

**BEFORE G. S. HANGE JUDGE, LABOUR COURT AT MAHAD,
DIST – RAIGAD**

**COMPLAINT (ULP) No. 02/2021
(CNR No. MHLC060000072021)**

Jitendra Jayant Deshpande

Age-50 Yrs Occ- Service

R/O- C-101, Ganganarayan co. society,

Ziral Ali,

Pen. Dist- Raigad

Complainant...

V/s.

1. Divisional Traffic Officer

M. S. R. T. C. Raigad Division

Ramwadi, Tal.- Pen, Dist.- Raigad-402107.

2. M. S. R. T. C.

Through, Divisional Controller,

MSRTC Raigad Division,

Ramwadi, Pen, Dist.- Raigad-402107.

Respondents....

3. Depot Manager,

MSRTC, Pen Depot, Raigad

Order Part-I

(Passed on- 06/08/2025)

This is a complaint under item 1(a), 1(b), 1(d), 1(f) and 1(g) of Schedule IV of the MRTU and PULP Act 1971.

Complainant's case:-

2. In short the case of the complainant is that he is working

as a conductor in the respondent depot since 1997 till today. On 26/08/2020, the respondents issued charge-sheet to him alleging that on 29/01/2020, when he was on duty to issue passes in Pen depot issued pass No. 893375 for Pen – Khopoli route for Rs. 4,000/- (Rs. Four Thousand only) from one Sagar Damodhar Mhatre by misusing office copy of said pass which was already issued to Pradhnya Prabhakar Shukla for Pen Gadab route for Rs. 1000/- (One Thousand). It is then alleged that the complainant had issued pass no. 844154 to Prathmesh Chandrakant Mhatre without using carbon and therefore it became possible to misuse it's office copy. Accordingly, said copy has been misused for issuing pass to one Rahul Gurav. Thus, it is alleged that the complainant has misappropriated Rs. 4000/ (Rs. Four thousand) and also responsible for misusing other passes.

3. According to the complainant the said charge is false. He has issued pass No. 893375 to one Prdhyana Prabhakar Shukla & it's office copy also bears her name. It is further contended that the third copy of the said pass has been misused by someone & he has no role in it. It has not been checked within time by the depot manager. It is then contended that he never issued any pass to Sagar Mhatre. It is contended that farce inquiry has been conducted & the enquiry Officer has not allowed the request of the complainant to examine the concerned depot officer Wartak, & passengers. The enquiry Officer has not allowed the request of the complainant to examine the Handwriting expert. The enquiry Officer has not followed the

principles of natural justice. It is contended that the enquiry officer has recorded the incorrect findings against him. Thus, according to the complainant the enquiry conducted against him is not fair and proper and the findings recorded by him are also perverse.

Case of the respondents:-

4. The respondents in the written statement denied the allegations in the complaint. According to them the complainant has mis-appropriated Rs. 4000/- (Rs. Four thousand) by misusing the official copy of the passes. The concerned passengers in their respective statements stated that they have obtained those passes from "Pass window" of Pen Depot. It is contended that the said fact came to knowledge of the depot when the passengers came for cancellation of the said passes. It is then contended that the fair opportunity has been given to the complainant in the enquiry and the enquiry Officer has recorded finding that misconduct is proved after considering the evidence on record and the defense of the complainant. It is contended that if the complainant is kept in service the respondents will suffer irreparable loss.

5. This court has framed issues below Exh. O-2. I have recorded my findings thereon for the reasons noted above.

<u>SR No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the enquiry conducted against the complainant is fair and proper and	Yes

- in accordance with the principles of natural justice?
- 2 Whether the findings of the enquiry officer are perverse ? No
- 3 What order ? As per final order.

