

Before Surya Kant, J.

KARNAIL SINGH,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP 14130 of 2009

12th September, 2011

Constitution of India, 1950 - Art. 226 - Indian Penal Code, 1860 - Ss. 279,337,338 & 304-A - Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rl. 5 - Petitioner was a Driver in Punjab Roadways who caused a fatal accident, resulting into death - claim for compensation before MACT - Principle of Vicarious and joint liability applied by Tribunal and the petitioner along with State held responsible to pay compensation - Competent authority initiated disciplinary action and deducted a sum of Rs. 1 lac from petitioner's Gratuity towards financial loss suffered - Though petitioner was held guilty of rash and negligent driving by Tribunal, he was acquitted by the Judicial Magistrate in the criminal case under Sections 279, 337,338, 304-A IPC- Challenge to deduction - held that in such like cases, the State Government is within its power to recover the pecuniary loss, partly or wholly, from the delinquent employee who is responsible for causing such loss to it.

Held, That 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.

(Para 13)

Further held, that for the reasons afore-stated, I do not find any merit in this writ petition which is accordingly dismissed.

(Para 16)

Padamkant Dwivedi, Advocate, *for the petitioner*.

Sudeepti Sharma, DAG Punjab

SURYA KANT, J. (ORAL)

(1) Petitioner was a Driver in the Punjab Roadways who caused a fatal accident on 15.02.1999, resulting into the death of a motorcyclist. The legal heirs of the deceased successfully raised claim for compensation before the Motor Accident Claims Tribunal (in short, 'the Tribunal'), for a sum of Rs.6,14,000/- along with interest @ 12%. The petitioner was also a party respondent before the Tribunal.

(2) The principle of vicarious and joint liability was applied by the Tribunal and the petitioner along with State of Punjab were held responsible to pay the compensation amount. The competent authority initiated disciplinary action against the petitioner and passed the impugned order(s) deducting a sum of Rs.1 lac from the petitioner's Gratuity towards the financial loss suffered by the State due to payment of compensation awarded by the Tribunal.

(3) It may be noticed here that the petitioner though was held guilty of rash and negligent driving by the Tribunal, he was acquitted by the Judicial Magistrate in the criminal case registered under Sections 279, 337, 338, 304-A IPC. The MACT award as well as the acquittal order both are said to have attained finality.

(4) The solitary question that arises for consideration is as to whether in such like cases, the State Government is well within its power to recover the pecuniary loss, partly or wholly, from the delinquent employee who is responsible for causing such loss to it?

(5) The petitioner-driver in the matter of disciplinary action is admittedly governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (in short, 'the Rules'). Rules 5 of the Rules prescribes the

penalties which may, for good and sufficient reasons, be imposed on a Government employee and it reads as follows:-

“Rule 5 - Penalties:- *The following penalties may, for good and sufficient reason, and as hereinafter, be imposed on a Government employee 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 increments of pay without cumulative effect.”* (Emphasis applied)

(6) It is also well-settled that no regular enquiry is required to be held for imposing a minor penalty though principles of natural justice comprising issuance of a show cause notice, consideration of the reply, if any, and passing of a speaking order need to be observed. The petitioner in the instant case was admittedly served with a show cause notice dated 12.10.2007 (Annexure P2) and it was after taking into consideration his reply (Annexure P3) that the impugned order dated 20.12.2007 (Annexure P4) was passed which has been further upheld in appeal (Annexure P5).

(7). In **Depot Manager APSRT Corpn. versus N.Ramulu and Anr. (1)**, the delinquent driver was subjected to departmental enquiry on the allegation that he had been found guilty of rash and negligent driving and for causing damage to the property estimated at Rs.500/-. He was accordingly removed from service. The order regarding recovery of the pecuniary loss caused by the driver as well as his removal from service both were upheld holding that it did not amount to double jeopardy.

(8) In **Jaswant Singh versus State of Haryana & Ors. (2)**, the petitioner was driving a truck belonging to the Government Department when it met with a fatal road accident resulting into an award of compensation by the Tribunal. The State Government paid the compensation having been

(1) (1997) 11 SCC 319

(2) PLR (2005) 140 P&H 369

held vicariously liable and thereafter passed an order to recover the said amount from the delinquent driver. The challenge to the recovery order was repelled by a Division Bench of this Court holding that :-

“After due consideration of the reply, liability has been fastened on the petitioner, on the basis of the finding of rash and negligent driving given by this Court. The aforesaid order passed by the respondents is neither without jurisdiction nor contrary to the provisions of the rules. Under the rules, the loss caused to the exchequer can be recovered from the erring official, provided the procedure for inflicting minor penalty is duly followed. In the present case, the respondents have passed a detailed speaking order. There is no breach of rules of natural justice. The petitioner has been given every opportunity to put forward his version of the events. The legal and factual defences raised by the petitioner have been duly considered. In our opinion, no injustice has been caused to the petitioner.”

