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| MHIC340000562020  | Comp. (ULP) No. 23 of 2020 Order Exhibit No.: O/03 Ku. Rekha D/o. Balkrishna Balekarmarkar. Vs. M. S. R. T. C. Gadchiroli. Through its Divisional Traffic Superintendent + 1 |
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JUDGMENT PART -01

(Passed on this 15th Day of April, 2025)

1) In view of Rule 117-A of the Industrial Court Regulations 1975, this court has framed two issues vide Exh. O/02, 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 |
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| 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. |
| 3) | What order ? | As per final order. |

REASONING

2) **AS TO PRELIMINARY ISSUES NO. 01 TO 03: -**

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 conductor with the respondent corporation, was served with charge-sheet dated 28.07.2014

alleging that she has committed misconduct under clauses 7(a), 7(c), 7(d), 7(i) and 12(b) of Discipline and Appeal Procedure of the respondent corporation. It was alleged in the charge-sheet against the complainant that on 22.07.2014, while she was discharging her duty as conductor on bus bearing No. MH-40/Y-5409 plying from Nagpur to Umred Bhisli, her bus was checked by the checking staff at Yerkheda. At time of checking, it was found that out of 18 passengers, 03 passengers were traveling on hand written tickets and other 03 passengers were traveling without tickets. The complainant has received total fare of Rs. 327/- from alleged without ticket passengers but has not issued tickets to them till point of checking. Cash with the complainant was checked and it was found less by Rs. 85/- with the complainant. In domestic enquiry, enquiry officer found that charges leveled against the complainant under clauses 7(a),7(c) and 7(d) of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation are proved. However, charges under clauses 7(i) 12(b) of Schedule-A of the Discipline and Appeal Procedure of the respondent corporation are not proved. Punishment order dated 20.12.2019 of reducing basic pay by three stages with cumulative effect was issued against the complainant. 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 to 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 proper and legal or are perverse.

5) Enquiry report prima facie shows that a charge-sheet dated 28.07.2014 was served upon the complainant describing the charges leveled against her. All supporting documents were served upon the complainant along with the charge-sheet. Formal charge was framed against the complainant, to which she has denied. The complainant was represented by her representative and an opportunity of cross-

examination was given to her. To this extent there is no agitation on part of the complainant.

6) Enquiry report further reveals that no presenting officer was appointed by the enquiry officer. Competent authority itself acted as enquiry officer. Enquiry officer himself has put questions to the complainant. Enquiry officer has also recommended punishment to be imposed by recording his findings on the charges leveled against the complainant. Enquiry report further reveals that the enquiry officer himself has acted as Investigator, Prosecutor and as Judge. Hon'ble Supreme Court in case of **State of Uttaranchal and Others Vs. Kharak Singh 2008 III CLR 1062**, has pleased to observe that, such an enquiry conducted against the complainant cannot be called as bonafide, fair and proper. In view of observations of Hon'ble Supreme Court in case of **Kharak Singh**, enquiry 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 obtained fare of Rs. 327/- from alleged without ticket passengers at the place of their boarding but has not issued ticket to 03 passengers whereas has issued handwritten tickets to 03 passengers. 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 7(a), 7(c) and 7(d) against the complainant are proved and charges under clauses 7(i) and 12(b) are not proved. While recording his findings, enquiry officer has observed that, ETI machine was not functioning proper and tickets were not properly printed. Allegations of selling unauthorised tickets and malafide acts while performing duties towards the respondent corporation were not proved but on same set of facts has arrived to a conclusion that, allegations of non issuing tickets to the passengers after accepting proper fare, non issuance of tickets within stipulated time frame are proved. Thus, according to observations of enquiry officer charges under clauses 7(a), 7(c) and 7(d) against the complainant are proved but charges under clauses 7(i) and 12(b) are not proved. Enquiry officer has not considered defence of the complainant that there was malfunction of ETI machine. These findings are not only inconsistent but can not coexist with each other. These circumstances reveals that the enquiry officer has failed to apply his judicial mind to the facts and evidence before him. The conclusions drawn by the enquiry officer 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 the 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

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| 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: 15.04.2025

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

Pronounced on : 15.04.2025
Direct Typed on : 15.04.2025
Checked and signed on : 16.04.2025
Typed by : Shri. A.B. Panpate
Stenographer

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