REASONS

ISSUE NOS. 1 TO 3

6. Learned advocate for the complainant has referred the papers of enquiry filed on record and submitted that the complainant since beginning has denied his hand writing & signature on the passes issued by misusing office copies. He submitted that the complainant has requested the enquiry Officer to send those passes to handwriting expert for ascertaining whether it bears his hand writing & signature but the said request has been turned down by the enquiry officer. It is then argued that the enquiry officer has also not considered the report of handwriting expert brought by the complainant which specifically states that the hand writing & signature on the pass issued by misusing office copy is not of the person who issued original pass i.e. the complainant. It is then argued that the enquiry officer refused to call the witnesses & also to adjourn the matter for the examination of the witness on behalf of the complainant. Then it is argued that the complainant himself sent the documents to hand writing expert & requested the enquiry officer to adjourn the inquiry till the receipt of report of the Hand writing

Expert, however, this request is also turned down.

7. It is then submitted that the statement of the complainant has been obtained by misrepresentation & the alleged misused pass was not shown to the complainant while recording his statement. It is then argued that the complainant has no concern with issuance of pass to one Rahul Gurav as it was not issued in his working tenure. He then relied on the clause 22 of MSRTC Discipline & Appeal Rules & submitted that unless criminal case is decided no punishment can be imposed on the complainant in domestic enquiry. He then submitted that the complainant is a conductor and without any training he has been deputed to work as Traffic Controller for issuance of passes. He then submitted that the passbooks of the depot are missing and someone might have misused the same. It is submitted that the complainant is working with the depot since 23 years and in that period no such incident had been noticed by the respondents. According to him this is a case wherein the complainant has been victimized to save the Superior Officers. He then submitted that in the police case no progress has been made by the police. It shows that the complainant has been victimized by the respondents. According to him, the complainant has proved strong prima facie case in his favour.

8. Per contra, learned advocate for the respondents has referred to the documents filed in the enquiry and specially copies of passes and submitted that the pass issued to Sagar Mhatre & Prdhnya

Shukla have been issued by same person I.e by the complainant. She then submitted that those passengers have given their respective statements that they obtained the passes from Pass window. She then submitted that the complainant himself in his statement dated 13/07/2020 admitted that he has issued pass to Sagar Damodhar Mhatre & denied that he issued passes to Vidhya Dabade, Rahul Gurav & Nandkumar Mhatre. She submitted that the said statement bears his signature & therefore it was not necessary to seek and consider the opinion of the Handwriting expert. She then submitted that the complainant was permitted by the enquiry officer to examine the witnesses & it is not necessary in domestic enquiry to have report of hand writing expert when other evidence is available. It is submitted that the statements of the passengers & statement of the complainant is sufficient to conclude that the complainant has misappropriated the Corporation money. It is then submitted that it is not necessary for the respondents to examine the passengers in the enquiry. In the written statement, reliance is placed on the judgment reported in the case of State of Haryana & Anr. Vs. Rattan Singh, AIR 1977 Supreme Court 1512.

9. At the outset, it is necessary to state that it appears from the enquiry papers that the complainant has been represented by his Union Representative who conducted the cross-examination of the witnesses of the respondents. It further appears that the statement of the complainant has been taken on record in the enquiry. It then appears that the enquiry proceeding has been adjourned time to time

on the request of the complainant. It then appears from enquiry papers that the complainant was permitted to examine passengers Prdhanya Shukla & Sagar Mhatrer & the proceeding was adjourned for their examination as per the request of the complainant. However, on adjourned date the complainant has not produced the witnesses & therefore second adjournment was refused to him & enquiry proceeded further. Therefore, there appears that the enquiry conducted against the complainant is fair and proper.

10. Before appreciating the contentions on merit it is necessary to refer the principles as to when findings of the enquiry officer in domestic enquiry can be termed as perverse. In the case of *Kuldeep Singh Vs. The Commissioner of Police & Others* decided on 17/12/1998, the Hon'ble Supreme Court has dealt with the aspect when the findings of the enquiry officer can be said to be perverse. The Court has considered its earlier decisions & held that "*In Nand Kishore vs. State of Bihar, cited in AIR 1978 SC 1277*" it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by

the enquiry officer would be perverse. The findings, recorded in a domestic enquiry, can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. It is then held that whether the evidence are opposed on the conclusion is where to which is no reasonable man could come. The evidence can be rejected as perverse. It was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