(9) Similar controversy was again dealt with by a Division Bench of this Court in **Sampuran Singh versus State of Punjab & Anr. (3)** and while upholding the order of recovery passed by the State Government against the delinquent driver to make good the pecuniary loss, this Court held as follows:-

“The stand of the State before this Court is that the petitioner was held squarely responsible for the accident which took place on 26th April, 2003, due to which compensation had to be paid to the claimant by the State. Thus, acting in accordance with the Rule 5 and the instructions aforesaid, 90% of the amount was ordered to be recovered from the petitioner.

Admittedly, in the writ petition, there is no challenge to the aforesaid rules or instructions.

We are thus of the considered view that no fault can be found with the action of the respondents. They acted in accordance with the rules and instructions and directed recovery of the

amount paid by way of compensation to the claimant, from the salary of the petitioner. Counsel for the petitioner has not been able to show how the action of the respondents can be termed illegal in view of the power contained in the aforesaid rules and instructions.”

(10) The Division Bench further held that :-

*“As regards submission of the counsel as to mandatory duty of the State to maintain a contingency funds in terms of Section 146(2) of the Motor Vehicles Act, the said question is not directly in issue in the present case. Even if a contingency fund is maintained by the State Government in terms of Section 146(2) of the Motor Vehicles Act, the rules governing the service conditions of the employees would naturally have independent existence, in view of the master servant relationship between the Government and the employee. The said rules would thus be on independent footing. The action taken by the respondents in the present case is purported to be taken in accordance with the said Rules which have no co-relation with Section 146(2) of the Motor Vehicles Act. The judgement in **K anchanmala V jaysin Shirke’s** case (supra) relied upon by the petitioner in our view, does not help the case of the petitioner. In the said case, the State had taken the stand that the driver had not been authorized to use the vehicle. However, a conclusion was ultimately reached that the driver was fully authorized to drive the vehicle in connection with affairs of the State. The apex court thus held that State could not escape its vicarious liability to pay compensation to heirs of the victim, due to negligent act of the driver in the course of employment. There can be no dispute with the proposition laid down in the said judgement. In the present case, the State never disputed its vicarious liability for the accident in question. However, in view of the rules authorizing it to recover pecuniary loss caused to the State Government, it decided to act under the same. Even the Tribunal had held the driver and the State jointly and severally responsible to pay the compensation.” (Emphasis applied)*

(11) In all fairness to learned counsel for the petitioner he relies upon the decision of a Co-ordinate Bench in **Constable Driver Bhupinder Singh No.178 versus State of Punjab & Ors. (4)**, wherein the order passed by the Disciplinary Authority against the delinquent driver for recovery of the pecuniary loss caused by him due to a road accident, has been quashed. The learned Single Judge relied upon four circumstances, namely, (i) the Department before the Claims Tribunal had taken a categorical stand that the accident occurred due to negligence of the claimant who did not observe the traffic rules. In other words, the Driver of the Government vehicle was impliedly defended; (ii) the imposition of recovery liability was contrary to the view taken by the Hon'ble Supreme Court in **State of Maharashtra versus Kanchanmala Vijaysing Shirke (5)**; (iii) no show cause notice was served upon the delinquent driver before passing the recovery order; and (iv) the driver had earned acquittal in the criminal case.

(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.

(4) 2011 (3) PLR 71

(5) 1995 (5) SCC 659

(14) The decision in *Vijaysing Shirke's* case (supra) has been discussed and explained by the Division Bench in *Sumpuran Singh's* case (supra). Those distinguishable features (already reproduced) need not be repeated here.

(15) The view taken in *Constable Driver Bhupinder Singh's* case thus appears to be *per incurium*.

(16) For the reasons afore-stated, I do not find any merit in this writ petition which is accordingly dismissed.

(17) *Dasti*.

Sandhu

Before Permod Kohli & Tejinder Singh Dhindsa, JJ.

STATE OF HARYANA,—Appellant

versus

GOBIND THUKRAL,—Respondent

L.P.A. No. 2248 of 2011

7th December, 2011

Constitution of India -Art. 318 - Punjab Service (Medical Attendance) Rules, 1940 - Haryana Public Service Commission(Conditions of Service) Regulations, 1972 - Reg.13 - Respondent had retired as a member of Haryana Public Service Commission in the year 1997 - Underwent an eye-surgery in 2007 at PGI - Claim for medical re-imburement declined on ground that non-official members of Commission do not fall in the ambit of the definition of Government employee - writ petition allowed - State appeal dismissed holding that on appointment distinction amongst person coming from different sources disappears and they become member of the common cadre or pool - all such appointees are entitled to similar treatment during service, and even after the superannuation - claim for medical reimbursement allowed.

Held, That the object and purport of making appointment from different sources is to give representation to different categories for the purpose of bringing efficiency in the functioning of the organization. However, on appointment, the distinction amongst the persons coming from different sources disappears and they become members of the common cadre or