

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

CWP-10480-2023 (O&M)
Date of Decision: 05.12.2023

KEWAL SINGH

...Petitioner

Versus

PEPSU ROAD TRANSPORT CORPORATION, PATIALA
THROUGH ITS MANAGING DIRECTOR, NABHA ROAD, PATIALA
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. P.K.S. Phooka, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Kewal Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 02.01.2023 (Annexure P-1) passed by the learned Industrial Tribunal, Bathinda (here-in-after referred to as 'the Tribunal') whereby the reference of industrial dispute raised by him regarding termination of his services, has been rejected.

A further prayer has been made by the petitioner for directing respondents No.1 and 2 (here-in-after referred to as the respondent-Management) to grant him full back wages along with other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. Petitioner claimed that he was employed with the respondent-Management as Conductor on 26.03.1979; however, his services were terminated on 08.01.1998 and at the time of termination of his services,

he was getting pay of Rs.6507/-. Petitioner claimed that his services were terminated without conducting any proper enquiry and without issuance of any show cause notice. Petitioner further claimed that in the termination order, the Appellate Authority has wrongly mentioned that the petitioner-workman had admitted his guilt, whereas according to the petitioner, he had only explained the facts to the Appellate Authority regarding the cause of his absence. Accordingly, the petitioner claimed reinstatement in service with continuity and other consequential benefits.

3. The afore-said claim of the petitioner was contested by the respondent-Management by raising preliminary objection that the claim was not maintainable and also that the claim was time barred. On merits, the respondent-Management stated that so far as entry of workman into job is concerned, the same was a matter of record; however, it was stated that his services were terminated vide order dated 08.01.1998 as he had remained absent on 08.01.1997 without any intimation and had caused loss of Rs.4730/- to the department. It was stated by the Management that the services of the petitioner were terminated after conducting enquiry and upon finding the petitioner guilty of the charges, the competent authority passed the termination order as per the rules. It is the categoric stand of the respondent-Management that the petitioner had admitted his guilt before the Enquiry Officer and also the charges levelled against him. It was stated that even an appeal filed by the petitioner-workman against the termination order was dismissed. Accordingly, prayer for dismissal of the claim petition was made.

4. From the pleadings of the parties, the following issues were

framed by the Tribunal below :-

- “1. Whether the termination of services of workman is legal, valid and justified? (OPM)*
- 2. Whether the workman has no locus standi and cause of action to file the present claim? (OPM)*
- 3. Whether the claim is time barred? (OPM)*
- 4. Relief.”*

5. In order to prove his case, petitioner-workman examined himself as WW-1 and deposed vide his affidavit Ex. WW-1/A. He further examined Sh. Husan Preet Sharma, Clerk PRTC as WW-2.

On the other hand, the respondents-Management examined one Sukhcharan Singh as MW1, who deposed vide his affidavit Ex.M-1/A and also produced on record the enquiry report Ex.M-1. MW-2 another witness examined by the respondent-Management deposed vide his affidavit Ex.M-2/A. However, in cross-examination of this witness, the workman got proved copy of charge-sheet as Ex.WW-1, copy of management receipt of charge-sheet as Ex.W-2, copy of admission and explanation submitted by the workman as Ex.W-3.

6. Upon considering the material/evidence available on the record, the Tribunal below, vide impugned Award dated 02.01.2023 (Annexure P-1), rejected the claim of the petitioner by holding that the termination of services of the petitioner were proved to be legal, valid and justified. It was further held by the Tribunal below that the claim of the workman was a stale claim and the same was held to be time barred.

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

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and facts in rejecting the claim of the petitioner. It is

submitted that the services of the petitioner were terminated without conducting proper enquiry and therefore, the enquiry proceedings are vitiated. It is further submitted that the Tribunal below has wrongly held that the claim of the petitioner was time barred. Learned counsel for the petitioner contends that the termination order has been passed against the petitioner primarily taking into consideration that he had admitted his guilt before the Enquiry Officer; whereas, there is no admission on the part of the petitioner and the petitioner has been wrongly terminated.

9. With the afore-said submissions, learned counsel for the petitioner prays for setting aside of the impugned Award with a further direction to the respondent-Management to grant him full back wages along with all consequential benefits.

10. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

11. Contours of the scope of interference by High Court in disciplinary proceedings are well settled. In ***Union of India v. P. Gunasekaran, 2015(1) S.C.T. 5***, Hon'ble Supreme Court held as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a) the enquiry is held by a competent authority;*
- b) the enquiry is held according to the procedure prescribed in that behalf;*
- c) there is violation of the principles of natural justice in conducting the proceedings;*
- d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i) the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.*

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18. *The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.*

19. *Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court...*”

12. Coming to the case in hand, the Tribunal below while considering the case of the petitioner herein, returned the following findings:

“Concededly the notice of absence from duty was issued to the workman on 16.01.1997 and he did not file reply to the same and on 29.02.1997 he was charge-sheeted, which consisted the charges that he remained absent from duty on 08.01.1997 without permission of the authorities and without getting the leave sanctioned and he caused loss to the department to the tune of Rs.4730/-. Further from the documents, it is evident that the workman was given time to file reply to the charge-sheet, but he did not file the same and Mohinder Singh Station Supervisor was appointed enquiry officer. Ex.MW-1 enquiry file further goes to prove that the workman appeared before the enquiry officer on 12.08.1997 and on the next date i.e. 18.08.1997 he did not appear before the enquiry officer. On the next date i.e. 05.09.1997 the workman again appeared before the enquiry officer, who adjourned it for the further proceeding for 16.09.1997. As per case of the respondents/management the workman made confession with regard to the charges before the

enquiry officer and desired to close the further enquiry and on the basis of enquiry report, as well as by keeping in view his past record his services were terminated on 07.01.1998. The workman on the other hand has claimed that he never made the claimed any admission before the enquiry officer, rather he approached the higher authorities and explained his absence for the reasons that he had got an injury and also performed duty on 29.09.1997 and 30.09.1997.

After taking into consideration the material on file, the tribunal found no irregularity and illegality in the enquiry conducted into the charges against the workman. Concededly the workman appeared before the enquiry officer on 16.09.1997, which is also evident from the enquiry report submitted by the enquiry officer. In the report itself, the enquiry officer mentioned that the workman had appeared before him on 16.09.1997 and filed written application, vide which he admitted the charges levelled against him at serial number 1 to 4. The application submitted by the workman is also admitted by the workman in his cross examination which is Ex. W-3. First of all this application, is also signed by the enquiry officer as well as the presenting officer. The application, is no doubt addressed to the G.M, but was submitted before the enquiry officer by the presenting officer signed by the workman. Had this application been filed before the General Manager, the enquiry officer as well as the presenting officer would not have signed it. The enquiry officer duly mentioned this fact in his enquiry report that the workman appeared before him and file the said application. In the termination order, the General Manager also mentioned this fact that the workman admitted the charges in written application before the enquiry officer on 16.09.1997. Thus it is proved that in fact the workman made confession to the charges in

written, before the enquiry officer and not before the general manager. Even otherwise the workman himself took a self contradictory stand with regard to his application. In the claim petition, the workman claim that he had explained his position with regard to his absence, but in Ex.W-3 there is no such explanation, as claimed by the workman, rather it is clear admission of the charges by the workman, wherein he also requested to close the enquiry. The workman was issued show cause notice and was also given personal hearing before the termination of his services and he admitted the same in his cross examination. The perusal of the termination order further goes to prove that the services of the workman were ordered to be terminated by keeping in view his past service record, which is mentioned at page No.15 of the enquiry file attached with the file. This page with regard to his past service record contains number of punishments inflicted upon the workman, which also includes the facts with regard to his previous termination, reinstatement, stoppage of increments, reduction of pay etc. Thus the termination of his services of the workman proved to be legal and valid and justified this issue is accordingly decided in favour of the respondents/management.

Issue No.2

10. Onus to prove this issue was upon the respondents/management. But during course of arguments this issue was not pressed upon, hence the same is decided against the respondents/management.

Issue No.3

11. Onus to prove this issue was upon the respondents/management. Admittedly the services of the workman were terminated on 07.01.1998, but he issued demand notice in the year 2011 and thereafter the matter referred to the tribunal on 20.07.2011. The workman has

not explained the reasons for long delay. There is unexplained delay of 13 years. The claim of the workman therefore is stale claim and held to be time barred.

Relief

12. In view of the findings on aforesaid issues, reference is answered against the workman with no order as to costs.”

13. A perusal of the above extracted findings would reveal that the petitioner had absented from duty; whereupon, a notice was issued to him to which he did not file any reply and subsequently, the petitioner was charge-sheeted, *inter alia*, on the ground that he remained absent from duty on 08.01.1997 without permission of the authorities and without getting the leave sanctioned and also that he had caused loss to the department to the tune of Rs.4730/-. It has come on record that the petitioner did not submit any reply to the said charge sheet; whereupon, Mohinder Singh, Station Supervisor was appointed as an Enquiry Officer. On the basis of the enquiry file (Ex.MW1), the Tribunal below observed that the petitioner-workman had appeared before the Enquiry Officer on 12.08.1997 and 05.09.1997 and then on 16.09.1997, when he filed a written application (Ex. W3); admitting the charges levelled against him at Serial nos.1 to 4. During cross-examination, the petitioner had admitted the afore-said application (Ex. W3). The Enquiry Officer has mentioned the aforesaid fact in his enquiry report that the workman had appeared before him and filed the aforesaid application. The workman was issued show cause notice and an opportunity of personal hearing was also afforded to workman. Upon considering the relevant material/enquiry file, the Management passed the termination order of workman.

