

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

**LPA No. 1383-2023 (O&M)
Date of Decision 18.10.2023**

Pepsu Road Transport Corporation (PRTC)

-----Appellant

Versus

Vijay Kumar and others

---Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Harsh Aggarwal, Advocate
for the applicant-appellant.

RITU BAHRI, ACTING CHIEF JUSTICE.

C.M. No. 3524 and 3525-LPA-2023

For the reasons mentioned in the applications, delay in refiling
of 23 days and in filing of 07 days is condoned.

The applications stand allowed.

LPA No. 1383-2023

The instant appeal under Clause X of the Letters Patent is
directed against the judgment/order dated 26.04.2023 rendered by the
learned Single Judge in CWP No. 1952-2020 while allowing the writ
petition filed by respondent No. 1-Vijay Kumar (herein after to be referred
as 'respondent No. 1').

2. Brief facts of the case are that respondent No. 1 was serving in
appellant-Corporation as Conductor and was charge-sheeted, vide memo

dated 13.05.1999 for a charge involving suspected fraud of Rs.132/- and for causing indiscipline by violating the rules of the Corporation. The respondent was exonerated of the first charge of suspected fraud, after conducting the regular inquiry on the basis of report dated 30.08.2001. However, the respondent was indicted for the charge involving indiscipline. In this regard, a show cause notice was issued to Respondent No. 1 on 24.01.2002. Respondent No. 1 was dismissed from service, vide order dated 29.07.2003. The departmental appeal filed against the said order, was also dismissed on 23.10.2003. A civil suit was preferred by respondent No. 1 impugning order of punishment and the same was dismissed. In appeal preferred by respondent No. 1, the suit was decreed partly. The punishment order dated 29.07.2003 was set aside and the matter was remanded back to the disciplinary authority for passing order afresh either in the light of the findings recorded by the inquiry officer or after seeking fresh report.

3. Again the same charge sheet was issued to respondent No. 1, vide communication dated 08.05.2013 and fresh inquiry was ordered. Again respondent No. 1 was exonerated for the charge of fraud of Rs.132/- but was held guilty for indiscipline. The Disciplinary authority once again dissented with the findings recorded by the inquiry officer and issued show cause notice dated 26.09.2013 to respondent No. 1 proposing punishment of dismissal. Respondent No. 1-Vijay Kumar vide communication dated 30.09.2013 requested for further time of 10 days of filing reply and subsequently, respondent No. 1 was called for personal hearing on 11.10.2013. On 25.10.2013, the impugned order was passed imposing penalty of punishment upon respondent No. 1. Respondent No. 1 then preferred CWP No. 11227-2015 challenging the order of punishment and the

same was disposed of on 08.02.2019 relegated respondent No. 1 to avail the remedy of filing of departmental appeal. However, the appeal preferred by respondent No. 1 was again dismissed on 26.11.2019. Thereafter, Respondent No. 1 again approached this Court by filing CWP No. 1952-2020, which was allowed on 26.04.2023. Hence the present appeal is filed by the appellant-department.

4. The Learned Single Judge examined the show cause notice dated dated 26.09.2013 and held that the show cause notice issued to respondent No. 1 cannot be sustained, as respondent No. 1 was not granted opportunity of hearing by the disciplinary authority before reaching at a finding against the employee. Accordingly, the writ petition filed by respondent No. 1-Vijay Kumar was allowed and he was ordered to be reinstated into service along with all consequential benefits. The disciplinary authority was given liberty to proceed from the stage prior to issuance of show cause notice dated 26.09.2013.

5. Reference at this stage can be made to inquiry report dated 19.09.2013 (Annexure P-5) wherein with respect to charge No. 1, it has been held that the suspected fraud of Rs.132/- by re-issuance of tickets is not proved, as the employee has stated in his statement *that he closed the ticket numbers after every trip but the entry thereof could not be got checked as there was no In-charge at Jalandhar Bus Stand. This fact was not disproved at any stage during cross examination nor the employee has been cross examined on this aspect. Even the prosecution witnesses have admitted that the report of suspected fraud is on the basis of suspicion only. Therefore, the employee was held to be not guilty for the present charge.*

6. Despite this inquiry report, the Punishing Authority passed the impugned order proposing punishment of dismissal of service. The respondent No. 1 then approached this Court by filing Civil Writ Petition No. 11227-2015 challenging the impugned orders, which was disposed of on 08.02.2019 by giving liberty to respondent No. 1 to avail alternative remedy of departmental appeal. However, the departmental appeal preferred by respondent No. 1 was dismissed on 26.11.2019 after affording an opportunity of hearing to respondent No. 1. It was held that the employee failed to submit any substantive fact/argument on record to prove his innocence. In the end, the employee had requested to take a lenient view and to reinstate him in service.

7. Heard.

8. It is not in dispute that Charge No. 1 was not proved against respondent No. 1 and thus it was the appellant-department, who had not led any evidence to show that whether there was any incharge at Jalandhar Bus Stand. It is well settled law that when the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity of hearing to represent before it records its finding. The disciplinary authority was duty bound to record its tentative reasons for such disagreement.

8. Thus, the Learned Single Judge has rightly allowed the petition filed by respondent No. 1 by holding that the disciplinary authority has merely substituted its conclusions without recording any reasons as to why the findings recorded by the inquiry officer cannot be sustained and was to be discarded.

9. In view of the above, the present appeal fails and the same is dismissed.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

October 18, 2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No