(1988) 04 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1810 of 1985

Gurcharan Singh		APPELLANT
	Vs	
Punjab State and others		RESPONDENT

Date of Decision: April 2, 1988

Hon'ble Judges: Manmohan Singh Liberban, J

Bench: Single Bench

Advocate: J.S. Khehar, for the Appellant; S.S. Brar for A.G. Punjab, for the Respondent

Final Decision: Allowed

Judgement

Manmohan Singh Liberban, J.

1.This regular second appeal arises out of the judgment dated 4.2.1985, of the Additional District Judge, Gurdaspur.

2. The controversy revolves around the following facts; Gurcharan Singh plaintiff was working as a Bus Conductor with Punjab Roadways at Batala, On 21.3.1981 during checking the Inspector found two passengers travelling without tickets from Samrala to Katni and again on 26.3.1981, two passengers were found travelling without tickets from Kartarpur to Jullundur. A charge-sheet was served on the plaintiff for not issuing tickets after charging the passengers Rs. 2/- on 21.3.1981 and Rs. 3/-on 26.3.1981 and thus misappropriating the government funds. An enquiry was held. The plaintiff was found guilty of embezzlement. The punishing authority agreeing with the findings of the enquiry, passed the following order:-

I agree I have considered his previous record also. His 13 increments already stand stopped. In view of the blemished record and the findings of the inquiry officer, I am constrained to remove him from service and forfeit the arrears of pay of the period he remained under suspension. Necessary notice may be issued.

A show cause notice was served on the plaintiff, who submitted his reply. Order of removal from service was passed against the plaintiff.

3. The plaintiff challenged the order of removal from service in a suit for declaration contending, the order of removal was illegal and void. The report of the Enquiry Officer was said to be based on no evidence and as such the order of the punishing authority agreeing with the findings of the enquiry officer would be deemed to be on no evidence. The punishment was alleged to be on extraneous considerations and not based on the charges served. It was averred to be a case of double jeopardy, as the order of removal had been passed taking into consideration his previous conduct for which he had already been punished. It was averred that the second show cause notice was merely a farce inasmuch as the punishing authority had already made up his mind and, therefore, there was no real reasonable opportunity provided to the plaintiff for consideration of his reply, nor the same had been considered.

4 The above-said allegations were controverted by the defendants. The following issues were framed:-

1. Whether the impugned orders are illegal, ultra vires, unconstitutional and null and void as alleged? If so, its effect? OPP.

2. Whether the suit is not maintainable in the present form? OPP.

3. Whether the plaintiff is entitled to declaration prayed for? OPP.

4. Relief.

The Courts below came to the conclusion, the order of removal is legal and based on evidence; there is no bias; no finding has been returned with respect to double jeopardy or the effect of taking into consideration of the previous conduct of the plaintiff. The suit was dismissed.

5. The counsel for the appellant has reiterated the contentions raised and has relied upon the judgments reported in State of Haryana v. Mohan Singh 1985 (2) S.L.R. 116, R.S.A. No. 39 of 1986 Punjab State and another v. Harnam Singh R.S.A. No. 39 of 1986, decided on 18.8.1987, Nripendra Nath v. Union of India and others 1981 (1) S.L.R. 533 and The General Manager, Northern Railway and others v. Harbans Singh 1979 (2) S.L.R. 590.

6. The counsel for the appellant has read out the statement of the witnesses produced before the enquiry officer as well as the report. It is not disputed that cash was not checked to find out whether the plaintiff had charged the amount and not issued the tickets. The passengers from whom the alleged amount had been charged were not examined. The amount was not charged in the presence of the Inspectors nor the passengers were confronted with the Conductor while checking the bus. No passenger is said to have claimed having paid the amount without issue of tickets. It may be a case of negligence or non issue of tickets but nothing has been brought on the record to show that the plaintiff had embezzled the amount The charge being of embezzlement, which is quite distinct from negligence in

performance of duties or violation of any other instructions, no finding could have been recorded by the enquiry officer with respect to the charge of embezzlement or misappropriation.

7. It is not disputed that under the rules, an opportunity with respect to quantum of punishment had to be provided to the delinquent. He had to be given a chance to explain that the proposed punishment is disproportionate to the nature of guilt attributed. The show cause notice has to be meaningful. The opportunity has to be effective and objective. It is not to be observed as a mere ritual.

