
(2014) 01 P&H CK 0246
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13117 of 2012

Chuhar Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Citation : (2014) 1 ACC 572 : (2014) 1 LLJ 417

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : M.S. Bedi, for the Appellant; Aman Bahri, Additional Advocate General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner who is a retired Driver from the Department of Transport, State of Punjab seeks the quashing of orders dated 04.03.2008 and 21.02.2011 (Annexures P-4 & P-5) in terms of which an amount of Rs. 61,667/- has been directed to be recovered out of his gratuity towards his proportionate liability for payment of compensation to the family members of the deceased who died in a motor accident involving a bus of the Punjab Roadways which was admittedly being driven by the petitioner. Brief facts are that the petitioner while working as Driver with the Punjab Roadways, Ludhiana Depot was plying a bus on 24.11.1989 when it was involved in an accident with a maruti car resulting in the death of one occupant. The legal heirs of the deceased filed a claim for compensation before the Motor Accident Claims Tribunal, Ropar and vide award dated 04.09.1992 (Annexure P-6), compensation to the tune of Rs. 1,85,000/- was awarded to the claimant party. A charge sheet dated 25.01.1996 was issued by the General Manager, Punjab Roadways Chandigarh under the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 raising a following charge against the petitioner:

Your duty was on Bus No. 6865 as driver on 24.11.1989. You have made the accident of this bus by driving it negligently near Kharpur with one maruti car,

whose driver died at the spot and another got seriously injured. The legal heirs of the deceased and the injured filed case No. 66/8-5-1990 in the court of Motor Accident Claims Tribunal for compensation. The Hon'ble Court while deciding the case on 04.09.1992 held you responsible for driving the bus negligently and passed an award of compensation to be given to the legal heirs of the deceased and the injured. As such by driving the bus negligently and making the accident of the bus with the maruti car and killing one person have put the govt. treasury to loss to the tune of Rs. 1,85,000/- and have made your self an accused.

2. Having considered the reply submitted by the petitioner to the charge sheet, Inquiry Officer was appointed and the inquiry report was furnished holding the petitioner to be guilty in driving the bus negligently. Based thereupon, the Director, State Transport, Punjab has ordered a recovery of an amount of Rs. 61,667/- from the gratuity of the petitioner vide order dated 20.02.2008 i.e. 1/3rd of the total of the compensation award granted by Motor Accident Claims Tribunal, Ropar. The petitioner preferred an appeal before the Special Secretary, Department of Transport, Punjab but the same has been dismissed in the light of impugned order dated 21.02.2011 (Annexure P-5).

3. Counsel for the petitioner would contend that a Driver cannot be held guilty on the basis of an award passed by the Motor Accident Claims Tribunal and it was obligatory for the department to record a finding based on cogent evidence to prove the charge of rash and negligent driving against such driver. It is only thereafter that the liability of recovery could have been fastened. Counsel states that no independent and direct evidence had been led before the Inquiry Officer who had merely returned findings based on the award passed by the Motor Accident Claims Tribunal. It is further contended that the department itself had taken a specific stand before the Tribunal that the petitioner/Driver was not at fault and as such, the impugned order of recovery is at variance with the very stand of the department taken earlier in point of time. It is contended on behalf of the petitioner that it would be the vicarious liability of the State to bear the loss if some damage has been caused during the course of service. Heavy reliance has been placed upon a judgment passed by a Coordinate Bench of this Court in Kulwant Singh Driver Vs. Municipal Corporation, Amritsar and another, in which it had been held that the employee cannot be taken to task for each act of negligence unless the employer comes to a conclusion that the act of negligence which caused accident constituted a misconduct.

4. Learned State counsel would justify the passing of the impugned orders by submitting that the petitioner has been held guilty of causing the accident due to his rash and negligent driving by the Motor Accident Claims Tribunal and even the Inquiry Officer duly appointed has returned findings based on the award of the Tribunal. That apart, State counsel would refer to an additional affidavit dated 21.08.2013 of the General Manager, Punjab Roadways, Ludhiana that had been placed on record and which refers to the decision of a committee that had been constituted by the Government for deciding the matter regarding affecting

recovery from Drivers of Punjab Roadways of loss caused by them on account of payment of compensation awarded by the Motor Accident Claims Tribunal in relation to accidents caused due to rash and negligent driving. It has been stated that the committee in its deliberations held on 20.07.2007 had decided to recover 1/3rd of the total amount of the compensation awarded by the Tribunal from the Drivers.

5. Counsel for the parties have been heard at length.

6. Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 define penalties (minor and major) and reads as follows:

5. Penalties.- The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a Government employees, namely:-

Minor Penalties

(i) Censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iv) withholding of increments of pay;

Major Penalties

(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

7. A bare perusal of Rule 5(iii) makes it apparent that a recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders is one of the prescribed minor punishment. A regular inquiry in

accordance with the procedure as laid down in Rule 8 of the 1970 Rules is required to be held only for imposition of a major penalty. A minor penalty, under the rules can be imposed after giving an opportunity of being heard/on consideration of reply to a charge sheet. In the facts of the present case, the impugned orders are in consonance with Rule 5 of the 1970 Rules and meet with the requirement of principles of natural justice as well. After following the procedure laid down under the 1970 Rules and relying upon the findings returned by the Motor Accident Claims Tribunal, the disciplinary authority came to the conclusion that the accident was caused due to the petitioner's rash and negligent driving and he is responsible for causing pecuniary loss to the State Government. The Competent Authority, however, had decided to recover only a part of the pecuniary loss caused by the petitioner to the state exchequer.

8. Even otherwise, the question as to whether the petitioner could have held liable to share the proportional liability towards compensation paid by the State to the family members of the victim of a road accident is no longer *res integra*. This Court in CWP No. 14130 of 2009 titled as *Karnail Singh Vs. State of Punjab & others* decided on 12.09.2011 had held as under:

(12). With all humility at my command, the decision in *Jaswant Singh's* case (*supra*) does not appear to be the correct statement of law. It is apparent that the decision of the Hon^{ble} Supreme Court in *Depot Manager APSRT Corpn. or of the Division Benches in Jaswant Singh and Sampuran Singh Cases* were not brought to the notice of the learned Single Judge.

(13). The unsuccessful defence plea taken by the Department/State Government to wriggle out of its liability, which was not accepted by the Tribunal while awarding compensation, is wholly inconsequential and irrelevant in the departmental action. The findings returned by the Tribunal on the question of "rash and negligent driving" which have attained finality are binding in nature so far as the domestic enquiry is concerned. Similarly, the acquittal in a criminal case where the prosecution is obligated to prove charges beyond "reasonable doubt" must be viewed differently. The standard of proof required in a criminal case, need not be the same for a Tribunal under the Motor Vehicles Act or the Disciplinary Authority under the Rules. However, if the punitive action has been taken without following the prescribed procedure, the writ court can always annul the same though leaving it open to the Authority to proceed afresh in accordance with law unless held otherwise for the reason(s) depending upon the peculiar facts and circumstances of a case.

9. The reliance placed by the petitioner upon the judgment rendered in *Kulwant Singh Driver's* case (*supra*) would have no application in the facts of the present case as that was not a case where any disciplinary action in accordance with the rules had been initiated against the erring driver and neither was the issue as regards binding nature or a finding of fact given by the Civil Court/Tribunal upon a domestic/departmental inquiry been expressly dealt with.

10. For the reasons recorded above, I find no basis that would warrant interference with the impugned orders dated 04.03.2008 (Annexure P-4) and 21.02.2011 (Annexure P-5). The writ petition is accordingly dismissed.