11. In *Association Of Engineering v/s Hindustan Motor Manufacturing reported in 2004 (102) FLR 154*, the Hon'ble Bombay High Court has held that the ruling of the Apex Court therefore clearly discloses the necessity for analysis of the evidence by the enquiry officer before arriving at the finding regarding the misconduct of the workmen. It is necessary for the enquiry officer to analyse the evidence and to disclose from such analysis as to how the allegations against the workmen are established by the evidence led by the employer. It is not a mere formality on the enquiry officer to conclude that allegations are proved by the evidence on record would

suffice the requirement of law in that regard but the exercise of analysis of evidence should be disclosed from the application of mind by the enquiry officer to the facts brought on record vis-a-vis the allegation of misconduct by the workman and such an exercise should be revealed on the face of the record of the report of the enquiry officer itself. In the absence thereof, as rightly submitted by the advocate for the petitioner, it cannot be said that the enquiry officer has applied his mind to the matter in issue nor it can be said that the findings by the enquiry officer are borne out from the record. On the contrary in the absence of analysis it would have to be concluded that the findings are perverse.

12. So far perversity of the findings is concerned, the findings is said to be perverse when it is shown that, such a finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before an authority or such a finding at which no reasonable person could have arrived at on the material placed before the Labour Court. In the present case so far as sending of documents to handwriting expert is concerned, said request of the complainant has been turned down by the enquiry Officer on the ground that in departmental enquiry other evidence is available and therefore, it is not necessary to send the documents to hand writing expert. However, then the complainant has himself sought sending of those documents to hand writing expert & sought copies thereof from the respondent. Those copies were provided to him. Then the complainant has sought stay of proceeding till the report of Hand

writing expert is received. However, said request has been turned down by the enquiry officer. It is well settled law that strict principles of Evidence Act are not applicable to the departmental proceedings. Hence, in the departmental enquiry it is not necessary to prove the misconduct beyond reasonable doubt. The disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence. Considering these aspects it can not be said that only on the ground that the proceedings has not been stayed till the receipt of report of Hand writing expert, strong prima facie case is made out by the complainant. Thus, it prima facie appears that fair and reasonable opportunity to meet charges has been given to the complainant.

13. So far as findings of the enquiry officer are concerned, it appears that he has considered the evidence in the enquiry along with the statement of the complainant that the pass No. 893375 issued to Sagar Damodhar Mhatre is issued by him & it bears his handwriting & signature. He referred to the documents and found the complainant guilty of the misconduct charged. It appears from the enquiry papers that the complainant was on duty of issuing passes from Feb.2019. It further appears that the pass No. 893375 has been issued in the working tenure of the complainant. It further appears from the statement of concern passengers viz. Sagar Mhatre & Pradhnya Shukla that they have obtained their respective passes from Pass Window of Pen Depot. It may be noted that pass issued to

Sagar Mhatre has been issued by misusing office copy of pass issued to Pradhnya Shukla. Both those passes have been issued in the working hours of the complainant. In the statement dated 13/07/2020 the complainant has admitted the issuance of pass to Sagar Mhatre.. The amount of Rs. 4000/- obtained for pass has not been deposited to MSRTC. However, later on the complainant tried to deny the fact that he has issued pass to Sagar Mhatre. In answer dated 11/9/2020 to charge sheet he contended that his statement was recorded without showing pass issued to Sagar Mhatre. He also alleged threatening. However, it appears that in the same statement dated 13/07/2020 he denied that passes issued to Vidya Dabade, & Rahul Gurav. Thus, at this stage it can not be accepted that the statement of the complainant was got recorded without showing him the passes & on threat. It may be noted that according to the complainant, he has only issued the pass No. 893375 to one Pradhnya Shukla & not to Sagar Mhatre . However, passes issued to Smt. Shukla & Sagar Mhatre bears same numbers. So also, it appears that the said Sagar Mhatre has given his statement in the enquiry wherein he stated that he paid Rs. 4,000/- (Rs. Four thousand) to the concerned officer and obtained pass. So also another misconduct of the complainant is that he has issued pass No.844154 to Prathmesh Mhatre, however, said pass has been issued without using Carbon for Office copy .Therefore, later on said office copy has been misused & the pass of same number came to be issued to Rahul Gurav. Those passes are filed in the enquiry papers. Thus it prima

facie appears from the enquiry papers that due non use of carbon, office copy of pass issued came to be misused which caused loss of Rs, 4500/ . All these facts are established in the enquiry. Thus, all these aspects appears to be considered by the enquiry officer.

