

(2012) 01 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9480 of 1996

Vishwamitter

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2012) 166 PLR 786

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.K. Dadwal, for the Appellant; N.S. Pawar, Addl. A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina J

1.The petitioner is before this Court impugning the show cause notice dated 20.6.1994 issued by the General Manager, Punjab Roadways, Rupnagar proposing dismissal from services while disagreeing with the inquiry report dated 14.6.1994 which found the petitioner innocent of the charges levelled against him, that is, of negligence in performing duty in not carrying out repairs of Bus No. 8223 as shown in the job card and for demanding fee/money from the driver of the said bus instead of repairing the faults and is, therefore, guilty of misconduct. The facts in brief are that the petitioner was working as a Fitter in Punjab Roadways, Rupnagar at the relevant time- He was charge sheeted for the above misconduct. An inquiry was held. The charge was not proved. The show cause notice was served which led to the passing of the impugned order. The proposed punishment of dismissal from service was scaled down to reinstatement but stoppage of two increments with permanent effect was inflicted and pay for the suspension period was limited to subsistence allowance already paid under Rule 7.2 of the Punjab Civil Service Rules Volume 1, Part I by forfeiting the remaining amount. The disagreement note was served on the petitioner and he filed a reply supporting the findings of the Inquiry Officer in his

favour and explaining reasons why the findings of the inquiry officer were correct.

2 Against the order of the General Manager, Punjab Roadways, Rupnagar, the petitioner submitted an appeal to the Divisional Manager, Department of Transport, Punjab, Chandigarh against the punishment order which has been dismissed by an order dated 13.5.1996.

3. On notice having been issued, the respondents have filed written statement In support of the order of punishment, it is stated that it has been passed by the competent authority after conducting a fair and proper inquiry in accordance with the rules and procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1970; that an opportunity of hearing was afforded to the petitioner and that the petitioner had an alternative remedy before the Civil Court or before the Labour Court, hence the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length and find that the Inquiry Officer has passed a well reasoned report exonerating the petitioner of the charges. The concluding findings in the inquiry report are in the following terms :-

In the end I have examined the case file of Departmental inquiry very carefully, such as: Report submitted by the" Government Witness-complainant; Charge sheet and Memo, of Charges; Reply; Statement of Government witness in chief as well as cross examination by Fitter, Statement of defence etc. and after perusing considering and examining the same I have come to the conclusion that the charge levelled against Vishwamitter in the charge sheet is not proved because as per statement of Government witness, this employee did not demand any fee and neither he was present with the other employee and Government witness has categorically stated that I had not talk with Vishwamitter regarding giving or taking any fee. Therefore, the charge levelled against Shri Vishwamitter in the charge sheet are not proved.

5. The examination of the show cause notice (PS) reveals that it proceeded on a disagreement with the report of the Inquiry Officer by the punishing authority. I, however, find that the order does not disclose any reason or even a gist of it as to why the findings of the Inquiry Officer were not acceptable to the punishing authority or required departure and on what material. In the charge memo (PI), only Harbans Lal Driver was cited as a witness. The only evidence led by the prosecution was of Harbans Lai Driver appearing as a witness at the inquiry. Harbans Lal was driver of Bus No. 8223 and the charge against the petitioner was in respect of Harbans Lal himself, the charge was that the petitioner had demanded fee/money from Harbans Lal driver. In his statement, Harbans Lal driver has not imputed any wrongful part of the petitioner in the alleged episode. Harbans Lal's evidence formed the basis of the report holding the petitioner innocent of the charges.

6. Learned counsel for the petitioner submits that no reason was given by the punishing authority in disagreeing with the findings of the Inquiry Officer or as to

what part of it was not acceptable on logic or reasoning. The prosecution had relied solely on the statement of Harbans Lal driver and no other evidence was led by the prosecution and on the face of that evidence, the inquiry report could not have been brushed aside and punishment order passed. Consequently, the appellate order also suffers from the same illegalities as that of the punishment order and that order too is based on conjectures and surmises. It is not a case where dismissing authority has ordered further inquiry which it could have done under the rules. In the absence of any reasoning in the dissenting note, the punishment order is perverse.

7. Mr. Pawar, learned Addl. A.G. Punjab appearing for the respondents has not been able to show any cogent evidence upon which the punishing authority could have departed from the findings arrived at in the inquiry proceedings holding the petitioner innocent of the charges levelled against him. He has also not been able to point out that there is any other evidence on record to support the conclusion of guilt. Not only that Harbans Lal had made a statement before the Inquiry Officer appearing as a witness for the prosecution, he had also addressed a letter dated 21.4.1994(P3) stating that he had no talk of any kind whatsoever with the petitioner as suggested, on the fateful night nor had he demanded any fee from him for the repair of the bus:

8. After giving my thoughtful consideration to the matter, I am of the considered view that the show cause notice based on a disagreement note which does not contain any reason whatsoever of dissent and the impugned orders passed thereafter mechanically based on whims and fanciful conjectures are liable to be set aside as mere ipse dixit. Merely because the petitioner was in night shift the charge cannot be fastened on him in absence of corroborative evidence or direct material of demanding money or not carrying out the repairs of the bus in question. If the driver had made complaint "with his own hand" against the petitioner he did not support it in his testimony before the Inquiry officer. The present is therefore a case of no evidence. Mere suspicion cannot take the place of proof. Even on preponderance of probabilities the punishment orders cannot be supported.

9. In view of the above, the writ petition is allowed and the impugned orders dated 24.6.1994 (P6) and 13.5.1996(P8) are quashed by issuing a writ of certiorari. I would also quash that part of the punishment order which denies the petitioner full salary for the period of suspension from 9.3.1994 till reinstatement on 30.6.1994 following the punishment order dated 24.6.1994. I am informed that the petitioner has retired as a Fitter from the Punjab Roadways on 30.10.2004. The petitioner would also be entitled to all consequential benefits flowing from this order which would be granted to him within three months from the date of receipt of certified copy of this order.