


MHIC340000122023 	Comp. (ULP) No. 12 of 2023 Order Exhibit No.: O/04 Moreswar Nikhare Vs. M. S. R. T. C. Chandrapur. Through its Divisional Controller + 01
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JUDGMENT PART -01

(Passed on this 06th Day of March, 2026)

1) In view of Rule 117-A of the Industrial Court Regulations 1975, this court has framed two issues vide Exh. O/03, which were in respect of fairness and legality of enquiry and alleged perversity of findings recorded by enquiry officer are heard as preliminary issues. Those issues are reproduced below along with my findings thereon and respective reasoning thereto;

No.	Preliminary Issues	Findings
1)	Is the procedure in conducting enquiry of the complainant legal, proper and just ?	NO.
2)	Is the findings recorded by enquiry officer legal and proper or is perverse ?	Findings of enquiry officer are perverse.

REASONING

2) **AS TO PRELIMINARY ISSUES NO. 01 AND 02: -**

Heard and perused the record. The complainant and the respondents, both have relied upon enquiry papers and enquiry report of enquiry conducted against the complainant.

3) The complainant who was working as Assistant Artisan with the respondent corporation, was served with charge-sheet dated 19.01.2020 alleging that he has committed misconduct under clauses 25, 26, 27, 30 and 34 of Schedule-A of Discipline and Appeal Procedure

of the respondent corporation. It was alleged in charge-sheet that on 21.11.2019 while he was on duty, he abused and used unparliamentary words to Santoshkumar Bawanthade- Assistant and Vinod Nagose-Artisan. He misbehaved with them. He obstructed functioning of the respondent corporation. The complainant instigated other workers not to work in time. The complainant has misguided the respondent corporation and enquiry officer. In domestic enquiry, enquiry officer found that charges leveled against the complainant under clauses 25, 26, 27, 30 and 34 of Schedule-A of Discipline and Appeal Procedure of the respondent corporation are proved. Punishment order dated 23.01.2021 of reducing basic pay by one stage with cumulative effect was passed against the complainant. The complainant has filed first appeal against impugned punishment order dated 23.01.2021. It is rejected vide order dated 02.11.2022. This is under challenge through present complaint.

4) The Hon'ble Supreme Court in case of **State of Uttaranchal and Others Vs. Kharak Singh 2008 III CLR 1062**, has pleased lay down principles while conducting domestic enquiry. They are reproduced as follows;

11) From the above decisions, the following principles would emerge:

- i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
- ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the

appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

Being guided by these principles, I hereby proceed to discern whether domestic enquiry conducted against the complainant is fair and legal and whether findings recorded by the enquiry officer are proper and legal or are perverse.

5) Enquiry report prima facie shows that a charge sheet dated 19.01.2020 was served upon the complainant describing charges leveled against him. All supporting documents were served upon the complainant along with the complaint. Formal charge was framed against the complainant, to which he has denied. The complainant was represented by his representative and an opportunity of cross-examination of witnesses examined in enquiry was given to him. To this extent there is no agitation on part of the complainant.

6) Enquiry report further reveals that, Assistant Mechanical

Engineer, MSRTC, Chandrapur was appointed as an enquiry officer and he has conducted enquiry, wherein he has recorded statement of reporting officer and the complainant. On basis of their statement, enquiry officer has concluded that charges leveled against the complainant are proved. However, enquiry report reveals that no presenting officer was appointed by the enquiry officer. Enquiry officer himself has put questions to the complainant and reporting officer. Enquiry report further reveals that the enquiry officer himself has acted as Investigator, Prosecutor and Judge. Record further reveals that, enquiry officer has submitted his report and suggested punishment. Hon'ble Supreme Court in case of **State of Uttaranchal and Others Vs. Kharak Singh 2008 III CLR 1062**, has pleased to observe that, an enquiry, where enquiry officer has acted as Investigator, Prosecutor and Judge cannot be called as bonafide, fair and proper. In view of observations of Hon'ble Supreme Court in case of **Kharak Singh**, enquiry against the complainant appears to be biased and prejudiced and cannot be called as bonafide, fair and proper.

7) It is well settled principles of law that, it is not necessary in each and every case that every witness must be examined by the enquiry officer before recording his findings on particular charges. Satisfaction of the enquiry officer as to allegations made against the delinquent and trustworthiness of evidence put forth before him to establish the charge is the core of exclusive domain of enquiry officer. It is the settled position of law that strict provisions of Evidence Act are not applicable to the domestic enquiry.

8) The complainant is alleged to have abused and used unparliamentary words to Santoshkumar Bawanthade- Assistant and Vinod Nagose- Artisan and thereby obstructed the functioning of the

respondent corporation. He misbehaved with them. The complainant instigated other workers not to work in time. The complainant has misguided the respondent corporation and enquiry officer. The enquiry officer on the basis of report of reporting officer, and statement of reporting officer and the complainant has arrived to a conclusion that the charges under clauses 25, 26, 27, 30 and 34 of Schedule-A of Discipline and Appeal Procedure of the respondent corporation are proved. Victims, who were abused by the complainant and other officials and staff members who were present in the office at the time of incident and were eye witnesses of alleged incident were material and important witnesses who could establish these allegations. Non examination of these vital witnesses has resulted into denial of an opportunity to the complainant to cross examine those witnesses and to impeach trustworthiness of the documents and recitals thereof. More over, record further reveals that, enquiry officer has recorded statement of reporter by asking leading questions as to report submitted by him without distinctly recording his statement. This further denied the complainant an opportunity to cross examine the witness and test his credibility. Important aspect which reveals from the enquiry papers and findings recorded by enquiry officer is that enquiry officer has relied upon statement of reporting officer, who is not an eye witness of the incident. His statement is not admissible being hear-say. These circumstances reveals that enquiry officer has failed to apply his judicial mind to the facts and evidence before him. Conclusions drawn by the enquiry officer, without examining independent witnesses and relying upon statement of reporting officer, choosing it as trustworthy against statement of the complainant, without justifying the same by reasons, are not only absurd but perverse too. In these circumstances, in my opinion, findings recorded by the enquiry officer are not sustainable and

has to be branded as perverse. As a consequence of these circumstances, **preliminary issues no.01 and 02 have to be answered in negative** to effect that procedure in conducting enquiry against the complainant is neither legal and proper nor is just, and that findings recorded by the enquiry officer are neither legal nor proper but, are perverse.

9) After having recorded the findings on preliminary issues No. 01 and 02 in negative, in view of principles of natural justice and fair play, the respondents are entitled for an opportunity to prove their allegations against the complainant before the court by adducing evidence, if it so desire. With these reasoning, I pass following order;

ORDER

01	Preliminary issues no. 01 and 02 are answered in negative to the effect that procedure in enquiry conducted against the complainant is not legal and proper nor is just, and that the findings recorded by the enquiry officer are not legal nor proper but, are perverse
02	The respondents are at liberty to prove charges against the complainant before the court by adducing evidence, if they so desire.

Date: 06.03.2026

(**Ravikant T. Sakhare**)
Member,
Industrial Court, Chandrapur.

Argued on : 06.03.2026
Pronounced on : 06.03.2026
Direct Typed on : 06.03.2026
Checked and signed on : 06.03.2026
Typed by : Shri. A.B. Panpate
Stenographer

(Ravikant T. Sakhare)
Member, Industrial Court, Chandrapur.