

MHIC340001052023 	Ref. (IT) No. 06 of 2023 Order Exhibit No.: O/05 Maharashtra State Road Transport Corporation, Gadchiroli. Through its Divisional Controller + 01. Vs. Maharashtra State Transport Kamgar Sanghatana, Gadchiroli Division, Gadchiroli+ 01
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IN THE COURT OF MEMBER INDUSTRIAL COURT, CHANDRAPUR
(Presided Over by Ravikant T. Sakhare)

Ref. (IT) No. 06/2023
Order Exh. O/05

Party No. 01 : (1) Maharashtra State Road Transport Corporation, through its Divisional Controller MSRTC, Gadchiroli.

(2) Maharashtra State Road Transport Corporation, through its Divisional Traffic Officer, MSRTC, Gadchiroli.

AND

Party No. 02 : (a) The Divisional Secretary, Maharashtra S. T. Kamgar Sanghatna, Gadchiroli Division, MSRTC, Gadchiroli.

(b) Kishor Shrirang Kulsange
Aged about- 55 years, Occ- Service,
R/o Indira Nagar, Mul road,
Chandrapur, Dist.- Chandrapur.

Advocates Appeared
Shri Bhaskar M. Patil
Shri K. V. Buradkar

Advocates for Party No.01.
Representative for Party No.02.

JUDGMENT PART - I(Passed on this 20th Day of July, 2026)

1) Present case is a reference under section 10(1) referred under section 12(5) of the Industrial Disputes Act, 1947, by the Additional Labour Commissioner, Nagpur, referring an industrial dispute in between the MSRTC, Gadchiroli, through its Divisional Controller and Maharashtra S. T. Kamgar Sanghatna, Gadchiroli Division, Gadchiroli and one Kishor Shrirang Kulsange, whereby an order dated 08.01.2010 passed by party No.01 corporation was disputed by party No.02 union and one Kishor Kulsange.

2) Statement of claim is filed by party No. 2(b) Kishor Kulsange vide Exh. U/2. view of Rule 117-A of the Industrial Court Regulations 1975, this court has framed two issues vide Exh. O/04, 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 are as follows :

No	Preliminary Issues	Findings
1)	Is the procedure in conducting enquiry of the party No.02(b) legal, proper and just?	No.
2)	Is the findings recorded by enquiry officer legal and proper or is perverse ?	Findings are perverse.
3)	What order ?	As per final order.

REASONING

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

Both the parties have opted not to adduce evidence on these

issues. Heard the advocates for both the parties and perused the record.

4) Perusal of record reveals that, party 2(b) Kishor Kulsange was working as driver with Party No.01 corporation. He was served with charge-sheet on 22.09.2008 whereby, it was alleged that on 03.07.2008 when party No.02(b) Kishor Kulsange was on duty as driver on bus bearing No. MH-12/AQ-8772, plying from Chamorshi to Mul, while performing his duty on the said trip, said bus was running from Chandrapur crossing road, truck bearing No. AP-27-W-5167 coming from right side dashed to S.T. bus, leading to severe accident. Party No.02(b) Kishor Kulsange has committed misconduct falling under clauses 11, 15 and 45 of Schedule-A of the Discipline and Appeal Procedure of party No.01 corporation. Party No.02(b) Kishor Kulsange was subjected to an enquiry and after enquiry, charges against him were found to be proved. Impugned punishment order was passed, which is under challenge in present reference.

5) 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 proper and legal or are perverse.

6) Enquiry report prima facie shows that on 22.09.2008 a charge sheet was served upon Party No.02(b) Kishor Kulsange describing the charges levelled against him. All supporting documents were served upon him along with charge-sheet. Formal charge was framed against Party No.02(b) Kishor Kulsange, to which he has denied. Enquiry record further reveals that during enquiry due opportunity of hearing was given to Party No.02(b) Kishor Kulsange. No prejudice while according opportunity of hearing to Party No.02(b) Kishor Kulsange can be seen. To this extent there is no agitation on part of Party No.02(b) Kishor Kulsange.

7) During enquiry, the enquiry officer has examined Reporting

Officer Shri. S. L. Dongre and an opportunity of cross examination was given to Party No.02(b) Kishor Kulsange. On basis of evidence of this witness and documentary evidence, enquiry officer has concluded that charges levelled against Party No.02(b) Kishor Kulsange are proved and show cause notice for proposed punishment was issued to Party No.02(b) Kishor Kulsange.

