

*Before M.L. Singhal, J*

SATNAM SINGH—*Petitioner*

*versus*

THE PRESIDING OFFICER, LABOUR COURT, AMRITSAR &  
ANOTHER—*Respondents*

C.W.P. No. 3421 of 1987

25th February, 2003.

*Constitution of India, 1950—Art. 226—Charges against a conductor of misappropriation—Removal from service—Labour Court finding the termination of services legal & valid—Challenge thereto—Findings of the Enquiry Officer that fraud has not been proved but if the bus had not been checked the conductor would have taken the money not suggestive of the fact that he had committed any misappropriation—Neither any statement of passengers was recorded nor any cash was checked by the Checking Staff—Conductor was still in the process of issuing tickets—Petition allowed, award of Labour Court quashed while ordering reinstatement with continuity of service and 50% back wages.*

Held, that the conductor was still in the process of issuing tickets and no passenger got down the bus where the bus was checked. Cash with the conductor was not checked. If cash with the conductor was checked, it would have been quite clear whether the conductor was telling lie or the passengers were telling lie.

(Para 10)

Further held, that as the Enquiry Officer has given only this finding that fraud has not been proved but if the bus had not been checked, the conductor would have taken the money, cannot be suggestive of the fact that he had committed any misappropriation. On such an inchoate finding, the livelihood of the petitioner should not have been snatched.

(Para 11)

Ms. Meenakshi Verma, Advocate for the petitioner.

A. S. Virk, Addl. A.G. Punjab for the Respondents.

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**JUDGEMENT**

*M.L. Singhal, J. (Oral)*

(1) The petitioner was conductor in Punjab Roadways, Tarn Taran Depot. He was removed from service by General Manager, Punjab Roadways depot, Tarn Taran by order Annexure P7, dated 14th January, 1986 on the charge that when on 26th January, 1979 Bus No. 370, on which he was conductor on duty was checked at Jandiala octroi post by the checking staff. On checking of the passengers, it was found that he had charged bus fare amounting to Rs. 1.60 paise from four passengers but had not issued them tickets. Eight more passengers were found travelling by that bus who were without tickets. He would have charged Rs. 3.20 paise from them and misappropriated the amount. Two more passengers were found, from whom he had charged full fare but issued them tickets of denomination lesser by 30 paise and misappropriated amount. Shri Satnam Singh thus misappropriated an amount of Rs. 1.90 paise and further he would have misappropriated the another Rs. 3.20 paise which he would have received at the point where passengers alighted.

(2) Petitioner Satnam Singh raised industrial dispute whereby he sought to question his removal from service. That industrial dispute was referred to the Labour Court, Amritsar under Section 10 (1)C of the Industrial Disputes Act 1947. By the award Annexure P8 dated 5th Decenber, 1984 Labour Court, Amritsar adjudicated the industrial dispute against him and held that the termination of his services was legal and valid.

(3) Petitioner has challanged the award of the Labour Court, Amritsar Annexure P8 through this writ petition filed by him under Article 226/227 of the Constitution of India and has prayed for its quashing and his reinstatement into service with full back wages and all other consequential benefits. It is alleged by him in this petition that the charges went unproved and he was not found guilty by the Enquiry Officer. Enquiry officer did not find that he had misappropriated any amount. He has found that if the Bus had not been checked, the conductor would have taken the money. No statement of the passengers was recorded nor any cash was checked. Case of the prosecution was not based on any evidence. It was a no evidence case. He gave reply to the chargesheet in which he stated that the allegations were false and he was still issuing tickets in the bus which was very heavily loaded when it was checked.

(4) The department examined Kashmir Singh, Inspector and Mahinder Singh, Inspector who were constituting the checking staff. Delinquent also produced one defence witness, Sh. Mangal Singh. Enquiry Officer's saying that if the bus had not been checked he, would have collected the amount and misappropriated it, is based on suspicion. He was removed from service on the basis of evidence which cannot be said to be legal evidence as none of the passengers was produced nor any of the Inspectors had stated that any of the passengers had told them as to the payment of any fare money by them. It was a total case of hearsay. It is further stated that the amount said to have been embezzled by him is Rs. 1.90 paise only. For the embezzlement of such a small amount which too is not proved, Labour Court should have invoked the provision of Section 11-A of the Industrial Disputes Act under which the Labour Court could have toned down the punishment and award him any punishment short of snatching his livelihood. In the case of conductor Malook Singh against whom also there was a charge of misappropriation and who also had been removed from service was dealt with leniently by the same Labour Court, Amritsar who set aside the order of his removal from service and he was ordered to be reinstated into service with full back wages and continuity of service and punished with the stoppage of two increments with cumulative effect. It is stated that the Labour Court should have used the same yardstick so far as the petitioner is concerned. It is further stated that the enquiry is vitiated for the reason that he was not told to engage any Co-worker, to assist him in the enquiry which was held to be mandatory by the Hon'ble Supreme Court and the non-compliance of this requirement by the Enquiry Officer or the punishing authority vitiated the enquiry.

(5) Respondent No. 2 contested the writ petition. It was urged that the petitioner was found guilty by the enquiry officer. He was awarded punishment on the basis of proved charges. Enquiry held against the petitioner was legal and according to rules. Statements of the checking staff have evidentiary value. The checking staff could well be believed. So far as the defence witness is concerned, nothing turns on from his statement as he has not stated anything which could support the version of the petitioner. He was just sitting behind the driver's seat and looking out of the window meaning thereby that he had no knowledge about the goings on in the bus. Enquiry officer has not examined him. He has held the charge as not proved but at the same time has held that if the bus had not been checked he

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would have taken the money. He was punished by the competent authority after going through the entire material including reply to the show cause notice. Findings of the enquiry officer are not based on suspicion but are based on evidence.

(6) I have heard Learned counsel for the petitioner as well as learned Addl. Advocate General, Punjab and have gone through the record.

(7) It was submitted by the Learned counsel for the petitioner that cash with the petitioner was not checked by the checking staff. Had the cash with the petitioner been checked, it would have revealed whether he had realised bus fare from those passengers and had misappropriated the amount. If the tickets sold had accounted for lesser amount *vis-a-vis* the amount found with him, it could have been inferred that the excess amount was with him on account of the fact that he had allowed certain passengers to travel by that bus without issuing tickets to them and himself pocketed the bus fare realised from them. It was submitted that in this case, the checking staff did not adopt this modus operandi at all. It was submitted that, no wonder, the passengers themselves were swindlers and the conductor was not dishonest. It was submitted that Kashmir Singh, Inspector did not record the statements of any passenger. He did not record the statements of those passengers who had been issued tickets of lesser denomination. He stated that they had not been confronted with the conductor. No passengers got down the bus where the bus was checked. It was submitted that the conductor was still in the process of issuing tickets. It was submitted that twelve passengers were found travelling without tickets from Bandala to Jandiala. He had charged the bus fare at the rate of 40 paise from four passengers but did not issue them tickets. It was submitted that if that was so why would he leave eight passengers without charging bus fare from them. It was only conjectural that he would have charged them fare when they got down the bus at Jandiala and allowed to travel them without tickets. Two other passengers boarded the bus at Bandala and petitioner issued them tickets of 25 paise each while he charged them 40 paise each and thus misappropriated 30 paise. It was submitted that it is again conjectural that the petitioner became dishonest. No wonder, he realised only 25 paise each from them and gave them tickets of lesser denomination inadvertently. Conductor was still in the process of

issuing tickets. No wonder, he would have issued tickets. Bus was full to its capacity. That being so, he was sure to take some time in issuing tickets to every passenger. Enquiry officer has not found the petitioner guilty of misappropriation. He has stated in his findings that fraud has not been proved but if the bus had not been checked the conductor would have taken the money. It was submitted that the enquiry officer has not forth rightly said that the charge/charges stood proved against the petitioner. It was submitted that the petitioner could be convicted only on definite findings and not on inchoate findings.

(8) In his reply to the show cause notice, the petitioner had stated that he had issued tickets to 25 passengers from Bandala to Jandiala and was still in the process of issuing tickets and he had not taken any fare from any passenger. The other two passengers had actually boarded the bus at Janian and not at Bandala. He had issued them tickets of proper denomination of 25 paise each. Neither Inspector Mahinder Singh nor Inspector Kashmir Singh has stated that they asked them where they had boarded the bus at Janian and were charged actual fare of 25 paise each.

(9) It was held in *State of Haryana Versus Ram Chander* (1) that :

“Where a bus is checked and it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding on guilt arrived at by him would not be based on pure hearsay. It would be based on (1) the evidence of the checker that he found passengers travelling without tickets and (2) the statements made by the passengers to the checker at the time of checking. The second item of evidence alone would be hearsay but it would be hearsay of high probative value because of the circumstance that statements were made in the presence of the conductor

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and on the spot. In such a case, it cannot be said that the enquiry officer's findings are based on pure hearsay or hearsay of unreliable nature.

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Where under the rules an Enquiry Officer is appointed to conduct a detailed enquiry into the guilt of the delinquent, where the Enquiry Officer submits a, detailed report giving his findings and the reasons for his findings and where the disciplinary authority agrees with the findings of the Enquiry Officer, it cannot be said as a matter of law that the disciplinary authority is bound to record reasons in every case. There is a vital difference between a case where the disciplinary authority agrees with the findings of the Enquiry Officer and acts upon them and a case where the disciplinary authority disagrees with the findings of the Enquiry Officer. In the former, it is not always necessary for the disciplinary authority to record reasons while in the latter case, it is necessary for the disciplinary authority to do so.

Where there is a full-fledged enquiry by an Enquiry Officer and findings supported by reasons are recorded by the Enquiry Officer, there is no need for the disciplinary authority to reiterate the findings and reasons given by the Enquiry Officer when he is agreeing with them."

(10) In this case, it was not necessary for the checking staff to record the statements of the passengers. It was sufficient if the checking staff confronted the passengers with the conductor and the passengers had told the checking staff that they had paid the bus fare but the conductor had not issued them tickets or they had told the checking staff that they had paid full bus fare to the conductor who had issued them tickets of lesser denomination. In the instant case, however, the conductor was still in the process of issuing tickets and no passenger got down the bus where the bus was checked. Cash with the conductor was not checked. If cash with the conductor was checked, it would have been quite clear whether the conductor was telling lie or the passengers were telling lie.

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(11) In this case, as the enquiry officer has given only this finding that fraud has not been proved but if the bus had not been checked, the conductor would have taken the money, cannot be suggestive of the fact that he had committed any misappropriation. On such an inchoate finding, the livelihood of the petitioner should not have been snatched.

(12) For the reasons given above, this writ petition is allowed. Award of the Labour Court Annexure P8 is quashed. Petitioner is ordered to be reinstated into service. Petitioner was removed from service in the year 1980. It is not believable that all these 23 years he has not engaged himself in any job and has not fed his family. I think award of 50 per cent of the back wages will do. He will have the benefit of continuity of service and also the benefit of the increments towards the arrears of back wages and also towards fixation of pay.

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**R.N.R.**

*Before V.M. Jain, & Satish Kumar Mittal, JJ*

INDERPAL SINGH—*Petitioner*

*versus*

UNION OF INDIA & ANOTHER—*Respondents*

*Crl.W.P. No. 465 of 1997*

17th January, 2003

*Army Act, 1950—Ss. 63 & 164(2)—Army Rules, 1954—Rl. 18(3)—Charges of indiscipline & negligence in handling fire arm—Summary Court Martial awarding dismissal from service—Vice Chief of Army Staff converting dismissal orders into discharge from service from the date of dismissal order became effective—Petition u/s 164(2) filed against the orders of Summary Court Martial is maintainable—Competent authority can reduce the sentence of dismissal to the discharge from service being a lesser punishment—No infirmity or illegality in the order passed by the Vice Chief of Army Staff—Provisions of Rule 18(3) impose a restriction that the discharge cannot be made with retrospective effect—Order to that extent liable to be set aside—Petition partly allowed.*