The learned Tribunal below has also considered the submission

raised by learned counsel for the petitioner that the petitioner-workman never admitted his guilt before the Enquiry Officer and upon perusal of letter dated 16.09.1997 (Exhibit W3) submitted by the petitioner, it has been observed that there is a clear admission of charges by the petitioner-workman; wherein he also requested to close the enquiry.

14. Learned counsel for the petitioner has failed to produce any material on record to dislodge the afore-said findings returned by the Tribunal below. Therefore, it is observed that due opportunity of hearing was afforded to the petitioner-workman to put forth his stand during the enquiry proceedings and considering the fact that the petitioner admitted his guilt by way of written application (Exhibit W3), there is no illegality or irregularity in conducting the enquiry proceedings.

15. As regards punishment of termination of services of Petitioner on account of absence from duty without permission and for causing financial loss to the Department; it is observed that absence from duty without permission and causing financial loss to employer are acts of misconduct.

In the case of ***Regional Manager, U.P. SRTC, Etawah and others v. Hoti Lal and another, 2003(1) S.C.T. 941***, the Apex Court held as follows :

"10. The decision in U.P. SRTC case was really in a different factual background making it distinguishable from the facts of the present case, and has no application. In Karnataka SRTC v. B.S. Hullikatti, reported in (2001) 2 SCC 574 it was held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of

passengers, though they should have, or have issued tickets of a lower domination knowing fully well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was reiterated by a three-Judge Bench in **Regional Manager, RSRTC v. Ghanshyam Sharma, reported in (2002) 10 SCC 330** where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and bus conductors who by their actions or inaction's cause financial loss to the corporations are not fit to be retained in service.

11. It needs to be emphasised that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. [See **Alexander Machinery (Dudley) Ltd. v. Crabtree, reported in 1974 LCR 120 (NIRC)**]. A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the

amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

16. In the instant case, the termination order had been passed by the Disciplinary Authority by not only considering the fact that the petitioner had admitted his guilt by way of a written application (Ex. W3) wherein he admitted the charges levelled against him, but also considering the past service record of the petitioner which indicated previous termination, reinstatement, stoppage of increments, reduction of pay etc. It is well settled that Courts cannot sit over the findings of the Enquiry Officer as accepted by the disciplinary authority and act as a court of appeal unless it is shown that the findings are without any evidence. Therefore, once there is no illegality or irregularity in the holding of enquiry nor any fault in the enquiry has been pointed out, accordingly, the order of dismissal is liable to be upheld.

17. As far as the findings returned by the Tribunal below that the claim of the petitioner was time barred, it is not disputed before this Court that the services of the petitioner were terminated on 08.01.1998; however,

he had served the demand notice only in the year 2011. No reason for the said long delay is forthcoming on behalf of the petitioner. It would be gainful to refer to judgment in ***“Prabhakar v. Joint Director Sericulture Department” 2015(4) SCT 493***, whereby, the Hon’ble Supreme Court while considering the plea of a stale claim, made the following observation :-

“28. In this process, let us first examine as to what would constitute 'industrial dispute' because of the simple reason that the appropriate Government has power to refer what is known as an 'industrial dispute' and likewise the Labour Court/Industrial Tribunal has jurisdiction to decide if there is an industrial dispute. We are not going into the entire gamut of what constitutes 'industrial dispute' within the meaning of Section 2(k) of the Act. Our focus is only on the aspect that what can be referred should be the dispute which is existing and in praesenti when the reference is sought. To put it otherwise, if it no longer remains an industrial dispute or industrial dispute 'does not exist' at that time, there would not be any question on making reference or adjudicating the matter as it is not an industrial dispute.

29. Section 2(k) of the IDA defines 'industrial dispute' and it reads as under :

"'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;"

30. As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual

are also deemed as industrial dispute and, therefore, an individual is given right to raise these disputes.

31. The term 'industrial dispute' connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression 'dispute or difference' as used in the definition, therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in maintaining the respective contentions.

32. To understand the meaning of the word 'dispute', it would be appropriate to start with the grammatical or dictionary meaning of the term :

'Dispute': "to argue about, to contend for, to oppose by argument' to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

33. Blacks law dictionary, 5th Edition, page 424 defines 'dispute' as under :

" A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined."

34. Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa. Hence an 'industrial dispute' cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should

be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of petitioner on April 01, 1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a dispute? Or can it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement, the employer presumed that the workmen has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a 'dispute' what had otherwise become a buried issue...”

In view of the above-said legal position, no fault can be found with the findings returned by the Tribunal that the claim of the petitioner was a stale claim.

18. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction

committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an

error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issue of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* *Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477; Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61; Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976; R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507 and Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.*

19. Keeping in view the above said principles and upon considering the totality of circumstances, this Court is of the opinion that there is no scope for interference in the factual findings recorded by the learned Tribunal below in the impugned Award dated 02.01.2023 (Annexure P-1) and the present writ petition is accordingly dismissed.

20. No other point has been urged.

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

December 05, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No