

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.614 of 1996(O&M)
Reserved On: 19.12.2023
Pronounced On:05.01.2024

Pepsu Road Transport Corporation and others

...Appellants

Versus

Tarlochan Singh

...Respondent

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

**Present: Mr. Sarabjeet Singh Khaira, Advocate,
for the appellants.**

**Mr. Anurag Chopra, Advocate and
Mr. Akshat Dalal, Advocate,
for the respondent.**

ANIL KSHETARPAL, J.

1. In this regular second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the suit filed by the plaintiff for grant of decree of declaration that the orders passed by the disciplinary authority while dismissing him from service are illegal, null and void which in appeal was upheld by the appellate authority.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. At the relevant time, the respondent was working as a Conductor in the buses run by the Pepsu Road Transport Corporation. On 15.07.1987, he was deployed on the bus enroute from Bathinda to Shimla.

On 15.07.1987, at about 10.00 am, when the bus reached the Tara Devi Station, the inspectors of the defendant-Corporation boarded the bus and started checking the bus. It was found during the checking of the bus that some unauthorised luggage was kept on the roof of the bus. Accordingly, it was apprehended that the plaintiff (respondent) has misappropriated Rs.87/-, the ticket charges of the aforesaid luggage without issuing any ticket. A report was prepared on the spot. A charge sheet was issued to the respondent and a regular inquiry was conducted. On receipt of the report of the regular inquiry, the punishing authority vide its order dated 05.04.1988, dismissed the plaintiff from services which in appeal was upheld by the appellate authority on 02.03.1989. The plaintiff filed a civil suit on 18.03.1988. The plaintiff asserts that the disciplinary inquiry and the consequent punishment are illegal, null and void. The suit was contested by the appellant-Corporation.

4. The trial court as well as the appellate court have allowed the suit on the following grounds:-

- (i) At the time of checking of the bus the statements of the passengers were not recorded and cash was also not checked.
- (ii) The owner of the goods was not travelling in the bus;
- (iii) The finding of the inquiry officer is based on no evidence.
- (iv) The inquiry officer assumed the role of prosecutor as he cross-examined the plaintiff.
- (v) The previous service record of the plaintiff has been taken into account though it was not made part of the

show cause notice.

5. The first appellate court has held that no opportunity of hearing was given to the plaintiff and the language of the order does not demonstrate application of mind by the disciplinary authority. The order passed by the punishing authority is not a speaking order.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record which is available in the digital form. They have also filed their respective synopsis.

7. It is a well settled principle that the civil court does not sit over the decision of the special tribunal as an appellate authority. If the Tribunal while passing the order follows the principles of natural justice, then the dismissal order shall not be set aside on the ground that there has been unintentional infringement of procedure, unless prejudice caused to the employee is proved. In this case, the recording of the statements of passengers was not necessary because the owner of the goods was not travelling in the bus. The passengers of the bus are not expected to know whether the conductor has issued the tickets to other passenger or luggage, or not. Similarly, the second reason also lacks substance because the conductor was not expected to charge the amount from the owner and keep it in his official bag where tickets and the cash collected is kept. The courts below have erred in observing that the findings of the inquiry officer were based on no evidence. A careful perusal of the inquiry file shows that the deposition of Mr. Jai Gopal, a member of the checking staff and as well as Mr. Tarsem Lal were recorded on behalf of the prosecution. Similarly, the courts have erred in observing that the inquiry officer assumed the role of

prosecutor. Section 165 of the Indian Evidence Act, 1872, enables the Presiding Judge of the court to ask questions. It does not imply that the inquiry officer assumes the role of prosecutor on asking of questions. The plaintiff has failed to show prejudice caused to him. It is evident that the plaintiff was given all opportunities to produce his evidence. Similarly, the disciplinary authority by way of reference only referred to the previous bad service record of the plaintiff. However, that itself was not made the basis for passing of the impugned order by the disciplinary authority.

8. The next reason assigned by the Court is also erroneous because it is proved that the appellate authority before passing the order gave an opportunity of hearing to the respondent-plaintiff. The disciplinary authority passed the order before the Supreme Court passed the judgment in **Union of India vs. Mohd. Ramzan Khan, 1991(1) SCT, 111**, i.e on 05.04.1988. The aforesaid judgment was made prospectively applicable, hence, the judgment does not apply to the facts of the present case.

9. The last reason assigned by the court is also erroneous because the disciplinary authority or the appellate authority is not presided over by judicially trained persons, and hence they cannot be expected to record detailed reasons for coming to a definite conclusion. The court is required to see the substance of the matter.

10. In view of the aforesaid facts and discussion, the judgments passed by the courts below are not sustainable being erroneous. However, a perusal of the paper book proves that while admitting the appeal for regular hearing in the year 1998, no interim order was passed in favour of the appellants. Hence, if the respondent was reinstated in service and had continued to serve, he shall be paid his retiral benefits as are payable to him.

However, no recovery from the respondent shall be made of the benefits already paid to him. However, the respondent shall not be liable to be paid any amount on account of back wages or arrears of salary or other respective benefits.

11. All the pending miscellaneous applications, if any, are also disposed of.

5th January, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO