

(2013) 05 P&amp;H CK 0238

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Letters Patent Appeal No. 2043 of 2012

Joginder Pal

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

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**Date of Decision:** May 4, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2013) LabIC 3094**Hon'ble Judges:** Surya Kant, J; R.P. Nagrath, J**Bench:** Division Bench**Advocate:** Puneet Gupta, for the Appellant;

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**Judgement**

Surya Kant, J.

This letters patent appeal is directed against the order dated 22.8.2012 whereby the learned single Judge has dismissed the appellant's writ petition challenging the order dated 11.11.2011 of his compulsorily retirement from service. The appellant was working as a driver in the Punjab Roadways. He caused an accident on 14.06.2010 hitting a private truck in which three passengers lost their lives while 15 others injured. The appellant was served with a charge-sheet on 12.10.2010 alleging that he was driving the bus at a fast speed and in a rash and negligent manner due to which the accident was caused. The Inquiry Officer, however, exonerated the appellant holding that there was a mechanical fault in the bus and the appellant got it repaired before departing from Delhi to Jammu.

2. The Disciplinary Authority, however, did not accept the enquiry report and wrote the following dissenting note:--

...Case has been perused by the undersigned. Enquiry Officer has exonerated you in his enquiry report on the basis that pressure of the bus was leaked and break of the bus was failed. However, as per the report and statement of departmental witnesses, it is clear that at the time of accident the operation meter of bus is 2.5

and 3.0 and this pressure was six hour later than the accident. The breaks of the bus could not be failed in such pressure. The departmental witness has clarified that the signs of tyres after applying breaks were visible to much distance on the road. Enquiry officer gave his finding ignoring this fact. For the above said reasons and not agreeing with the inquiry report, therefore, dissenting note has been issued to you....

3. The dissenting note was duly served upon the appellant. His reply to the show-cause notice was considered. Thereafter, he was ordered to compulsorily retire from service as a measure of punishment. The appellant preferred departmental appeal which was also turned down by the Appellate Authority by passing a speaking order in accordance with the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as "1970 rules").

4. The afore-stated order came to be challenged but the learned single Judge has also turned down the appellant's writ petition, inter alia, observing that no irregularity or illegality in conducting the departmental proceedings could be pointed out and since the action taken against the appellant is in consonance with the principles of natural justice, no interference with the impugned order in exercise of jurisdiction under Article 226 of the Constitution was called for.

5. Still aggrieved, the appellant has preferred this appeal.

6. Reliance is placed on two Division Bench decisions of this Court in [Gurmel Singh Vs. Central Administrative Tribunal and Others](#), and Haryana State Agricultural Marketing Board v. K.L. Ahuja and another, 2011 (4) SCT 233, to contend that the report of the Inquiry Officer was duly approved by the senior most technical officer, i.e., the Works Manager but the Disciplinary Authority while disagreeing did not refer to the reasons" either assigned by the Inquiry Officer or the note of the Works Manager. On this premise, it is urged that there is noncompliance of Rule 9(2) of the 1970 rules which mandates that "the Punishing Authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

7. Having given our thoughtful consideration to the submission, we do not find any substance in it. We say so for the reason that the Disciplinary Authority has taken note of two vital factors, namely, pressure meter was found running at 2.5 and 3.0 speed even after six hours of the accident, to indicate the higher speed of the bus at the time when it met with accident. Secondly, there were skid marks on the road for a long distance to indicate that despite applying breaks from a reasonable distance, the appellant was unable to control or stop the bus. This also clearly suggested that the bus was at very fast speed at the time when it met with the accident. The gravity of misconduct is further compounded by the fact that, as observed by the enquiry

officer also, that the appellant was aware of the leakage in pressure at the time when he departed from Delhi for Jammu.

8. The Division Bench in the case of Gurmel Singh's case (supra) rightly held that Rule 9(2) of the 1970 rules was not complied with as that was a case where Disciplinary Authority after agreeing with the Inquiry Officer that there was a mechanical defect, yet observed that the driver ought to have been more alert. In the instant case, the principle of *res ipsa loquitur* can be attracted to the domestic enquiry also as the manner in which the accident took place and had its impact of causing death of three passengers and injuries to other 15, speaks in volume how negligently the Bus was being driven, especially when there is not even a whisper that the driver of other vehicle was also at fault in any manner.

9. In our considered view, sufficiency of the reasons or the material for arriving at its firm conclusion by the Disciplinary Authority would ordinarily not fall within the exercise of power of judicial review under Article 226 of the Constitution unless a clear case of "no evidence" or "perverse findings" is made out. The appellant has failed to make out such a case. Dismissed.