

Before J. V. Gupta, J.

PUNJAB STATE THROUGH THE COLLECTOR,
AMRITSAR,—Appellant.

versus

SWINDER SINGH,—Respondent.

Regular Second Appeal No. 1463 of 1975.

October 5, 1983.

Domestic enquiry—Principles of Natural Justice—Enquiry against a bus conductor—Allegations of non-issue of tickets to passengers and embezzlement—No passenger examined as a witness by the Enquiry Officer—Non-examination of passengers—Whether makes the enquiry unfair—Enquiry Officer cross-examining the delinquent employee on the conclusion of the statement of every witness—Such procedure—Whether vitiates the enquiry in the absence of proof of any prejudice.

Held, that where a bus is checked and it is found that the tickets had 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 of guilt arrived at by him would not be based on pure hearsay. It would be based on the evidence of the checker that he found passengers travelling without tickets and the statements made by the passengers to the checker at the time of the checking. In such a case, it cannot be said that the enquiry conducted was in any way unfair.

(Para 5)

Held, that strict rules of evidence do not apply to domestic enquiries and where the delinquent employee has no where alleged that any prejudice had been caused to him on account of his being cross-examined by the Enquiry Officer after each of the witnesses was examined during the enquiry, the enquiry cannot be said to have been vitiated.

(Paras 6 and 7).

Regular Second Appeal from the decree of the Court of Shri Des Raj Mahajan, Additional District Judge, Amritsar, dated 22nd day of May, 1975, reversing that of the Sub Judge 1st Class, Amritsar, dated the 30th day of November, 1974, and passing a decree in favour of the plaintiff against the defendant as prayed for in his plaint and leaving the parties to bear their own costs.

Shri R. P. Bhatia, Advocate, for A.G. (Pb.)

Nemo, for respondent.

JUDGMENT

J. V. Gupta, J.

1. This is defendant's second appeal against whom the suit for declaration was dismissed by the trial Court, but decreed in appeal.

2. The plaintiff-respondent was serving as a conductor in the Punjab Roadways, Amritsar. On February 23, 1972, he was found in possession of the cash in excess of Rs. 14.80. On October 3, 1972, the cash in his possession was checked and found to be short by Rs. 29.15. On September 22, 1972, nine passengers were found travelling without tickets in the bus and, therefore, he was alleged to have misappropriated Rs. 2.20. On April 24, 1972, three passengers were found to be travelling without tickets and he was alleged to have caused a loss of Rs. 2.25 to the State. On April 12, 1972, three passengers were found to be travelling without tickets in the bus and it was alleged that he intended to embezzle the amount thereto. On these allegations, he was placed under suspension on May 6, 1972. He was charge-sheeted and an enquiry was held against him by Shri B. S. Sodhi, Enquiry Officer. Shri Sharan Singh, the then General Manager, Punjab Roadways, Amritsar, was of the view that on the basis of the enquiry report, the plaintiff was liable to be removed from service. He, therefore, called upon him to show cause against the proposed punishment. The plaintiff filed his reply to the show cause notice dated November 10, 1972. After considering his reply and giving him a personal hearing, the then General Manager passed the impugned order, Exhibit D. 2 whereby he was removed from service. The plaintiff filed an appeal before the Director, State Transport, Punjab, which was dismissed. He filed the present suit for the grant of a declaration to the effect that the order of his removal from service dated November 23, 1972, was illegal, void, arbitrary and that he continued to be in service as a conductor. He was entitled to the pay and privileges of his position and the other consequential benefits. The suit was contested on behalf of the defendant *inter alia* on the ground that the impugned order was in accordance with law and the suit as such was not maintainable. The trial Court came to the conclusion that the plaintiff had failed to prove that the impugned order, Exhibit D. 2, was illegal, invalid, void or arbitrary, as alleged. As a result, his suit was dismissed. In appeal, the learned Additional District Judge, reversed the said finding of the trial Court and held that the order dated November 23, 1972, Exhibit D. 2, passed by the General Manager, Punjab Roadways, Amritsar, was illegal and void. Consequently, the plaintiff's suit

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was decreed. Dissatisfied with the same, the defendant has come up in second appeal to this Court.

3. The learned counsel for the appellant contended that the learned Additional District Judge found the order of removal, Exhibit D. 2, to be illegal and void on two grounds, namely, (i) that the passengers travelling in the bus were not produced before the Enquiry Officer in support of the allegations levelled against the plaintiff and, thus, there was no legal evidence to the effect that the plaintiff had misappropriated any money. The learned lower appellate Court in this behalf placed reliance on *Tarlochan Singh v. State of Punjab* (1) and (ii) that the Enquiry Officer cross-examined the plaintiff after each of the witnesses was examined during the enquiry and, thus, the enquiry was vitiated. In this behalf, the learned lower appellate Court relied upon *S. Krishnan Nair v. The Divisional Superintendent (P.B.), Southern Railway*, (2). The learned counsel submitted that so far as the first ground was concerned, the decision relied upon by the lower appellate Court was over ruled in letters patent appeal by the Full Bench of this Court in *State of Haryana v. Ram Chander* (3) and, therefore, the said ground was no more available to the plaintiff. As far as the second ground was concerned, argued the counsel, the strict rules of evidence did not apply to the domestic enquiries and that the plaintiff had nowhere alleged any prejudice caused to him on account of his being cross-examined by the Enquiry Officer, as alleged, and, therefore, the decision in *S. Krishnan Nair's case* (supra), relied upon by the lower appellate Court was not at all applicable to the facts of the present case.