8. It is well-accepted now that one has not to prove the actual bias of the punishing authority. In case an ordinary prudent person thinks that there is likelihood of bias on the part of the punishing authority or his acts lack bona fides, the resultant order shall suffer from the vice of bias and will be a void order. The authority while discharging its duties is supposed to act keeping in view that the person shall carry an impression that he has been fairly dealt with. While judging the bias one has to keep in mind that it is difficult to prove the state of mind of a person, the only thing which can be seen is whether there was a reasonable ground for believing that he was likely to have a bias consciously or unconsciously. While doing so one has to take in to consideration human probabilities and the ordinary course of human conduct. It is the totality of circumstances which has to be taken into consideration to assess whether a reasonable man carried an impression of real likelihood of bias. Further, the circumstances have to be taken into consideration objectively. Justice must not only be done but also appear to have been done. It must be routed in confidence.

9. It has been pointed out by the learned counsel for the appellant that before issuing a second show cause notice proposing the punishment, the punishing authority had already made up his mind and the issuance of the second show cause notice was only a ritual observed to comply with the statutory provisions of the rules. On perusing the order of the punishing authority passed on the enquiry report, I am of the considered view that the punishing authority had already made up his mint to award the punishment before the show cause notice was issued. In view of the order passed there was nothing left to be considered in the reply with respect to the quantum of punishment. Hence the impugned order of punishment of removal from service suffers from reasonable apprehension of bias. The impugned order is liable to be set aside on this short ground alone. These observations of mine dispose of the contentions raised by the appellant that the impugned order suffers from bias and that the second show cause notice having been served by the punishing authority after making up its mind the plaintiff''s reply with respect to the punishment had not been considered objectively.

10. The learned counsel for the appellant contends, the punishing authority had taken into consideration extraneous matters which were not the basis of charge sheet. I find no force in this contention for the reason that no extraneous matter

was taken into consideration while awarding the punishment. The delinquent plaintiff was apprised of his service record in order to determine the quantum of punishment It is obvious that in order to determine the quantum of punishment the punishing authority had to take into consideration numerous factors like his previous conduct, number of years put in service, prejudice likely to be suffered by him in his future service, financial losses likely to be suffered, existence or absence of any mitigating circumstances, etc. etc. Thus, in order to come to a conclusion for appropriate punishment, the previous record and conduct was one of the necessary facts to be taken into consideration. There was no need to frame the charges on the basis of his previous conduct as the punishment was not being awarded for his previous conduct. He was being punished for the offence committed by him and his previous conduct was being taken into consideration only to determine the quantum of punishment.

11. The contention of the counsel for the appellant that it is a case of double jeopardy again has no force, in view of my above observations. The question of double jeopardy would have arisen had the plaintiff been punished for the offence committed by him for which he had already been punished Here, he had been punished for entirely new acts committed by him and it was only for the purposes of determining the quantum of punishment that his previous conduct was being taken into consideration, for which it cannot be said that he was being punished twice. The judgment in Harbans Singn and others'' case (supra) is neither pari materia on facts nor on law. That was a case in which the punishment was being enhanced because of his previous conduct. In the case in hand the question was of determining the quantum of punishment considering the gravity of the offence and the absence of mitigating circumstances and not of enhancement of punishment.

12. Counsel for the respondents only contends that civil Court has no jurisdiction to reappraise the evidence. I find no force in this submission, inasmuch as it is not a case of reappraisal of evidence, but one of finding the delinquent guilty on the basis of no evidence. Counsel for the respondents has failed to find out any distinction in the facts and circumstances of this case with those reported in State of Haryana v. Mohan Singh (supra).

13. In view of my above observations, this appeal is allowed, the judgment and decree of the Courts, below are set aside and the suit of the plaintiff is decreed to the extent that the order of removal from service is illegal and in violation of the principles of natural justice and the same is, therefore, set aside. The plaintiff is directed to be reinstated in service. Since the plaintiff has, in his statement marked ''A'', already given up his claim with respect to back-wages, no order with respect to back-wages is being passed. The plaintiff shall be entitled to all other benefits treating him in service as if his services were not terminated. He shall be entitled to full wages for the suspension period till he was removed. Appeal all wed with costs throughout.