

(1995) 03 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2211 of 1994

Kuldip Singh

APPELLANT

Vs

Pepsu Road Transport Corporation and Others

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Pepsu Road Transport Corporation (Conditions of Appointment and Service)
Regulations, 1981 — Regulation 28

Citation : (1997) 3 LLJ 645 : (1995) 111 PLR 241

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; R.S. Ahluwalia, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Kuldip Singh -appellant was working as a driver with Pepsu Road Transport Corporation. He is alleged to have assaulted a fellow worker and also caused some damage to the room in which the latter was working. By an order passed on October 1, 1987 he was awarded a punishment whereby his four annual increments with cumulative effect were stopped and his pay and allowances other than subsistence allowance were forfeited. He filed a suit for a declaration that the order of punishment was illegal, unconstitutional and against the principles of natural justice. The suit was contested on behalf of the Corporation and it was pleaded that the impugned order was perfectly legal and was passed after holding a regular departmental enquiry against the plaintiff in which he was given full opportunity to defend himself. It was also pleaded that a copy of the enquiry report was supplied to the delinquent and a notice was also given to him to show cause why the penalty of dismissal be not imposed on him. It was further pleaded that instead of awarding the extreme punishment of dismissal from service, a lenient view was taken whereby his four annual increments with cumulative effect were stopped besides forfeiting pay and some other allowances. The trial Court found that there was no infirmity in the order

imposing the punishment and consequently dismissed the suit. The judgment and decree of the trial Court was upheld in appeal by the Additional District Judge, Patiala. It is against the decree passed by the Courts below that the plaintiff appellant has filed the present regular second appeal.

2. The only argument advanced by learned counsel for the appellant is that while passing the order of punishment the competent authority took into account the previous record of the plaintiff but did not afford any opportunity of hearing to him in this regard. It could not be disputed by the learned State Counsel that no opportunity was afforded to the plaintiff before considering his previous record. It found no (sic.) merit in the contention of the plaintiff-appellant. Regulation 28 of the Pepsu Road Transport Corporation (Conditions of Appointment and Service Regulations), 1981 governing the service conditions of the employees of the defendant Corporation provides that in awarding the punishment, the punishing authority shall take into account the previous record, if any, of the employee, the gravity of the misconduct and any other extenuating or aggravating circumstances that may exist. If the punishing authority is to consider the previous record with which it is likely to be influenced in the matter of awarding punishment to the delinquent official, it is necessary that the latter be afforded an opportunity of being heard in this regard. The rules of natural justice require that a reasonable opportunity should be provided to the employee not only to prove that he is not guilty of charges levelled against him but also to establish that the punishment proposed to be imposed is either not called for or is excessive. The previous record proposed to be taken into account must be disclosed to the employee so that he may be in a position to offer an explanation, if any. Admittedly, the plaintiff was not informed that his previous record would be taken into account while imposing the punishment nor was that record disclosed to him. In this view of the matter, it has to be held that the principles of natural justice stood violated and the impugned order imposing punishment cannot be sustained. The view that I am taking finds support from a judgment of the Supreme Court in *State of Mysore Vs. K. Manche Gowda*, and from a judgment of this Court in *Mahipat Ex-Constable v. State of Haryana* and Ors. 1994 (4) S.L.R. 311.

3. In the result, the appeal is allowed, the impugned order imposing punishment declared illegal and the suit of the plaintiff decreed. The parties to bear their own costs throughout.