4. After hearing the learned counsel I am of the considered opinion that the findings arrived at by the lower appellate Court to the effect that the enquiry was not fair, are liable to be set aside.

5. As regards the first ground, the matter stands concluded against the plaintiff by the Full Bench judgment of this Court in *Ram Chander's case* (supra) in paragraph 4 whereof it was observed *inter alia*.

"The learned counsel for the respondent wanted us to read the observations of the Supreme Court (in *Jaganath*

(1) 1975 Current Law Journal.

(2) 1973 (2) S.L.R. 353.

(3) AIR 1976 Pb. & Hary. 381.

Prasad Sharma v. State of Uttar Pradesh (4), as laying down that hearsay evidence was altogether inadmissible in domestic enquiries also. We do not think that we can so read the observations of the Supreme Court. The sentence underlined by us for emphasis clearly shows that the Supreme Court was emphasising the general unreliability of hearsay evidence and the violation of the rules of natural justice involved in relying upon pure hearsay. We venture to illustrate the position as follows; If half a dozen persons go to the office of the Haryana Roadways and complain that the conductor of a certain bus collected fare from them but did not issue tickets to them and if later on the passengers are not examined as witnesses, a finding of guilt based solely upon the complaint given by the passengers would amount to a finding based on pure hearsay and would involve violation of principles of natural justice. On the other hand, 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 of 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 the 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 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."

Thus the judgment in *Tarlochan Singh's case* (supra) relied upon by the learned lower appellate Court stands overruled by the above-said Full Bench decision of this Court.

6. So far as the second ground taken by the learned counsel for the appellant that the strict rules of evidence do not apply to the

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domestic enquiries and that the plaintiff has nowhere alleged that any prejudice has been caused to him on account of his being cross-examined by the Enquiry Officer is concerned, I find force therein.

7. In *State of Haryana v. Rattan Singh* (5), it has been observed by the Supreme Court,—

“It is well settled that in domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All material which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such materials and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.”

Similar observations were made by the Full Bench of this Court in *Ram Chander's case* (supra), wherein it was also observed;—

“Domestic tribunals in the absence of statutory guidance, have the right to regulate their own procedure and are also not bound by the strict rules of evidence. The rules of procedure and the rules of evidence observed in Courts are often misplaced in domestic enquiries. A Domestic Tribunal whose procedure is not regulated by a statute is free to adopt a procedure of its own so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source if it is logically probative”.

As regards the decision in *S. Krishnan Nair's case* (supra), relied upon by the lower appellate Court; the same is distinguishable. In paragraph 13 of the judgment in the said case, it is observed *inter alia* as follows :—

“It is not that a person who faces a charge should not be asked any question by the inquiry officer. A statement may be taken by the inquiry officer. Normally such statement is

taken after the close of the evidence. But it may be that in some circumstances even if it is taken earlier it cannot vitiate the enquiry."

As regards the present case, there is nothing on the record to show that the domestic enquiry was vitiated on that ground. The plaintiff while appearing in the witness-box did not utter even a single word as to any prejudice caused to him on account of certain questions put to him by the Enquiry Officer. The trial Court in paragraph 12 of the judgment observed,—

"The case of the plaintiff stands on different footings. The plaintiff what to speak of any evidence or placing on record any document showing that the enquiry officer or the punishing authority was biased against him, has preferred not to utter a single word against the General Manager or the Traffic Manager when he was examined as P.W. 2 in this case. In his examination-in-Chief, he has not even stated that the Punishing Authority was biased towards him or that the Enquiry Officer was biased, or any such allegation has been levelled against the punishing authority or the Enquiry Officer. In the absence of any allegation or any document, it is not proper to hold that the Enquiry Officer or the punishing authority was biased against the plaintiff. Even no suggestion has been put to the Traffic Manager Shri B. S. Sodhi, who was examined as D.W. 2, that he had conducted the proceedings with a biased mind, nor any instance has been put to Shri Sharn Singh, Deputy Transport Controller, the punishing authority, who has appeared as D.W. 1, that on such account he was biased against the plaintiff."

Thus, on both the counts, the findings of the lower appellate court are not tenable.

8. No other point arises, nor has been raised.

9. For the reasons recorded above, this appeal succeeds and is allowed. The judgment and decree of the lower appellate Court are set aside and that of the trial Court dismissing the plaintiff's suit are restored with no order as to costs.

N. K. S.