8) Enquiry report further reveals that no presenting officer was appointed by the enquiry officer. The competent authority itself acted as enquiry officer. Enquiry officer himself has put questions to the witnesses and has recorded his findings only on basis of evidence of reporting authority and documentary evidence available with him, without examining any other witness. Enquiry officer has also recommended the punishment to be imposed by recording his findings on the charges levelled against Party No.02(b) Kishor Kulsange.

9) 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 Party No.2(b) Kishor Kulsange 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.

10) 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.

11) Enquiry officer has acted upon mere statement of reporting officer Shri. S. L. Dongre recorded before himself, which is in form of a simple statement that his statement is according to the report submitted by him. No independent statement was recorded by enquiry officer before himself. This denied an opportunity to Party No.2(b) Kishor Kulsange to test veracity of statement of the reporting officer. According to reporting officer, Party No.02 Kishor Kulsange drove his bus in rash and negligent manner and gave dash to Truck, leading to severe accident. Defence of Party No.02(b) Kishor Kulsange is that truck bearing No. AP-27-W-5167 coming from right side dashed to S.T. bus. There is nothing on the record to reveal that defence of Party No.02(b) Kishor Kulsange is improbable or unlikely.

12) Admittedly, reporting officer Shri. S. L. Dongre is not an eye witness of the incident. His statement is solely dependent upon statement of witnesses he alleged to have recorded when he reached at spot of incident. Alleged incident took place on 03.07.2008 at about 10.45 pm.. Investigating Officer has visited the spot much later after the accident took place. As reporting officer Shri. S. L. Dongre is not eye witness of the incident and he has not narrated any specific observations which can point out that party No.02 Kishor Kulsange was driving his bus in rash and negligent manner, in my opinion, merely on grounds that, both vehicles have dashed each other, it can not and should not be a ground to presume that party No.02 Kishor Kulsange was at fault, unless there is specific evidence to that effect. Reporting Officer in his report has recited names of witnesses who were examined by him, but those witnesses were not examined by the enquiry officer in the enquiry. In these circumstances, in my opinion, statement of

reporting officer is untrustworthy and can not be acted upon without further corroboration.

13) It is matter of record that the enquiry officer has not examined any of witness who is alleged to have witnessed the incident and can put forth direct evidence about the incident. This resulted into denial of an opportunity to Party No.02(b) Kishor Kulsange to cross examine said witnesses and to establish facts before enquiry officer. No witness supporting statement of Reporting Officer Shri. S. L. Dongre is examined by enquiry officer. Enquiry officer has relied upon the statement of Reporting Officer, who was not the eye witness of the accident.

14) In view of the circumstances that the enquiry officer/ competent authority has relied upon the statement of Reporting Officer only, who was not the eye witness of the accident, has not examined any of the passenger of the bus or eye witness of the accident, in my opinion, findings recorded by enquiry officer arriving at a conclusion that misconduct alleged against party No.02 (b) Kishor Kulsange is proved, is based upon insufficient evidence. In these circumstances, in my opinion, findings recorded by enquiry officer on basis of mere statement of reporting officer Shri. S. L. Dongre and documents without examining any witness, are not sustainable and has to be branded as perverse. As a consequence of these circumstances, **preliminary issues no.01 have to be answered in negative** to the effect that procedure in conducting enquiry against Party No.2(b) Kishor Kulsange is neither legal and proper nor is just, and that findings recorded by the enquiry officer are neither legal nor proper but, are perverse.

15) After having recorded the findings on preliminary issues no. 01 in negative, in view of principles of natural justice and fair play, party

No.01 Corporation is entitled for an opportunity to prove its allegations against Party No.2(b) Kishor Kulsange before the court by adducing evidence, if it so desire. With these reasoning, I pass following order;

O R D E R

01	It is hereby declared that enquiry conducted against the party no. 2(b) Kishor Kulsange is not legal, just and proper.
02	It is hereby further declared that the findings recorded by the enquiry officer/ competent authority are perverse.
03.	The party no. 1 corporation is at liberty to adduce independent evidence before the court to substantiate their allegations against the party no. 2(b) Kishor Kulsange, if they so desire.

(Ravikant T. Sakhare)

Member,

Date: 20.07.2026

Industrial Court, Chandrapur

Argued on	:	13.07.2026
Direct typed on	:	20.07.2026
Pronounced on	:	20.07.2026
Checked and signed on	:	20.07.2026
Uploaded on CIS	:	20.07.2026
Typed by	:	Shri. K. C. Durge Stenographer

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