

(2010) 05 P&H CK 0268

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ram Bhajan APPELLANT

Vs

Punjab State and Another RESPONDENT

Date of Decision: May 11, 2010

Acts Referred:

- Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 8(23)

Citation: (2010) 159 PLR 531 : (2010) 4 SLR 235

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The appellant was working as Conductor with Punjab Roadways, Pathankot. He has filed this appeal to impugn the judgment passed by the trial Court as well as by the Appellate Court, Gurdaspur. The appellant had filed the suit seeking declaration to the effect that the order passed by the General Manager, Pathankot dated 17.11.1987 removing him from service with immediate effect was illegal, null and void.

2. The appellant had joined the service in the year 1973. The removal order passed against the appellant was challenged on the following grounds:

1. That the charge sheet was not framed in accordance with the rules and reply to the charge sheet was not considered at all.
2. That the inquiry officer recorded the findings even in the absence of the co-worker provided to the plaintiff/respondent to defend his case and thus the plaintiff/respondent could not produce his proper defence and moreover, the Inquiry Officer did not consider his defence evidence at all.

3. That the checking staff neither recorded statements of passengers travelling in the bus at the relevant time nor checked the cash in hand of the plaintiff/respondent and further the report of the inquiry officer is in violation of Rule 8(23) It was not proved on the file that who issued the old tickets to the passengers travelling in the bus.

4. That the reply to the show cause notice has not been considered and it was rejected in routine only.

3. The allegation against the appellant is that he had embezzled a sum of Rs. 585.65 while working as Conductor conducting the bus from Delhi to Pathankot on 05.11.1986. The appellant had issued used tickets to the passengers worth Rs. 585.65 and thus had embezzled the Government money. Having failed in his appeal, the appellant had filed the suit to challenge this order on various grounds. In the reply filed, the suit was opposed. It was pleaded that the respondent was given full opportunity to defend himself and the impugned order was passed after holding an inquiry, which was conducted without any flaw. It was also pleaded that the appellant was provided a reasonable opportunity to defend himself.

4. The suit was tried on the following issues:

1. Whether the order dated 17.10.87 is illegal, null and void etc. If so its effect? OPP.

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

3. Relief.

5. The trial Court decreed the suit against which the State had filed the appeal. The appellate Court, however, reversed the finding of the trial Court on the ground that there was no serious defect causing prejudice to the appellant. It was also found that the inquiry file showed that full reasonable opportunity at every step was provided to the appellant. The appellant had produced the evidence in his defence. The appellant was properly charged etc.

6. Learned Counsel appearing for the appellant has made two fold submissions before me. He would first submit that evidence of no passenger was recorded and even the cash was also not tallied. On this basis, Counsel would contend that it was a case of no evidence or it was a case of no sufficient evidence. The State Counsel on the other hand would draw my attention to [State of Haryana and Another Vs. Rattan Singh](#), where it is held by the Hon'ble Supreme Court that merely because the evidence of the passenger was not recorded, it could not be termed as a case of no evidence, Once the evidence of checking staff is recorded, it would be some evidence and thus would not be a case of no evidence.

7. Learned Counsel for the appellant then submits that the provisions of Rule 8(23) of the Punjab Civil Services (Punishment and Appeal) Rules, were violated. The submission is that the inquiry report was not prepared in accordance with the

requirement as laid down in this Rule.

8. Rule 8(23) of the rules reads as under:

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain:

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

Explanation.- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its finding on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiry authority where it is not itself the punishing authority shall forward to the punishing authority the records of inquiry which Shall include - (a) the report prepared by it under Clause (i);

(b) the written statement of defence, if any, submitted by the Government employee;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any filed by the presenting officer or the government employee or both during the course of the inquiry; and

(e) the orders, if any, made by the punishing authority and the inquiring authority in regard to the inquiry.

9. The requirement is for preparing the inquiry report. The rule may have made a mention to some of the aspects, which are required to be reflected in the inquiry report but it is the inquiry report which is to be prepared and made use. Firstly, it is not pointed out as which aspect was not recorded in the inquiry report. There is no allegation of complete violation of the provisions. Preparing of an inquiry report in a particular manner is not what is primarily the requirement of the rule which appears to be as guideline to the inquiry officer. Even if there be some failure to prepare the inquiry report in terms of the rule, this would not lead to any prejudice and it would not vitiate inquiry or the inquiry report. There is no scope of any prejudice to the employee if the inquiry report is not prepared as per the rule. No submissions were

made before me to show or to urge that any prejudice was caused for not preparing the inquiry report in terms of the rule position. In fact, it has not been specifically shown as to how this inquiry report was not in accordance with rule.

10. In view of this background, merely because the inquiry report was not prepared exactly in the manner would not lead to prejudice to the case of the appellant. There is no merit in the appeal and the same is accordingly dismissed.