, the instant petition fails and the same is accordingly dismissed.

16. All pending application/s, if any, shall also stand closed.

August 24, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No