14. Learned advocate for the complainant has strongly relied on the report of Handwriting Expert filed along with the complaint & submitted that said report has been given to the enquiry officer, however he has not considered it. It is submitted that the said report shows that pass issued to Sagar Mhatre did not bear the hand writing & signature of the complainant. It appears that the complainant has done private expert examination of the Colour copies of the passes as provided to him by the respondents. Smt. Neha Menon, Forensic Expert, of Square company has examined the copies & opined that the signature & handwriting on the passes issued to Sagar Mhatre & Pradhanya Shukla are not of the same person. It appears that the said report has been received by the respondents on 24/12/2020. However, as stated earlier at initial stage of the enquiry, the enquiry officer has refused to send the documents to Handwriting Expert on the ground that there is other evidence against the complainant. As stated earlier in the domestic enquiry strict principles of Evidence Act are no applicable. There is statement of the complainant, statement of passenger Sagar Mhatre which on probability / prima facie proves the misconduct of the complainant. Hence, non consideration of report of Private Handwriting Expert by the enquiry officer will not prove strong prima facie case in favour of the complainant.

15. So far as the non examination of passengers by the respondents is concerned it is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Therefore non examination of other passengers is not fatal. There is confidential report of the department wherein the all these passes have been specifically mentioned.

16. So far as the contention of the complainant that he has no training and still he was directed to issue the passes is concerned, in the enquiry, said aspect appears to be made clear by the reporter. He stated that the complainant was appointed as temporary Divisional Controller.

17. Another contention of the learned advocate for the complainant is as to the delay in the notice of the mis-appropriation. However, the said aspect cannot be considered as strong prima facie case when there is some evidence on record before the enquiry officer to held the complainant guilt of the mis-appropriation. Another submission of learned advocate for the complainant is that 15 copies of passbooks are missing from the office of respondents. According to him, due to which someone has misused the said receipt books and the complainant has been victimized. However, this contention cannot be accepted in view of evidence available in the enquiry

against the complainant.

18. In so far as reliance on the clause 22 of MSRTC Discipline Appeal Rules is concerned, according to it when the criminal case & proceeding of Anti Corruption Department is pending against the delinquent, departmental enquiry can be conducted but no punishment can be imposed until the final order of the court. However, it appears from the papers on record that the criminal case is not only against the complaint but also against other employees. The evidence relied in the enquiry is independent & nowhere the evidence collected by the police has been filed or relied in the inquiry. In the case of Depot Manager, A.P. State Road Transport Corporation. Vs. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699, the Hon'ble Supreme Court in paragraph 8 held as under: "The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case

requires to be considered in the backdrop of its own facts and circumstances. In the present case departmental enquiry has started on the confidential report of Security Officer and on the evidence collected by department. No evidence collected by the police has considered. In such circumstances the departmental enquiry has been conducted independently without any reference to police case filed. Evidence in the enquiry is independent.

19. On bare perusal of the findings recorded by the enquiry Officer of the respondents it appears that he has taken into consideration oral as well as documentary evidence in order to arrive at findings. In domestic enquiry the provisions of Indian Evidence Act are not strictly applicable. Therefore, on the basis of evidence brought before the enquiry Officer by the respondents and the statement in defense given by the complainant, the findings recorded by the enquiry Officer appears to be not perverse. On these grounds, if the finding recorded by enquiry Officer is looked into then it cannot be said that those are perverse. Therefore, I hold that the findings recorded by enquiry officer are not perverse. Consequently, I answer these issues accordingly and pass the following order.

ORDER

- 1) It is hereby held and declared that the inquiry conducted against the complainant is fair and proper and in accordance with the principles of natural justice.

- 2) The findings of enquiry Officer are not perverse.
- 3) In the circumstances no order as to costs.

Mahad.
Date. - 06/08/2025

(G. S. Hange)
Judge
Labour Court, Mahad