

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

CWP-8405-2019

Date of decision : 20.02.2023

Pardeep Kumar

....Petitioners

Versus

Pepsu Road Transport Corporation and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikas Chatrath, Advocate,
Mr. Nitin Kaushal, Advocate,
Mr. B.P.S. Thakur, Advocate,
Mr. Abhishek Singla, Advocate,
Ms. Tanya Sehgal, Advocate and
Mr. Ujjwal Sharma, Advocate for the petitioner.

Mr. Anupam Singla, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition the petitioner has raised challenge to the punishment order dated 17th of January, 2017 (Annexure P-2) whereby the petitioner was ordered to be treated as fresh entrant. Further challenge has been laid to the order dated 10th of January, 2018 (Annexure P-4) whereby the appeal preferred by the petitioner against the order dated 17th of January, 2017 is held to be maintainable.

2. Petitioner was appointed as Conductor on contract basis on 28th of May, 2001. Later on his services were regularized. Petitioner was served a memo dated 8th of August, 2014 whereby the following charges were levelled against the petitioner :-

- “1. Misconduct.
2. Participated in an illegal strike without any notice from

09.07.2014 to 11.07.2014 which resulted in loss of schedule 1325 K.Ms., thereby causing financial loss of Rs.26,520/-. Likewise participated in illegal strike from 02.08.2014 without any notice. This resulted in loss of 246 schedule Kms and causing financial loss to the tune of Rs.7266/- to the PRTC.

3. During official duty on 11.07.2013 on Bus No.A.F.-07, Route No.246 (Kapurthala-Chandigarh), he defrauded the Corporation for an amount of Rs.15/-.

4. Grossly violated the Rules of the PRTC and brought a bad name of the institution amongst the General Public.”

3. The petitioner was found guilty of three charges i.e. charge Nos.1, 2 and 4 whereas he was exonerated *qua* charge No.3. The inquiry finally culminated in the order of termination. Aggrieved against the punishment of termination, the petitioner preferred appeal wherein the Appellate Authority ordered *de novo* inquiry against the petitioner. The petitioner accepted the said order and participated in the *de novo* inquiry. De novo inquiry resulted in the order dated 17th of January, 2017 (Annexure P-2) wherein the following punishment was imposed :-

“Considering the pleas taken by the workman during personal hearing, official is given one more opportunity to the serve the Corporation and he is appointed afresh as Conductor. The financial loss of Rs.33,786/- caused to the corporation is ordered to be recovered from the payable salary of the workman.”

4. The petitioner further preferred appeal against the aforesaid order passed by the General Manager (Admn.) PRTC, Patiala. In the appeal, the Appellate Authority found that the punishment of treating the

petitioner as a fresh entrant needs to be replaced and saddled him with the punishment of stoppage of two increments with cumulative effect.

5. Vide impugned order dated 10th of January, 2018 (Annexure P-4) Managing Director of the respondent-Corporation exercising *suo motu* powers set aside the order dated 1st of September, 2017 and restored order dated 17th of January, 2017 holding that since no second appeal is provided under the regulations, order dated 1st of September, 2017 ought not have been passed.

6. Ld. Counsel for the petitioner submits that order dated 17th of January, 2017 as well as that dated 27th of November, 2017/10th of January, 2018 cannot be sustained. He submits that order dated 17th of January, 2017 is bad in law as the punishment imposed upon the petitioner is not one of the prescribed punishment as per the relevant Rules/Regulations. He claims that order dated 27th of November, 2017/10th of January, 2018 ought not have been passed while exercising *suo motu* powers as the Regulations do not provide any such power vested in the Authority. It is further claimed that the Appellate Authority prescribed under the Rules is the Additional Managing Director. He further asserts that the order is wrong factually as well as the order dated 1st of September, 2017 has not been passed on the second appeal but on appeal against the order dated 17th of January, 2017 passed by the General Manager. Furthermore, he asserts that the stand taken by the respondents in their written statement w.r.t. delegation of powers is also dehors the Rules as applicable.

7. Per contra, Mr. Singla asserts that since the de novo inquiry was ordered by the Authority and the matter was never remanded back to the Punishing Authority, and further since the inquiry report was also submitted before the Appellate Authority, the petitioner could not have filed appeal and in case such appeal was filed the Appellate Authority ought not have entertained the same as the same amounts to second appeal. However, Mr. Singla is not in position to dispute the fact that the regulations do not provide any delegation of power by the Appellate Authority.

8. I have heard counsel for the parties and have gone through records of the case.

9. Facts are not much in dispute as the same are matter of record. The issue involved in the present case is '*whether the order passed by the General Manager dated 17th of January, 2017 can be deemed to be an order passed by delegatee of an Appellate Authority or its an order passed by the Punishing Authority?*'.

10. The argument raised by Mr. Singla appears to be attractive at the first blush. However if accepted, the same shall result in defeating a valuable right vested in the petitioner to appeal against the order of punishment. Otherwise also factually the assertion made appears to be wrong. He is right to the extent that the Managing Director at the time of ordering *de novo* inquiry never remanded the case back and the report of *de novo* inquiry was submitted before the Appellate Authority only. However, at the same time it is borne from the record that after receiving the report

the Appellate Authority authorized the Punishing Authority to deal with the same. There is no Rule/Regulation whereby the Appellate Authority can delegate his powers that too to a Punishing Authority. Resultantly, this Court is at pain to accept such interpretation given at the hands of the respondents and the plea raised is hereby rejected being without merit. The only inference that can be drawn is that after receiving inquiry, the Appellate Authority rightly ordered the same to be dealt by the Punishing Authority. Thus, there was no occasion for the Managing Director to exercise *suo motu* power to anull order dated 27th of November, 2017/10th of January, 2018.

11. Resultantly, the present writ petition is allowed. Order dated 27th of November, 2017/10th of January, 2018 is hereby quashed and that dated 1st of September, 2017 is ordered to be maintained.

12. Hence, the petitioner is held to be entitled for all consequential benefits in accordance with law. The respondents are directed to release the benefits to the petitioner within a period of 12 weeks from the date of receipt of certified copy of this order.

February 20, 2023

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No